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Cisco Product Catalog

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Cisco Systems Terms and Conditions of Sale and Software License

The Terms and Conditions of Sale and Software License Agreement (the "Agreement") contained herein constitute the entire agreement between Cisco Systems, Inc. ("Cisco") and Customer.

1. PRODUCTS.

1.1 "Products" shall mean any products identified on (a) Cisco's then current price list, (b) any of Cisco's proposals or quotations, or (c) any of Cisco's invoices.

1.2 Alterations. Alterations to any Product which Cisco deems necessary to (a) comply with specifications, changed safety standards or governmental regulations, (b) make the Product non-infringing with respect to any patent, copyright or other proprietary interest, or (c) otherwise improve the Product, may be made at any time by Cisco without prior notice to or consent of Customer and such altered Product shall be deemed fully conforming.

2. PAYMENT.

Upon credit approval by Cisco, payment terms shall be net thirty (30) days from date of shipment. All payments shall be made in U.S. dollars. If at any time Customer is delinquent in the payment of any invoice or is otherwise in breach of this Agreement, Cisco may, in its discretion, withhold shipment (including partial shipments) of any order or may, at its option, require Customer to prepay for further shipments. Any sum not paid by Customer when due shall bear interest until paid at a rate of 1.5% per month (18% per annum) or the maximum rate permitted by law, whichever is less. Customer grants Cisco a security interest in Products purchased under this Agreement to secure payment for those products purchased. If requested by Cisco, Customer agrees to execute financing statements to perfect this security interest.

3. TAXES AND DUTIES.

All stated prices are exclusive of any taxes, fees and duties. Any taxes related to Products purchased or licensed pursuant to this Agreement shall be paid by Customer or Customer shall provide to Cisco an exemption certificate acceptable to the taxing authorities. Applicable taxes shall be billed as a separate item on the invoice.

4. ORDERS.

Cisco will not be bound by any terms of Customer's order that are inconsistent with the terms herein. All orders are subject to acceptance by Cisco at its corporate headquarters. No form of acceptance except Cisco's written acknowledgment mailed to Customer, or Cisco's commencement of performance shall constitute a valid acceptance of Customer's order. Any such acceptance is expressly conditional on assent to the terms hereof and the exclusion of all other terms. Customer shall be deemed to have assented to the terms hereof, whether or not previously received, upon accepting delivery of anything shipped by Cisco. If tender of these terms is deemed an offer, acceptance is expressly limited to the terms hereof.

5. SHIPPING AND DELIVERY.

5.1 Shipment Dates. Shipping dates will be established by Cisco upon receipt of purchase order(s) from Customer. Shipping dates will be assigned as close as practicable to the Customer's requested date. Cisco will use commercially reasonable efforts to notify Customer of the actual scheduled shipping date within five (5) working days after receipt of order.

5.2 Rescheduling. Customer has the right to defer Product shipment for no more than (30) days from the scheduled shipping date, provided written notice is received by Cisco at least fifteen (15) days before originally scheduled shipping date.

5.3 Change Order Charge. Canceled orders, rescheduled deliveries or Product configuration changes made by Customer within ten (10) days of the original shipping date will be subject to (a) acceptance by Cisco, and (b) a charge of 15% of the total invoice amount. Cisco reserves the right to reschedule delivery in cases of configuration changes made within ten (10) days of scheduled shipment.

5.4 Shipment Terms. Customer shall be responsible for all freight, handling and insurance charges. Unless given written instructions by Customer, Cisco shall select the carrier. In no event shall Cisco have any liability in connection with shipment, nor shall the carrier be considered an agent of Cisco. Cisco shall not be liable for damage or penalty for delay in delivery or for failure to give notice of any delay.

5.5 Title and Risk of Loss. Title and risk of loss shall pass from Cisco to Customer at Cisco's dock, San Jose, California, or such other place of manufacture as Cisco may from time to time use.

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7. LIMITED WARRANTY.

