

# Diversity IT, LLC

## Standard Terms and Conditions for Sale of Goods

- 1. DEFINITIONS.** "Diversity IT" and "Seller" mean Diversity IT, LLC a limited liability company organized in accordance with the laws of the State of California with its principal office located at 27324 Camino Capistrano #129-130, Laguna Niguel, California 92677. Diversity IT is not an authorized reseller or distributor of any Manufacturer such as HP, Cisco, IBM, Sun, Juniper, Linksys, 3COM, EMULEX, APC, Brooktrout, or QLogic.

"Buyer" means the individual, company or other party who orders Goods from the Seller.

"Good" or "Goods" means the product, equipment, components, parts, and materials Seller sells to and/or ships on behalf of Buyer.

"Price" means the price quoted to Buyer on the date the order is accepted by Seller.

- 2. APPLICABLE TERMS.** This Agreement, along with the Credit Application, Seller's Order Confirmation and any Secondary Market disclosure/disclaimer, governs the sale of Goods provided by Diversity IT LLC. These terms and any applicable addenda, Seller proposal, price quote, purchase order, or acknowledgement issued by Seller form the parties' final agreement ("Agreement"). Seller's proposal, offer or acceptance is specifically conditioned on Buyer's acceptance of this Agreement. Any additional or conflicting terms in Buyer's request for proposal, specifications, purchase order or any other written or oral communication are not binding on Seller unless separately signed by Seller. Seller's failure to object to Buyer's additional or conflicting terms does not operate as a waiver of any terms contained in this Agreement.

- 3. PRICE.** The Price shall be in US Dollars and in the amount set forth in the Order Confirmation and/or by Seller's shipping and invoicing documents. Buyer is solely responsible for and shall pay any and all duties and taxes. Seller is never responsible for payment of and shall never pay duties or taxes on behalf of Buyer. If Seller mistakenly pays or is charged for any duties or taxes, Buyer shall immediately reimburse Seller upon notice from Seller. Seller reserves the right, in its sole discretion, to change or alter the Price. Should Seller elect to a change a Price, then: (a) Seller will notify Buyer in writing; (b) Buyer has the option to cancel or change the purchase order and will notify Seller of its intent in writing within three (3) business days; and (c) if Buyer fails to timely notify Seller of its intent, the change in Price shall be deemed accepted by Buyer.

In the event Buyer requests Seller purchase a manufacturer's service or warranty contract on Goods being purchased from Seller, Buyer shall prepay any and all such costs of the manufacturer's warranty before any Goods are shipped. This prepayment is necessary for Seller to procure and attach the manufacturer's warranty to the Goods purchased before receipt by the Buyer. Buyer's prepayment for the manufacturer's warranty is non-refundable under any circumstances.

- 4. DELIVERY.** Shipping costs will be determined by Seller and Buyer prior to shipment and shall be reflected in Seller's quote. In the event that Seller's quote is silent on shipping costs, Seller's Prices are based on F.O.B. Seller's designated North American warehouse. Seller shall not be liable for any loss or expenses incurred by Buyer or Buyer's customer(s) due to delay in the delivery of the Goods. When Goods are delivered in installments, failure by Seller to deliver one or more installments shall not alter the agreement between Buyer and Seller with respect to Goods previously delivered or undelivered.

- 5. PAYMENT TERMS.** Payment from Buyer to Seller shall be net thirty (30) days from receipt of Seller's invoice. Buyer agrees to pay two percent (2%) interest per month (24% annually) or the maximum legal rate provided under the laws of California, whichever is higher, on any and all amounts not received within the terms specified. In the event that Buyer returns Goods to Seller, Buyer remains obligated to pay Seller the full amount due for the Goods until such time that the Goods are received by Seller pursuant to the terms of Articles 9 and 10 of this Agreement.
- 6. SECONDARY MARKET DISCLOSURE/DISCLAIMER.** Seller is a Secondary or Open Market Reseller, and is not an authorized reseller or distributor of the Goods or services. By operating in the Secondary Market, Seller is able to set its own pricing levels based, in part, on its ability to source Goods outside a specific channel. Seller typically sources Goods originally sold through a manufacturer's authorized channel but sold into the Secondary Market so cost savings could be passed on to Seller's customers.

