

NOTONELESSON TERMS and CONDITIONS of SALE – 2019

Last Updated: [April 23rd, 2019]

1. Acceptance. NOTONELESSON, a division of capoWEBdesign Inc., is herein referred to as “NOTONELESSON” and the customer purchasing products (“Products”) or services (“Services”) is herein referred to as “Buyer.” These terms and conditions of sale (“Terms”), any NOTONELESSON quotation, acknowledgment or invoice and all documents incorporated by specific reference herein or therein (“NOTONELESSON Documents” and together with these Terms, the “Agreement”), constitute the complete terms governing the sale of Products and Services. NOTONELESSON HEREBY REJECTS ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS PROPOSED BY BUYER, WHETHER OR NOT CONTAINED IN ANY OF BUYER’S BUSINESS FORMS OR IN BUYER’S WEBSITE, AND SUCH ADDITIONAL OR DIFFERENT TERMS WILL BE OF NO EFFECT. No site usage agreement or any other click through agreement on a non-NOTONELESSON website will have any binding effect on NOTONELESSON whether or not NOTONELESSON clicks on an “ok,” “I accept,” or similar acknowledgment. Commencement of any work by NOTONELESSON or Buyer's acceptance of delivery of the Products or Services, or placing an online order through NOTONELESSON’s website will manifest Buyer's assent to the Agreement. Additional or different terms applicable to a particular sale may be specified in the body of a NOTONELESSON Document or agreed to in writing by the parties. In the event of a conflict, the following order of precedence will apply: (a) terms agreed to in writing and executed by an authorized officer of NOTONELESSON; (b) NOTONELESSON Document terms; (c) these Terms.

2. Quotations. Quotations are only valid in writing and for 60 days from the date of the quotation. All quotations are subject to change or withdrawal without prior notice to Buyer. Quotations are made subject to approval of Buyer’s credit. NOTONELESSON may refuse orders and has no obligation to supply Products or Services unless NOTONELESSON issues an order acknowledgement or upon the shipment of Products or commencement of Services.

3. Prices and Payment Terms. Except as otherwise specifically set forth in NOTONELESSON’s quotation, prices are in U.S. Dollars and are subject to change without notice. All orders are accepted subject to NOTONELESSON’s price in effect at time of shipment. Prices do not include any sales, use, value-added or other taxes, import duties, license fees or like charges (“Fees”) related to the sale, importation or use of Products or Services, and Buyer is responsible for those Fees. If NOTONELESSON is subsequently required to pay any Fees, Buyer shall fully defend and indemnify NOTONELESSON therefor. Terms of payment are due at time of purchase NOTONELESSON’s Website. Buyer’s inspection rights herein will not affect the

payment terms. Under no circumstances will Buyer have a right of set-off. If Buyer fails to make any payment as required, Buyer agrees to indemnify NOTONELESSON for all associated costs incurred by NOTONELESSON, including reasonable attorney fees and court costs.

4. Cancellation or Modification. NOTONELESSON may cancel any purchase order or release thereunder, or terminate any agreement relating to the purchase of NOTONELESSON's Products or Services upon reasonable prior written notice to Buyer. Once NOTONELESSON has accepted a purchase order or begun taking actions with respect to a purchase order, Buyer cannot cancel or modify that purchase order except with NOTONELESSON's written consent. In such event, Buyer will be liable for cancellation or modification charges and all costs incurred and committed for the order or in connection with the cancellation or modification, as applicable, together with a reasonable allowance for prorated expenses and anticipated profits.

5. Inspection/Non-Conforming Shipments and Returns. NOTONELESSON's policy on inspection, non-conforming shipments and returns is available at https://www.notonelesson.com/assets/pdf/legal/NOTONELESSON-RETURN-POLICY_04_23_2019.pdf.

6. Delivery. NOTONELESSON will set up services paid for within but not limited to 24 – 48 hours after purchase. Title to the Products and risk of loss shall pass to Buyer upon delivery in accordance with the applicable terms. Buyer assumes all risk and liability for damage, loss and use or misuse by third parties who acquire or use the Products illicitly after delivery. Buyer must notify NOTONELESSON and the delivering carrier within 10 business days from date of receipt of Products, of any failure, and afford NOTONELESSON a reasonable opportunity to inspect the Products.

