

ZEROWAIT CORPORATION GENERAL TERMS & CONDITIONS OF SALE (Nov 2005)

1. Scope. Zerowait shall sell to Customer the hardware, software and service products (the "Product(s)") ordered by Customer and shall accept purchase orders from Customer only in accordance with these General Terms and Conditions of Sale ("Agreement"). SUBMITTING A PURCHASE ORDER TO ZEROWAIT FOR PRODUCTS INDICATES CUSTOMER AGREEMENT WITH THESE TERMS & CONDITIONS OF SALE. THESE TERMS AND CONDITIONS SHALL PREVAIL NOT-WITHSTANDING ANY VARIANCE WITH ANY PROVISION OF ANY PURCHASE ORDER OR OTHER DOCUMENT SUBMITTED BY CUSTOMER.

2. Prices. The prices shall be set by Zerowait and shall be stated in one or more quotations provided to customer. Official quotations are valid for thirty days from quotation date. Prices on our online store are subject to change at any time.

3. Availability. With the exception of items ordered directly from the manufacturers we represent, items quoted are subject to prior sale and many items have limited availability. Only our acceptance of an official Purchase Order guarantees availability. If an item is ordered on the online store and is determined to be out of stock, customer will be notified immediately via email or phone and given the choice between a backorder or a refund if payment has been made in advance.

4. Payment Terms. Payment terms are set by Zerowait and should be taken from the customer's official quotation from Zerowait. Payment terms on Purchase Orders other than those set by Zerowait are not valid. Zerowait accepts company checks, bank wires, and credit card payments for purchases. All internationally shipped orders must be prepaid with no exceptions. First time Customers must prepay their orders with either a credit card, international money order, or bank wire—unless a credit application has been completed and approved by Zerowait in **advance** of ordering. Zerowait further reserves the right to refuse payment terms if, in Zerowait's sole discretion, such terms would create an unreasonable credit risk. In that event, deliveries will be available only on a C.O.D. or cash-in-advance basis. To use PayPal to pay for an order, the Customer must first obtain an official Zerowait quote from an authorized Zerowait sales professional and must obtain approval from Zerowait to send money via PayPal to us. NOTE: PayPal payments received for orders that do not comply with the above will be delayed or denied. Zerowait reserves the right to extend to or deny Customers the privilege of paying by credit card at any time, for any purchase. After approval by Zerowait's credit department, Customer may be extended Net 15 day terms. Customers with terms commit to make payment on invoices within fifteen (15) days of the issuance of the invoice, which occurs upon shipment in the case of hardware and software purchases. Zerowait reserves the right to charge Customer interest on any delinquent balance. This interest is computed on a daily basis for each day that the payment is delinquent at the lesser of two per cent (2%) per month or the maximum rate permitted by law. Zerowait reserves the right to refuse shipment to Customer if any delinquencies are outstanding and incurred. Zerowait reserves the right to invoice on shipment, including whole or partial orders, and payment shall be due fifteen (15) days after the issuance of such invoice. Zerowait may refuse to ship on credit for any reason or for no reason. No payment by Customer or receipt by Zerowait of a lesser amount than the amount of invoice shall be deemed to be other than on account of the earliest due amount, nor shall any endorsement or statement on any check or letter accompanying any check or payment be deemed an accord and satisfaction, and Zerowait may accept such check or payment without prejudice to Zerowait's right to recover the balance of any amount due or pursue any other remedy provided for in these terms and conditions. In connection with the foregoing, Zerowait shall have the absolute right in its sole discretion to apply any payment received from Customer to any account of Customer then not current and due and delinquent.

5. Ordering. Customers should send signed official Purchase Orders via email, mail or fax to 302.738.4302 referencing acknowledgement of this agreement, and stating the quantity, Product(s), applicable price, shipping instructions, and requested delivery date. Shipping instructions MUST include desired carrier, speed, special instructions (i.e., blind ship), and ship to address. The delivery date must be requested prior to submitting the order or we cannot guarantee it. Orders shall be subject to acceptance by Zerowait and delivery schedules shall be established in accordance with Product availability and Customer's credit status. If a customer requests a delay in the delivery date *after* submitting a purchase order to Zerowait and *after* Zerowait has ordered equipment from a manufacturer based on a Customer purchase order, Customer will take delivery upon shipment from the manufacturer and all invoice terms from Zerowait related to that equipment will begin upon that delivery.