Seller ships all new Goods in the unopened original packaging of the manufacturer with part and serial numbers on the package label, if applicable. If Buyer receives a Good(s) from Seller that a manufacturer states in writing on the manufacturer's letterhead that the Good(s) has not been produced under the authority or approval of the branded manufacturer, Seller will replace the Good(s) at no charge. Buyer fully understands, acknowledges and agrees that the Goods were sourced and purchased outside a manufacturer's authorized channel, and as such a manufacturer, a manufacturer's sales representative, or a manufacturer's partner may take steps to disrupt the sale in an attempt to preserve the manufacturer's price structure in the local market. The manufacturer may refuse to honor new or existing warranty contracts. If a Good was purchased in the Secondary Market, the manufacturer may require that the Good be subjected to a recertification process. Seller is not responsible nor has any liability of any sort should Buyer or Buyer's customer enter into a dispute with the manufacturer.

**7. RECEIPT OF GOODS.**

- A. Goods shipped directly to Buyer.** Buyer shall examine the Goods immediately upon receipt and shall notify the Seller in writing within five (5) days of any defect (including any discrepancy in the condition of the Goods) or short delivery. If the Buyer does not notify the Seller in writing within five (5) days from the date of delivery, the Goods are deemed accepted by Buyer.
- B. Goods are drop shipped to a third party.** Goods may be dropped shipped to a third party at the request of Buyer. Goods are accepted by Buyer if Seller is not notified in writing within five (5) days from the date of delivery. After five (5) days from date of delivery, the Seller shall not be liable for any short delivery or defect (including any discrepancy in the condition) of the Goods. If such written notice is not received from Buyer within the five (5) days, full payment for the Goods is due to Seller from Buyer.

If any third party, including any manufacturer, makes an allegation regarding the condition of the Goods delivered to either the Buyer or to a dropped shipped receiver of the Goods, such allegations shall never be grounds to return the purchased Goods unless: (i) the allegations identify every Good at issue by serial number and are in a writing on the letterhead of the entity making the allegations; and (ii) are signed by the employee of the entity making the allegations. Then and only then, will Seller may consider such allegations; however, it is still Seller's sole discretion whether to allow a return of the Good(s). Seller shall never be a party to any dispute between Buyer or Buyer's customer and any manufacturer.

BUYER EXPRESSLY AGREES THAT IT SHALL BE LIABLE FOR PAYMENT OF ALL GOODS THAT ARE NOT OBJECTED TO AS DEFECTIVE BEYOND FIVE DAYS AFTER THE DATE OF DELIVERY AND SHALL PAY ALL INVOICES FOR SUCH GOODS ACCORDING TO THE SPECIFIED PAYMENT TERMS.

