

TERMS AND CONDITIONS OF SALE

1. **Acceptance.** The following terms and conditions govern the purchase and sale of computer systems and related products and services ("Products") offered by Colfax International ("Colfax") to "Purchaser." By placing an order (oral or written) for Products, Purchaser agrees to be bound by and accepts these terms and conditions. No order shall be binding until accepted by Colfax. Until an order is submitted to Colfax, these terms and conditions and all Products and prices are subject to change without prior written notice at any time to Purchaser, at the sole discretion of Colfax.

a. **ALL SALES ARE FINAL.** Colfax provides Products to the custom order and specification of Purchaser. Therefore, all sales are final and Purchaser may not return Products to Colfax except as set forth in Section 4.

b. **Purchaser Purchase Orders.** If Purchaser submits its own purchase order (oral or written) with separate or additional terms and conditions of purchase and sale, the terms and conditions set forth herein govern the purchase and sale of Products exclusive of Purchaser's terms and conditions, unless otherwise expressly agreed to in writing and signed by a duly authorized officer of Colfax.

2. **Payment Terms and Right to Offset.** All prices advertised by Colfax are in U.S. dollars and exclude shipping and handling charges, taxes, customs fees and duties. Unless Purchaser provides Colfax a valid and correct tax exemption certificate with its order (or before Colfax accepts the order), Purchaser shall pay all applicable sales tax, value-added tax and other fees and duties. Payment shall be cash or approved credit (U.S. currency) and due on demand unless otherwise agreed in an accepted purchase order, which shall be reflected in an invoice accompanying shipment. Past due payments shall bear late charges at a rate equal to 1.5% of the amount due per month, or the highest rate allowed by law. Colfax shall have the right to offset and deduct any amounts owed by Colfax to Purchaser to the payment of any amounts due Colfax under a purchase order invoice.

3. **Delivery.** Delivery dates are approximate only and not guaranteed. All deliveries are F.O.B. Sunnyvale, California. The delivery of all Products is subject to Purchaser's cooperation and assistance in the provision of all necessary information, materials, access to facilities, equipment, systems, software, data and key-personnel, and all consents, permissions and licenses, as may be required for timely fulfillment of Purchaser's order of Products. **Purchaser acknowledges and agrees that Colfax shall not be liable for any direct, consequential, incidental or exemplary losses or damage (including but not limited to lost revenue or profits) arising from or related to any delay or failure to ship or deliver Products by a stated shipment or delivery date, even if Colfax has been advised of the possibility of those losses or damages.**

a. **On-Site Fulfillment.** To the extent the fulfillment of Products requires on-site access to the designated property of Purchaser or other party, Purchaser agrees to maintain adequate insurance coverage to protect Colfax, Purchaser and any third party (owner, lessee and/or tenant) and to indemnify and hold Colfax and its, officers, directors, employees, representatives and agents harmless from any loss, cost, damage or expense (including, but not limited to, attorneys' fees and expenses) arising from or related to any product liability, death, personal injury or property damage or destruction occurring at the location in connection with the delivery of Products, other than solely as a result of the willful misconduct of Colfax or its employees, representatives and agents.

4. **Inspection / Return Merchandise Authorization.**

a. Purchaser agrees to inspect all delivered Products upon delivery and to notify Colfax of any damage to Products or nonconformity within three (3) days of the date of delivery of the Products. If no notice is received by Colfax within this 3-day period, all Products shall be deemed delivered in conformance with the purchase order and in undamaged condition. In the event the nonconformity comprises missing Products, Colfax will ship any missing Products to Purchaser within fifteen (15) days after receipt of the notice of nonconformity. Products may only be returned to Colfax in accordance with the provisions of Section 4.b. and 4.c. below.

b. **Procedure for Return of Defective Products.** Purchaser must obtain a return merchandise authorization ("RMA") number to return any Products covered by the Limited Warranty set forth in Section 5. To obtain an RMA number, Purchaser must contact the RMA Service Department at (408) 730-2275 by phone or written communication and provide the Product serial number, invoice number and date, date code, and detailed product defect information. Only Products given an RMA number may be

returned to Colfax. For any Products that are issued an RMA number, Colfax will, in its sole discretion, repair or replace defective Products or refund the lesser of the purchase price or the then fair market value of the Products. Colfax reserves the right to refuse to issue a RMA number if the Product is not covered by the Limited Warranty set forth in Section 5. Purchaser must ship the Product to Colfax within thirty (30) days from the date of the issuance of the RMA number. Purchaser must prepay shipping charges. Purchaser is responsible for any loss or damage incurred during shipment. *Colfax assumes no liability for returned Products not signed for by an employee of Colfax.* Returned Products must be shipped in its original boxes and include the original invoice and all manuals, cables, cords, and other accessories shipped by Colfax. The RMA number must be clearly labeled on the outside of the returned shipment.

