



Search...



# SHI Online Customer Resale Terms and Conditions

Unless a resale agreement currently exists between Reseller and Customer, these terms (the "Terms") shall constitute the entire understanding between SHI and the firm ("Customer") ordering the software, hardware, or third party services (collectively "Products") under the ordering document ("Order"). Issuance of an Order shall be deemed Customer's acceptance of these terms. If a resale agreement currently exists between SHI and Customer, the Order shall be subject to the terms and conditions of that resale agreement in lieu of these Terms.

## 1. Definition of SHI

"SHI" means one of the following, depending on which SHI office receives the Order:

- If the Order is received by SHI International Corp.:  
"SHI" means SHI International Corp., a New Jersey corporation with offices at 290 Davidson Ave., Somerset, NJ 08873.
- If the Order is received by SHI/Government Solutions, Inc.:  
"SHI" means SHI Government Solutions, Inc., a Texas corporation with offices at 3828 Pecana Trail Austin, TX 78749.
- If the Order is received by StrataScale Solutions, LLC:  
"SHI" means StrataScale Solutions, LLC, a Delaware Limited Liability Company with offices at 3828 Pecana Trail Austin, TX 78749
- If the Order is received by SHI Canada ULC:  
"SHI" means SHI Canada ULC, a Canadian corporation with offices at 895 Don Mills Road, Tower II, Suite 400, Toronto, Ontario M3C 1W3.
- If the Order is received by SHI Corporation UK Limited:  
"SHI" means SHI Corporation UK Limited, with offices at 401 Grafton Gate, Milton Keynes, Buckinghamshire, England MK9 1AQ.
- If the Order is received by SHI Global IT Solutions Ireland Ltd:  
"SHI" means SHI Global IT Solutions Ireland Ltd, with offices at Pembroke House, 28 - 32 Pembroke Street Upper, Dublin 2, Ireland.
- If the Order is received by SHI International B.V.:  
"SHI" means SHI International B.V., with offices at Herengracht 124, 1015 BT, Amsterdam, Netherlands
- If the Order is received by SHI International SAS:  
"SHI" means SHI International SAS, with offices at 9-15 Rue Maurice Mallet, 92130 Issy les Moulineaux, France
- If the Order is received by SHI International Corp Hong Kong Limited:  
"SHI" means SHI Hong Kong, with offices at 29/F, Tower 5, The Gateway, 15 Canton Road, Harbour City, Tsim Sha Tsui, Kowloon, Hong Kong SAR, China
- If the Order is received by SHI Singapore Solutions Pte. Ltd:  
"SHI" means SHI Singapore Solutions Pte. Ltd, with offices at One Raffles Place, #20-61 Tower 2, Suite 2032, Singapore 048616
- If the Order is received by SHI International Corp Australia Pty. Ltd:  
"SHI" means SHI International Corp Australia Pty. Ltd. with offices at Level 45, 680 George Street Sydney, NSW 2000 Australia

## 2. Terms of Payment

The invoice shall be paid ("paid" being defined as "issuance of payment from Customer's Accounts Payable Department") net thirty days after Customer's receipt of a valid invoice at the remit-to address referenced in the Order ("Payment Due Date"). Any invoice or portion thereof that is subject to a good faith dispute will not be paid; in such case, Customer will promptly notify SHI of any rejected invoice or portion thereof, with reasons for such rejection. The rejected costs, adjusted to the extent as mutually agreed to, shall then be paid within ten days after resolution of the reason for rejection ("Resolution Payment Due Date"). Customer will pay any federal, state, and local sales, use, withholding tax, duties or similar taxes imposed or based on the sale of Products under this Agreement. When SHI is authorized to collect such taxes they will be separately stated on SHI's invoices and reported and paid to appropriate governmental authorities by SHI. SHI shall charge interest at the rate of 1.5% per month (or the maximum rate that as is permitted by applicable laws, if less) from the Payment Due Date or Resolution Due Date, as the case may be, to the date payment is received by SHI.

## 3. Shipping

Products shipped to Customer's facilities shall be packaged in such a manner as to preclude all reasonably anticipated in-transit damage and in accordance with commercial standards. All shipments of Products will be clearly labeled with the shipping address stated on the order, the applicable PO number, recipient's name and if applicable, building and room number. Shipment terms are FOB Destination, freight pre-paid and added.

## 4. Returns

Product returns are subject to SHI's return policy, which is found at [www.shi.com/returnpolicy](http://www.shi.com/returnpolicy) (/returnpolicy).