Cisco warrants that Products purchased under this Agreement will be free from hardware defects in material and workmanship for a period of ninety (90) days from the shipping date. Chassis of Products purchased under this Agreement may be new or equivalent to new. In addition, Cisco warrants that software will substantially conform to the published specifications. During the warranty period, Cisco will make all necessary adjustments, repairs and parts replacement free of charge provided (1) the Customer has given Cisco immediate written notice of such defect within the warranty period and (2) the material is returned to Cisco in the manner prescribed below. Replacement parts used in hardware repairs may be new or equivalent to new.

The above warranties do not apply to any Product which (1) has been altered, except as authorized by Cisco, or (2) has not been installed, operated, repaired or maintained in accordance with any installation, handling, maintenance or operating instructions supplied by Cisco, or (3) has been subjected to unusual physical or electrical stress, misuse, negligence or accident.

EXCEPT AS SET FORTH ABOVE, CISCO AND ITS SUPPLIERS DISCLAIM ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING THOSE OF MERCHANTABILITY, NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. NO DEALER OR RESELLER IS AUTHORIZED TO MAKE ANY MODIFICATIONS, EXTENSIONS, OR ADDITIONS TO THIS WARRANTY.

Return Material Authorization: In all cases of Cisco direct U.S. purchase/license of Product, where a Product is returned to Cisco, Customer shall call and obtain a Return Material Authorization (RMA) number from Cisco's customer service department. For all non-direct international or multinational purchases, Customer must contact the place from which the Product was purchased/licensed to obtain its remedy.

Customer shall return all RMA Products in the original or equivalent shipping container, freight and insurance prepaid. The RMA number must appear on the outside of the carton when shipped to Cisco. Customer shall return all RMA material within ten (10) days of receipt of the replacement part. In the event Customer fails to return the RMA Product within such period, Customer agrees to purchase the RMA Product and pay Cisco the list price for the Product.

8. PATENT AND COPYRIGHT INDEMNITY.

8.1 Cisco will defend any claim, suit or proceeding brought against Customer so far as it is based on a claim that any Product supplied hereunder infringes a patent or copyright in the United States, if notified promptly in writing of the claim and given full authority, information and assistance for the defense. If such claim has occurred, or in Cisco's opinion is likely to occur, Customer agrees to permit Cisco at its option and expense, either to procure for Customer the right to continue using the Product or to replace or modify the same so that it becomes non-infringing, or, if neither of the foregoing alternatives is reasonably available, remove the Product and refund Customer the price thereof as depreciated or amortized by an equal annual amount over the lifetime of the Product as established by Cisco.

8.2 Cisco has no liability for any claim based upon the combination, operation or use of any Product supplied hereunder with equipment, devices or software not supplied by Cisco. Cisco has no liability for any claim based upon alteration or modification of any Product supplied hereunder.

8.3 Customer shall defend and hold Cisco harmless against any expense, judgment or loss for alleged infringement of any patents, copyrights or trademarks which result from Cisco's compliance with Customer's designs, specifications or instructions.

8.4 Notwithstanding any other provisions hereof, Cisco shall not be liable for any claim based on Customer's use of the Products as shipped after Cisco has informed the Customer of modifications or changes in the Products required to avoid such claims and offered to implement those modifications or changes, if such claim would have been avoided by implementation of Cisco's suggestions.

8.5 THE FOREGOING STATES THE ENTIRE OBLIGATION OF CISCO WITH RESPECT TO INFRINGEMENT. THE FOREGOING IS GIVEN TO CUSTOMER SOLELY FOR ITS BENEFIT. THE FOREGOING ALSO IS IN LIEU OF, AND CISCO AND ITS SUPPLIERS DISCLAIM, ALL WARRANTIES OF NONINFRINGEMENT WITH RESPECT TO THE PRODUCTS.

9. EXPORT RESTRICTIONS.

Customer shall obtain all licenses, permits and approvals required by any government and shall comply with all applicable laws, rules, policies and procedures of the U.S. Government. Customer will indemnify and hold harmless Cisco for any violation or alleged violation by Customer of such laws, rules, policies and procedures. Customer shall not transmit, directly or indirectly, the Products or any technical data (including processes and services) received from Cisco, nor the direct product thereof, outside of the United States without prior authorization of the U. S. Government if such authorization is required. Cisco and Customer each agree to provide the other such information and assistance as may reasonably be required in connection with securing licenses, approvals, and permits, and to take timely action to obtain all required import and export documents.