c. **PURCHASER SHOULD MAKE BACKUP COPIES OF THE SOFTWARE AND DATA STORED ON PRODUCT HARD DRIVES OR OTHER STORAGE DEVICES AS A PRECAUTION AGAINST POSSIBLE FAILURES, ALTERATION, OR LOSS OF THE DATA.** PURCHASER AGREES TO REMOVE ANY CONFIDENTIAL, PROPRIETARY, OR PERSONAL INFORMATION BEFORE RETURNING ANY PRODUCTS CONTAINING THE INFORMATION. COLFAX IS NOT RESPONSIBLE OR LIABLE FOR DAMAGE TO OR LOSS OF ANY PROGRAMS, DATA, OR REMOVABLE STORAGE MEDIA, SUCH AS DISKETTES, CD'S, AND USB FLASH DRIVES. COLFAX IS NOT RESPONSIBLE FOR THE RESTORATION OR REINSTALLATION OF ANY PROGRAMS OR DATA OTHER THAN SOFTWARE INSTALLED BY COLFAX WHEN THE PRODUCT WAS ASSEMBLED.

d. Colfax reserves the right to reject a return of Products if any of the terms and conditions of this Section are not complied with and may at its option and sole discretion (i) return the Products to Purchaser without notice or (ii) repair the Product and assess charges (at then current prices) for any missing items. If Products are returned without an RMA number or the prior written consent of Colfax and Colfax accepts the returned Products, Purchaser agrees to pay a restocking fee equal to twenty-percent (20%) of the purchase price of the Products. If a Product returned as defective is found to operate properly under the manufacturers' specifications upon testing by Colfax, Purchaser agrees to pay a testing and verification fee (at then current rates) in addition to the original invoice purchase price.

5. **Limited Warranty / Disclaimers.**

a. Colfax represents and warrants that Products assembled and delivered or installed by Colfax (excluding individual component parts and software) shall be reasonably free of material defects in workmanship for a period of thirty (30) days from the date of installation, provided that all such Products are operated and maintained in accordance with all instructions provided and under operating conditions intended for the proper operation and use of the Products (the "Limited Warranty"). **Warning: Unauthorized installation, alterations, upgrades, repairs, modifications, misuse or abuse of the Products shall automatically render this limited warranty null, void and unenforceable.** Colfax is not responsible for any failure or improper operation of the Products caused by improper or unauthorized installation, use, modification, upgrade or repair, or misuse or abuse, by Purchaser or any third party.

ANY AND ALL WARRANTIES PROVIDED IN THIS SECTION ARE MADE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, WHICH ARE HEREBY EXPRESSLY DISCLAIMED.

b. Colfax assembles and installs third party component parts and software produced by third party manufacturers. **Colfax makes no representations and warranties regarding individual third party components and software and hereby expressly disclaims any and all warranties, express or implied, of individual third party components and software, including without limitation, the implied warranties of fitness for a particular purpose, merchantability, non-infringement and that the Products will be free of material defects, viruses or other harmful elements. Colfax shall not be liable for any inability or failure on the part of third party component and software manufacturers to offer or honor component or software warranties, if any.**

c. Colfax does not represent or warrant that the Products will meet or exceed any benchmarks, performance measures, yardsticks, intended purpose or use requirements, including thermal, acoustic, mechanical or electrical specifications or characteristics. Colfax does not represent or warrant that the Products will be compatible or interoperable with software, hardware, computer operating systems, databases and applications not developed by Colfax. Colfax does not represent or warrant that Products will be free of viruses or other harmful elements and Purchaser should

ensure the Products are scanned and protected against these threats before use.

d. *It is the sole responsibility of Purchaser to determine whether or not the Products will meet Purchaser's specifications and/or requirements.* Purchaser acknowledges and agrees that it will not rely on the advice of Colfax or its representatives regarding Products for any purpose.

e. Information about the software that was either preinstalled by Colfax or that was included with the Products at the time of purchase will be made available to Purchaser, upon request, within thirty (30) days from date of Product purchase. Colfax may demand that Purchaser provide proof of purchase (by dated receipt) as a condition to receiving the requested information. Colfax shall not be obligated to provide any technical support, information or assistance regarding Products installed by Purchaser subsequent to the delivery and/or installation of Products by Colfax.

6. **Default.** If Purchaser fails to make any payment, becomes insolvent, makes an assignment for the benefit of its creditors, or files for bankruptcy, Colfax may, in addition to all other available legal and equitable remedies, withhold limited warranty and/or support services, defer further shipments, cancel the unshipped balance, and/or repossess Products for which payment has not been received at Purchaser's sole cost.

