

TERMS OF SALE AND SOFTWARE LICENSE AGREEMENT

These Terms of Sale and Software License Agreement ("Terms of Sale") are entered into by and between Cisco Systems, Inc., a California corporation having its principal place of business at 170 West Tasman Drive, San Jose, California, 95134 ("Cisco") and you ("Customer"), for Products and Services, unless Cisco and Customer enter into or have entered into another agreement (including but not limited to a written, click-wrap, click-and-accept or electronic agreement) regarding the purchase and license of the specific Cisco Products or Services being purchased and such agreement is in effect at the time the applicable Purchase Order is received by Cisco ("Existing Agreement"), in which case the terms and conditions of such Existing Agreement shall govern the purchase and license of those Cisco Products or Services.

The following exhibits are incorporated into these Terms of Sale:

- Exhibit A: Shipping Terms
- Exhibit B: End User License Agreement

1.0 DEFINITIONS

- 1.1 **Affiliate** means any corporation, firm, partnership or other entity that directly or indirectly controls, or is controlled by, or is under common control with Cisco or Customer.
- 1.2 **Cisco.com** is Cisco's suite of on-line services and information at <http://www.cisco.com>.
- 1.3 **Cisco Branded** means a Product or a Service bearing a trademark or service mark of Cisco Systems, Inc. or any Cisco Affiliate.
- 1.4 **Documentation** is user manuals, training materials, Product descriptions and specifications, technical manuals, license agreements, supporting materials and other information relating to Products or Services offered by Cisco, whether distributed in print, electronic, CD-ROM or video format.
- 1.5 **Effective Date** is the date these Terms of Sale are electronically accepted, click-accepted or, if signed in hard copy by Customer, the date of last signature, or in the absence of any of the forgoing, these Terms of Sale shall be effective from the date an order is placed by Customer.
- 1.6 **Hardware** is the tangible Cisco product acquired by Customer from Cisco and listed on the Price List. Hardware does not include any tangible product listed on the Price List in the name of a third party.
- 1.7 **Network Services** are any services offered by Customer, as Customer's primary business model, which services may include the following: access to the Internet, data and voice transmission and any other communications service furnished by Customer by means of Customer's communications network.
- 1.8 **Price List** is the price list(s) published at Cisco.com applicable to the relevant Cisco entity to which each Purchase Order is issued by Customer.
- 1.9 **Products** are, individually or collectively as appropriate, Hardware, Software and Documentation listed on the then-current Price List.
- 1.10 **Purchase Order** is an order issued by Customer to Cisco for Products or Services to be purchased, licensed or provided under these Terms of Sale.

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- 1.11 **Services** are any maintenance, technical support, or any other services performed or to be performed by Cisco, provided that “Services” does not include those services for which Cisco requires a separate statement of work to be executed between the parties.
- 1.12 **Software** is the machine readable (object code) version of the computer programs listed from time to time on the Price List or provided with the Hardware and made available by Cisco for license to Customer including firmware, and any copies made, bug fixes for, updates to, or upgrades thereof. Software does not include any computer programs listed on the Price List in the name of a third party.
- 1.13 **Territory** is any country(ies) in which Customer has been granted Cisco resale certifications, or in the absence of any such certifications, the country in which Customer’s principal place of business is located.

2.0 SCOPE

- 2.1 These Terms of Sale set forth the terms and conditions for Customer’s purchase of Products and Services solely for use in the Territory and solely for (i) Customer’s internal business use, (ii) providing Network Services if Customer’s primary business is Network Services, or (iii) resale only if and where Customer has been granted appropriate reseller certifications or distribution rights by Cisco for the specific Products or Services to be resold/distributed. Customer shall not resell to, make available for use by, or otherwise transfer title to any Product to, any end user or other third party, including any reseller, without such reseller certifications or distribution rights.
- 2.2 Customer is not authorized by these Terms of Sale to resell Products to any United States Federal, state, or local entity, including under such arrangements as a direct General Services Administration (“GSA”) Schedule contract, California Multiple Award Schedule (“CMAS”) or similar state or federal schedule contract.

3.0 PRICES

- 3.1 Prices for Products and Services shall be those specified in Cisco’s then current Price List, less any applicable discount at the time of acceptance of the Purchase Order by Cisco, or in accordance with an applicable, valid written price quotation, if any, submitted by Cisco to Customer for such Products or Services.
- 3.2 All prices are exclusive of any freight, handling and shipping insurance charges, taxes, fees and duties or other similar amounts, however designated, including without limitation value added, sales and withholding taxes which are levied or based upon the prices, charges or upon these Terms of Sale. Customer shall pay any taxes related to Products and Services provided pursuant to these Terms of Sale (except for taxes based on Cisco’s revenue income) or shall present an exemption certificate acceptable to all relevant taxing authorities. Applicable taxes shall, to the extent practical, be billed as a separate item on the invoice.