10. CONFIDENTIAL INFORMATION.

Customer shall hold confidential and shall not use or permit others to use any Confidential Information identified as such in writing or orally by Cisco or information which Customer knows or has reason to know is confidential, proprietary or trade secret information of Cisco. The obligations of confidentiality shall not apply to information which (i) has entered the public domain except where such entry is the result of Customer's breach of this Agreement; (ii) prior to disclosure hereunder was already in Customer's possession; or (iii) subsequent to disclosure hereunder is obtained by Customer on a nonconfidential basis from a third party who has the right to disclose such information to the Customer.

11. FORCE MAJEURE.

Cisco shall not be liable for any delay or failure in performance whatsoever due to Acts of God, earthquakes, shortages of supplies, transportation difficulties, labor disputes, riots, war, fire, epidemics, and similar occurrences. The obligations and rights of Cisco shall be extended on a day-to-day basis for a period of time equivalent to the period of the delay.

12. LIMITATION OF LIABILITY.

NOTWITHSTANDING ANYTHING ELSE HEREIN, ALL LIABILITY OF CISCO AND ITS SUPPLIERS UNDER THIS AGREEMENT OR OTHERWISE SHALL BE LIMITED TO MONEY PAID TO CISCO UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT OR CIRCUMSTANCES GIVING RISE TO SUCH LIABILITY AND IN THE CASE OF DAMAGES RELATING TO ANY ALLEGEDLY DEFECTIVE OR INFRINGING PRODUCT, SHALL, UNDER ANY LEGAL OR EQUITABLE THEORY, BE FURTHER LIMITED TO THE PURCHASE PRICE PAID BY CUSTOMER FOR SUCH PRODUCT.

13. CONSEQUENTIAL DAMAGES WAIVER.

IN NO EVENT SHALL CISCO OR ITS SUPPLIERS BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOST PROFITS, OR LOSS OR DAMAGE TO DATA, OR ANY OTHER INDIRECT DAMAGES, EVEN IF CISCO OR ITS SUPPLIERS HAS BEEN INFORMED OF THE POSSIBILITY THEREOF.

14. GENERAL

14.1. CHOICE OF LAW.

This Agreement shall be interpreted and construed and legal relations created shall be determined in accordance with the Laws of the State of California.

14.2 NO WAIVER.

No waiver of rights under this Agreement by either party shall constitute a subsequent waiver of this or any other right under this Agreement.

14.3 ASSIGNMENT.

Neither this Agreement nor any rights under this Agreement, other than monies due or to become due, shall be assigned or otherwise transferred by either party (by operation of law or otherwise) without the prior written consent of the other party; nor shall Cisco delegate any of its obligations, hereunder, without the prior written consent of Customer. Notwithstanding the foregoing, this Agreement may be transferred or otherwise assigned to any company or other entity which acquires all or substantially all of the assets of such party. This Agreement shall bind and inure to the benefit of the successors and permitted assigns of the parties.

14.4 ILLEGALITY. In the event that any of the terms of this Agreement become or are declared to be illegal by any Court of competent jurisdiction, such term(s) shall be null and void and shall be deemed deleted from this Agreement. All remaining terms of this Agreement shall remain in full force and effect. Notwithstanding the foregoing, if this paragraph becomes applicable and, as a result, the value of this Agreement is substantially impaired for either party, then the affected party may terminate this Agreement by written notice to the other.

14.5 ATTORNEYS' FEES. In the event of a breach of this Agreement, the breaching party shall pay to the other party any reasonable attorneys' fees and other costs and expenses incurred by the non-breaching party in connection with the enforcement of any provisions of this Agreement.

14.6 NO AGENCY. Neither party has the right or authority to, and shall not, assume or create any obligation of any nature whatsoever on behalf of the other party or bind the other party in any respect whatsoever.

14.7 ENTIRE AGREEMENT.

This Agreement constitutes the entire Agreement between the parties hereto concerning the subject matter of this Agreement; and there are no conditions, understanding, Agreements, representations, or warranties, expressed or implied, which are not specified herein. This Agreement may only be modified by a written document executed by the parties thereto.