

# SF&B, LLC

## TERMS AND CONDITIONS OF SALE

### 1. DEFINITIONS

"Seller" and "SF&B" means SF&B, LLC, a Colorado Limited Liability Company, located at 9585 Niwot Road, Longmont, CO 80504. Seller is not an authorized distributor or seller of HP, Cisco, IBM, Sun, Juniper, Linksys, 3COM, EMULEX, APC, Brooktrout, or QLogic. Seller is an independent reseller only.

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

"Goods" means the product Seller sells to Buyer or ships on behalf of Buyer.

"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 personal/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. However, a change in Price would allow Buyer the option to cancel or change the purchase order. In the event Buyer requests Seller to purchase a manufacturer's service or warranty contract on Goods purchased from Seller, Buyer shall prepay any and all such costs of the manufacturer's warranty before any Goods are shipped.

### 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. 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 lower. Buyer and Seller agree to the terms of payment as specified in the T&C.

### 6. INDEPENDENT RESELLER DISCLOSURE/DISCLAIMER

Seller is an independent distributor or reseller of various product lines. For those product lines where Seller is not an authorized distributor or reseller, Seller does not have a direct relationship with the manufacturer. Seller provides a thirty day replacement warranty for defective or damaged product sold by Seller and purchased by Buyer. Service and extended warranty options may be available at an additional charge.

### 7. CISCO DISCLOSURE/DISCLAIMER

Seller is not a Cisco authorized Cisco distributor or reseller. Seller provides a thirty day replacement warranty for defective or damaged product sold by Seller and purchased by Buyer. Service and extended warranty options may be available at an additional charge.

Smartnet warranties are a separate product from Cisco and are not included with the purchase of Cisco hardware. A significant factor in determining the eligibility of a Cisco Smartnet warranty is based upon the procurement process rather than the condition of the product, i.e., if the product was not purchased from a Cisco authorized distributor or reseller. Cisco reserves the right to decline Smartnet coverage. Additionally, Cisco may refuse to honor existing Smartnet contracts if product purchased outside of the Cisco authorized channel is inserted into Smartnet covered products. Seller is not responsible nor has any liability should

Cisco refuse to honor a Smartnet contract for any reason and under no circumstances is Seller a part of or party to any dispute between Buyer and Cisco.

## **8. 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 Seller's 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.

## **9. WARRANTY**

SELLER IS NOT AN AUTHORIZED SELLER OF CISCO, IBM, SUN, JUNIPER, LINKSYS, 3COM, EMULEX, APC, BROOKTROUT, OR QLOGIC. 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.

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.

## **10. RMA POLICY**

Defective product may be replaced within thirty (30) days of receipt of product. Seller offers advanced replacements on DOA product. 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 per cent 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. Buyer shall owe to Seller the full price of any and all product returned to Seller without an authorized RMA number.

## **11. 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 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 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 per cent 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.

## **12. 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 a signed Individual Guarantee and approve such application before any product will be shipped. The Credit Application includes an Individual Guarantee 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 the Terms and Conditions are the exclusive terms and conditions governing the sale and purchase transaction between Buyer and Seller.

## **13. 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.

## **14. SHIPPING CHARGES**

Any delivery charge amount given by Seller to Buyer shall be an estimate only. Any shipping estimate will be determined by Seller and the Buyer prior to shipment and stated on Sellers quote.

## **15. 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.

## **16. GOVERNING LAW AND JURISDICTION**

Any dispute arising out of or related to these Terms and Conditions 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, Denver County District Court, 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 that is more than one year after the date of the shipping of the product.

## **17. 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.

## **18. 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.

#### **19. ENTIRE AGREEMENT**

These 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.