

# HPE terms and conditions of online and phone sales for HPE Parts Store (Terms) by Hewlett-Packard Australia Pty Ltd (ABN 74 004 394 763)

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## **1. Scope**

ATTENTION: Please read these Terms carefully as they apply to orders submitted by you to HPE either online or over the phone for products available in the HPE Parts Store website or call center (“HPE Parts Store”). By ordering online or over the phone you confirm that you agree to these Terms governing the purchase of all products available in the HPE Parts Store (“HPE Spare Parts”).

## **2. HPE Spare Parts**

All HPE Spare Parts are from our Service inventory and meet our rigorous engineering and quality standards. When you purchase a HPE Spare Part, it will be new or ‘as new’. ‘As new’ means that the HPE Spare Part has been repaired, refurbished or remanufactured.

All HPE Spare Parts come with the HPE Limited Warranty referred to below and with guarantees that cannot be excluded under the Australian Consumer Law.

## **3. Prices and Delivery Charges**

Prices, delivery charges and payment will be as specified in the HPE Parts Store, as determined when ordering online or over the phone. If applicable, HPE will list delivery charges as a separate line item on its invoices. Prices will include the applicable goods and services taxes as at the date that the order is accepted by HPE and the sale has been processed and concluded.

HPE reserves the right to change prices published on the HPE Parts Store prior to acceptance of that order by HPE.

Where there has been a typographical or other error in the price, HPE has the right to correct the price at any time prior to delivery. HPE will notify you of the corrected price. You may choose to pay the corrected price, however if you do not choose to pay the corrected price, then HPE may cancel your order and will issue a refund or credit to your account, if you have already paid.

#### **4. Orders**

All orders are subject to acceptance by HPE. HPE will provide you with an order acceptance or rejection notice as soon as reasonably possible.

You will specify a delivery address within Australia unless otherwise agreed.

HPE Spare Parts purchased within Australia will only be shipped or delivered within Australia. You may not export any products purchased at the HPE Parts Store.

#### **5. Order Cancellation**

HPE has the right to cancel any accepted order prior to delivery in the event of any pricing error (as referred to above) or any material error outside of HPE's control in connection with your order or other conditions published in the HPE Parts Store relevant for your order, or if any further verification of your credit conditions or records so warrants. If you have already made payment and your order is cancelled, HPE will issue a refund or credit to your account.

You may cancel an order for an HPE Spare Part (excluding Custom Parts orders) at any time before shipment. Custom Parts means HPE Spare Parts which are modified, designed or manufactured to meet your specific requirements. Subject to your rights under the Australian Consumer Law, Custom Parts orders are non-refundable. Custom Parts Orders are to be paid for upfront.

## **6. Payment**

Payment for products is due prior to delivery of the product. Where you make your purchase relying on credit provided by a third party, any acceptance by HPE is subject to that third party providing credit to you. HPE is not bound to complete the order and has no liability to you in the event that that third party fails to provide sufficient credit for the purchase.

## **7. Title and Risk of Loss**

Title to hardware products passes to you upon the later of full payment and delivery of the products.

Risk of loss and damage pass to you upon delivery.

## **8. HPE Spare Parts Availability & Discontinuance**

Availability of HPE Spare Parts is limited, and HPE Spare Parts may not be available for immediate delivery. HPE will contact you if the HPE Spare Part is no longer available or if there will be a substantial delay in delivering the products to you. If the HPE Spare Parts are no longer available, HPE will contact you and will discuss what (if any) alternative products are available. You will have the option to cancel or amend your order. If you have already made payment and your order is cancelled, HPE will issue a refund or credit to your account. If your order is amended and purchase price changes, you will pay any additional amount due to HPE in accordance with the payment terms set out in these Terms or HPE will issue a refund or credit to your account.

## **9. Personal Use**

HPE Spare Parts acquired by you under these Terms are solely for your personal use and not for immediate resale or sub-licensing.

## **10. Your responsibilities**

Some HPE Spare Parts are capable of retaining user-generated data.

