



ARUBA NETWORKS

TERMS AND CONDITIONS OF SALE

1. ENTIRE AGREEMENT. These Terms and Conditions of Sale (“**Agreement**”) shall constitute the complete and exclusive statement of the terms of agreement between Aruba (as defined below and including AirWave Wireless) (“**Aruba**”) and the entity identified on the purchase order to which the Agreement is attached or otherwise referenced (“**Purchaser**”) unless different, contradictory or additional terms and conditions are agreed to in a writing signed by authorized representatives of both Parties. “**Aruba**” means Aruba Networks, Inc., a Delaware corporation, 1344 Crossman Ave., Sunnyvale, CA 94089, if purchases under this Agreement are delivered to North or South America; otherwise, it means Aruba Networks International Ltd., Building 1000, Citygate, Mahon, Cork, Ireland, a company organized under the laws of Ireland and an affiliate and licensee of Aruba Networks, Inc. The foregoing addresses may be changed upon prior written notice. Aruba’s performance is expressly conditioned on Purchaser’s assent to the Agreement. Aruba Support Services purchased are provided under and governed by the ArubaCare Terms and Conditions found at http://www.arubanetworks.com/pdf/ArubaCare_Agreement.pdf AirWave Support Services purchased are provided under and governed by the AirWave Support Terms and Conditions found at <http://www.airwave.com/support/terms.htm>.

2. PRODUCTS. Aruba reserves the right to modify or change at any time, and, at its discretion, to inform Purchaser of any modifications or changes to Products ordered under this Agreement that affect form, fit, function, or performance prior to shipment. Aruba will be free to substitute components or modify manufacturing processes and make other changes in the Product(s) and/or Product specifications at any time and without any prior notice.

3. SOFTWARE LICENSE. Each Product is subject to either Aruba’s shrink-wrap or click-wrap end-user software license agreement, which is incorporated herein by reference. If there is any inconsistency between this Agreement and the applicable end-user license agreement (“**EULA**”), the EULA will prevail. Purchaser agrees to abide by the applicable EULA.

4. PURCHASE ORDERS; ALLOCATION. Orders are subject to written acceptance by Aruba and shipment schedules established in accordance with Product availability and Purchaser’s credit status; however Aruba shall not have any liability for failure to meet a delivery date. If Aruba’s order acknowledgment changes any of Purchaser’s purchase order requirements, Purchaser will be deemed to agree to the changes unless written objection is received by Aruba by the end of the next business day. Aruba reserves the right to allocate inventories and current production in its sole discretion.

5. PRICE; PAYMENT TERMS; INTEREST. The price paid by Purchaser shall be that stated on Aruba’s sales order acknowledgment. Unless otherwise stated on a quotation, quotations are valid for thirty (30) days from the date issued. All prices are in U.S. dollars, and all payments are to be made in U.S. dollars, free of any restrictions. Standard payment terms are net thirty (30) days from the date of invoice, but Aruba reserves the right to require alternative payment terms, including payment in advance, irrevocable letter of credit, or C.O.D. Payment is not conditioned upon the Products meeting any acceptance testing procedures Purchaser may have. Aruba reserves the right to charge Purchaser interest on any delinquent balance, computed on a daily basis for each day that the payment is delinquent at the lesser of eighteen percent (18%) per year or the maximum rate permitted by law. Aruba reserves the right to refuse shipment to Purchaser if Purchaser is delinquent in making payments.

6. TAXES. Purchaser is responsible for paying or reimbursing Aruba for all taxes or providing Aruba with a tax exemption certificate acceptable to the taxing authorities.

7. SHIPMENT. Products shall be shipped Ex Works (Incoterms 2000), place of manufacture or Aruba’s warehouse, freight collect or pre-paid and added to the invoice. Title to hardware and all risk of loss passes to Purchaser upon delivery to a carrier at the shipment point. Title to software remains with Aruba at all times. Purchaser hereby grants to Aruba a purchase money security interest covering each shipment of Products made hereunder (and any proceeds thereof) in the amount of Aruba’s invoice for such shipment until payment in full is received by Aruba.

8. EXPORTER AND IMPORTER OF RECORD. For international shipments, Purchaser or its properly authorized agent or freight forwarder shall be exporter of record from the United States. Purchaser shall be the importer of record and is responsible for fulfilling quota terms, obtaining import licenses, paying import license or permit fees, duties and customs fees, and any other governmental or import taxes or fees, and preparing and submitting all required documentation in connection with importing the Products.

