

Avago Technologies

Standard Terms and Conditions of Sale



1. APPLICABILITY

These Terms govern the sale of Avago's Products to or license of its Software to the customer identified in an Avago order acknowledgement form or in Avago's valid quotation ("Customer"). These Terms, together with any special terms provided on Avago's valid quotation, constitute the entire agreement between Avago and Customer and may not be changed except by an amendment signed by Avago's and the Customer's authorized representatives. These Terms supersede any previous communications, representations or agreements between the parties, whether oral or written, regarding the sale of Products and license of Software. Customer's additional or different terms and conditions will not apply. Customer's purchase of Products constitutes Customer's acceptance of these Terms.

- A "Product" is any component identified on the applicable Avago quotation or order acknowledgment form.
- A "Standard Product" is a Product based on Avago published Specifications that are routinely offered for sale by Avago to a broad base of customers.
- A "Custom Product" is either (i) a Standard Product modified per Customer requirements or non-published (limited release) standards; or (ii) a Product designed, configured, tested or manufactured to meet Customer requirements.
- "Software" is one or more computer programs in object code format, whether stand-alone or bundled with Product, and related documentation provided to Customer under these Terms.

2. ORDER APPROVAL

No order will be binding on Avago unless and until the customer receives a written or electronic acknowledgment accepting the order. Orders must specify delivery dates within six (6) months from order date unless otherwise agreed or indicated on the quotation.

Minimum order and/or minimum packaging quantity requirements may apply. Minimum line order values of US\$1,000.00 will apply unless otherwise stated in Avago's valid quotation.

3. PRICES

Prices and currency are as stated on Avago's valid quotation. Prices exclude delivery charges and are valid for the period indicated on the quotation. If special shipping instructions are agreed Avago will bill additional charges separately.

Prices exclude any sales, value added, GST, withholding, or other tax which Customer will pay in addition to the purchase price if applicable. If Customer claims exemption from tax, Customer must provide a certificate of exemption.

Customer will provide VAT-ID numbers to support VAT exemptions of intra-community supplies where appropriate as governed by applicable national legislation. Customer will notify Avago immediately if the VAT-ID number provided becomes invalid or is

changed or amended in any way. Avago reserves the right to retroactively charge VAT if VAT has been incorrectly exempted.

4. DELIVERY

Avago will endeavor to ship for Delivery on Avago's acknowledged delivery date ("Acknowledged Date"). "Delivery" occurs when Avago places Product at Customer's or Customer's representative's disposal at the named place agreed to by Avago in accordance with the quoted Incoterms (Incoterms 2000). Avago may make partial deliveries, which may be separately invoiced. Delivery delay will not relieve the Customer of its obligation to pay for Products or to accept subsequent deliveries. If Avago cannot to meet the Acknowledged Date, Customer and Avago may agree to alternative arrangements. In the absence of such agreement, Customer's sole remedy is to cancel any portion of an order that Avago cannot deliver in compliance with the Acknowledged Date.

Avago will not be liable for performance delays or for non-performance due to events of Force Majeure or other causes beyond its reasonable control. If such an event occurs, Avago may, at its option, (i) extend the Delivery date and/or (ii) allocate its available supply among its customers when it is unable to supply its total demands and/or commitments.

In the event of shipment errors, such as wrong Product, quantity, or shipment to the wrong location, Customer must notify Avago within thirty (30) days from invoice date. Avago will then verify the claim and ship replacement parts or correct the error, as appropriate.

5. TRANSFER OF TITLE AND ACCEPTANCE

Title, risk of loss and damage to Products will pass to Customer, and acceptance will occur upon Delivery.

6. PAYMENT

Unless otherwise specified, upon Avago's credit approval, payment is due thirty (30) days from invoice date. Avago may change credit or payment terms at Avago's discretion if Customer's financial condition or previous payment record so warrant. Avago may discontinue performance if Customer fails to pay any sum due, or if Customer fails to cure any other breach of this or any other Avago agreement after ten (10) days written notice of the breach. Customer will reimburse Avago any expenses Avago incurs in collecting any outstanding amount due (including without limitation, attorneys' fees).

7. RESCHEDULED DELIVERY, NO RETURNS

Customer may reschedule Delivery of Standard Product up to thirty (30) calendar days before the Acknowledged Date. Customer may reschedule Delivery of Custom Products with lead times shorter than ten (10) weeks up to ten (10) weeks before the Acknowledged Date. Customer may not reschedule Delivery of Custom Products with lead-times longer than ten (10) weeks within lead time. No such reschedule shall be for Delivery later than thirty (30) days after the originally scheduled Delivery date. Customer may incur charges for modifying Product delivery schedules or for

canceling Product orders. Avago will not accept rescheduling of orders after Product shipment.

Customers may not cancel orders or return Products, except as provided in Section 8 (Warranty).

8. WARRANTY

Avago warrants Product against defects in materials and workmanship during the Warranty Period. Avago further warrants that, during the Warranty Period, Product will conform to Avago's relevant published technical or functional specifications in effect on the date Avago ships Customer's order ("Specifications"). This warranty extends only to Customer and not to indirect purchasers or users.