7. **Limitation of Liability.** Except for the Limited Warranty set forth herein, which shall be Purchaser's sole and exclusive remedy against Colfax for nonconforming or materially defective Products, **TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER COLFAX NOR ITS EMPLOYEES, OFFICERS, DIRECTORS, AFFILIATES, OR THEIR SUPPLIERS, SUBCONTRACTORS OR AGENTS (EACH A "RELEASED PARTY") SHALL BE LIABLE FOR: (A) DIRECT, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS, BUSINESS, REVENUES OR SAVINGS), (B) ANY CLAIMS, DEMANDS OR ACTIONS AGAINST PURCHASER BY ANY THIRD PARTY; (C) ANY LOSS OR CLAIM ARISING OUT OF OR IN CONNECTION WITH PURCHASER'S IMPLEMENTATION OF ANY CONCLUSIONS OR RECOMMENDATIONS BY A RELEASED PARTY BASED ON, RESULTING FROM, ARISING OUT OF OR OTHERWISE RELATED TO THE PRODUCTS; OR (D) THE AVAILABILITY OR UNAVAILABILITY OF THE PRODUCTS FOR USE OR ANY LOST, DAMAGED OR CORRUPTED DATA OR SOFTWARE; REGARDLESS OF LEGAL THEORY OR CAUSE OF ACTION, EVEN IF A RELEASED PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, CLAIMS OR LOSSES OR IF SUCH DAMAGES, CLAIMS OR LOSSES ARE OTHERWISE FORESEEABLE. WITHOUT LIMITING THE FOREGOING, IN THE EVENT OF ANY LIABILITY INCURRED BY A RELEASED PARTY, THE ENTIRE LIABILITY OF A RELEASED PARTY FOR DAMAGES FROM ANY CAUSE WHATSOEVER SHALL NOT EXCEED THE LESSER OF: (A) THE DOLLAR AMOUNT PAID BY PURCHASER FOR THE PRODUCT(S) GIVING RISE TO THE CLAIM OR THE SPECIFIC SERVICES GIVING RISE TO THE CLAIM; OR (B) \$25,000.00.**

8. **Indemnification.** Purchaser agrees to indemnify and hold Colfax, its officers, directors, employees and representatives harmless from and against all liability and damages (including reasonable attorneys' fees and costs) arising from or related to Purchaser's breach of these terms and conditions.

9. **Governing Law.** These terms and conditions shall be governed by the laws of California without application of conflicts of law provisions and without application of the United Nations Convention on the International Sale of Goods, the application of which is hereby expressly excluded. Should any provision of these terms and conditions be deemed void and/or unenforceable, the remainder shall continue to be valid and enforceable to fullest extent intended by the parties. No waiver of any provision of the terms and conditions shall be effective unless set forth in writing and signed by the party to be charged.

10. **Entire Agreement, Modifications.** These terms and conditions constitute the entire agreement between Colfax and Purchaser regarding the purchase and sale of Products and supersede and replace any prior or contemporaneous understandings. These terms and conditions may not be amended, supplemented or replaced, in whole or in part, except in writing signed by duly authorized representatives of Colfax and Purchaser. No course of prior dealings between the parties and no usage of trade will be relevant to determine the meaning of these terms and conditions or any purchase order or invoice.

11. **Disputes / Attorneys' Fees.** Colfax and Purchaser agree that any and all disputes arising from or related to the purchase and sale of

Products which cannot be promptly resolved between them shall be resolved in Santa Clara County, California. No claim may be brought by Purchaser against Colfax more than one (1) year after the date of purchase. The prevailing party in any such dispute shall be entitled to recover its attorneys' fees and costs (including, but not limited to, expert witness fees and other litigation, copy, facsimile, and computer research fees), whether the dispute proceeds to trial or not.

12. **EXPORT COMPLIANCE.** Purchaser agrees that it will not divert, use, export or re-export any Products contrary to United States law. Purchaser expressly acknowledges and agrees that it will not export, re-export, or provide any Products to any entity or person within any country that is subject to United States economic sanctions or embargoes without obtaining prior authorization from the United States Government. The list of countries subject to United States economic sanctions or embargoes may change from time to time but currently includes Cuba, Iran, Sudan, and Syria. Purchaser also expressly acknowledges and agrees that it will not export, re-export, or provide Products to entities and persons that are ineligible under United States law to receive the items, including but not limited to, any person or entity on the United States Treasury Department's list of Specially Designated Nationals or on the United States Commerce Department's Denied Persons List, Entity List, or Unverified List. In addition, Purchase acknowledges that manufacturers' warranties for exported Products may vary or may be null and void for Products exported outside the United States.

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