

Standard Terms and Conditions

1. DEFINITIONS

“Seller” and “Clear Source” mean Clear Source IT, Inc. located at 8200 S Quebec Street, #A3-258, Centennial, CO 80112. Seller is an independent supplier of IT Hardware from many manufacturers including but not limited to Avaya, Brocade, Cisco, Dell, Emulex, HP, IBM, Juniper, Mushkin, QLogic, Series-e, and Sun.

“Goods” means the IT Hardware Seller sells to Buyer or ships on behalf of Buyer.

“Buyer” means the person, company or other party who orders Goods from the Seller.

“Price” means the price quoted on the date the order is accepted by Seller.

2. VALIDITY

When Buyer places a purchase order with Seller and Seller accepts the Buyer’s purchase order by either issuing an Order Confirmation and/or by shipping and invoicing the order, Buyer and Seller agree the purchase order, the Order Confirmation or invoice, any manufacturer disclosure/disclaimer, the Credit Application, the Individual Guarantee, and all the following terms and conditions are the exclusive terms and conditions governing the sale and purchase transaction between Buyer and Seller. All of these documents together or separately may be referred to as the Terms and Conditions of Sale or T&C. There shall be no modification of or change to any of the T&C except by a writing signed by both Buyer and Seller.

3. PRICE

Price shall be the amount set forth in the Order Confirmation and/or by shipping and invoicing the order. Price is exclusive of all duties and taxes and shall be paid in accordance with the Seller’s payment terms. 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. If Seller mistakenly pays or is charged for any duties or taxes, Buyer shall reimburse Seller. Seller reserves the right to change or alter the Price as the situation demands. In the event Buyer requests Seller to purchase a manufacturer’s service or warranty contract on Goods purchased from Seller, Seller may require Buyer to prepay any and all such costs of the manufacturer’s warranty before any Goods are shipped. Such payment is not refundable under any circumstances. A manufacturer, in the manufacturer’s sole discretion, may choose not to honor the warranty contract on Goods purchased from Seller because Seller is not a member of the manufacturer’s authorized reseller program.

4. DELIVERY

Seller shall not be liable for any 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 received per the terms specified on the Invoice. Issues arising from invoices must be in writing and received by Seller within seven working days from the date of the invoice. In the case of conflicting terms between T&C documents, the Invoice terms shall take precedence. Buyer shall owe to and pay to Seller the full amount due for the Goods until such Goods are returned to Seller pursuant to the terms Agreement in the same condition in which the Goods were shipped. Buyer agrees to pay interest on any and all amounts not received within the terms specified which shall be past due at 2 percent per month which is 24 percent per year or at the maximum legal rate, whichever is higher. Buyer and Seller agree to the terms of payment as specified in the T&C.

6. SECONDARY MARKET DISCLOSURE/DISCLAIMER

Seller is a Secondary Market reseller and is not an authorized reseller or distributor of the products or services sold by Seller. By operating in the Secondary Market, Seller is able to set its own pricing levels based, in part, on its ability to source product outside a specific channel. Seller typically sources products 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.

Products purchased in the Secondary Market are not automatically eligible for a Manufacturer’s warranty. The Manufacturer usually reserves the right to refuse support on product purchased in the Secondary Market. Secondary Market resellers can procure Manufacturer or

Third Party warranties. However, if a Manufacturer is aware that the product was purchased in the Secondary Market, Manufacturer warranty coverage may be refused unless the product is subjected to a recertification process for a fee.

Seller ships all new product in the unopened original packaging of the Manufacturer with part numbers and serial numbers on the package label, if applicable. If Buyer receives a product from Seller that a Manufacturer states in writing has not been produced under the authority or approval of the branded Manufacturer, Seller will replace the product at no charge. Buyer acknowledges and agrees that since the product was sourced and purchased outside a Manufacturer's authorized channel, 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. Seller is not responsible nor has any liability should Manufacturer refuse to honor a warranty contract for any reason and under no circumstances is Seller a part of or party to any dispute between Buyer and Buyer's customer and Manufacturer.

7. RECEIPT OF GOODS

If the Goods are shipped to Buyer, Buyer shall examine the Goods immediately upon receipt and shall notify the Seller in writing within five 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 days from the date of delivery, the Goods are accepted by Buyer. If the Goods are drop shipped to a third party at the request of Buyer, Goods are accepted by Buyer if Seller is not notified in writing within five days from the date of delivery. After five 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 days, full payment for the Goods is due to Seller from Buyer. If any third party, including any manufacturer, makes any allegations 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: 1. Such allegations identify every Good at issue by serial number and are in a writing on the letterhead of the entity making the allegations; and 2. Such allegations are signed by the employee of the entity making the allegations. Then and only then, in Sellers sole discretion, Seller may consider such allegations.