4.0 ORDERS

- 4.1 Customer shall purchase or license Products or Services by issuing a Purchase Order, signed, if requested by Cisco, or (in the case of electronic transmission) sent by its authorized representative, indicating specific Products and Services, Cisco Product numbers, quantity, unit price, total purchase price, shipping instructions, requested shipping dates, bill-to and ship-to addresses, tax exempt certifications, if applicable, contract reference, and identity of the end user for each Product and Service. No contingency contained on any Purchase Order shall be binding upon

Cisco. The terms of these Terms of Sale shall apply, regardless of any additional or conflicting terms on any Purchase Order or other correspondence or documentation submitted by Customer to Cisco, and any such additional or conflicting terms are deemed rejected by Cisco.

- 4.2 Cisco shall use commercially reasonable efforts to provide order acknowledgement information within three (3) business days for all Purchase Orders placed on Cisco.com or within ten (10) business days of receipt for Purchase Orders placed by any other method. Upon and subject to credit approval by Cisco following Cisco's receipt of any Purchase Order, Cisco Customer Service will review and accept or decline any or all Purchase Orders for the Cisco entity that will supply the Products or Services, and no other person is authorized to accept Purchase Orders on behalf of Cisco. Cisco Customer Service may accept a Purchase Order even if some of the information required by Section 4.1 above is missing or incomplete.
- 4.3 Customer may defer Product shipment for up to thirty (30) days from the original shipping date scheduled by Cisco, provided written or electronic notice (issued, in either case, by an authorized representative of Customer) is received by Cisco at least ten (10) days before the originally scheduled shipping date. Cancelled Purchase Orders, rescheduled shipments or Product configuration changes requested by Customer less than ten (10) days before the original scheduled shipping date shall be subject to (a) acceptance by Cisco, and (b) a charge of fifteen percent (15%) of the total invoice amount relating to the affected Products. Cisco reserves the right to reschedule shipment in cases of configuration changes requested by Customer within ten (10) days of scheduled shipment. No cancellation shall be accepted by Cisco where Products are purchased with implementation services, including design, customization or installation services, except as may be set forth in the agreement or statement of work under which the services are to be rendered.

5.0 SHIPPING AND DELIVERY

- 5.1 Scheduled shipping dates will be assigned by Cisco as close as practicable to Customer's requested date based on Cisco's then-current lead times for the Products. Cisco will communicate scheduled shipping dates in the order acknowledgement or on Cisco.com. Unless given written instruction by Customer, Cisco shall select the carrier.
- 5.2 Shipping options available as well as applicable shipment terms (per Incoterms 2010) are set forth in Exhibit A hereto. The selected shipping option shall be indicated on the Purchase Order. Where applicable, Customer shall pay the shipping and handling charges in addition to the purchase price for the Products, which will be included in remittance and/or commercial invoices issued by Cisco. Title and risk of loss shall transfer from Cisco to Customer and delivery shall be deemed to occur in accordance with Exhibit A hereto. Customer shall be responsible for all freight, handling and insurance charges subsequent to delivery.
- 5.3 Where Customer places orders on any Cisco Affiliate other than Cisco, Customer shall pay invoices issued by such entity with respect to such orders and the delivery terms agreed with such entity shall apply. Different shipping terms may apply to such Purchase Orders as set forth on Exhibit A or otherwise as set out on Cisco.com.
- 5.4 Customer shall assume responsibility for compliance with applicable export laws and regulations, including the preparation and filing of shipping documentation necessary for export clearance. This also applies in cases where Customer requests in its Purchase Order delivery of Products to Customer's forwarding agent

or another representative in the country of shipment. Customer agrees not to use any export licenses owned by Cisco or any of its Affiliates.

For shipments under FCA as per the attached Exhibit A, Customer specifically agrees to provide Cisco with the complete name and address of each End User either (a) in the Purchase Order issued, or (b) in writing within five (5) days of receiving a request by Cisco, and other information required under this Agreement or requested by Cisco. Export clearance will ensure utilizing Cisco's general global export licenses or in the case a general global license does not include the listed End User destination, then individual export licenses must be obtained prior to export. Customer accepts any additional delays caused by the export licensing process as well as delays to comply with conditions of the individual export license.

5.5 CISCO SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE OR PENALTY FOR DELAY IN DELIVERY OR FOR FAILURE TO GIVE NOTICE OF ANY DELAY. EXCEPT IN ACCORDANCE WITH THE APPLICABLE SHIPPING TERMS SET FORTH IN THESE TERMS OF SALE, CISCO SHALL NOT HAVE ANY LIABILITY IN CONNECTION WITH SHIPMENT, NOR SHALL THE CARRIER BE DEEMED TO BE AN AGENT OF CISCO.

5.6 All sales are final. Except as provided in Cisco's warranty statements, Cisco does not accept returns unless (i) Cisco shipped a product other than as specified in the Purchase Order, (ii) such Product is unopened, and (iii) the Product is returned in accordance with Cisco's then current RMA policy and procedures.