## 5. Warranty

SHI warrants that SHI will maintain all necessary local, state, and federal licenses and certifications that may be required in order to legally deliver the Product described in the PO and has all rights, approvals, and/or authorizations necessary to provide the Products. SHI is a value added reseller ("VAR") of Product, not the original equipment manufacturer or licensor ("OEM"), and therefore disclaims any warranty responsibility regarding Product provided under this Order. SHI shall forward the end user warranties to Customer which are provided to SHI from the OEM of the Product, and to the extent granted by the OEM, Customer shall be the beneficiary of the OEM's warranties. SHI is not a party to any warranty terms between Customer and OEM and Customer agrees to look solely to the OEM for satisfaction of any and all warranty claims related to that OEM's Product. EXCEPT AS OTHERWISE PROVIDED IN THIS ORDER, SHI HEREBY DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WARRANTY OF NONINFRINGEMENT, OR ANY WARRANTY RELATING TO THIRD PARTY SERVICES. THE DISCLAIMER CONTAINED IN THIS PARAGRAPH DOES NOT AFFECT THE TERMS OF ANY WARRANTY PROVIDED BY AN OEM.

## 6. Software License

Software Products resold under this Order, as well as related maintenance or support services, will be governed by either the license agreement between Customer and the OEM or, if no such agreement exists, the OEM's standard license and support agreements, which SHI shall forward to Customer at the time of delivery of the Products, when provided to SHI by the OEM. SHI is not a party to any such terms between Customer and OEM and Customer agrees to look solely to the OEM for satisfaction of any and all license and support claims or obligations related to that OEM's Product.

## 7. Product Indemnification

As a Value Added Reseller of Products and third party services, SHI disclaims any indemnification responsibility regarding Product provided under the Order. Customer agrees to look solely to the OEM for satisfaction of any and all indemnification claims related to that OEM's Product.

## 8. Limitation of liability

NEITHER PARTY WILL BE LIABLE FOR ANY SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF OR DAMAGE TO DATA, LOSS OF ANTICIPATED REVENUE OR PROFITS, WORK STOPPAGE OR IMPAIRMENT OF OTHER ASSETS, WHETHER OR NOT FORESEEABLE AND WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EITHER PARTY'S TOTAL CUMULATIVE LIABILITY TO THE OTHER IN CONNECTION WITH THESE TERMS OR AN ORDER, WHETHER IN CONTRACT, TORT OR OTHER THEORY, WILL NOT EXCEED THE TOTAL AMOUNT OF FEES ACTUALLY PAID OR PAYABLE BY CUSTOMER TO SHI UNDER THE ORDERS RECEIVED FOR THE YEAR PREVIOUS TO THE INCIDENT WHICH GAVE CAUSE FOR SUCH LIABILITY. CUSTOMER ACKNOWLEDGES THAT SUCH AMOUNT REFLECTS THE ALLOCATION OF RISK SET FORTH IN THESE TERMS AND THAT SHI WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY.

## 9. Cancellation

Provided the Order or some part thereof has not been designated "non-cancellable" or "non-returnable" by SHI, Customer shall have the right to cancel or postpone, in whole or in part, the Order, without penalty, provided that notice of such cancellation or postponement is received by SHI prior to shipment of the ordered Products. If Customer cancels the Order following shipment of the Products but prior to delivery, Customer shall pay all freight and handling charges for shipment and return shipment of such Products to SHI. Notwithstanding the foregoing, any such cancellations shall be subject to charges imposed by the OEM associated with cancellation.

## 10. Assignment

Neither party may assign, subcontract, or transfer the Order, or any part thereof, without the other party's prior written consent, and any such assignment or transfer without such consent shall be null and void.

## 11. Force Majeure

Neither party shall be liable to the other for any failure or delay in performing its obligations hereunder, or for any loss or damage resulting therefrom, due to: (1) acts of God or public enemy, acts of government, riots, terrorism, fires, floods, strikes, lock outs, epidemics, act or failure to act by the other party, or unusually severe weather affecting Customer, SHI or its subcontractors, or (2) causes beyond their reasonable control and which are not foreseeable (each a "Force Majeure Event"). In the event of any such Force Majeure Event, the date of delivery or performance shall be extended for a period equal to the time lost by reason of the delay. The party experiencing the delay shall be prompt in restoring normal conditions, establishing new schedules and resuming operations as soon as the event causing the failure or delay has ceased. SHI shall notify Customer promptly of any such delay and shall specify the effect on the Product as soon as practical.

## 12. No Waiver

Any failure by either party to insist upon observance or performance by the other of the provisions of these Terms shall not be deemed a "course of dealing" waiver of any such provision or a waiver of the right of the parties to enforce any and all provisions in the future.

## 13.No Severance

Should any of these Terms be declared unenforceable in law for whatever reason, all other terms and conditions shall survive and the unenforceable provision(s) will be severed from these Terms and the balance of the terms and conditions shall be binding on both parties as if the severed provision(s) had never existed, unless performance thereof is rendered legally impractical and no longer fulfills the intentions the Order.