9. CHANGES TO PURCHASE ORDER; CANCELLATION. Any and all changes Purchaser makes to its purchase order must be agreed to by Aruba in writing. Any cancellation of a purchase order will result in a cancellation penalty of twenty-five percent (25%) of the amount of the invoice.

10. RESCHEDULING. Purchaser may reschedule up to fifty percent (50%) of an accepted order one time, upon at least ten (10) days’ prior written notice to Aruba before the scheduled shipment date. The rescheduled date cannot be later than 30 days from the original schedule. Rescheduled orders may not be cancelled or rescheduled again. Any prepaid, but unused professional services (i.e., training and/or consulting services) will expire twelve (12) months after the purchase date.

11. LIMITED WARRANTIES; WARRANTIES EXCLUSIVE. Aruba warrants only to Purchaser that the hardware Products purchased hereunder will substantially conform to Aruba’s published specifications for such Product for twelve (12) months from the date of shipment by Aruba. The software warranty (if any) is as set forth in the EULA. Any Product that is damaged, abused, modified, altered, not maintained in accordance with Aruba’s standards or missing its serial code, or returned in any manner that is not in compliance with Aruba’s then current RMA policies, is not covered by this warranty. Aruba’s sole obligation under this express warranty shall be, at Aruba’s option and expense, to repair or replace the Product. In the event of a breach of the Hardware warranty within thirty (30) days of shipment, Aruba will replace any non-compliant Product with a new Product within one business day of notice via our RMA procedure. Purchaser may purchase an extension of this next business day protection through a separate support and service agreement. In the absence of such a support and service agreement, in the event of a breach of the Hardware warranty thirty or more days after shipment but within the twelve month warranty period, Aruba will repair or replace any non-compliant Product and return in operable condition to the End User within forty-five (45) days of notice and receipt of the non-compliant Product via our RMA procedure. Purchaser must contact Aruba’s Technical Assistance Center (“**TAC**”) within the applicable warranty period to obtain a Return Material Authorization (RMA) number. In order to obtain warranty services, dated proof of purchase may be required by Aruba in its sole discretion. Products may not be returned without an RMA number. Access to Aruba’s TAC for any and all questions, consultation, deployment assistance, or problem reports shall be provided only pursuant to a separate service and support agreement.

EXCEPT AS EXPRESSLY PROVIDED IN HEREIN, ALL PRODUCTS AND SERVICES ARE PROVIDED ON AN “AS IS” BASIS WITHOUT ANY WARRANTY WHATSOEVER, AND ARUBA AND ITS SUPPLIERS EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESS, IMPLIED, AND ARUBA NETWORKS TERMS AND CONDITIONS OF SALES
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STATUTORY INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS AND FITNESS FOR A PARTICULAR PURPOSE. ARUBA ALSO MAKES NO WARRANTY REGARDING NONINTERRUPTION OF USE OR FREEDOM FROM BUGS.

12. LIMITATION OF LIABILITY. EXCEPT FOR BODILY INJURY, NEITHER ARUBA NOR ITS SUPPLIERS OR LICENSORS WILL BE LIABLE WITH RESPECT TO ANY PRODUCT OR OTHER SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR (I) ANY AMOUNTS IN EXCESS IN THE AGGREGATE OF THE AMOUNTS PAID TO ARUBA UNDER THE PURCHASE ORDER IN WHICH THESE TERMS ARE REFERENCED DURING THE TWELVE MONTH PERIOD PRIOR TO DATE THE CAUSE OF ACTION FIRST AROSE OR (II) ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR (III) COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES. NEITHER ARUBA NOR ITS SUPPLIERS OR LICENSORS WILL HAVE ANY LIABILITY FOR ANY FAILURE OR DELAY DUE TO MATTERS BEYOND ITS REASONABLE CONTROL OR FOR ANY ALLOCATION OF PRODUCTS BETWEEN ITS CUSTOMERS IN THE EVENT OF A SHORTAGE.

THIS SECTION 12 SHALL NOT BE DEEMED TO PRECLUDE ANY LIABILITY WHICH, UNDER APPLICABLE PRODUCTS LIABILITY LAW, CANNOT BE PRECLUDED BY CONTRACT.