6.0 PAYMENT

Upon and subject to credit approval by Cisco, payment terms shall be thirty (30) days from shipping date. All payments shall be made in the currency of the Price List applicable to the Purchase Order. If at any time Customer is delinquent in the payment of any invoice, or is otherwise in breach of these Terms of Sale, Cisco may, in its discretion, and without prejudice to its other rights, withhold shipment (including partial shipments) of any order, require Customer to prepay for further shipments, and/or withhold the provision of Services, until complete payment has been received. Any sum not paid by Customer when due shall bear interest from the due date until paid at a rate of (i) ten per cent per annum or (ii) the maximum rate permitted by law, whichever is less. Customer grants Cisco a security interest in Products purchased under these Terms of Sale to secure payment for such Products. If requested by Cisco, Customer agrees to execute financing statements to perfect this security interest.

7.0 PROPRIETARY RIGHTS AND SOFTWARE LICENSING

7.1 Subject to Section 7.2 below and the terms contained in Exhibit B (Cisco's End User License Agreement ("EULA")), Cisco grants to Customer a non-exclusive, non-transferable license (a) to use the Software and Documentation for Customer's internal use, and (b) where Customer is a certified Cisco reseller or authorized distributor, to market and Resell the Software and related Documentation in the Territory during the term of these Terms of Sale, solely as permitted by Section 2.0 (Scope) and this Section 7.0 (Proprietary Rights And Software Licensing) of these Terms of Sale. Any resale of Software or Documentation to any person or entity other than as expressly permitted by Section 2.0 (Scope) is expressly prohibited. Customer may not sublicense, to any person or entity, any rights to distribute the Software or Documentation.

7.2 For non-Cisco Branded Software and Documentation delivered in connection with this Agreement which is separately licensed by a third party, Customer's rights and responsibilities with respect to such Software or Documentation shall be governed

in accordance with the third party's applicable software license. Customer shall, on request, enter into one or more separate "click-accept" license agreements or third party license agreements as part of the installation and/or download process which shall supersede this Agreement with respect to the non-Cisco Branded Software or Documentation covered by such license.

- 7.3 Where Customer is a certified Cisco Reseller, Customer shall provide a copy of the Cisco EULA and applicable third party license agreement to each end user with delivery of the Product or prior to installation of the Software. Customer shall notify Cisco promptly of any breach or suspected breach of the Cisco EULA or third party license and further agrees that it will, at Cisco's request, assist Cisco in efforts to preserve Cisco's or its supplier's intellectual property rights including pursuing an action against any breaching third parties.

8.0 LIMITED WARRANTY

- 8.1 Products. The warranties for Cisco Branded Products may be found at the following URL: <http://www.cisco.com/go/warranty>.
- 8.2 Notwithstanding any other term of these Terms of Sale, Cisco's sole and exclusive warranty and obligations are set forth in Cisco's Limited Warranty Statement delivered with the Cisco Branded Product and this Section 8.0. Customer shall not make any warranty commitment, whether written or oral, on Cisco's behalf. Customer shall indemnify Cisco against any warranties made in addition to Cisco's standard warranty and for any misrepresentation of Cisco's reputation or of Cisco's Products and Services.
- 8.3 Services. Services provided hereunder shall be performed in a workmanlike manner consistent with industry standards. Customer must notify Cisco promptly, but in no event more than thirty (30) days after completion of the Services, of any claimed breach of this warranty. Customer's sole and exclusive remedy for breach of this warranty shall be, at Cisco's option, re-performance of the Services, or termination of these Terms of Sale or the applicable Service and return of the portion of the Service fees paid to Cisco by Customer for such non-conforming Services. The provision of Services under these Terms of Sale shall not extend the warranties provided with any Hardware purchased or Software licensed by Customer.
- 8.4 Restrictions. The limited warranties referenced in this Section 8.0 do not apply if the Cisco Branded Product (a) has been altered, except by Cisco, (b) has not been installed, operated, repaired, used or maintained in accordance with instructions made available by Cisco, (c) has been subjected to abnormal or unusual physical or electrical stress or environmental conditions, misused, or negligently handled or operated; (d) is acquired by Customer for beta, evaluation, testing, demonstration purposes or other circumstances for which Cisco does not receive a payment of a purchase price or license fee.
- 8.5 Unless otherwise specified in writing by Cisco, the limited warranties referenced in this Section 8.0 do not apply to any non-Cisco Branded Software or Hardware that may be offered for sale on the Price List in the name of a third party. Non-Cisco Branded Hardware and Software are warranted solely by the applicable manufacturer or licensor. Cisco will pass through, to the extent permitted, the manufacturer's and/or licensor's warranties and Customer shall look solely to such manufacturer and/or licensor for warranty claims.
- 8.6 DISCLAIMER OF WARRANTY. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 8.0, CISCO HEREBY DISCLAIMS AND CUSTOMER WAIVES ALL

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