# CacheGuard Terms of Sale - V1.1

These Terms of Sale are applied to the purchase of products and services (hereinafter called ‘the Goods’) by the individual or entity (hereinafter called ‘the Buyer’) that has purchased those Goods from CacheGuard Technologies Ltd. (hereinafter called ‘the Seller’).

Terms of sale will be deemed to have been accepted by the Buyer when he asks for a quote or orders Goods from the Seller to the exclusion of any other terms that the Buyer tries to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

The headings in these terms of sale are for convenience only and will not affect their interpretation.

## 1 - Goods

The description of the Goods is set out on the official website of the Seller or in its technical documentation officially (hereafter collectively called ‘the Documentation’) distributed by the Seller, unless expressly changed in a quotation. In asking for a quotation, ordering or buying, the Buyer acknowledges that he has not relied upon any statement, promise or other representations about the Goods by the Seller. Descriptions of the Goods set out in the Documentation are intended as a guide only.

Options attached to purchased Goods are intended to be exclusively used with and by the main goods to which they belong and never singly or in relation with not yet purchased similar Goods. Such options include, but are not limited to, blacklists subscriptions or support contracts.

In the case where the purchase of the Goods is made as a subscription, upgrade or downgrade of the Goods as described in the Documentation are possible under the following conditions: the Buyer should first cancel its subscription and the purchase a new subscription with the desired upgrade or downgrade.

The Seller can make any changes to the specifications of the Goods that are required to conform to any applicable safety or other statutory or regulatory requirements.

## 2 - Prices

The prices (hereafter called ‘the Price’) of the Goods are set out in the Documentation or the quotation current at the date of the order or purchase or such other price the Seller may agree in writing.

If the cost of the Goods to the Seller increases due to any factor beyond the control of him including, but not limited to, material costs, labour costs, alteration of exchange rates or duties, or changes to delivery rates, the Seller can increase the Price prior to delivery. Any increase in the Price will only take place after the Seller tells the Buyer about it.

The Buyer may be entitled to discounts at the Seller's discretion. In cases where discounts are granted the Buyer accepts particular conditions established by the Seller in its quotation. Conditions may include, but are not limited to, payment conditions, subscription period or payment currency.

The Price is exclusive of fees for packaging and transportation/delivery and applicable VAT (Value Added Tax), customs duties and other taxes or levies which are imposed or charged by any competent authority.

## 3 – VAT and Customs Duties

If the Seller isn't VAT registered, he does not charge or show VAT on invoices to the Buyer located in the UK whether the Buyer is a business or a consumer.

If the Seller is VAT registered and the Buyer is a business (as opposed to a consumer) located in EU (European Union), the VAT is zero-rated if the Buyer is VAT registered. In this case the Buyer should provide its VAT registration number to the Seller.

If the Buyer is located out of the EU and imports the Goods, the VAT is zero-rated. However the Buyer acknowledges to be fully responsible for the payment of customs duties to authorities of the country to which he imports the Goods.

In any other case, the VAT is charged according to the rate enforced in the Buyer's country. If the Buyer provides wrong information with regards to the VAT, his purchase may be cancelled without being able to ask any form of reimbursement.

## 4 – Cancellation and Alteration

Details of the Goods as described in the clause “Goods” and set out in the Documentation are subject to alteration without notice and are not a contractual offer to sell the Goods which is capable of acceptance.
A quotation (including any non-standard price negotiated in accordance with the clause “Prices” is valid for a period of 30 days only from the date shown in it unless expressly withdrawn by the Seller at an earlier time.

Either the Buyer or Seller can cancel an order for any reason prior to the acceptance or rejection of the quotation. In the case where the purchase of the Goods is made as a subscription for a given period of time, either of the Buyer or the Seller can cancel the subscription at any time. In case where the Buyer cancels the subscription all started subscriptions are due entirely. In the case where the Seller cancels the subscription, the Buyer can claim to be reimbursed for the unexpired portion of the subscription period.

## 5 – Payment

The Seller invoices the Buyer for the Goods either a) on or at any time after the delivery of the Goods or b) where the Goods are to be collected by the Buyer or where the Buyer wrongfully does not take delivery of the Goods, at any time after the Seller has notified the Buyer that the Goods are ready for collection or the Seller has tried to deliver them.

