

FIREYE GENERAL TERMS AND CONDITIONS

THE FOLLOWING TERMS AND CONDITIONS SHALL GOVERN THE ENTIRE PUR-CHASE RELATIONSHIP (THE 'CONTRACT') BETWEEN FIREYE (FIREYE) AND THE PURCHASER AS STATED IN THE PURCHASE ORDER ('PURCHASER') INCLUDING, BUT NOT LIMITED TO, ALL NEGOTIATIONS, ORDERS, ACCEPTANCES, SALES, AND DELIVERIES. NO TERM OR CONDITION OR OTHER UNDERSTANDING, ORAL OR WRITTEN, IN ANY WAY PROPOSING TO VARY OR EXPAND UPON THESE TERMS AND CONDITIONS, WHETHER CONTAINED IN THE PURCHASER'S FORMS OR ELSEWHERE, SHALL BE BINDING ON FIREYE, ITS SUCCESSORS OR ASSIGNS, UNLESS IN WRITING AND SIGNED BY AN OFFICER OF FIREYE.

1. WARRANTIES, EXCLUSIVE REMEDIES, AND LIMITATION OF DAMAGES: Fireye guarantees for one year from the date of installation or 18 months from the date of manufacture, whichever occurs first, to replace, or at its option, to repair any product or part thereof which Fireye, in its sole discretion, deems to be defective in material or workmanship or which otherwise fails to conform to the description of the product on the face of its sales order. Fireye's obligations pursuant to this warranty do not extend to any products or parts thereof which Fireye determines to have been installed, operated, maintained, repaired, or altered improperly or otherwise than in conformity to Fireye's applicable instructions, or which have been subject to misuse, accident, or neglect. **THE FOREGOING IS IN LIEU OF ALL OTHER WARRANTIES, BOTH EXPRESS AND IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS SPECIFICALLY STATED IN THESE TERMS AND CONDITIONS OF SALE, REMEDIES WITH RESPECT TO ANY PRODUCT OR PART MANUFACTURED OR SOLD BY FIREYE, OR WITH RESPECT TO ANY BREACH OF OR DEFAULT UNDER THIS CONTRACT (INCLUDING ANY BREACH OF WARRANTY), SHALL BE LIMITED EXCLUSIVELY TO THE RIGHT TO REPLACEMENT OR REPAIR F.O.B. FIREYE MAIN WAREHOUSE LOCATION, AS ABOVE PROVIDED. IN NO EVENT SHALL FIREYE BE LIABLE FOR CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY NATURE WHICH MAY ARISE IN CONNECTION WITH SUCH PRODUCT OR PART OR ANY BREACH OF OR DEFAULT UNDER THIS CONTRACT. TO THE EXTENT PERMITTED BY LAW, THE AGGREGATE LIABILITY OF FIREYE HEREUNDER WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, WILL BE LIMITED TO ONE TIMES THE CONTRACT VALUE, PROVIDED HOWEVER THE FOREGOING LIMITATION DOES NOT LIMIT THE LIABILITY OF FIREYE FOR ANY INJURY TO, OR DEATH OF A PERSON, CAUSED BY THE GROSS NEGLIGENCE OF FIREYE.**

2. ACCEPTANCE OF ORDERS: Fireye shall have no obligation, nor shall Fireye be bound, with respect to any order, unless the order has been accepted by an authorized employee of Fireye. At its discretion, Fireye may elect to reject any orders submitted by Purchaser.

3. SHIPMENT: All prices are F.O.B. Fireye main warehouse location. Method and route of shipment are at Fireye's discretion, unless the Purchaser supplies explicit instructions on the face of the sales order in which case the Purchaser shall pay any additional transportation costs occasioned by such instructions. Purchaser assumes all risk of loss or damage to the products during shipment and is responsible for insuring such products for their purchase price. Title to the products transfers to Purchaser immediately upon delivery to the first carrier transporting the shipment.

4. DELIVERY AND FORCE MAJEURE: Under no circumstances shall Fireye be liable for any loss, damage or delay due to any cause beyond its reasonable control, including but not limited to acts of government, strikes, lockouts, other labor disputes, fire, explosion, theft, weather damage, flood, earthquake, riot, civil com- motion, war, malicious mischief, or act of God.

5. TAXES: The amount of any present or future sales, revenue, excise, or other taxes applicable to the products listed herein shall be added to the purchase price and shall be paid by the Purchaser, or in lieu thereof the Purchaser shall provide Fireye with a tax exemption certificate acceptable to relevant taxing authorities.

6. QUOTATIONS AND PRICES: Prices are subject to change without notice and orders calling for future delivery will be billed according to the price in effect at the time of delivery. A \$100.00 net minimum billing applies to all orders. Written quotations are effective only if made on Fireye's standard quotation form and, in any event, such quotations shall automatically expire sixty (60) calendar days from the date issued and are subject to earlier termination by notice at any time during that 60-day period. Payment terms are as stated on the invoice or net thirty (30) days when not specified.