You should make periodic backup copies of the data, files and programs stored on your products, including hard drives and storage devices, as a precaution against possible failures, alteration, or loss of the data.

Before returning any product for service (including repair), be sure to back up data and remove any confidential, proprietary or personal information. Data may be lost during service (including repair).

You should maintain a separate backup system or procedure that is not dependent on the products so you can reconstruct lost or altered files, data, and programs.

## **11. Refurbished Parts Program**

From time to time, HPE may offer a refurbished parts program. Under this program, you may purchase a refurbished exchange HPE Spare Part provided that you return the defective HPE Spare Part to HPE. The defective HPE Spare Part must be the same product type as the exchange HPE Spare Part. You must return the defective HPE Spare Part to HPE within 14 days of receiving the exchange HPE Spare Part. All defective HPE Spare Parts must be returned by you at your expense (unless otherwise stipulated by HPE).

After the receipt and inspection of the returned defective HPE Spare Part in accordance with the above paragraph, HPE will refund to you the defective core charge stipulated at the time of purchase of the exchange HPE Spare Part. The refund will only be made to the same credit card or PayPal account that was used for the original order of the exchange HPE Spare Part. To the extent that your rights under the Australian Consumer Law are additional to, and inconsistent with your rights under the refurbished parts program, your rights under the Australian Consumer Law will prevail.

## **12. HPE Limited Warranty**

All HPE Spare Parts come with a standard 12 months warranty against defects in materials and workmanship. This HPE Limited Warranty commences from the date of purchase of the HPE Spare Part. Please contact HPE on the details below for further information or if you have any questions.

Under the HPE Limited Warranty, HPE will replace, at no charge, HPE Spare Parts, which are defective and advised to HPE within the 12 month warranty period. A replacement Spare Part will be issued upon receipt of the faulty product.

The HPE Limited Warranty does not apply to defects resulting from improper or inadequate maintenance by you; software supplied by you or a third party, interfacing or supplies; unauthorized modification; improper use or operation outside of the specifications for the product; abuse, negligence, accident, loss or damage in transit or improper site preparation.

HPE denies liability for any damage that may be caused by the installation of the HPE Spare Part by an unauthorised HPE repairer.

### **13. Australian Consumer Law (ACL)**

(a) Subject to section 0, if Customer is a consumer within the meaning the ACL:

- (i) HPE's products and services are supplied with consumer guarantees that cannot be excluded under the ACL. Customer has a right to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. Customer has a right to have the products repaired or replaced if they are not of acceptable quality and the failure is not a major failure;
- (ii) nothing in this Agreement excludes or limits any right or remedy, or any guarantee, warranty or other term or condition implied or imposed by the ACL (including any consumer guarantee) which cannot be lawfully excluded or limited;
- (iii) Customer's express warranties under this Agreement are in addition to Customer's rights and remedies under the ACL. Customer's consumer guarantee rights under the ACL prevail to the extent that they are inconsistent with any limitations contained in the express warranty;
- (iv) if HPE products are provided by Customer to HPE for repair, they may be repaired using refurbished parts or may be replaced by refurbished products of the same type rather than being repaired. Customer data stored on products may be lost during repair;
- (v) the express warranty period for HPE's products, software and services is set out in the Supporting Material; and
- (vi) if Customer wishes to receive support or claim a remedy under a warranty under this Agreement or the ACL, Customer should contact HPE:

Hewlett-Packard Australia Pty Ltd  
Building F, 1 Homebush Bay Drive  
Rhodes, NSW 2138

Attention: HPE Parts Store  
Toll Free Number - 1300 301 099  
Email - spareparts@HPE.com

Unless otherwise agreed by HPE or required by law, including the Australian Consumer Law, you are responsible for the cost of returning goods to HPE for warranty support.

(b) If Customer is a consumer within the meaning of the ACL and is purchasing goods or services that are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then despite any other provision of this Agreement other than clause **Error! Reference source not found.**, HPE limits its liability for failure to comply with a consumer guarantee as follows:

- (i) provision of services: to any one or more of the following: re-supply of the services or payment of the costs of having the services re-supplied;
- (ii) provision of products: to any one or more of the following: replacement of the products or the supply of equivalent products; repair of the goods; payment of the costs of replacing the goods or of acquiring equivalent goods; or payment of the costs of having the products repaired; and
- (iii) otherwise, to the maximum extent permitted by law.