- 8. WARRANTY.** SELLER IS NOT AN AUTHORIZED SELLER OF HPE, CISCO, IBM, SUN, JUNIPER, LINKSYS, 3COM, EMULEX, APC, BROOKTROUT, OR QLOGIC PRODUCTS OR SERVICES. SELLER IS A RESELLER ONLY. IF BUYER IS AN AUTHORIZED SELLER OR RESELLER FOR ANY MANUFACTURER AND BUYER CHOOSES TO PURCHASE SUCH MANUFACTURER'S GOOD FROM SELLER, ANY DISPUTE BETWEEN BUYER AND MANUFACTURER OF THE GOOD IS SOLELY BETWEEN BUYER AND MANUFACTURER. IF BUYER IS NOT AN AUTHORIZED SELLER OR RESELLER FOR ANY MANUFACTURER AND BUYER CHOOSES TO PURCHASE ANY MANUFACTURER'S GOOD FROM SELLER, ANY DISPUTE BETWEEN BUYER AND MANUFACTURER OF THE GOOD IS SOLELY BETWEEN BUYER AND MANUFACTURER. UNDER NO CIRCUMSTANCES IS SELLER A PART OF OR PARTY TO ANY DISPUTE BETWEEN BUYER OR BUYER'S CUSTOMER AND ANY MANUFACTURER. GOODS SOLD BY SELLER ARE NOT MANUFACTURED BY SELLER. THE GOODS MAY BE COVERED BY A MANUFACTURER'S WARRANTY, SERVICE, OR SUPPORT POLICY. IF SUCH MANUFACTURER'S WARRANTY IS PRESENT, SELLER ON DATE OF SHIPPING ASSIGNS AND PASSES TO BUYER ANY SUCH WARRANTY OF THE MANUFACTURER. BUYER AGREES, ACCEPTS, AND ACKNOWLEDGES THAT BUYER SHALL HAVE EXCLUSIVE RECOURSE AGAINST THE MANUFACTURER OF SUCH GOODS ONLY UNDER SUCH WARRANTIES. IF REQUESTED BY THE BUYER IN WRITING, THE SELLER MAY BE ABLE TO PURCHASE A MANUFACTURER'S WARRANTY, SERVICE, AND SUPPORT POLICY. IN THE EVENT BUYER MAKES SUCH A REQUEST AND SELLER IS ABLE TO PURCHASE A MANUFACTURER'S WARRANTY, SERVICE, AND SUPPORT POLICY, THEN BUYER HEREBY AGREES TO PREPAY SELLER THE FULL COST OF SUCH PURCHASE. ANY AMOUNT PAID BY BUYER TO SELLER FOR SUCH WARRANTY, SERVICE, OR SUPPORT POLICY IS NON-REFUNDABLE UNDER ANY CIRCUMSTANCE.

**SELLER MAKES NO REPRESENTATION OR EXPRESS WARRANTY REGARDING ANY GOODS PURCHASED BY BUYER FROM SELLER EXCEPT THOSE STATED HEREIN. SELLER SPECIFICALLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY GOODS PURCHASED BY BUYER FROM SELLER, INCLUDING AND WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY IMPLIED WARRANTIES ARISING FROM STATUTE, TRADE USAGE, COURSE OF DEALING, OR COURSE OF PERFORMANCE.**

SELLER OFFERS A THIRTY (30) DAY ADVANCED REPLACEMENT WARRANTY FROM THE DATE OF SHIPPING ON GOODS PURCHASED FROM SELLER. SHOULD A GOOD FAIL TO OPERATE UNDER THE MANUFACTURER'S SPECIFIED OPERATING ENVIRONMENT WITHIN THIRTY (30) DAYS FROM THE DATE OF SHIPMENT, SELLER WILL PROVIDE A REPLACEMENT IN EXCHANGE FOR THE DEFECTIVE GOOD. BUYER SHALL BE RESPONSIBLE FOR ALL COSTS AND EXPENSES RELATED TO THE REMOVAL AND RETURN TRANSPORTATION OF THE GOOD TO SELLER AS WELL AS THE TRANSPORTATION COSTS OF THE REPLACEMENT GOOD.

- 9. RETURN MERCHANDISE AUTHORIZATION POLICY.** Defective Goods may be replaced within thirty (30) days of receipt of Goods. Seller offers advanced replacements on dead-on-arrival ("DOA") Goods. Non-defective Goods returned will be handled on a case-by-case basis. In order to receive credit, minus a twenty-five percent (25%) re-stocking fee, Goods must be returned in the same condition as delivered and within thirty (30) days after the Goods were received. All returns must have an authorized Return Merchandise Authorization Number, ("RMA"), number, issued by Seller, which RMA number is valid for fourteen (14) days after the RMA has been issued. Any product returned to Seller without an authorized RMA number will be rejected by Seller and no credit will be given to Buyer (therefore, the full price is due and payable to Seller plus any and all interest charges from the date of the invoice).