The payment is due upon receipt of the invoice or otherwise according to any credit terms agreed between the Buyer and the Seller. The Buyer must make payment even if delivery has not taken place and/or that the title in the Goods has not passed to the Buyer.

In the case where the purchase of the Goods is made as a subscription for a given period of time, payments are due at the beginning of each subscription period.

If the Buyer does not pay within the conditions set out above, the Seller will suspend any further deliveries to the Buyer and without limiting any of its rights or remedies for statutory interest, charges the Buyer interest at the rate of 4% per annum above the base rate of the Bank of England from time to time on the amount outstanding until the Buyer pays in full.

All payments must be made in US Dollars unless otherwise agreed in writing between the Buyer and the Seller. Both parties must pay all amounts due under these terms in full without any deduction or withholding except as required by law and neither party is entitled to assert any credit, set-off or counter-claim against the other in order to justify withholding payment of any such amount in whole or in part.

## 6 – Delivery

The Seller arranges for the delivery of the Goods to the location specified in the order or to another location the Buyer and the Seller agree to in writing. If the Buyer does not specify a delivery location or if both parties agree, the Buyer must collect the Goods from another location.

In case where the Goods are license keys or any other non material goods, the Buyer must provide to the Buyer a valid and active email address to which the good should be sent. Otherwise the Seller is not responsible of any delay in the delivery of the Goods.

Subject to the specific terms of any special delivery service, delivery can can take place at any time of the day and must be accepted at any time between 8:00 AM and 8:00 PM. If the Buyer does not take delivery of the Goods the Seller can, at his discretion and without prejudice to any other rights: a) store or arrange for the storage of the Goods and will charge the Buyer for all associated costs and expenses including, but not limited to, transportation, storage and insurance; and/or b) make arrangements for the delivery of the Goods and will charge Buyer for the costs of such redelivery and/or; c) after 10 business day, resell or otherwise dispose of part or all of the Goods and charge the Buyer for any shortfall below of the Goods. A business day means any day other than a Saturday, Sunday or bank holiday.

If redelivery is not possible as set out above, the Buyer must collect the Goods from a location specified by the Seller and will be notified of this. The Seller can charge the Buyer for all associated costs including, but not limited to, storage and insurance.

Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Seller will not be liable for any delay in delivery of the Goods that is caused by a circumstance beyond its control or failure of the Buyer to provide the Seller adequate delivery instructions or any other instructions that are relevant to the supply of Goods.

In case where Goods are license keys or any other non material goods delivered by email, the Seller is not liable if the Buyer rejects emails coming from the Seller due to any reasons. Such reasons include, but are not limited to, an outage of the Buyer's emailing system or tagging of emails sent by the the Seller as SPAM.

## 7 – Inspection and Acceptance of Goods

The Buyer must inspect the Goods on delivery or collection. If the Buyer identifies any damages or shortages, he must inform the Seller in writing within 1 day of delivery, providing details.

Other than by agreement, the Seller will only accept returned Goods if the Seller is satisfied that those Goods are defective and if required, has carried out an inspection. Subject to the Buyer compliance with this clause and/or the agreement of the Seller, the Buyer may return the Goods and the Seller will, as appropriate, repair, or replace, or refund the Goods or part of them. The Buyer bears the risk and cost of returning the Goods.

The Seller will be under no liability or further obligation in relation to the Goods if: a) the Buyer fails to provide notice as set above; and/or b) the Buyer makes any further use of such Goods after giving notice under the clause above relating to damages; and/or c) the defect arises because the Buyer did not follow the oral or written instructions of the Seller about the Storage, commissioning, installation, use and maintenance of the Goods; and/or d) the defect arises from normal wear and tear of the Goods; and/or e) the defect arises from misuse or alteration of the Goods, negligence, wilful damage or any other act by the Buyer, its employees, agents, clients or any other parties.

Acceptance of the Goods will be deemed to be upon inspection of them by the Buyer and in any event within 1 day after delivery.

## 8 – Risk and Title

The risk in the Good will pass to the Buyer on completion of delivery. Title to the Goods will not pass to the Buyer until the Seller has received payment in full (in cash or cleared funds) for: a) the Goods and/or; b) any other goods or services that the Seller has supplied to the Buyer in respect to which payment has become due.