## **14. HPE Spare Part Returns**

If HPE Spare Part orders are cancelled by you after shipment you will be responsible for obtaining a HPE Return Authority (RA) Number, the organising and transportation of the HPE Spare Part back to the designated HPE shipping location, and all charges associated therein.

To obtain an RA number you must call HPE within 30 days of receipt of the HPE Spare Part. The RA Number is valid for 14 calendar days only, from its issue date. Subject to your rights under the Australian Consumer Law, HPE reserves the right to reject the return of HPE Spare Parts if they are not in their original packaging and suitable for resale.

Where HPE approves the RA request, a restocking fee of 15% or \$50 (whichever is lesser) may apply.

## **15. Limitation of the Liability**

Nothing in these Terms excludes, restricts or modifies any right or remedy, or any guarantee, warranty or other term or condition implied or imposed by the Australian Consumer Law which cannot be lawfully excluded or limited.

Save for any rights you may have at law which cannot be excluded, limited or modified, including your consumer guarantee rights contained in the ACL (and referred to above):

- (i) HPE does not warrant that the operation of HPE Spare Parts will be uninterrupted or error-free;
- (ii) HPE is not responsible for damage that occurs as a result of your failure to follow the instructions intended for the HPE Spare Parts;
- (iii) HPE will not be liable for loss of data as it expects you to make appropriate arrangements to back up your data;
- (iv) HPE will not be liable under the Terms for any loss of income, loss of profits, loss of contracts, loss of data or for any indirect or consequential loss or damage of any kind howsoever arising, whether caused by tort (including negligence), breach of contract or otherwise; and
- (v) any term or condition of your order which is any way inconsistent with or in addition to these Terms will not be applicable or binding on HPE unless otherwise agreed in a written agreement signed by you and HPE and HPE's failure to object will not be considered a waiver of these Terms.

HPE does not exclude or limit liability for death or personal injury (including to the extent caused by its negligence) or for any other liability that cannot be excluded or limited by law

HPE's maximum aggregate liability under the Terms whether in contract, tort (including negligence) or otherwise, save for any rights you may have at law which cannot be excluded, limited or modified, including your consumer guarantee rights contained in the Australian Consumer Law, shall in no circumstances exceed the amount payable by you to us in respect of the HPE Spare Parts in question.

## **16. Protection of Personal Data**

You agree that any personally identifiable information you provide to us in connection with the HPE Parts Store may be dealt with by HPE in accordance with the terms specified in the HPE Privacy Statement available at the bottom of the HPE Parts Store web pages.

You also agree that HPE may use personal information provided by you in order to conduct appropriate anti-fraud checks. Personal information that you provide may be checked against a credit reference or fraud prevention agency, which may keep a record of that information.

## **17. Export Statement of Assurance**

Products obtained under these Terms may be subject to Australia and other government export control laws and regulations. You must comply with those regulations whenever it exports or re-exports controlled products or technical data obtained from HPE or any product produced directly from the controlled technical data.

## **18. Other applicable terms**

HPE Spare Parts are manufactured for standard commercial uses and are not intended to be sold or licensed for use in critical safety systems, in hospitals in situations where uninterrupted performance is desirable or in nuclear facilities.

HPE is not responsible for delay or failure to perform under these Terms due to causes beyond its reasonable control.

Each party will treat and hold confidential information provided by the other party which is marked as confidential or proprietary.

HPE may subcontract the performance of services to qualified service suppliers.

All documents referred to in these Terms are incorporated into these Terms and are available from HPE upon request.

Any customer site access requirements will not be enforceable to either increase the obligations or liabilities or reduce the rights under these Terms of HPE, its officers, employees, or subcontractors.



## **19. Governing Laws**

Any contract or dispute arising in connection with Terms will be governed by laws in force in New South Wales, Australia.