



General Terms & Conditions

1) APPLICABILITY: These general terms & conditions (these "Terms") are the only terms which govern the sale of goods & the provision of services by Smile Business Products, Inc. ("Smile") to you ("Client"), except that if there is a written contract signed by Smile & Client with respect to the sale of goods or provision of services to Client, the terms & conditions of that contract shall prevail to the extent they are inconsistent with or in addition to these Terms. Smile offers the following types of managed service agreements: (a) Equipment Maintenance Agreement, (b) Rental Agreement, (c) Managed Printer Services Agreement, (d) Managed Network Services Agreement, (e) Document Management Agreement, (f) Managed Communications Agreement, & (g) Web Services Agreement. Smile refers to these agreements collectively as "Service Level Agreements." Smile also provides Clients with the opportunity to obtain Goods (as defined below) pursuant to the terms of a Smile rental agreement or a Smile lease agreement (collectively, "Rental/Sales Agreements"). Rental/Sales Agreements together with the Service Level Agreements are each individually referred to in these Terms as a "Smile Agreement" and, collectively, as "Smile Agreements."

2) SALE OF GOODS: Upon the execution of a financing agreement or receipt of payment, Smile shall deliver to Client, & Client shall accept, those tangible goods (a) identified on the sales, rental or lease document acknowledged in writing by Client or (b) ordered by Client on Smile's website at www.smilebpi.com (the "Website") using Client's unique username & password (collectively, "Goods"). Smile reserves the right to repossess Goods in the event that Client does not comply with the payment terms specified. ALL SALES ARE FINAL AND, OTHER THAN CONSUMABLE SUPPLIES, NO GOODS ARE RETURNABLE OR EXCHANGEABLE. **ALL GOODS ARE SOLD "AS IS" UNLESS OTHERWISE PROVIDED IN THESE TERMS OR IN A SEPARATE WRITTEN AGREEMENT SIGNED BY BOTH CLIENT & SMILE.** Client agrees not to sell, assign or dispose of any Goods purchased from Smile until payment in full has been made to Smile. With the consent of Smile (which consent Smile may grant or withhold, in its sole discretion), Goods currently stocked by Smile, unused & in their original packaging may be returned & are subject to a restocking fee, equal to 25% of the sales price.

3) ACCEPTANCE OF TERMS & CONDITIONS: If Client has entered into a Smile Agreement with Smile, Client agrees that payment by Client of the initial invoice shall be deemed to be acceptance by Client of the Terms & Conditions on the reverse side of such invoice. Smile reserves the right to change these Terms from time to time in its sole discretion & Client agrees that the publishing of these Terms, as amended or modified from time to time, on the back of every invoice constitutes adequate notice to Client of any amendment or modification of these Terms. The terms & conditions of a Service Level Agreement that is renewed may be different from the terms & conditions applicable to the previous Service Level Agreement.

4) LIMITED WARRANTY: For new Goods purchased from Smile where an Equipment Maintenance Agreement is not purchased at the time of sale, any repairs required within ninety (90) days of purchase will be performed under a manufacturer warranty that covers labor & materials only to diagnose and/or replace a defective part. There are no other express or implied warranties made by Smile with respect to the Goods. Client agrees & acknowledges that if any model or sample Goods were shown to Client, the models or samples were used to merely illustrate the general type & quality of the Goods & Client was informed that its Goods would not necessarily conform to the models or samples. **EXCEPT AS PROVIDED ABOVE IN THIS SECTION 4, SMILE MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY, (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR (C) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

5) LIMITATION OF LIABILITY: IN NO EVENT SHALL SMILE BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THESE TERMS, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY CLIENT OR COULD HAVE BEEN REASONABLY FORESEEN BY SMILE, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, & NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL SMILE'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS OR ANY SMILE AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE EXCEED THE TOTAL OF THE AMOUNTS PAID TO SMILE FOR THE GOODS HEREUNDER.

6) LATE CHARGES: Client agrees to pay invoices and/or non-refundable monthly maintenance fees for Goods & services within the time periods stated on the invoice. In the event Client fails to make any payment when due, Client agrees to pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily & compounded monthly. Client understands that Smile has the right to withhold services if Client fails to make the payments when due in accordance with any Service Level Agreement. A fee of \$25 shall be charged for each returned check or declined credit card charge.

7) NO ASSIGNMENT: Neither these Terms nor any Smile Agreement may be assigned by Client without prior written approval by Smile, which approval may be withheld in Smile's discretion. Any attempted assignment by Client in violation of this provision shall be void. Smile reserves the right to delegate its duties under these Terms & any Smile Agreement to one or more independent contractors. Smile further reserves the right to assign these Terms & any Smile Agreement with Client to a third party selected by Smile without the prior consent of Client.