**10. PRODUCT RETURN PROCEDURE.** To return Goods within thirty (30) days of the shipping date, Buyer shall request in writing and receive from Seller a RMA (see Article 9 above). In such written request, the Buyer shall provide a specific reason for the return of each Good by serial number requested to be returned. The Seller shall not accept returns without prior written authorization from the Seller and a RMA. Goods shall be received by Seller from Buyer within fifteen (15) days of the date the RMA is issued by Seller. All and any RMA shall be prominently displayed on the shipping label on boxes containing any returned Good. Buyer shall owe to and pay to Seller the full amount due for the Good until such Good is returned to Seller pursuant to an authorized RMA and in the same condition in which the Good was shipped. Authorized returns may exclude special order Goods and are subject to Seller's approval.

If a Good return is requested after the initial thirty (30) days from the shipping date, it is the sole discretion of the Seller whether the return will be accepted. A 25% re-stocking fees shall apply if the Good return is approved.

Buyer is solely responsible for shipping and payment of any shipping costs including insurance for all Goods returned to Seller. Buyer shall use carriers that provide proof of delivery and insurance for the entire value of the shipment. Buyer is responsible for all risk of loss for the return Good during shipment. All returned Goods shall be 100 percent complete, in resalable condition (manufacturer's seals intact), and will include the original packaging material, manuals, blank warranty cards, and other accessories provided by the manufacturer. If any Good does not meet any of these conditions, Seller may, in its sole and absolute discretion, reject any portion of or all the returned Goods, and Buyer shall be responsible for full payment.

**11. CREDIT APPLICATION.** If payment for Goods ordered by Buyer from Seller is not paid in full before shipping, Seller must receive from Buyer a completed and signed Credit Application. The Credit Application are subject to Seller's approval before any product will be shipped.

If payment for Goods ordered by Buyer from Seller is paid in full before shipment, Seller must receive from Buyer a signed Credit Application with only Section A and Section B completed before any Goods will be shipped by Seller. If Buyer is an Authorized Manufacturer Reseller, Seller must receive from Buyer a signed manufacturer disclosure/disclaimer before any Goods will be shipped by Seller.

**12. INDEMNITY.** Seller and Buyer (each as an "Indemnitor") shall indemnify the other ("Indemnitee") from and against all third party claims alleging bodily injury, death or damage to a third party's tangible property, but only to the extent caused by the Indemnitor's negligent acts or omissions. If the injury or damage is caused by the parties' joint or contributory negligence, the loss and/or expenses shall be borne by each party in proportion to its degree of fault. No part of the Goods, Buyer's site or Buyer's customer site is considered third party property. Indemnitee shall provide the Indemnitor with prompt written notice of any third party claims covered by this Article. Indemnitor has the unrestricted right to select and hire counsel, defend and/or settle the claim on the Indemnitee's behalf.

**13. LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, SELLER IS NOT LIABLE, WHETHER BASED IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, INDEMNITY OR ANY OTHER LEGAL OR EQUITABLE THEORY, FOR: LOSS OF USE, REVENUE, SAVINGS, PROFIT, INTEREST, GOODWILL OR OPPORTUNITY, COSTS OF CAPITAL, COSTS OF REPLACEMENT OR SUBSTITUTE USE OR PERFORMANCE, LOSS OF INFORMATION AND DATA, CLAIMS ARISING FROM BUYER'S THIRD PARTY CONTRACTS, OR FOR ANY TYPE OF INDIRECT, SPECIAL, LIQUIDATED, PUNITIVE, EXEMPLARY,

COLLATERAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR FOR ANY OTHER LOSS OR COST OF A SIMILAR TYPE. SELLER'S MAXIMUM LIABILITY IS LIMITED TO THE AMOUNT ACTUALLY PAID TO THE SELLER BY THE BUYER FOR THE GOOD OR THE PURCHASE PRICE OF THE GOOD SOLD, WHICHEVER IS LOWER.