Avago warrants that Software will not fail to execute its programming instructions due to defects in materials and workmanship when properly installed and used on the hardware designated by Avago during the Warranty Period. Avago further warrants that, during the Warranty Period, Software will substantially conform to Specifications. Avago does not warrant that Software will operate in hardware and software combinations selected by Customer, or meet requirements specified by Customer.

For purposes of this Section 8, "Warranty Period" means the period of time beginning with shipment and continuing (i) three (3) years for Standard Products, and (ii) one (1) year for Custom Products and Software. In the event that Avago confirms defects or non-conformance to Specifications during the Warranty Period, Avago will, at its option, repair or replace the affected Products or Software, or refund the net purchase price of the affected Products.

Some Products may contain remanufactured parts equivalent to new in performance. Unless Avago otherwise agrees in writing, Avago may make process or materials changes affecting the performance or other characteristics of Product. Product supplied after such a change will continue to meet Avago's published Specifications, but may not be identical to Product supplied as samples or under prior orders.

The above warranties do not apply to defects resulting from improper or inadequate maintenance; higher assembly, use with Customer or third party supplied software, interfacing or supplies; unauthorized modification; improper use or operation outside of the Specifications; abuse, negligence, accident, loss or damage in transit; improper site preparation; or unauthorized maintenance or repair.

THE ABOVE WARRANTIES ARE EXCLUSIVE AND NO OTHER WARRANTY, WHETHER WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED. AVAGO SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

9. LICENSES

Avago and its third party suppliers own and retain all rights, title and interest in the Software and its associated documentation. Third party suppliers may protect their rights in the Software in the event of any violation of applicable license terms.

Avago grants Customer a non-transferable, worldwide, non-exclusive license to use the Software for internal purposes in accordance with the documentation provided with the Software. Such documentation may include license terms provided by Avago and Avago's third party suppliers, which will apply to the use of Software and take precedence over these license terms. In the absence of documentation specifying the applicable license, Customer is granted the right to use one (1) copy of the Software on one (1) machine or instrument, or as otherwise indicated on the quotation.

Customer will not disassemble or otherwise modify the Software without written authorization from Avago, except as permitted by law. Customer may not copy the Software onto any public or distributed network.

Customer's license will terminate upon Customer's breach of these license terms. Customer must destroy all copies of the Software immediately upon such termination and shall provide a certificate of such destruction upon Avago's request.

Software and technical data rights granted to the federal government include only those rights customarily provided to end user Customers. Avago provides customary commercial license in Software and technical data pursuant to FAR 12.211 (Technical Data) and 12.212 (Computer Software) and, for the Department of Defense, DFARS 252.227-7015 (Technical Data - Commercial Items) and DFARS 227.7202-3 (Rights in Commercial Computer Software Documentation).

10. INTELLECTUAL PROPERTY CLAIMS

Avago will defend or settle any claim against Customer that Standard Products or Avago Software delivered under these Terms infringe (i) any United States or European Union patent or (ii) any worldwide copyright or trademark, provided Customer promptly notifies Avago in writing, and cooperates with and provides control of the defense or settlement, to the extent legally permissible.

In the event of an infringement claim under this Section 10, Avago will pay infringement claim defense costs, settlement amounts and court-awarded damages. If Avago determines such a claim may occur, Avago may, at its option, modify Product, procure any necessary license, or replace it. If Avago determines none of these alternatives is reasonably available, Avago will refund Customer's purchase price minus any credits that may have been applied upon return of the Product.

Avago has no obligation for any claim of infringement arising from (i) Avago's compliance with, or use of, Customer's designs, specifications or instructions or technical information; (ii) Product modifications by Customer or a third party; (iii) Product use prohibited by Specifications or related application notes; (iv) use or combination of the Product with products not supplied by Avago; or (v) any infringement occurring after Customer has received notice of such suit or proceeding or other communication alleging the infringement unless Avago has given written permission for such continuing infringement.

THIS SECTION 10 STATES AVAGO'S ENTIRE LIABILITY FOR CLAIMS OF INTELLECTUAL PROPERTY INFRINGEMENT.

11. LIMITATION OF REMEDIES AND LIABILITY

NOTWITHSTANDING ANYTHING ELSE IN THESE TERMS, IN NO EVENT WILL AVAGO, ITS SUBCONTRACTORS OR SUPPLIERS BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION DOWNTIME COSTS, LOSS OF DATA, RESTORATION COSTS, LOST PROFITS, OR COST OF COVER) REGARDLESS OF WHETHER SUCH CLAIMS ARE BASED ON CONTRACT, TORT, WARRANTY OR ANY OTHER LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

EXCEPT FOR AVAGO'S OBLIGATION TO MAKE WARRANTY REFUNDS UNDER SECTION 8 (WHICH IS LIMITED TO THE PRODUCT PURCHASE PRICE) AVAGO'S LIABILITY TO CUSTOMER IS LIMITED TO THE LESSER OF (I) THE AMOUNT ACTUALLY PAID BY CUSTOMER TO AVAGO FOR THE PRODUCT OR SOFTWARE THAT IS THE SUBJECT OF SUCH DAMAGES IN THE TWELVE (12) MONTHS PRIOR TO THE ACCRUAL OF SUCH DAMAGES, OR (II) US \$1,000,000.00.