Until title to the Goods has passed to the Buyer, the Buyer must a) hold the Goods on fiduciary basis as the Seller's bailee and/or; b) store the goods separately and not remove, deface or obscure any identifying make or packaging on or relating to the Goods; and/or c) keep the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery.

As long as the Goods have not been resold, or irreversibly incorporated into another product, and without limiting any other right or remedy the Seller may have, the Seller can at any time ask the Buyer to deliver up the Goods and, if the Buyer fails to do so promptly, enter any of the Buyer's premises or of any third party where the Goods are stored in order to recover them.

## 9 – Termination

The Seller can terminate the sale of Goods under this present terms of sale where: a) the Buyer commits a material breach of his obligations; b) the Buyer is or becomes or, in the Seller's reasonable opinion, is about to become subject to a bankruptcy order or take advantage of any other statutory provision for the relief of insolvent debtors; c) the Buyer enters into a voluntary arrangement under Part 1 of the Insolvency Act 1986, or any other scheme or arrangement is made

with his creditors; or d) the Buyer convenes any meeting of his creditors, enters into voluntary or compulsory liquidation, has a receiver, manager, administrator or administrative receiver appointed in respect to his assets or undertakings or any part thereof, any documents are filed with the court for the appointment of an administrator, notice of intention to appoint an administrator is given by the Buyer or any by a qualifying floating charge holder (as defined in para. 14 of Schedule B1 of the Insolvency Act 1986), a resolution is passed or petition presented to any court for the winding up of the Buyers' affairs or for the granting of an administration order, or any proceedings are commenced relating to the Buyer's insolvency or possible insolvency.

## 10 – Limitation of Liability

The Seller's liability under the present Terms of sale, and in breach of statutory duty, and in tort, misrepresentation or otherwise will be limited to this clause.

Subject to the clauses above on “Inspection and Acceptance of Goods” and “Risk and Title” all warranties, conditions or other terms implied by statue or common law (save for those implied by Section 12 of the Sale of Goods Act 1979) are excluded to the fullest extent permitted by law.

If the Seller does not deliver the Goods, its liability is limited, subject to the clause below, to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quantity in cheapest market available, less the price of the Goods.

The Seller liability will not, in any circumstances, exceed the total amount of the Price payable by the Buyer. The Seller will not be liable (whether caused by its employees, agents, contractors or otherwise) in connection with the Goods for: a) any indirect special or consequential loss, damage, costs, or expenses; and/or b) any loss of profits; loss of anticipated profits; loss of business; loss of data; loss of reputation or goodwill; business interruption; or, other third party claims; and/or c) any failure to perform any of his obligations if such delay or failure is due to any cause beyond his reasonable control; and/or d) any losses caused directly or indirectly by any failure or breach by the Buyer in relation to his obligations; and/or e) any loss relating to the choice of the Goods and how they will meet the Buyer's purpose or the use by him of the Goods supplied.

The exclusions of liability contained within this clause will not exclude or limit the Seller's liability for death or personal injury caused by him; or for any matter for which it would be illegal to him to exclude or limit his liability; and for fraud or fraudulent misrepresentation.

## 11 – Communications

All notices under these Terms of sale must be in writing and signed by, or on behalf of, the party giving notice (or a duly authorised officer of that party).

Notices will be deemed to have been duly given: a) when delivered, if delivered by courier or other messenger (including registered mail) during the normal business hours of the recipient; b) when sent, if transmitted by email and a successful transmission report or return receipt is generated; c) on the fifth business day following mailing if mailed by national ordinary mail; or d) on the tenth business day following mailing, if mailed by airmail.

All notices under these Terms of sale should be first sent by email prior to any other means of communication and subsequently must be addressed to the most recent address, email address or fax number notified by the other party.

## 12 – Circumstances beyond the control of either party

Neither party shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that party. Such causes include, but are not limited to: power failure, Internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the party in question.

## 13 – No Waiver

No waiver by the Seller of any breach of theses Terms of sale by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

## 14 – Severance

If one or more of these Terms of sale is found to be unlawful, invalid or otherwise unenforceable, then those provisions shall be deemed severed from the remainder of these Terms of sale (which will remain valid and enforceable).

## 15 – Law and Jurisdiction

These Term of sale are governed by and interpreted according to English law. All disputes arising under these Terms of sale are subject to the exclusive jurisdiction of the English courts.