6. Delivery. Delivery is F.O.B. Shipping Point -- from the manufacturer (if drop shipment is requested by the Customer) or from Zerowait's Newark, Delaware facility. *Zerowait does not collect sales tax and customers are responsible for all taxes, tariffs and government levies related to purchases.* Title and risk of loss or damage in respect to the Products shall pass to Customer on delivery to the common carrier. Products are deemed accepted by Customer upon delivery to the common carrier. Customer is responsible for payment of all costs relating to transportation, delivery and insurance. Unless agreed to in advance, international shipping must be arranged by and prepaid by the customer. Zerowait shall use its best efforts, but shall not be obligated, to deliver the Products in accordance with Customer's shipping instructions and choice of carrier.

Generally, orders will be processed and shipped within 48-72 hours of receipt of payment or arrangement of acceptable terms. Often they will ship faster, but this is our standard order processing. Expedited order processing may be available, at Zerowait's discretion, depending on the content of the order. If a customer wishes for an order to ship the same day, we will require all conditions for shipping (prepayment, technical information related to the order, etc.) to be met by 2:30 PM Eastern US time. Additionally, an expedite charge of \$25.00 will be applied to the order. Shipping prices provided on quotes are estimates only. Actual shipping charges will apply and will be added to the final invoice. Overseas orders are subject to a packing charge of \$100.00 for all equipment over 20 pounds in weight. If a Purchase Order does not include complete shipping instructions, per the above, Zerowait will ship via standard order processing, using Second Day Air shipping.

Once a Purchase Order has been received by Zerowait, Customer's prices may be considered firm unless the shipment is delayed by the customer for any reason beyond thirty (30) days from date of order. In that case, the prices may change, and customer will be notified immediately. Shipment delays caused by new-product manufacturer backlogs will not affect customer prices. Orders may also be taken over the phone or sent to us through electronic means (i.e., email, online store, instant messaging) when repeat customers are paying by credit card or PayPal and the sale is for less than \$1,000.00. If a customer requests a delay in the delivery date *after* submitting a purchase order to Zerowait and *after* Zerowait has ordered equipment from a vendor based on a Customer purchase order, Customer will take delivery upon shipment from the manufacturer and all invoice terms from Zerowait related to that equipment will begin upon that delivery.

7. Change Orders, Cancellation and Rescheduling. Any and all changes to purchase orders sought to be made by Customer must be provided by mail, email, or fax notice from Customer and are subject to approval by Zerowait. All changes made to purchase orders within ten (10) days prior to the scheduled shipment date are subject to a restocking charge equal to thirty percent (30%) of the change. A request to move the ship date forward or increase quantities will be granted provided Zerowait deems itself able to satisfy the request. Reschedule requests between eleven (11) and thirty (30) days are subject to Zerowait's approval at its sole discretion. Only one (1) reschedule per purchase order shall be permitted. If Customer cancels any portion or all of an order within thirty (30) days of the original shipping date, it shall be assessed a thirty percent (30%) restocking charge equal to a percentage of the net dollar reduction in the purchase price of the order. If Zerowait is unable to meet the delivery schedule, it shall provide notice as soon as it is reasonably aware of the situation. No Product may be returned except under warranty or for repair, or in the event that Customer and Zerowait have negotiated in writing a trade-in for a different Product.

8. Evaluation and/or Rental Equipment. At Zerowait's discretion, Customer may be permitted to obtain equipment for the purpose of temporary use or evaluation for a period to be determined on a case by case basis. Prior to delivery of any equipment, Customer agrees to provide Zerowait with signed rental agreement or, in the case of evaluations, a Product Evaluation Agreement or a Purchase Order for the equipment (this can be a zero value Purchase Order with purchase contingent on a successful evaluation) complete with an official signature. At the end of the rental or evaluation period, Customer agrees to 1) purchase the equipment, in which case Zerowait will create an Invoice, which shall then be subject to the terms above; or 2) return the equipment immediately to Zerowait in perfect condition, along with any packaging, manuals, or other peripherals that came with it. Unless agreed upon in writing prior to an evaluation, Customer agrees to pay all shipping costs associated with the return of the product to Zerowait.