THE LIMITATIONS SET FORTH IN THIS SECTION 11 WILL NOT APPLY TO INFRINGEMENT CLAIMS UNDER SECTION 10, AND CONFIDENTIALITY CLAIMS UNDER SECTION 12, OR TO DAMAGES FOR BODILY INJURY OR DEATH.

THE REMEDIES IN THESE TERMS ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES.

12. CONFIDENTIALITY

Customer may acquire knowledge of information relating to Avago's business, Products or Software ("Avago Confidential Information") and agrees to keep such Avago Confidential Information in confidence. Customer agrees not to use the Avago Confidential Information except as permitted by Avago in writing. Customer agrees not to copy, alter or directly or indirectly disclose any Avago Confidential Information. Customer use the degree of care and means that it uses to protect its own information of like kind, but in no event less than reasonable care to prevent the disclosure or unauthorized use of Avago Confidential Information. Customer may disclose Avago Confidential Information which is required to be disclosed pursuant to an enforceable requirement of a government agency or law so long as Customer provides prompt notice to Avago of such requirement prior to disclosure. All Avago Confidential Information is and shall remain the property of Avago. Upon Avago's written request, Customer shall return, transfer or assign to Avago all Avago Confidential Information and all copies thereof.

13. GENERAL

Bankruptcy. If Customer becomes insolvent, is unable to pay its debts when due, files for bankruptcy, is the subject of involuntary bankruptcy, has a receiver appointed, or has its assets assigned, Avago may cancel any unfulfilled obligations.

Notices. All notices required or permitted under these Terms will be in writing, and will be addressed to Avago or to an authorized Avago representative, and will be considered given when (i) delivered personally, (ii) sent by confirmed telex or facsimile, (iii)

sent by commercial overnight courier with written verification receipt, or (iv) three (3) days after having been sent, postage prepaid, by first class or certified mail.

Assignment. The provisions of these Terms are for the benefit of the parties and not for the benefit of any third party. Customer's

assignment of, these Terms, any order, or any rights arising thereunder without Avago's written consent will be void and of no effect.

Data Privacy. Avago will store and use any of the Customer's Personal Data in accordance with Avago's privacy practices, which are available upon request. Avago will not sell, rent or lease Customer's Personal Data to others. "Customer's Personal Data" means Customer's personal data or other personal data in Avago's control, including but not limited to names, telephone numbers and e-mail addresses. Customer agrees that Avago may forward Customer's Personal Data to other Avago entities or business partners (including agents, resellers and subcontractors) solely to conduct business activities, including communication with third parties (such as the handling of orders, advertising campaigns or market research). Customer agrees that Avago and its entities may store and use Customer's Personal Data in all countries where Avago and its entities do business. Customer represents and Avago acknowledges Customer's representation that consent from individual data subjects has been obtained or is not needed.

Legal Compliance. Customer will comply with U.S. and other applicable laws and regulations (including without limitation laws and regulations prohibiting transfers, exports and re-exports, unless written authorization is obtained from the appropriate government). Avago may suspend performance if Customer is in violation of applicable laws or regulations.

Governing Law, Attorneys Fees. These Terms will be governed according to the laws of California. The Superior Court of the

County of Santa Clara or the United States District Court for the Northern District of California will have jurisdiction and venue for all controversies arising out of, or relating, to this Agreement. The parties expressly waive the applicability of the UN Convention on Contracts for the International Sale of Goods and it will not apply to the terms and conditions of this Agreement. The prevailing party shall be awarded its reasonable attorney fees, and costs and expenses incurred in any litigation arising under these Terms.

Waiver. Neither party's failure or delay to exercise any of its rights under these Terms will be deemed a waiver of forfeiture of those rights.

Severability. These Terms shall be applied to the extent permitted by applicable law. To the extent that any provision of these Terms is determined to be illegal or unenforceable, the remainder of these Terms will remain in full force and effect.

Nuclear/Medical Uses. AVAGO'S PRODUCTS AND SOFTWARE ARE NOT SPECIFICALLY DESIGNED, MANUFACTURED OR AUTHORIZED FOR SALE AS PARTS, COMPONENTS OR ASSEMBLIES FOR THE PLANNING, CONSTRUCTION, MAINTENANCE OR DIRECT OPERATION OF A NUCLEAR FACILITY OR FOR USE IN MEDICAL DEVICES OR APPLICATIONS. CUSTOMER IS SOLELY LIABLE, AND WILL INDEMNIFY AND HOLD AVAGO HARMLESS FOR ALL LOSS, DAMAGE, EXPENSE OR LIABILITY IN CONNECTION WITH SUCH USE, IF PRODUCTS OR SOFTWARE ARE USED FOR THESE APPLICATIONS.

END OF TERMS