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CREDIT APPLICATION

Date: _____

Sales Rep or Quote #: _____

Company Name: _____

Dun and Bradstreet Number: _____

Bill To Address:

Address: _____

City: _____ State/Province: _____

Zip/Postal Code: _____ Country: _____

Billing Contact Person: _____

Billing Phone Number: _____ Billing eMail: _____

Preferred Method of Contact: Standard Mail eMail Fax Fax Number: _____

Ship To Address:

Address: _____

City: _____ State/Province: _____

Zip/Postal Code: _____ Country: _____

Telephone: _____ Fax: _____

Principals: _____

Purchasing Contact Person: _____

Business Start Date: _____ Type of Business: _____

Business is a: Sole Proprietorship Partnership Corporation

Subsidiary of: _____

Line of Credit Requested: \$ _____ First Purchase: \$ _____

Purchase Order Required? Yes No

TRADE REFERENCES:

1) Company Name: _____

Address: _____

Telephone: _____ eMail: _____

2) Company Name: _____

Address: _____

Telephone: _____ eMail: _____

3) Company Name: _____

Address: _____

Telephone: _____ eMail: _____

BANK REFERENCES:

Name of Banking Institution: _____

Address: _____

Telephone: _____ eMail: _____

Checking Account Number: _____

Savings Account Number: _____

The undersigned applicant for credit by execution of this application, warrants and represents that the statements of fact furnished are true and correct, and does hereby expressly agree that all purchases now made and which may hereafter be made from ServerMonkey.com as Seller shall be upon the Terms and Conditions of Sale set forth on the second page of this Credit Application.

Signature: _____

Print Name: _____

Title: _____ Date: _____

TERMS AND CONDITIONS OF SALE

All sales of servers, hardware, equipment and other computer products ("Products") by ServerMonkey.com LLC ("ServerMonkey") shall be made only upon these Terms and Conditions of Sale ("Terms and Conditions") and NOT any purchase order or other document of Buyer. BY PLACING AN ORDER FOR PRODUCT(S), BUYER ACCEPTS AND IS BOUND BY THESE TERMS AND CONDITIONS. ServerMonkey's failure to object to any terms which conflict with these Terms and Conditions shall not be deemed a waiver or objection thereto. NEITHER SERVERMONKEY NOR BUYER IS BOUND BY ANY TERMS AND CONDITIONS IMPRINTED OR IMBEDDED IN ORDERS, ORDER ACKNOWLEDGEMENTS OR OTHER COMMUNICATIONS BETWEEN THE PARTIES UNLESS SPECIFICALLY AGREED UPON IN WRITING BY A DULY AUTHORIZED REPRESENTATIVE OF SERVERMONKEY.