BUYER AGREES THAT THE EXCLUSIONS AND LIMITATIONS IN THIS ARTICLE 13 WILL PREVAIL OVER ANY CONFLICTING TERMS AND CONDITIONS IN THIS AGREEMENT AND MUST BE GIVEN FULL FORCE AND EFFECT WHETHER OR NOT ANY OR ALL SUCH REMEDIES ARE DETERMINED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE AND REGARDLESS OF WHETHER SELLER HAS BEEN ADVISED BY BUYER OF THE POSSIBILITY OF SUCH DAMAGES.

- 14. GOVERNING LAW.** This Agreement is governed by and construed in accordance with the laws of the State of California, without regard to its conflict of laws principles. The application of the United Nations Convention on Contracts for the International Sale of Goods is excluded. Seller and Buyer agree to resolve any disputes in accordance with the procedures set forth in Article 15, including the jurisdiction where the dispute will be heard.
- 15. DISPUTE RESOLUTION.** Either party may give the other party written notice of any dispute arising out of or relating to this Agreement or order and not resolved in the normal course of business. The parties shall attempt in good faith to promptly resolve such dispute by negotiations between executives who have authority to settle the dispute. If a dispute cannot be settled through direct negotiations, the parties agree to first endeavor to settle the dispute via voluntary non-binding mediation, before resorting to arbitration. A mediator will be selected by voluntary agreement of both parties, or in the event both parties cannot agree on a mediator, a mediator will be selected in accordance with the rules of the American Arbitration Association. The mediation shall be held in Orange County, California. Each party shall bear its own costs and expenses and an equal share of the administrative and other fees associated with the mediation. Any dispute that remains unresolved following mediation shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. The place of arbitration shall be Orange County, California. Each party submits to the personal jurisdiction for such arbitration, and for the purposes of confirming a judgment. Judgment upon the award rendered by the arbitrator(s) may be entered in any court having competent jurisdiction. The arbitrator(s) shall award to the prevailing party, if any, as determined by the arbitrator(s), all of its costs and fees. "Costs and fees" mean all reasonable pre-award expenses of the arbitration, including the arbitrators' fees, administrative fees, travel expenses, out-of-pocket expenses such as copying and telephone, court costs, witness fees, and attorneys' fees. In rendering the award, the arbitrator(s) shall determine the rights and obligations of the parties according to the substantive and procedural laws of the State of California.
- 16. STATUE OF LIMITATIONS.** To the extent permitted by law, any lawsuit for breach of contract, including breach of warranty, arising out of this contract, must be commenced no later than twelve (12) months from the date the cause of action accrued or the Goods were delivered to Buyer, whichever is earlier.
- 17. THIRD PARTIES.** This contract does not create a contractual relationship with, impart obligations on, or confer rights to any third party.
- 18. WAIVER.** Failure of either party to require performance of any provision shall not affect its right to thereafter require full performance of that provision. The waiver by either party of a breach of any provision shall not constitute a waiver of any subsequent breach or nullify the effectiveness of such provision.

- 19. SEVERABILITY.** The invalidity or unenforceability of any provision of this Agreement shall not affect the enforceability or validity of the remaining provisions, and the Contract shall be construed in all respects as if any invalid or unenforceable provision was omitted.
- 20. ENTIRE AGREEMENT.** This Agreement constitutes the entire contract between the parties and supersedes any prior agreement, understanding, discussions, or representations made between the parties. The terms of this sale are expressly limited to these terms and conditions. Any changes, modifications, or additions to the Agreement are binding and enforceable only if made in writing and signed by the respective parties. Any and all terms set forth on Buyer's purchase order or otherwise proposed by Buyer are hereby objected to and shall be void unless expressly agreed to in a written document signed by both parties.