7. CANCELLATIONS, MODIFICATIONS AND RETURNS: Once placed, orders may be cancelled or modified by the Purchaser only with the written consent of Fireye in its sole discretion. If such consent is given and an order is cancelled or modified, the Purchaser shall reimburse Fireye for all expenses (as determined by Fireye in its sole discretion) incurred prior to such cancellation or as a result of such modification and pay such cancellation fee as Fireye may determine in its sole discretion. Goods may be returned only with the prior written authorization of Fireye and shall be subject to such fees and restocking charge as may be determined by Fireye, in its sole discretion. All goods returned pursuant to Fireye's authorization shall be shipped with shipping charges prepaid and securely packed so as to reach Fireye without damage.

8. PATENT INFRINGEMENT: If suit is brought against Purchaser alleging that the manufacture or sale of products sold hereunder infringes any United States patent (except infringement occurring as a result of incorporating a design or modification of the goods at Purchaser's request, or occurring as a result of Purchaser's failure to use the goods in the manner directed and exclusively for the purposes for which they are sold), then Fireye will defend, indemnify and hold harmless Purchaser and pay any awards against Purchaser arising from such infringement; provided, however, that Purchaser has given Fireye (a) prompt written notice of any charge of such infringement, (b) the right at its expense to settle such charge or to defend or control the defense of any suit based upon such charge, and (c) all necessary information and assistance in connection therewith. In case any product sold hereunder is held to infringe an existing patent and the use of said product is enjoined. Fireye shall have the option of either procuring for the Purchaser the right to continue using said product, or replacing the same with a non-infringing product, or modifying the same so as to avoid infringement or removing the same and refunding the purchase price.

THIS PARAGRAPH SETS FORTH FIREYE'S SOLE AND EXCLUSIVE LIABILITY WITH RESPECT TO PATENT INFRINGEMENT.

9. TRADEMARKS AND TRADE NAMES: Purchaser acknowledges that all brand names, trade names and trademarks incorporated onto or associated with the products (collectively, the 'Marks') purchased hereunder are the exclusive property of Fireye and that the Purchaser will not acquire any rights in any of the Marks by purchasing the products hereunder. Purchaser shall not make any use of the Marks at any time except as otherwise authorized in writing by Fireye.

10. PROPRIETARY INFORMATION/NONDISCLOSURE: Purchaser acknowledges that any knowledge or information, including drawings and data, which Fireye may have dis- closed or may hereafter disclose to the Purchaser incident to the placing and filling of a purchase order, shall, at all times, remain the exclusive property of Fireye, and Purchas- er shall acquire no interest in, or right with respect to, such proprietary information unless otherwise stated in writing by Fireye. Purchaser further acknowledges that such proprietary information constitutes valuable, special, and unique business assets of Fireye and Purchaser will not now or at any time in the future use any such information in any manner or disclose any such information to any person or entity, except as expressly permitted in writing by Fireye.

11. DEFAULT/REMEDIES AND TERMINATION: In the event that Purchaser fails to make payment when due for goods shipped to it or otherwise breaches any provision of this Contract, Purchaser shall be liable for any loss suffered by Fireye by reason of such action including by not limited to, costs of collection, attorneys' fees, loss of Fireye's profits, and additional freight, storage and handling costs. In such event, Fireye, at its sole discretion, may also terminate this Contract, require that any shipment be made C.O.D., demand cash in advance prior to filling any orders from the Purchaser and place the Purchaser on credit hold. The above-listed remedies are cumulative and in addition to any other remedies available to Fireye at law or in equity.

12. INDEMNIFICATION: Purchaser shall indemnify, defend, and hold harmless Fireye from and against any and all claims, losses, liabilities and expenses (including without limitation, attorneys' fees) on account of any injuries or deaths of any persons or damage to any property arising from the sale and use of goods sold by the Purchaser in which the products sold hereunder are incorporated.

13. DISPUTE RESOLUTION: Any disputes arising under this Contract shall be referred to binding arbitration in the state of New Hampshire under the commercial arbitration rules of the American Arbitration Association.

14. GOVERNING LAW: This Contract shall be governed and interpreted in accordance with the laws of the State of New Hampshire. The state courts of New Hampshire and the U.S. District Court for the District of New Hampshire shall have exclusive jurisdiction with respect to claims made hereunder.

15. NON-WAIVER: Failure by either party to exercise any of its rights under this Contract upon one occasion shall not constitute a waiver of its right to exercise the same or other rights on another occasion.

16. ASSIGNMENTS: Purchaser may not assign or transfer any of its rights or duties under this Contract without the written consent of Fireye. Fireye may, in its sole discretion, assign or transfer any or all of its rights or duties under this Contract to any person or entity, including without limitation any affiliate of successor.

17. SEVERABILITY: In the event any provision herein should be held unenforceable by a court of competent jurisdiction, such court is hereby authorized to amend such provision so that it will be enforceable to the fullest extent permitted by law, and all remaining provisions shall continue in full force without being affected, impaired, or invalidated thereby in any way.