7. Limited Warranty. NOTONELESSON warrants its Products and Services pursuant to the terms of NOTONELESSON's Warranty Statement. The Warranty Statement is available at https://www.notonelesson.com/assets/pdf/legal/NOTONELESSON-WARRANTY-POLICY_04_23_2019.pdf and upon request. EXCEPT AS SET FORTH HEREIN, OR OTHERWISE REQUIRED BY APPLICABLE LAW, NOTONELESSON MAKES NO WARRANTY OR REPRESENTATION OF ANY KIND, EXPRESS OR IMPLIED (INCLUDING NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE).

8. Limitation of Liability and Remedies. EXCEPT WHERE PROHIBITED BY APPLICABLE LAW NOTONELESSON WILL NOT BE LIABLE AND BUYER WAIVES ALL CLAIMS AGAINST NOTONELESSON, FOR INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, DOWN TIME, LOST PROFITS OR COMMERCIAL LOSSES, WHETHER OR NOT BASED UPON NOTONELESSON'S NEGLIGENCE OR BREACH OF WARRANTY OR STRICT LIABILITY IN TORT OR ANY OTHER CAUSE OF ACTION. IN NO EVENT, EXCEPT WHERE PROHIBITED BY APPLICABLE

LAW, WILL NOTONELESSON'S LIABILITY IN CONNECTION WITH THE AGREEMENT OR SALE OF NOTONELESSON'S PRODUCTS OR SERVICES EXCEED THE PURCHASE PRICE OF THE SPECIFIC PRODUCTS OR SERVICES AS TO WHICH THE CLAIM IS MADE. Where required by law, nothing in this Agreement shall exclude, limit or restrict the liability of either party a) for death or personal injury arising from negligence, b) in respect of any fraud or fraudulent misrepresentation; or c) to the extent a liability limitation or exclusion is not permitted by law.

9. Product Use. Buyer is solely responsible for determining if a Product is fit for a particular purpose and suitable for Buyer's application. Accordingly, and due to the nature and manner of use of NOTONELESSON's Products, NOTONELESSON is not responsible for the results or consequences of use, misuse or application of its Products. All physical properties, statements and recommendations are either based on the tests or experience that NOTONELESSON believes to be reliable, but they are not guaranteed.

10. Ownership of Intellectual Property. All drawings, know-how, designs, specifications, inventions, devices, developments, processes, copyrights and other information or intellectual property disclosed or otherwise provided to Buyer by NOTONELESSON and all rights therein (collectively, "Intellectual Property") will remain the property of NOTONELESSON and will be kept confidential by Buyer in accordance with these Terms. Buyer has no claim to, nor ownership interest in, any Intellectual Property, and such information, in whatever form and any copies thereof, shall be promptly returned to NOTONELESSON upon request from NOTONELESSON. Buyer acknowledges that no license or rights of any sort are granted to Buyer hereunder in respect of any Intellectual Property, other than the limited right to use NOTONELESSON's Products or receive the Services purchased from NOTONELESSON.

11. Use of Trademarks and Trade Names. Buyer shall not use, directly or indirectly, in whole or in part, NOTONELESSON's name, or any other trademark or trade name that is now or may hereafter be owned by NOTONELESSON (collectively the "Trademarks"), as part of Buyer's corporate or business name, or in any way in connection with Buyer's business, except in a manner and to the extent authorized herein or otherwise approved by NOTONELESSON in writing. Buyer hereby acknowledges NOTONELESSON's ownership of the Trademarks and the goodwill associated therewith. Buyer shall not infringe upon, harm or contest the validity of any Trademarks. Buyer shall be entitled to use the Trademarks only in connection with the promotion or sale of the Authorized Products pursuant to the terms of the Agreement. Buyer shall reproduce the Trademarks exactly as specified by NOTONELESSON. Buyer shall not use the Trademarks in combination with any other trademarks or names. Buyer agrees that it will not register or attempt to register any Trademark or any colorable imitation thereof (including any non-English language variation thereof) or use such Trademarks for any products or for any purposes other than those set forth in the Agreement. Buyer shall not at any time during or after termination of the Agreement use in its business any other trademark that is similar to or

in any way resembles the Trademarks so as to be likely to cause deception or confusion with the Trademarks. Buyer shall provide reasonable cooperation to NOTONELESSON with respect to any efforts of NOTONELESSON to protect, defend or enforce its rights to the Trademarks. Should Buyer cease being an authorized customer of NOTONELESSON for any reason, Buyer shall immediately discontinue any formerly permitted use of NOTONELESSON's name or the Trademarks.