8) GOVERNING LAW; JURISDICTION; VENUE: These Terms & each Smile Agreement shall be governed by & construed in accordance with the laws of the State of California, other than its conflict of law rules. Client irrevocably consents to the jurisdiction & venue of the state & federal courts located in Sacramento, California in connection with any action relating to or arising out of these Terms or any Smile Agreement.

9) ATTORNEYS' FEES. The prevailing party in any dispute arising regarding any obligation under this Agreement, or any resulting transaction, shall be entitled to recover all reasonable attorneys' fees, expert witness fees, costs & other reasonable expenses incurred in the preparation & arbitration or other litigation of the dispute, as well as in any proceeding to enforce this arbitration provision or any resulting award, or any appeal from any judgment thereon.

10) ARBITRATION: Except as provided below, Client agrees that any dispute or claim in law or equity regarding any obligation under these Terms or any Smile Agreement, or any related agreement or resulting transaction (including any cross complaint), shall be decided by neutral, binding arbitration. To the maximum extent permitted by law, Smile and Client waive any rights they may have to trial by jury in regard to claims covered by this section. The arbitrator shall be a retired judge or justice, unless the parties mutually agree to a different arbitrator, who shall render an award in accordance with substantive California law. The parties shall have the right to discovery in accordance with California Code of Civil Procedure §1283.05. In all other respects, the arbitration shall be conducted in accordance with Title 9 of Part III of the California Code of Civil Procedure. Arbitration fees shall be divided equally among the parties involved. The arbitration will take place in Sacramento, California. Any arbitration award rendered by the arbitrator(s) shall be final and binding upon the parties. Judgment upon the award of the arbitrator may be entered in any court having jurisdiction. Notwithstanding the foregoing, the provisions of this Section 10 shall not prevent Smile from (i) exercising its right to repossess Goods upon a payment default by Client, (ii) ceasing to provide services to Client under any Service Level Agreement upon a payment default by Client, (iii) filing a complaint against Client upon any payment default by Client or (iv) seeking injunctive relief for any breach or alleged breach by Client of the confidentiality provisions of any Smile Agreement executed by Client.

11) NOTICES: All notices, request, consents, claims, demands, waivers & other communications hereunder or under any Smile Agreement (each, a "Notice") shall be in writing & addressed to the parties at the addresses set forth on the face of the sales confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). A Notice is effective only (a) upon receipt of the receiving party, & (b) if the party giving the Notice has complied with the requirements of this Section 11.

12) RELATIONSHIP OF PARTIES: The relationship between the parties is that of independent contractors. Nothing contained in these Terms or any Smile Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, & neither party shall have authority to contract for or bind the other party in any manner whatsoever.

13) FORCE MAJEURE: Smile shall not be liable or responsible to Client, nor be deemed to have defaulted or breached these Terms or any Smile Agreement, for any failure or delay in fulfilling or performing any term of these Terms or any Smile Agreement when & to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Smile.

14) SEVERABILITY: If any term or provision of these Terms or any Smile Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of these Terms or any Smile Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

15) ENTIRE AGREEMENT: These Terms, together with the terms of any Smile Agreement executed by Smile & Client, constitutes the entire agreement between Smile & Client with respect to the subject matter hereof & of any Smile Agreement & supersedes all prior agreements & understandings, whether written or oral, with respect to the subject matter of these Terms or any Smile Agreement. Client agrees that it has not relied on any representation, warranty, or provision not explicitly stated in these Terms or any Smile Agreement executed by Smile & Client. These Terms together with the terms of any Smile Agreement executed by Smile & Client shall prevail notwithstanding any additional or different terms & conditions of any purchase order or other document submitted by Client in respect to the Goods or services to be provided hereunder or under any [Smile Agreement](#). In the event of any conflict between these Terms and one or more provisions of any Smile Agreement, the provision(s) in the Smile Agreement shall prevail.

16) AMENDMENT & MODIFICATION: Except as provided in Section 3 above, these Terms & the terms of any Smile Agreement may only be amended, modified or supplemented by an agreement in writing signed by Client & Smile. No waiver by any party of any of the provisions hereof or in any Smile Agreement shall be effective unless explicitly set forth in writing & signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, & whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from these Terms or any Smile Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or under any Smile Agreement preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

17) SURVIVAL: All of the provisions of these Terms shall remain in full force & effect after any termination of these Terms or any Smile Agreement.

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