## 14. Governing Law/Jurisdiction: one of the following will apply, depending on which SHI office receives the Order

- If the Order is received by SHI International Corp, SHI Government Solutions, Inc., StrataScale Solutions, LLC, SHI International Corp Hong Kong Limited, or SHI Singapore Solutions Pte. Ltd: The Order, and any claims or disputes arising out of or relating thereto shall be interpreted in accordance with the laws of the State of New Jersey, without regard to: (1) conflict of law principles; (2) the United Nations Convention on Contracts for the International Sale of Goods; and, (3) the Uniform Computer Information Transactions Act ("UCITA"). The parties hereby consent to the exclusive jurisdiction and venue of the federal and state courts of the State of New Jersey.

- If the Order is received by SHI Canada ULC: The Order, and any claims or disputes arising out of or relating thereto shall be interpreted in accordance with the laws of the province of British Columbia and those laws of Canada applicable therein, without regard to choice of law provisions or the United Nations Convention on Contracts for the International Sale of Goods and the parties hereby irrevocably submit to the exclusive jurisdiction and venue of the Superior Court of Justice for the province of British Columbia.
- If the Order is received by SHI Corporation UK Limited: The Order, and any claims or disputes arising out of or relating thereto shall be interpreted in accordance with the laws of England and Wales without regard to the United Nations Convention on Contracts for the International Sale of Goods and the parties hereby irrevocably submit to the exclusive jurisdiction and venue of the English courts. Products supplied to SHI Corporation UK Limited are subject to UK VAT by means of a reverse charge (ex VAT invoice for non-UK based suppliers) pursuant to Article 44 in EU VAT Directive 2006/112 for electronic shipment, licensing or services.
- If the Order is received by SHI Global IT Solutions Ireland Ltd: The Order, and any claims or disputes arising out of or relating thereto shall be interpreted in accordance with Irish law without regard to the United Nations Convention on Contracts for the International Sale of Goods and the parties hereby irrevocably submit to the exclusive jurisdiction and venue of the Irish courts. Products supplied to SHI Global IT Solutions Ireland Ltd are subject to Irish VAT by means of a reverse charge (ex VAT invoice for non-Ireland based suppliers) pursuant to Article 44 in EU VAT Directive 2006/112 for electronic shipment, licensing or services.
- If the Order is received by SHI International B.V.: The Order, and any claims or disputes arising out of or relating thereto shall be interpreted in accordance with the law of The Netherlands without regard to the United Nations Convention on Contracts for the International Sale of Goods and the parties hereby irrevocably submit to the exclusive jurisdiction and venue of the courts of The Netherlands. Products supplied to SHI International B.V. are subject to Dutch VAT by means of a reverse charge (ex VAT invoice for non-Dutch based suppliers) pursuant to Article 44 in EU VAT Directive 2006/112 for electronic shipment, licensing or services.
- If the Order is received by SHI International SAS: The Order, and any claims or disputes arising out of or relating thereto shall be interpreted in accordance with French law without regard to the United Nations Convention on Contracts for the International Sale of Goods, and the parties hereby irrevocably submit to the exclusive jurisdiction of the Courts of Paris, unless otherwise required by law.
- If the Order is received by SHI International Corp Australia Pty. Ltd: The Order, and any claims or disputes arising out of or relating thereto shall be interpreted in accordance with the laws of New South Wales, without regard to the United Nations Convention on Contracts for the International Sale of Goods and the parties hereby irrevocably submit to the exclusive jurisdiction and venue of the courts of New South Wales.

If any claim or dispute arising hereunder is not resolved through such negotiations within thirty days following written presentment, either Party may, upon giving the other Party at least ten days prior written notice, initiate litigation submitting such claims or disputes for decision by a court of competent jurisdiction within the appropriate above, in accordance with the rules of that court and laws of that jurisdiction. Either Party may, at its option and at any time during the dispute resolution process, seek injunctive relief (including, but not limited to preliminary injunctive relief). Each party irrevocably waives its rights to trial by jury in any action or proceeding arising out of or relating to the Order or these Terms.

The prevailing party in any litigation arising out of or relating to the Order or these Terms shall be entitled to recover its expenses, costs of litigation (including, without limitation, clerk, paralegal, and expert witness costs), and reasonable attorneys' fees from the losing party, whether or not otherwise specifically awardable under any law or court rule.

## 15. Exportation

Export of Products by Customer is subject to applicable US export regulations and Customer shall be solely responsible for compliance thereof.

## 16. Entire Agreement

These Terms shall constitute the entire agreement between the parties with respect to the subject matter of the Orders. These Terms and any Order shall not be modified or rescinded, except by a writing signed by SHI and Customer. These Terms supersede all contemporaneous and prior oral and written communications, understandings and agreements of the Parties with respect to the subject matter of these Terms. This Agreement shall govern and supersede any preprinted terms and conditions stated on or attached to any Order, which are null and void with respect to these Terms and the Order.



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