

Microsoft Customer Agreement

Hardware Terms

These terms supplement the General Terms of the Microsoft Customer Agreement and apply to the purchase of Hardware. If there is any conflict between these terms and the General Terms, these terms control with respect to Hardware. Capitalized terms have the meanings given in the General Terms unless defined below.

Definitions

"Hardware" means all Microsoft devices, accessories, and spare parts purchased under this Agreement.

"High-Risk Use" means use in any system, application or situation where failure or fault of any kind of the Hardware could reasonably be seen to lead to death or serious bodily injury of any person, or to severe physical or environmental damage.

"Included Software" means any software preinstalled on or distributed with Hardware.

Purchase Terms

- a. **Orders.** Each order is subject to Microsoft's acceptance and the availability of the Hardware. Microsoft may decline or cancel any order at any time prior to shipping. Customer may not cancel any order once Microsoft has begun processing the order.
- b. **Not for Resale.** Hardware is sold to Customer for its own use and business purposes. Customer may not purchase Hardware under this Agreement for the purpose of reselling that Hardware to any other customer, retailer, wholesaler, or other unrelated third party.
- c. **Shipping.** If Customer is purchasing the Hardware directly from Microsoft, then Microsoft will deliver Hardware to the location Customer designates, freight prepaid. Risk of loss for Hardware transfers to Customer upon delivery. Unless otherwise agreed, Microsoft will use ground shipping to ship Hardware to Customer.
- d. **Included Software.** Included Software may be subject to separate end-user license terms included with that software ("EULA"). Customer is not authorized to install or use the Included Software unless Customer first agrees to the EULA or a separate license agreement with Microsoft governing use of such Included Software. Customer accepts the EULA (1) by breaking the seal on packaging that refers to the EULA, (2) by using the Hardware, or (3) by installing, copying, or using the Included Software. If Customer does not agree to the EULAs for all Included Software, Customer may return the Hardware unused to Microsoft for a full refund. The EULAs are not part of this Agreement, but to the extent of any conflict with this Agreement, the EULA will control solely for the Included Software to which it applies.

Returns

- a. **Return policy.** For Hardware purchased directly from Microsoft, Microsoft will accept returns for items that meet the requirements of this section for 30 days from the date of purchase.
- b. **Requirements.** All returns must be accompanied by the original documentation, instruction manuals, registration, parts and components (including cables, controllers, and accessories) and the original manufacturer packaging. The following items may not be returned: (i) items that have been personalized or customized; (ii) special order items; and (iii) items that have been used, altered or that show wear or damage.
- c. **Refunds.** Refunds will be made in the same method as payment was accepted. Refunds will equal the amount paid less the original shipping charges, if any. Shipping charges will not be deducted if the Hardware is returned because Customer does not agree to the EULA(s) for Included Software.

- d. **Personal data.** Microsoft is not responsible for any customer or personal data included on returned or exchanged items. Customer must ensure that all customer and personal data are removed from all items prior to return or exchange.
- e. **Promotional items and bundles.** For promotional items and bundles, all included products must be returned together. If a promotion or bundle includes a service that has been used, the full retail value of the service will be deducted from the refund amount. When a bundle is purchased and only part of the bundle is returned, the bundle discount is void, and the total bundle discount will be deducted from the refund.

Hardware Warranties

The sole warranty and remedies Microsoft provides for Hardware is the manufacturer's limited warranty (if any) applicable to the Hardware or any extended warranty that Customer may purchase from Microsoft separately, as each is described on www.microsoft.com/surface/warranty (or a successor site).

High-Risk Use

- a. **WARNING:** The Hardware is not fault-tolerant. The Hardware is not designed or intended for any High-Risk Use. If Customer elects to use the Hardware for a High-Risk Use, it does so at its own risk.
- b. **Defense of Third-party Claims.** Without limiting Customer's defense obligations in the General Terms, Customer agrees to defend, indemnify and hold harmless Microsoft and its Affiliates from and against all damages, costs and attorneys' fees arising from claims or demands associated with Customer's High-Risk Use of Hardware. This obligation will not be subject to any limitation of, or exclusion from, liability in this Agreement.

Limitation of Liability

Each party's total liability to the other for all claims related to each Hardware device is limited to direct damages up to the amount Customer paid for that Hardware device, subject to the following:

- a. **Applicability.** To the extent permitted by applicable law, this limitation applies to all claims and damages related to Hardware purchased under this Agreement, including, without limitation, breach of contract, breach of warranty, strict liability, and negligence and other torts, even if the parties knew or should have known about the possibility of the damages.
- b. **Exclusions.** The Exclusions in the General Terms apply.
- c. **Exceptions.** In addition to the exceptions identified in the General Terms, no limitation will apply to liability arising out of Customer's High-Risk Use of the Hardware.

Environmental Compliance

- a. **By Microsoft.** Microsoft will comply with all applicable laws and regulations relating to the collection, treatment, recovery, recycling, disposal, and reuse of electrical and electronic equipment ("EEE"), batteries, software media, and packaging materials ("Environmental Laws") in each country where Microsoft ships or delivers Hardware to Customer, directly or through a Partner. Subject to the conditions and limitations in the General Terms, Microsoft will defend Customer against any third-party claim to the extent it alleges that Microsoft failed to comply with any of these requirements in any such country.
- b. **By Customer.** If Customer ships or delivers Hardware outside of the country where Microsoft shipped or delivered it to Customer, Customer must comply with all applicable laws and regulations relating to the collection, treatment, recovery, recycling, disposal, and reuse of electrical and electronic equipment ("EEE"), batteries, software media, and packaging materials in each such country. Subject to the conditions and limitations in the General Terms, Customer will defend Microsoft and its Affiliates against any third-party claim to the extent it alleges Customer failed to comply with any of these requirements in any country where Customer ships or delivers Hardware.

Miscellaneous

- a. **US export.** The U.S. Export terms in the General Terms apply to Hardware.



- b. **Copyright levies in EU.** Hardware may be subject to EU/EFTA copyright levies pursuant to Article 5(2)(b) of Directive 2001/29/EC based on the product and delivery address. Customer must pay any required copyright levies, which will be added to the invoice for the order.