

# McCally IT LLC, Terms & Conditions

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## **GENERAL TERMS AND CONDITIONS OF SALES AND SERVICES**

These Terms and Conditions of Sale and Service shall apply to all sales of goods (Goods) and/or services (Services, and together, Products) sold to Buyer, Client and/or Customer by McCally IT LLC, also known herein as “McCallyIT” a Texas Limited Liability Company (together McCallyIT). All orders are subject to approval by McCallyIT at its corporate headquarters in Fort Worth, TX.

1. **PAYMENT TERMS** - (i.) Invoices are due and payable upon receipt of Products or upon other terms provided to Buyer by Seller as stated on the invoice. Buyer agrees that any outstanding balance unpaid when due shall be subject to a finance charge at the maximum legal rate approved by applicable law in effect at the time of calculation (currently eighteen (18) percent per annum,) to be calculated and billed separately on a monthly basis. (ii.) Payments received from Buyer may be applied by Seller against any outstanding balance due under this or any other agreement between Buyer and Seller. Seller may refuse or delay any shipments if Buyer fails to pay when due any payments due Seller under any purchase order or agreement. Any discount offer is void if not taken at time of invoice payment.
2. **TRANSFER OF OWNERSHIP**- Seller will maintain full ownership of all Products sold to Buyer until payment is received in full.
3. **PRICE & TAXES** - All prices are F.O.B. point of origin. Prices do not include, and Buyer agrees to pay, all sales, use, services, excise or similar taxes due on sales to Buyer and any related freight and handling charges which may result from sales to Buyer. Seller may increase the price of any Goods ordered by buyer, prior to shipment from Seller’s location, in the event Seller’s cost of such Goods increase, with prior approval by Buyer. Such increase shall be calculated at the same percentage as the increase in cost to Seller.
4. **ACCEPTANCE** – Upon receipt of Products, Buyer agrees to inspect and/or test the Products in a prompt manner and notify Seller in writing no later than 10 days after the earlier of (i) receipt of Product by Buyer or (ii) the date of the completion of Services provided by Seller. Products and Services shall be deemed accepted by Buyer unless Buyer provides Seller with timely written notice, as set forth above, specifically noting any defects or discrepancies in the quality or quantity of Products or Services received.
5. **DELIVERY & TRANSPORTATION** – All goods shipped are F.O.B. point of origin. Title to and risk of loss of all Goods shall pass upon Seller’s delivery of Goods to carrier. Buyer shall pay all freight, handling, delivery, special packing and insurance charges for shipment of goods. Choice of carrier, shipping method and route shall be at the election of Seller. Seller shall have the right to deliver all goods covered hereby at one time or in portions from time to time.
6. **PRODUCT AND SOFTWARE WARRANTIES** - MCCALLYIT hereby passes through to Client such manufacturer’s warranties as may be extended by the manufacturers to MCCALLYIT.
  - (a) For third party licensed software, warranties may be provided directly by the manufacturers to the Client as purchaser of the software. MCCALLYIT disclaims any warranty as to third-party software and further disclaims any liability to client for the failure of third party software to operate, or for its infringement on the rights of others.
  - (b) Should a failure occur during the first 30 day period after original Product installation, MCCALLYIT will, at its option, repair or replace failed Product at no cost to Client. Repair or replacement of warranted Product will be done either on-site or at MCCALLYIT offices; whichever proves most expeditious.
  - (c) Beyond the initial 30 day period and continuing for an additional eleven months, MCCALLYIT will repair or replace, at its option, Product that fails during the manufacturers’ warranty period at no cost to its clients provided the faulty Product is delivered to MCCALLYIT with all components necessary to complete the repair or replacement. Should significant interaction with the manufacturer be required to secure replacement items, MCCALLYIT will charge only for that time necessary to prove warranty and implement the replacement, including any shipping charges that are incurred.
  - (d) No representation or warranty will apply to any failure arising from the Client employing any accessory on the Product, or any part thereof, not installed by MCCALLYIT. MCCALLYIT will, upon request by the Client, provide Client with an evaluation as to whether installation of any accessory will adversely affect the operation of the Product. However, Client understands that MCCALLYIT, by not objecting to the use of such accessory, not installed by MCCALLYIT does not in any way represent or warrant such accessory, including its performance in conjunction with any of the configurations supplied by MCCALLYIT.
7. **WARRANTIES FOR SERVICES** - MCCALLYIT warrants that all Services shall be rendered in a workmanlike manner. Services warranties for particular Products and Software supplied and installed by MCCALLYIT will be voided if the Product and Software configurations for such products and software have been modified without

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MCCALLYIT approval and supervision, or if any of the following situations occur resulting in the failure of the particular products and software supplied and installed by MCCALLYIT:

(a) Any part of the particular Product and Software is used in such a way contrary to accepted industry standards or published user documentation, and such misuse causes such Product or Software to fail; or

(b) Any of Client's Product or Software existing prior to this Agreement or not supplied by MCCALLYIT shall fail and/or malfunction; or

(c) Any Product or Software is moved from the original site of installation, unless MCCALLYIT has been retained to relocate the Product or Software; or

(d) Any operating system or applications software "bugs" cause a disruption in functionality or damage to a Product or Software, or results in the Product or Software becoming inoperative, or

(e) Additional software is installed or activated by Client without MCCALLYIT's knowledge, such as Screen Savers, Instant Messenger, Audio/Video Players, etc.

