

## TERMS AND CONDITIONS OF SALE

If, in connection with the sale of certain products and/or services, DataDirect Networks, Inc. ("DDN") provided to you ("Buyer") a written order acknowledgement that references these Terms and Conditions (an "Acknowledgement"), all references herein to the "attached quotation" shall be interpreted as references to that Acknowledgement for purposes of that sale. If DDN and Buyer have signed a written agreement regarding the sale of the products and services specified in the attached quotation (collectively, the "Products"), that agreement shall govern the sale of the Products and these Terms and Conditions shall not apply. In the absence of such an agreement, these Terms and Conditions shall govern the sale of the Products.

**Sale Agreement:** The attached quotation, these Terms and Conditions, any and all end user license agreements accompanying software or firmware Products (each, a "EULA"), and any and all warranty terms accompanying the Products (each, a "Warranty Agreement") are collectively referred to herein as the "Sale Agreement." The Sale Agreement constitutes the sole and entire agreement between DDN and Buyer regarding the sale of the Products, and supersedes all prior and contemporaneous communications and agreements regarding same, all of which are merged herein. If any prior or contemporaneous communication from Buyer includes any terms or conditions that are in addition to or inconsistent with those contained in the Sale Agreement, the Sale Agreement shall constitute a counter offer.

**Acceptance:** Buyer's acceptance of the Sale Agreement is expressly limited to the terms set forth in the Sale Agreement. DDN hereby objects to and rejects any terms or conditions in any communication from Buyer that are in addition to or inconsistent with those contained in the Sale Agreement ("Other Terms"), and no act or omission by DDN (with the sole exception of a DDN officer signing a written agreement) shall be deemed to constitute DDN's acceptance of any Other Terms. The Sale Agreement shall be deemed accepted by Buyer as the sole and entire agreement regarding the sale of the Products in accordance with the acceptance terms in the Acknowledgement or, if no Acknowledgement has been provided to Buyer in connection with the sale of the Products, upon the earlier of: (i) Buyer's issuance of an order for the Products; (ii) Buyer's failure to reject any of the Products within ten (10) days following Buyer's receipt thereof; and (iii) Buyer's use of any of the Products.

**Purchase and Sale:** Upon Buyer's acceptance of the Sale Agreement, Buyer agrees to purchase, and DDN agrees to sell, the Products under the terms and conditions set forth in the Sale Agreement.

**Pricing:** Prices for the Products are as set forth in the attached quotation. Product prices do not include any transportation charges or sales, use, excise, personal property, or other taxes. All applicable transportation charges and taxes will be listed on a DDN invoice as separate items, which Buyer agrees to pay or, in the case of taxes, to supply appropriate tax exemption certificates in a form satisfactory to DDN. Unless otherwise stated, all amounts set forth in the Sale Agreement, and on DDN's corresponding invoices, are in U.S. currency.

**Payment Terms:** If DDN, in its sole discretion, decides to extend credit to Buyer, payment terms for the Products shall be net thirty (30) days from the date of the corresponding DDN invoice, provided that DDN may further extend any payment due date in its sole discretion. DDN will have the right, among other remedies, to suspend further performance under this and/or other agreements with Buyer in the event Buyer fails to make any payment when due. Buyer shall be liable for all expenses, including attorneys' fees, relating to the collection of past due amounts and/or DDN's enforcement of this Sale Agreement. If any payment owed to DDN is not paid when due, it shall bear interest, at a rate to be determined by DDN, which shall not exceed the maximum rate permitted by law, from the date on which it is due until it is paid. Should Buyer's financial position become unsatisfactory to DDN, immediate cash payments or security satisfactory to DDN may be required by DDN for future deliveries and/or for Products previously delivered.

**Rejections and Cancellations:** DDN may reject a Product order at any time (even after accepting such order), either orally or in writing, without liability. Buyer may not cancel a Product order without DDN's prior written consent, which may be given or withheld at DDN's sole discretion.