1. **Prices.** Quotations, unless previously withdrawn, are only open for acceptance by ServerMonkey within 3 days from quotation date and are subject to approval of Buyer's credit. Prices quoted do not include shipping, handling, and taxes. If Buyer claims any exemption, Buyer must provide a valid, signed certificate or letter of exemption for each respective jurisdiction. All prices are subject to adjustment due to errors, omissions, specifications, quantities, materials, cost of production, shipment arrangements or other terms and conditions which are not part of ServerMonkey's original price quotation. ServerMonkey may cancel orders at any time, in its sole discretion.
2. **Payment.** Payment terms are at ServerMonkey's sole discretion, and unless otherwise agreed to by ServerMonkey, payment must be received prior to ServerMonkey's acceptance of an order. Invoices are due on demand and shall be paid without offset or deduction within the time period noted on Buyer's invoice, measured from the date of the invoice. Interest at 10% per annum (or the maximum rate allowed by law if less) will be payable on any amount outstanding for longer than 30 days. Buyer shall also be responsible for all reasonable legal fees, costs and expenses incurred by ServerMonkey if Buyer's late payment results in collection efforts. ServerMonkey shall also be entitled in its absolute discretion to apply any payment received from Buyer to ServerMonkey towards any indebtedness of Buyer, whether under this or any other agreement.
3. **Delivery and Time.** Delivery dates quoted by ServerMonkey are best estimates only and time is expressly not of the essence. Late or partial delivery does not entitle Buyer to cancel its order. Buyer acknowledges that ServerMonkey will not be liable for any damage or injury arising from a delay in delivery. In the event of delivery by installments, Buyer is not entitled to treat the delivery of faulty Products in any one installment as a repudiation of the entire agreement. Buyer must notify ServerMonkey in writing of nondelivery of Products, or receipt of nonconforming or damaged Products within 3 days of the delivery date. Delivery to Buyer occurs when Products are delivered to Buyer, the carrier or Buyer's agent at ServerMonkey's facility, whichever occurs first.
4. **Risk of Loss, Title to Products, and Security Interest.** All Products are shipped "Ex Works" Houston (per Incoterms 2000). In the absence of instructions as to shipping, ServerMonkey will select a carrier who is not its agent. Such instructions shall not change the "Ex Works" terms of shipping, and ServerMonkey will have no liability for such shipment. Title to Products does not pass until Buyer has paid for Products in full. Buyer agrees that ServerMonkey shall retain a purchase security interest in all Products which it has sold to Buyer, and to any proceeds from the disposition of the Products, until the purchase price and any other charges due to ServerMonkey have been paid in full. Buyer agrees to execute any financial statements or other documents which ServerMonkey may request in order to protect ServerMonkey's security interest. Buyer expressly authorizes ServerMonkey to execute such security documents on Buyer's behalf and hereby designates ServerMonkey its attorney-in-fact for such limited purposes. In addition to the rights and remedies granted by these Terms and Conditions, ServerMonkey shall have all rights and remedies of a secured party under the Uniform Commercial Code, which rights shall be cumulative.
5. **Limited Warranty; Limitation of Liability.** Unless otherwise noted by ServerMonkey, refurbished servers will be free from electrical failures under normal use for a period of one (1) year from the date of purchase. Other hardware designated as "Refurbished" or "Used" have a thirty (30) day warranty against electrical failures. Current Limited Warranty information is available at <http://www.servermonkey.com/warranty/>. All warranties for Products shall be subject to the following:
 - a. **Exclude Remedy.** For products confirmed to be defective, Buyer's exclusive remedy shall be, at ServerMonkey's option, to either refund Buyer's purchase price for Product as reflected in the invoice (less any rebates or discounts), or to replace Product with the same or similar products meeting the description of the returned Product as set forth on the invoice. The warranty period for replacements shall be the period remaining under the limited warranty period for the Product that was replaced. Buyer shall bear the cost of returning Product to ServerMonkey's facilities and if ServerMonkey sends replacements, ServerMonkey shall bear the cost of sending the replacements to Buyer's facilities located within the continental United States.
 - b. **Return Materials Authorization Procedure.** In order to recover under this limited warranty, Buyer shall strictly comply with the following Returns Materials Authorization Procedure:
 1. Lodge the RMA form through ServerMonkey's website within thirty (30) days of the alleged electrical failure of the Product covered under this Warranty.
 2. Attach a clear copy of the invoice and a detailed description of the Product that failed, including manufacturer part number, lot number, and the corresponding invoice number;
 3. Provide a detailed written failure analysis report confirming the failure;