13. EXPORT COMPLIANCE. Purchaser agrees not to export, either directly or indirectly, any Product purchased or licensed hereunder without first obtaining any required license or other approval from the U.S. Department of Commerce or any other agency or department of the United States Government. If Purchaser exports any such Product from the United States or re-exports it from a foreign destination, Purchaser shall ensure that the export/re-export or import of the Product is in compliance with all laws, regulations, orders or other restrictions of the United States and the appropriate foreign government. For controllers being deployed into United States and Israel jurisdictions, regulations promulgated by the United States Federal Communication Commission (FCC) and the Israel Ministry of Communications (MOC) regarding certain radio settings that must be enabled, require Aruba to only ship restricted controllers with a “US” or “IL” designation within the United States or Israel, respectively. Controllers without these “US” or “IL” designation must not be deployed within the United States and Israel. The Purchaser assumes sole responsibility of any penalties if the restricted products are not deployed according to the FCC or MOC regulations.

14. FORCE MAJEURE. Aruba shall not be liable to Purchaser for any alleged loss or damages resulting from delays in performance (including loss or damages resulting from delivery of the Products being delayed) caused by acts of Purchaser, acts of civil or military authority, governmental priorities, earthquake, fire, flood, epidemic, quarantine, energy crisis, strike, labor trouble, component shortage, war, riot, accident, shortage, delays in transportation, or any other causes beyond Aruba’s reasonable control.

15. WAIVER; SEVERABILITY. A waiver of any default hereunder or of any provision of this Agreement shall not be deemed to be a continuing waiver or a waiver of any other default or of any other provision, but shall apply solely to the instance to which such waiver is directed. In the event any provision of this Agreement is found to be invalid, illegal or unenforceable, a modified provision shall be substituted which carries out as nearly as possible the original intent of the Parties, and the validity, legality and enforceability of any of the remaining provisions shall not in any way be affected or impaired thereby.

16. GOVERNING LAW AND VENUE. This Agreement shall be construed in accordance with and all disputes hereunder shall be governed by the laws of the State of California as applied to contracts made and to be performed in California, without applying conflict of laws rules. The United Nations Convention on Contracts for the International Sale of Goods (1980) is hereby excluded in its entirety from application to this Agreement. Any dispute arising from or relating to the subject matter of this Agreement that cannot be resolved thereby within a period of thirty (30) days after written notice of a dispute has been given by one party hereunder to the other (the last day of such thirty (30) day period being herein referred to as the “**Arbitration Date**”), shall be finally settled by arbitration in San Francisco, California, using the English language in accordance with the Arbitration Rules and Procedures of JAMS/Endispute (“**JAMS**”) then in effect, by an arbitrator with substantial experience in resolving complex commercial contract disputes, who will be chosen from the appropriate list of JAMS arbitrators. If the parties cannot agree upon the identity of an arbitrator within fifteen (15) days following the Arbitration Date, then an arbitrator shall be selected on an expedited basis in accordance with the Arbitration Rules and Procedures of JAMS. Any arbitrator so selected shall have substantial experience in the networking industry. The arbitrator shall have the authority to grant specific performance and to allocate between the parties the costs of arbitration (including service fees, arbitrator fees and all other fees related to the arbitration) in such equitable manner as the arbitrator may determine. The prevailing party in the arbitration shall be entitled to receive reimbursement of its reasonable expenses (including reasonable attorneys’ fees, expert witness fees and all other expenses) incurred in connection therewith. Judgment upon the award so rendered may be entered in a court having jurisdiction or application may be made to such court for judicial acceptance of any award and an order of enforcement, as the case may be. Notwithstanding the foregoing, each party shall have the right to institute an action in a court of proper jurisdiction for preliminary injunctive relief pending a final decision by the arbitrator, provided that a permanent injunction and damages shall only be awarded by the arbitrator. For all purposes of this Section 16, the parties consent to exclusive jurisdiction and venue in the United States Federal Courts located in the Northern District of California.

17. SURVIVAL. The following provisions shall survive the termination of this Agreement or the relationship with Purchaser: Entire Agreement; Software License; Price; Payment Terms; Interest; Shipment; Taxes; Exporter and Importer of Record; Limited Warranties; Warranties Exclusive; Patent and Copyright Infringement; Limitation of Liability; Export Compliance; Force Majeure; Waiver; Severability; and Governing Law.