**Delivery:** Except as otherwise expressly stated in the attached quotation, transportation terms shall be Ex Works, DDN's shipping point, and DDN may, at its option, select the common carrier or use the carrier recommended by the Buyer (with the understanding that any carrier selected or used by DDN is not the agent of DDN). Risk of loss and/or damage, and title to the Products (except for software and firmware Products, which are licensed per the "Licensed Products" paragraph below), shall pass from DDN to Buyer upon delivery to and receipt by the carrier or other delivery service. All Product delivery dates are approximate and not guaranteed, and DDN shall have no liability for any late delivery or non-delivery. DDN reserves the right to make partial shipments. DDN, at its option, shall not be bound to tender delivery of any Products for which Buyer has not provided shipping instructions. If the shipment of any Products is postponed or delayed by Buyer for any reason, Buyer agrees to reimburse DDN for any and all storage costs and other additional expenses resulting therefrom.

**Limited Warranty:** Certain of the hardware, software, and firmware Products are covered by a limited warranty, the terms and limitations of which are set forth in the applicable Warranty Agreement or EULA. Copies of the applicable Warranty Agreement and/or EULA accompany the corresponding Product. Additionally, copies are available at <http://www.datadirectnet.com/resource-downloads/resources>, or from a DDN sales representative. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS EXPRESSLY SET FORTH IN A WARRANTY AGREEMENT OR EULA, ALL PRODUCTS ARE PROVIDED TO BUYER "AS IS", AND DDN AND ITS SUPPLIERS AND LICENSORS DO NOT MAKE AND SPECIFICALLY DISCLAIM ALL EXPRESS AND IMPLIED WARRANTIES OF EVERY KIND RELATING TO THE PRODUCTS AND/OR THE USE THEREOF (INCLUDING, WITHOUT LIMITATION, ALL EXPRESS AND IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND/OR NON-INFRINGEMENT).

**Limitations on Liability:** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL DDN OR ITS SUPPLIERS OR LICENSORS BE LIABLE UNDER ANY THEORY OF LIABILITY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, LOST REVENUE OR PROFITS) IN ANY WAY ARISING OUT OF OR RELATED TO THE SALE AGREEMENT, THE PRODUCTS, OR USE OF THE PRODUCTS, EVEN IF DDN OR ANY OTHER PERSON OR ENTITY HAS BEEN ADVISED OF OR SHOULD KNOW OF THE POSSIBILITY OF SUCH DAMAGES. WITHOUT LIMITING THE FOREGOING, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, DDN'S MAXIMUM AGGREGATE LIABILITY IN CONNECTION WITH THE SALES AGREEMENT, THE PRODUCTS, AND/OR USE OF THE PRODUCTS SHALL NOT EXCEED THE GREATER OF (i) THE TOTAL AMOUNT INVOICED TO, AND PAID BY, BUYER UNDER THE SALE AGREEMENT AND (ii) \$50,000. THE FOREGOING LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

**Licensed Products:** Notwithstanding anything in the Sales Agreement to the contrary, all software and firmware Products are licensed (and not sold) pursuant to the applicable EULA, and the use of terms such as "sale" and "purchase" herein in connection with those Products shall be understood as a reference to such licensing of those Products.

**Export Restrictions:** Buyer shall not export, re-export, or transfer, directly or indirectly, any Product, item, or technical data received from DDN to any country or user to which such export, re-export, or transfer is restricted by U.S. laws or regulations (or by the applicable laws or regulations of another country) without first obtaining all required governmental licenses, authorizations, certifications, and approvals.

**Governing Law and Jurisdiction:** The Sale Agreement shall be governed by and construed in accordance with the laws of the State of California, without giving effect to principles of conflicts of law. BOTH PARTIES HEREBY AGREE THAT THE SALE AGREEMENT SHALL NOT BE GOVERNED BY THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS. Both parties further agree to the exclusive jurisdiction of the courts of the State of California located in Los Angeles County with respect to any legal proceeding arising in connection with the Sale Agreement.

**Miscellaneous:** The Sale Agreement may only be amended by a written instrument signed by both parties. Neither party's failure to exercise any of its rights under the Sale Agreement will be deemed a waiver or forfeiture of those rights unless such waiver or forfeiture is set forth in a written instrument that has been signed by such party. In the event that any provision of the Sale Agreement is held by a court of law or other government agency to be void, voidable, or unenforceable, the remaining portions of the Sale Agreement shall remain in full force and effect. Buyer may not assign the Sale Agreement in whole or in part, by operation of law or otherwise, without DDN's prior written consent, and any such purported assignment is void and of no effect. In the event of any inconsistency between these Terms and Conditions and the attached quotation, these Terms and Conditions shall control. All typographical or clerical errors made by DDN in the attached quotation or in any publication are subject to correction by DDN.