It's not the intent of MCCALLYIT and Client that the occurrence of one or more of the situations described in paragraph (e) above shall void warranties for all products and software supplied and installed by MCCALLYIT. Such situation shall only result in voiding the warranties of the particular services and products affected by one or more situations.

MCCALLYIT provides no warranty for Services related to the detection and remedy of issues required as a result of hacking attempts and the introduction of viruses, or other network activities defined as malicious.

MCCALLYIT will not warrant any loss of data or other related work product, either by direct or consequential actions. Client agrees that it is responsible for insuring a successful daily backup.

8. DISCLAIMER OF OTHER WARRANTIES – Seller makes no other warranty, express or implied, with respect to the Goods or Services. Seller disclaims any warranty with respect to the merchantability of the products or the fitness of the products for any particular purpose or use of buyer as well as any express or implied warranties or conditions arising through the use by seller of any samples, any course of dealing or course of performance between the parties or usage of trade. No repair or replacement of Products by any party shall extend any warranty period therefore.
9. FORCE MAJEURE – Seller shall not be liable for delays in delivery or for failure to perform due to causes beyond the reasonable control of Seller, which causes shall include, without limitation, acts of God, acts or omissions of Buyer, acts of civil or military authorities, delays in transportation or inability to obtain necessary labor, materials or supplies. In the event of delay, the set date of delivery, if any, shall be extended for a reasonable period, or, at Seller's option, cancelled.
10. PROPRIETARY INFORMATION - MCCALLYIT agrees that all information communicated to it by Client shall be and was received in strict confidence and shall be used only for the purposes of this Agreement. However, the confidential obligations imposed by this paragraph shall not apply to information disclosed to MCCALLYIT by Client which:
  - (a) Is independently developed by MCCALLYIT
  - (b) Was previously known to MCCALLYIT and was not acquired by MCCALLYIT, directly or indirectly, from Client under an obligation of confidence;
  - (c) Is received by MCCALLYIT without obligation of confidence from third party that did not acquire it, directly or indirectly, from Client under an obligation of confidence;
  - (d) Is or becomes publicly available by other than unauthorized disclosure;
  - (e) Is approved for release by written authorization of Client; or
  - (f) Is required to be disclosed in connection with a request pursuant to legal process, provided that Client shall be given written notice prior to any such disclosure and an opportunity to challenge such requirement or seek an appropriate protective order.
11. YOUR OBLIGATIONS

You agree to provide our personnel access to all equipment, data, disks or other needed materials for service, and to notify us of (1) any potential safety or health hazards that may exist at your location or with your equipment and (2) any safety procedures to be followed while at your location.

YOU ARE SOLELY RESPONSIBLE FOR ANY DATA OR INFORMATION STORED IN, OR ON, ANY EQUIPMENT AND SHALL BE SOLELY RESPONSIBLE FOR MAKING "BACK-UP" OR SECURITY COPIES OF SUCH DATA OR INFORMATION UNLESS MCCALLYIT HAS BEEN CONTRACTED TO DO SO HEREIN.
12. TERM OF TERMINATION

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The term of this agreement will as outlined herein, and/or of this agreement to the completion of the service requested, unless terminated sooner. MCCALLYIT has the right to terminate this agreement, with or without cause, upon 30 working day notice to you. We will not be in default of this agreement or be liable for any delay, failure in performance, or interruption of service resulting from any cause beyond our control.

13. LIMITATIONS AND WARRANTY

With respect to any equipment, part, or component covered by a manufacturer's warranty, MCCALLYIT Technology Solutions, LLC shall perform repair services pursuant to such warranty when authorized to act as an authorized service agent for such manufacturer in making warranty repairs. Otherwise, warranty questions or problems with respect to any equipment, parts or components must be addressed directly to the manufacturer by Customer. Customer must show proof of purchase to qualify for warranty services. Replaced parts become property of MCCALLYIT Technology Solutions, LLC or the respective manufacturer if exchange is required.

Unless otherwise stated, all materials, supplies, parts, and other products supplied under this agreement are provided on an "AS IS" basis. Except where prohibited by law, MCCALLYIT Technology Solutions, LLC disclaims all warranties, express or implied, including the implied warranties of merchantability and fitness for a particular purpose with respect to any services, parts, components, or products delivered or rendered hereunder.

