

# DataDirect Networks Federal, LLC

## TERMS AND CONDITIONS OF SALE

### SALE AGREEMENT:

If, in connection with the sale and licensing of certain hardware, software and firmware ("Products") and/or services, DataDirect Networks Federal, LLC ("DDN") provided to you ("Buyer"), the attached quotation, these Terms and Conditions, any and all end user license agreements accompanying software or firmware Products (each, a "EULA"), any Statement of Support Services delivered to Buyer upon the purchase of support services ("Support Services"), installation or other professional services ("Professional Services") and any and all warranty terms accompanying Products ("Warranty Agreement") are collectively referred to herein as the "Sale Agreement." The Sale Agreement is located at [www.ddn.com/company/resource-library](http://www.ddn.com/company/resource-library), constitutes the sole and entire agreement between DDN and Buyer regarding the sale of 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.

### PRICING:

Prices for 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. All pricing is in U.S. currency.

### PAYMENT TERMS:

If DDN, in its sole discretion, decides to extend credit to Buyer, payment terms for 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 & 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:

Unless otherwise agreed by the parties in the attached quotation, DDN will ship Products 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 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 there from.

### RESELLER:

DDN is an authorized reseller of products and services provided by its corporate affiliates. Such affiliates may provide products and services, as permitted by applicable law. All products and services are subject to the terms of the Sale Agreement provided by DDN or its corporate affiliate.

### 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 or may be found at [www.ddn.com/company/resource-library](http://www.ddn.com/company/resource-library). TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS EXPRESSLY SET FORTH IN THE WARRANTY AGREEMENT OR EULA, ALL PRODUCTS AND SUPPORT SERVICES 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 PRODUCTS AND SUPPORT SERVICES AND/OR THE USE THEREOF (INCLUDING, WITHOUT LIMITATION, ALL EXPRESS AND IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND/OR NON-INFRINGEMENT).

**INFRINGEMENT:**

DDN will defend or settle any action brought against Buyer to the extent that it is based upon a third-party claim that a Product, as provided by DDN to Buyer under this Agreement, infringes any United States patent or any copyright or misappropriates any trade secret, and will pay any costs and damages made in settlement or awarded against Buyer in final judgment resulting from any such claim, provided that Buyer gives DDN: (i) prompt notice of any such claim; (ii) sole control of the defense and any related settlement of any such claim; and (iii) at DDN's expense, all reasonable information, assistance, and authority in connection with the foregoing. DDN will not be bound by any settlement or compromise that Buyer enters into without DDN's express prior written consent. If Buyer's rights to use and distribute a Product under the terms of this Agreement is, or in DDN's opinion is likely to be, enjoined due to the type of claim specified in above, then DDN may, at its sole option and expense: (i) procure for Buyer the right to continue to use and distribute such Product under the terms of this Agreement; (ii) replace or modify such Product so that it is non-infringing; or (iii) if options (i) and (ii) above cannot be accomplished despite DDN's reasonable efforts, then DDN may terminate Buyer's rights and DDN's obligations hereunder with respect to such Product and credit to Buyer the amounts paid for such Product during the twelve (12) months prior to the date DDN issues such a credit, provided that all units of such Product are returned to DDN in an undamaged condition. DDN will have no obligation under this Section for any claim of infringement or misappropriation to the extent that it results from: (i) the combination, operation, or use of a Product with or in equipment, products, or processes not provided by DDN; (ii) modifications to a Product not made by or on behalf of DDN; (iii) Buyer's failure to use updated or modified Products provided by DDN; or (iv) Buyer's use or distribution of a Product other than in accordance with this Agreement. THE FOREGOING PROVISIONS OF THIS SECTION SET FORTH DDN'S SOLE AND EXCLUSIVE LIABILITY AND BUYER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIMS OF INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OR PROPRIETARY RIGHTS OF ANY KIND.

**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, PRODUCTS, OR USE OF 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, PRODUCTS, AND/OR USE OF 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 represents that it is not listed on a U.S. Government restricted party list for export control or trade sanctions purposes, including the Specially Designated Nationals list administered by the Office of Foreign Assets Control and the Entity List, Denied Persons List and Unverified List administered by the Bureau of Industry and Security, and is not 50% or more owned, in the aggregate, by one or more restricted parties. Any Product provided under this Agreement may be subject to U.S. export controls. Buyer agrees that it shall not export, re-export, or transfer, directly or indirectly, any Product to any restricted party, to any region subject to U.S. embargo or comprehensive sanctions (currently, Cuba, Iran, North Korea, Sudan, Syria, and Crimea), or for any end use prohibited by Section 744 of the U.S. Export Administration Regulations (e.g., chemical/biological weapons, nuclear, and missiles), without obtaining any required prior authorization from the U.S. government.

**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 Santa Clara 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.