BUYER SHALL BE AND DOES AGREE TO BE LIABLE FOR PAYMENT FOR ALL GOODS HELD BEYOND THE 5-DAY PERIOD 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 RESELLER OF AVAYA, BROCADE, CISCO, DELL, EMULEX, HP, IBM, JUNIPER, MUSHKIN, QLOGIC, SERIES-E, OR SUN. SELLER IS AN INDEPENDENT RESELLER ONLY. IF BUYER IS AN AUTHORIZED SELLER OR RESELLER FOR ANY MANUFACTURER AND BUYER CHOOSES TO PURCHASE SUCH MANUFACTURER'S PRODUCT FROM SELLER, ANY DISPUTE BETWEEN BUYER AND MANUFACTURER OF THE PRODUCT 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 PRODUCT FROM SELLER, ANY DISPUTE BETWEEN BUYER AND MANUFACTURER OF THE PRODUCT IS SOLELY BETWEEN BUYER AND MANUFACTURER. UNDER NO CIRCUMSTANCES IS SELLER A PART OF OR PARTY TO ANY DISPUTE BETWEEN BUYER AND ANY MANUFACTURER. PRODUCTS SOLD BY SELLER ARE NOT MANUFACTURED BY SELLER. THE PRODUCTS MAY BE COVERED BY A MANUFACTURER'S WARRANTY, SERVICE, OR SUPPORT POLICY (IF PRESENT). IF SUCH 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 RECOURSE ONLY AGAINST THE MANUFACTURER OF SUCH PRODUCTS UNDER SUCH WARRANTIES AND ONLY AGAINST THE MANUFACTURER. 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 IN NOT REFUNDABLE IN ANY CIRCUMSTANCES. SELLER MAKES NO REPRESENTATION OR EXPRESS WARRANTY REGARDING ANY PRODUCT PURCHASED BY BUYER FROM SELLER EXCEPT THOSE STATED HEREIN. SELLER SPECIFICALLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY PRODUCT 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 DAY ADVANCED REPLACEMENT WARRANTY FROM THE DATE OF SHIPPING ON PRODUCTS PURCHASED FROM SELLER. SHOULD A PRODUCT FAIL TO OPERATE UNDER THE MANUFACTURER'S SPECIFIED OPERATING ENVIRONMENT WITHIN THIRTY DAYS FROM THE DATE OF SHIPMENT, SELLER WILL PROVIDE A REPLACEMENT IN EXCHANGE FOR THE DEFECTIVE PRODUCT.

9. RETURN POLICY

Defective product may be replaced within thirty (30) days of receipt of product. Seller offers advanced replacements on DOA Goods. Non-defective product returned will be handled on a case by case basis. Product returned within thirty (30) days of receipt of product in the same condition in which the product was shipped will receive credit, minus a 25 percent restock fee. Seller in Seller's sole discretion may waive any restock fee. All returns must have an authorized RMA number, issued by Seller, which RMA number is valid for fourteen (14) days after the RMA has been approved. Any product returned to Seller without an authorized RMA number may be accepted by Seller but no credit will be given to Buyer and 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 a product within thirty days of the shipping date, Buyer shall request in writing and receive from Seller a Return Merchandise Authorization Number, ("RMA"). In such written request, the Buyer shall provide the specific reason for the return of each product by serial number requested to be returned. The Seller shall not accept returns without prior written authorization from the Seller and an RMA. Products shall be received by Seller from Buyer within fifteen 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 product. Buyer shall owe to and pay to Seller the full amount due for the product until such product is returned to Seller pursuant to an authorized RMA and in the same condition in which the product was shipped. In the sole discretion of the Seller, a 25% restock fee may apply. Authorized returns may exclude special order items and are subject to Seller's approval.

If a product return is requested after the initial thirty days from the shipping date, it is the sole discretion of the Seller whether the return will be accepted. A 25% restock fees may apply if product return is approved.

Buyer is solely responsible for shipping and payment of any shipping costs including insurance for all product 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 product during shipment. All returned products 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 product does not meet all of the terms in the previous sentence, Seller may in its sole and absolute discretion reject any portion of or all the returned production or choose to impose additional charges against the Buyer.

11. CREDIT APPLICATION AND INDIVIDUAL GUARANTEE

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 and approve such application before any product will be shipped. If Seller is unable to obtain sufficient credit insurance on Buyer, Seller may require Buyer to sign an Individual Guarantee. The Credit Application includes an Individual Guarantee to be signed by an officer of Buyer for the total amount of credit extended to Buyer by Seller. The signed Credit Application, signed Individual Guarantee, the Buyer's purchase order, the Seller's Order Confirmation or invoice, any manufacturer disclosure/disclaimer, and these Standard Terms and Conditions are the exclusive terms and conditions governing the sale and purchase transaction between Buyer and Seller.