14. LIMITATION OF LIABILITY

MCCALLYIT Technology Solutions, LLC entire liability, and your exclusive remedy, for damages from any cause whatsoever, whether caused by any act, omission, or negligence of MCCALLYIT Technology Solutions, LLC, or any employee, representative, agent, or contractor of MCCALLYIT Technology Solutions, LLC, and regardless of the form of action, shall be limited to amounts actually paid by you for services hereunder. The foregoing limit of liability does not apply to damages to tangible personal property or bodily injuries illegally caused by MCCALLYIT Technology Solutions, LLC. In no event will MCCALLYIT Technology Solutions, LLC be liable for damages caused by your and/or your employee's acts, omissions or negligence, or for special, incidental, indirect, punitive, or consequential damages, lost profits, loss of use of Equipment, loss of opportunity, loss of stored memory or data, cost of substitute equipment, or other incidental or related costs even if MCCALLYIT Technology Solutions, LLC has been advised of the possibility of such damages or costs, or for any claim against you by any third party. The foregoing limitation shall apply notwithstanding any failure of essential purpose of any limited remedy provided herein.

15. ASSIGNMENT – Any assignment of this agreement or any right hereunder by Buyer, Client and/or Customer shall be void without MCCALLYIT's written consent.

16. DEFAULT – In the event of any default, Buyer shall pay all costs incurred by Seller in collecting any amounts due under this agreement, including reasonable attorneys' fees and costs. The waiver by Seller of any breach or default in any payment shall not be deemed to be a waiver of any later breach or default. Seller shall have all the remedies provided under the Uniform Commercial Code, including those of a secured party, and any other remedies which Seller may have at law, in equity or under any other agreement. All such remedies shall be cumulative. The exercise or failure to exercise any remedy shall not preclude the exercise of that remedy at another time or of any other remedy at any time.

17. SECURITY INTEREST – Buyer grants Seller a purchase money security interest in the items sold hereunder whether constituting equipment, inventory, fixtures and/or general intangibles shipped by Seller at any time, including all accessions to and replacements thereto, and all proceeds thereof (collectively, the "Collateral") to secure the payment of the purchase price of such Collateral. Buyer authorizes Seller: (i.) to file one or more financing statements signed only by the Seller without the Buyer's signature, (ii.) to use a copy of this agreement as an exhibit to any financing statement, and (iii.) notify any other secured lender of Seller's purchase money security interest. Buyer agrees to cooperate fully with Seller in executing any additional documents, instruments, financing statements or amendments thereto as Seller may request to perfect or continue the security interest created by this agreement.

18. DISPUTE RESOLUTION - If Seller has a dispute against Buyer, or Buyer has a dispute against Seller, in any such case relating to this Agreement, any Work Order or any Services, Buyer and Seller will adhere to the following procedure prior to initiating any judicial proceedings:

Either Party may notify the other Party of the occurrence of a dispute and establish a mutually convenient time and place for senior level representatives of each Party to meet to discuss the dispute. In any event, the meeting will occur within five business days after delivery of the notice of dispute.

If the Parties are unable to resolve the dispute at the meeting or if for any reason a meeting does not occur within such five business day period, either Party may then give the other Party written notice that the dispute continues. Within five business days after delivery of such notice, senior level representatives of each Party will meet to discuss the issue

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at a mutually convenient time and place. If the dispute has not been resolved during the fourteen days following the date of delivery of notice of the dispute, either Party may then request non-binding mediation by written notice to the other Party.

Within thirty calendar days after a request for mediation from either Party, the Parties will agree in writing to the selection of a mediator and commence non-binding mediation. Each Party will bear its own cost of mediation and one-half the cost of the mediator.

If the Parties are unable to resolve the dispute after conclusion of the mediation, it shall be submitted to binding arbitration upon the written request of one party served on the other, and shall be conducted in Collin County, Texas pursuant to the Commercial Arbitration Rules of the American Arbitration Association.

19. INTEGRATION – This agreement sets forth the sole and entire agreement between the parties with regard to the sale of Goods herein and supersedes any and all prior or contemporaneous oral agreements between them regarding the same. When Buyer and Seller enter into additional written agreements with respect to Goods and/or services to be provided to Buyer by Seller, these General Terms and Conditions of Sale shall be deemed incorporated by reference in those additional writings.
20. GENERAL – All agreements, covenants, conditions and provisions contained herein shall apply to and bind the assignees and successors in interest of Buyer. If any provision or portion of this agreement is held to be invalid, illegal, unconscionable or unenforceable, the other provisions and portions hereof shall not be affected. The several captions used herein are for the convenience of the parties only and shall not affect the constructions or interpretation hereof. Any clerical errors are subject to correction. This agreement shall be governed by the laws of the State of Texas. All disputes between Seller and Buyer shall be determined by a state or federal court of competent jurisdiction located in Collin County, Texas.

Buyer, Client, Company, Customer: \_\_\_\_\_

Terms and Conditions Acknowledged by: \_\_\_\_\_

Printed Name & Title: \_\_\_\_\_

Date: \_\_\_\_\_