 4. Properly package and return Product to ServerMonkey within twenty (20) days of ServerMonkey's issuance of the Return Materials Authorization. (RMAs are void after twenty (20) days of issuance.); and
 5. Adhere to ServerMonkey's return material authorization procedures then in effect.
 - c. **Independent Testing.** ServerMonkey reserves the right to have the Product examined and tested to confirm the electrical failure and the cause of such failure. Such testing shall be conclusive in determining rights under this Limited Warranty.
 - d. **Exclusions:** ServerMonkey makes no warranty with respect to the following: (a) Products whose failures are due to accident, abuse, improper use (including but not limited to handling, storage, installation or de-installation), negligence, problems with electrical power, or products not supplied by ServerMonkey; (b) any Product which was modified contrary to the manufacturer's specifications; (c) any Product that was disassembled into component parts; (d) any Product that was removed from the original products supplied by ServerMonkey; (e) any Product if Buyer transferred ownership or possession of the product; (f) any Product that was shipped from the United States; or (g) any software that may be installed on Products. The limited warranty shall not apply to Product for which Buyer has breached these Terms and Conditions, including but limited to failure to pay ServerMonkey for Products as reflected on the invoice.
 - e. **Non-Transferable.** This warranty is non-transferable and applies only to the original Buyer of Product and shall not extend to Buyer's affiliates, customers or any other third party. ServerMonkey assumes no duty, express or implied, to any third party as a result of this Limited Warranty.
 - f. **Limitation of Liability/Disclaimer.** Except as specifically provided herein, **SERVERMONKEY MAKES NO WARRANTY, STATUTORY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR INTENDED PURPOSE OR USE, NON-INFRINGEMENT OR ORIGINALITY. IN NO EVENT SHALL SERVERMONKEY BE LIABLE FOR ANY CLAIMS ALLEGING NEGLIGENCE OR WORSE OR FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES (INCLUDING BUT NOT LIMITED TO DOWNTIME COSTS OR LOSS OF USE, INCOME, DATA, PROFITS, OPPORTUNITY, OR GOODWILL) NOR SHALL SERVERMONKEY BE LIABLE FOR ANY DAMAGE TO OTHER PRODUCTS, REGARDLESS OF WHETHER OR NOT SERVERMONKEY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SERVERMONKEY'S MAXIMUM AGGREGATE LIABILITY HEREUNDER SHALL NOT EXCEED THE PURCHASE PRICE PAID FOR PRODUCTS.**
6. **Changes.** ServerMonkey may modify, revise or cancel its Limited Warranty, Return Policies, or these Terms and Conditions from time to time, at its sole discretion, and such change will not affect Product ordered by Buyer prior to the date of such change.
7. **Default.** ServerMonkey shall be entitled to suspend any (further) performance of an order or to dissolve the order or agreement, without prejudice to its right to claim alternative or additional damages, if Buyer is granted a suspension of payments or is declared bankrupt; if Buyer defaults in complying with one or more of its obligations to ServerMonkey; or if ServerMonkey fears that Buyer is or will be unable to meet its obligations under the agreement and Buyer fails to offer adequate security for the performance of its obligations within the period indicated by ServerMonkey. If one of the events referred to in this article occurs, all claims ServerMonkey may have against Buyer on whatever basis will immediately become due.
8. **Not for Export.** It is the sole and exclusive responsibility of Buyer to understand, verify and comply with all export and re-export requirements relevant to any Products purchased or received from ServerMonkey. Buyer agrees and confirms that Buyer shall not export or re-export, directly or indirectly, any Products, including any items incorporating such Products, to any country (including but not limited to, CUBA, LYBIA, IRAN, NORTH KOREA, SUDAN, SYRIA), destination, or individual (including those on the U.S. Department of Commerce, Bureau of Industry and Security "Entity List" and other lists of denied parties) for which the U.S. Government or any agency thereof requires an export license or other approval for export or re-export, without first obtaining such license or approval. In addition, Products shall not be sold, leased, transferred to or used by an End User engaged in activities of mass destruction, or related to the design, development or use of nuclear materials, nuclear facilities, nuclear weapons, or chemical or biological weapons.
9. **Returns and Cancellations.** Requests to cancel or reschedule orders must be agreed to in writing and may or may not be accepted in ServerMonkey's absolute discretion. Without waiving any of its rights, ServerMonkey is entitled to recover all its costs and profits arising out of Buyer's attempt to cancel.
10. **Law.** This warranty is governed by the laws of the state of Texas without giving effect to the principles of conflicts of law. In the event that any of the terms set forth herein is determined to be unenforceable, the other terms and conditions shall remain in full force and effect. Failure of ServerMonkey to enforce any of the TERMS AND CONDITIONS shall not be deemed a waiver of any of ServerMonkey's rights and shall not affect the validity of the sale or these Terms and Conditions.