If payment for Goods ordered by Buyer from Seller is paid in full before shipping, 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.

12. LIMITATION OF LIABILITY

IN ANY AND ALL CIRCUMSTANCES SELLER'S MAXIMUM LIABILITY IS LIMITED TO THE AMOUNT ACTUALLY PAID TO THE SELLER BY THE BUYER FOR THE PRODUCT OR THE PURCHASE PRICE OF THE PRODUCT SOLD, WHICHEVER IS LOWER. SELLER SHALL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE UPON A CLAIM OR ACTION IN CONTRACT, TORT, INDEMNITY OR CONTRIBUTION, OR OTHER CLAIMS RELATING TO THE PRODUCTS SOLD TO BUYER WHICH EXCEEDS THIS LIABILITY LIMIT. SELLER SHALL NOT BE LIABLE TO BUYER OR ANY THIRD PARTY FOR CLAIMS FOR ANY CONSEQUENTIAL DAMAGES AGAINST THE BUYER, OR FOR MALFUNCTION, DELAYS, INTERRUPTION OF SERVICE, LOSS OF BUSINESS, LOSS OR DAMAGE TO EXEMPLARY DAMAGES, WHETHER OR NOT SELLER HAS BEEN MADE AWARE OF THE POSSIBILITY OF SUCH CLAIMS OR DAMAGES.

13. SHIPPING CHARGES

All costs of shipping will be determined by Seller and Buyer prior to shipment and stated on Seller's quote.

14. TITLE; RISK OF LOSS

Seller will use information received from the Buyer to arrange for shipment of ordered product to Buyer or Buyer's customer, ("end-user"), Free on Board (F.O.B.) shipping point, meaning title to the product and risk of loss passes to the Buyer upon delivery to the carrier. Seller will advise Buyer of estimated shipping dates, but Seller will, under no circumstances, be responsible for delays in delivery, and associated damages, due to events beyond Seller's reasonable control, including without limitation, acts of God or public enemy, acts of federal, state or local government, fire, floods, civil disobedience, strikes, lockouts, and freight embargoes.

15. GOVERNING LAW AND JURISDICTION

Any dispute arising out of or related to these Standard Terms and Conditions of Sale or the sales transaction between Seller and Buyer shall be governed by the laws of the State of Colorado, without regard to its conflicts of law rules. Specifically, the validity, interpretation, and performance of this agreement shall not be governed by the United Nations Convention on the International Sale of Goods. Buyer consents to the exclusive jurisdiction and the exclusive venue of the State Courts of the State of Colorado to resolve any dispute between them related to this agreement or any product purchased or sold pursuant to this agreement, and Buyer waives any and all rights to contest this exclusive jurisdiction and venue of such Courts. Buyer also agrees not to bring any legal action, based upon any legal theory including contract, tort, equity or otherwise, against Seller more than one year after the date of the shipping of the product.

In the event of any dispute arising out of or relating to this Agreement, the parties shall seek to settle the dispute via direct discussions. If a dispute cannot be settled through direct discussions, 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 Denver, Colorado. 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 Denver, Colorado. Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. 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 Colorado.

The forgoing shall not apply to a dispute or controversy involving either party's Confidential Information or intellectual property. In the event of such a dispute or controversy, either may immediately seek any legal and/or equitable remedies it deems necessary.

16. SEVERABILITY

If any provision contained in this agreement is or becomes invalid, illegal, or unenforceable in whole or in part, such invalidity, illegality, or unenforceability shall not affect the remaining provisions and portions of this agreement, and the invalid, illegal, or unenforceable provision shall be deemed modified so as to have the most similar result that is valid and enforceable under applicable Colorado law.

17. WAIVER

The failure of either party to require performance by the other party of any provision of this agreement shall not affect in any way the first party's right to require such performance at any time thereafter. Any waiver by either party of a breach of any provision in this agreement shall not be taken or held by the other party to be a continuing waiver of that provision unless such waiver is made in writing.

18. ENTIRE AGREEMENT

These Standard Terms and Conditions, the Buyer's purchase order, Seller's Order Confirmation or invoice, manufacturer disclosure/disclaimer, the Credit Application, and the individual guarantee are the exclusive terms and conditions governing the sale and purchase transaction between Buyer and Seller and shall not be modified in any way except by a writing signed by both the Seller and the Buyer. These terms and conditions supersede all prior or contemporaneous proposals, oral or written, understandings, representations, conditions, warranties, and all other communications between Seller and Buyer relating to the subject products. This agreement may not be explained or supplemented by any prior course of dealings or trade by custom or usage or conditions of purchase proposed by Buyer.