12. Confidential Information. All information furnished or made available by NOTONELESSON to Buyer in connection with the subject matter hereof shall be held in confidence by Buyer. Buyer agrees not to use (directly or indirectly), or disclose to others, such information without NOTONELESSON's prior written consent. The obligations in this section will not apply to any information that: (a) at the time of disclosure was or thereafter becomes generally available to the public by publication or otherwise through no breach by Buyer of any obligation herein; (b) Buyer can show by written records was in Buyer's possession prior to disclosure by NOTONELESSON; or (c) is legally made available to Buyer by or through a third party having no direct or indirect confidentiality obligation to NOTONELESSON with respect to such information.

13. Audit. Unless agreed to in writing by an officer of NOTONELESSON, neither Buyer nor any Buyer representative, may examine or audit NOTONELESSON's cost accounts, books or records of any kind or any matter, or any other data that NOTONELESSON, in its sole discretion, considers confidential or proprietary.

14. Infringement and Indemnification. Except as set forth below, NOTONELESSON agrees to defend and indemnify Buyer against any claims, costs, damages, liability and expenses resulting from actual patent, trademark or copyright infringement, misappropriation of confidential information, or violation of any other Intellectual Property right, domestic or foreign that may arise from the sale of NOTONELESSON's proprietary Product to Buyer as such pertains to the subject matter of the Agreement (each, a "Claim"); provided, however, (a) Buyer supplies NOTONELESSON written notice of such Claim immediately after the Buyer has notice of such Claim, (b) Buyer cooperates with NOTONELESSON in the defense and settlement of such Claim; and (c) Buyer allows NOTONELESSON the right to defend and settle such Claim at NOTONELESSON's expense. If a suit or claim results in any injunction or order that would prevent NOTONELESSON from supplying any part or Product falling under the Agreement, or if the result of such a suit or claim would, in the reasonable opinion of NOTONELESSON, otherwise cause NOTONELESSON to be unable to supply such parts or Products, NOTONELESSON may do one or more of the following: (i) secure an appropriate license to permit NOTONELESSON to continue supplying those parts or Products; (ii) modify the appropriate part or Product so that it becomes noninfringing; (iii) replace the appropriate part or Product with a non-infringing but practically equivalent part or Product; or (iv) if

NOTONELESSON cannot reasonably accomplish the actions specified in subsections (i) – (iii), then in NOTONELESSON’s sole discretion, NOTONELESSON may discontinue selling the part or Product without any further liability to Buyer. Notwithstanding the foregoing, NOTONELESSON shall have no liability or duty to defend and indemnify Buyer against any Claim relating to: (1) the use of any part or Product, (2) the combination of any part or Product with any other part or product not supplied by NOTONELESSON, or (3) any part or Product or process that is designed or specified by Buyer.

15. NOTONELESSON Employees. NOTONELESSON sales and service employees do not have the training or authority to make legal representations or enter into any agreements or execute any Buyer documents affecting legal responsibilities or waiving legal rights, including those regarding the transfer of intellectual property rights or related to privacy laws. Any such representations, agreements or documents will not be binding on NOTONELESSON or such NOTONELESSON employees.

16. Service Terms. The following terms and conditions apply to any Services provided by NOTONELESSON and site visits, as applicable:

- a) Services will be provided at NOTONELESSON’s then current service rates.
- b) Buyer is solely liable for all damages or injuries caused or contributed to by Buyer that may occur on Buyer’s designated site or while visiting NOTONELESSON’s designated site, except to the extent damages or injuries are directly caused by the gross negligence or willful misconduct of NOTONELESSON service personnel.
- c) For Services provided at Buyer’s designated site:
 - i. Buyer shall prepare the site for the Services. If the site is not prepared for the Services upon NOTONELESSON service personnel’s arrival at the agreed upon time and date for Services, NOTONELESSON may charge Buyer for any delay and/or travel time at NOTONELESSON’s regular service rates. Buyer shall provide NOTONELESSON with advance notice of any rules, regulations, statutes and requirements applicable to the Services, including any required permits and licenses that are applicable to Buyer’s local jurisdiction.
 - j. NOTONELESSON may refuse, without any liability, to provide Services and to allow NOTONELESSON service personnel to suspend Services or vacate any site where, in NOTONELESSON’s opinion, performance of Services would pose a risk to the safety of any person. In such event, Buyer is responsible for payment of any delay and/or travel time at NOTONELESSON’s regular service rates.
 - k. Buyer must provide at least 24 hours’ notice of cancellation of any Service order. If Buyer cancels with less than 24 hours’ notice, Buyer is responsible for any costs incurred by NOTONELESSON caused by such cancellation.



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- i. A PO or credit card number is required prior to scheduling for any on-site non-warranty Service.
 - d) For Services provided at NOTONELESSON’s designated site:
 - i. A non-refundable estimate fee will apply to all units evaluated in the NOTONELESSON Repair Department. This fee will be cancelled upon acceptance of repair estimate.
 - j. Buyer is not responsible for any damages incurred while shipping items to NOTONELESSON for repair. Buyer should package all Products with care. Buyer will be notified of any shipping damage upon receipt of the Product.

17. Compliance. Buyer agrees to comply with all federal, state, local and foreign rules, regulations, ordinances and laws applicable to Buyer’s obligations hereunder and Buyer’s use of the Products and Services, including import/export laws, labor laws and anticorruption laws.

18. Relationship of the Parties. Nothing in the Agreement or the course of dealing of the parties may be construed to constitute the parties hereto as partners, joint venturers or as agents for one another or as authorizing either party to obligate the other in any manner.

19. Force Majeure. NOTONELESSON will not be responsible for failure to perform in a timely manner under the Agreement when its failure results from events beyond its reasonable control (an event of “Force Majeure”), including acts of God, epidemics, acts of war whether declared or undeclared, blockades, labor disputes (whether of NOTONELESSON’s employees or the employees of others), raw material shortages and material increases in costs of raw materials. In the event of Force Majeure, the time for performance will extend form such time as reasonably necessary to enable NOTONELESSON to perform.

20. Assignment; Binding Effect. No assignment of any rights or interest or delegation of any obligation of Buyer under the Agreement or Buyer’s purchase order may be made without NOTONELESSON’s prior written consent. Any attempted assignment will be void. NOTONELESSON may assign the Agreement or otherwise transfer its rights and/or obligations under the Agreement. The Agreement will inure to the benefit of and be binding upon the parties and their respective permitted successors and assigns.

21. Waiver. In the event of any default by Buyer, NOTONELESSON may decline to ship Products or provide Services. If NOTONELESSON elects to continue shipping or otherwise fails to insist upon strict compliance with the Agreement, NOTONELESSON’s actions will not constitute a waiver of Buyer’s default or any other existing or future default or affect NOTONELESSON’s legal remedies.

22. Bankruptcy. If either party becomes insolvent, is unable to pay its debts when due, files for or is the subject of involuntary bankruptcy, has a receiver appointed or has its assets assigned, the other party may cancel any unfulfilled obligations hereunder.

23. Limitation of Actions/Choice of Law. Any dispute arising out of or related to the Agreement will be governed by and construed according to the laws of the state or, if outside the United States, the country where NOTONELESSON is located and litigated exclusively in the competent courts located in such state or, if outside the United States, the capital of such country. The parties hereto expressly release and waive any and all rights to a jury trial and consent to have any dispute heard solely by a court of competent jurisdiction. The parties agree that the United Nations Convention on Contracts for the International Sale of Products will not apply to the Agreement.

24. Survival. Any provisions in the Agreement which, by their nature, extend beyond the termination or expiration of any sale of Products or Services, will remain in effect until fulfilled.

25. Severability. If any provision herein is held to be unlawful or unenforceable, the remaining provisions herein will remain in effect.

26. Integration and Modification. The Agreement constitutes the entire agreement between NOTONELESSON and Buyer with respect to the Products and Services covered by the Agreement, and supersedes any prior agreements, understandings, representations and quotations with respect thereto. No modification hereof will be of any effect unless in writing and signed by the party to be bound thereby.