9. Security Interest. Customer hereby grants to Zerowait a security interest covering each shipment of Products made hereunder (and any proceeds thereof) in the amount of Zerowait's invoice for such shipment, until payment in full is received by Zerowait. Customer agrees to sign and execute any and all documents as required by Zerowait to perfect such security interest.

10. Proprietary Rights and Software License. Per Network Appliance, all software in use on its systems belongs to Network Appliance (NetApp), with a license to use the software extended to their customers. Except for offering NetApp units with one-time transferable licenses, Zerowait does not resell any Network Appliance software, licenses or software support to end users. For other manufacturer products, Zerowait grants to Customer a non-exclusive and nontransferable license to use the software purchased from Zerowait ("Software") in object code form solely for Customer's internal business use and according to the manufacturers' instructions and terms. For any Zerowait software products, Customer may make one (1) copy of the Software for backup purposes. Except as expressly authorized above, CUSTOMER SHALL NOT: (i) COPY, IN WHOLE OR IN PART, SOFTWARE OR DOCUMENTATION; (ii) MODIFY THE SOFTWARE; (iii) REVERSE COMPILER OR REVERSE ASSEMBLE ALL OR ANY PORTION OF THE SOFTWARE; OR (iv) DISTRIBUTE, SELL OR CREATE DERIVATIVE WORKS OF THE SOFTWARE. Customer must not publish or provide any results of benchmark tests run on the Software to a third party without Zerowait's prior written consent. Customer agrees that aspects of the licensed materials, including the specific design and structure of individual programs, are the protected intellectual property of Zerowait or its vendors under trade secret, copyright, patent and/or trademark law. Customer agrees not to disclose, provide or otherwise make available such protected intellectual property in any form to any third party without the prior written consent of Zerowait. Customer agrees to implement reasonable security measures to protect such protected intellectual property. Title to Software and documentation shall remain solely with the manufacturer of the software.

11. Taxes and Duties. Customer shall assume all responsibility for taxes on shipments or provide Zerowait with a tax exemption certificate acceptable to the taxing authorities. On orders for shipment outside the United States of America, all required import duties, licenses and fees shall be payable by the Customer in addition to the stated prices.

12. Export Law Compliance. Neither Zerowait nor Customer shall export, directly or indirectly, any information acquired under this Agreement or any Products utilizing any such information to any country for which the United States Government or any agency thereof at the time of export requires an export license or other governmental approval, without first obtaining such license or approval. With respect to any transactions under these general terms and conditions of sale, both parties will cooperate, in any reasonable manner, to effect compliance with foreign sales corporation rules as set forth in the Internal Revenue Code.

13. Hardware Products Warranty. Zerowait's standard warranty is a 30 day depot replace or repair, and covers hardware defects only. Extended warranties are available at additional cost from Zerowait and should be purchased if customers wish coverage for longer than 30 days. Equipment sold by Zerowait that is covered under the manufacturers' or vendors' current warranty programs are covered by the manufacturers or vendor and Zerowait makes no claims or warranties other than those provided by the manufacturer or vendor itself.

14. Exclusive Warranties. THE FOREGOING WARRANTIES AND REMEDIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ZEROWAIT NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE SALE, INSTALLATION, MAINTENANCE OR USE OF ITS PRODUCTS, AND ZEROWAIT MAKES NO WARRANTY WHATSOEVER OF ANY NONSTANDARD PRODUCTS SUPPLIED BY IT HEREUNDER. ZEROWAIT SHALL NOT BE LIABLE UNDER THIS WARRANTY IF ITS TESTING AND EXAMINATION DISCLOSES THAT THE ALLEGED DEFECT IN THE PRODUCT DOES NOT EXIST OR WAS CAUSED BY CUSTOMER'S OR ANY THIRD PERSON'S MISUSE, NEGLIGENCE, IMPROPER INSTALLATION OR TESTING, UNAUTHORIZED ATTEMPTS TO REPAIR, OR ANY OTHER CAUSE BEYOND THE RANGE OF THE INTENDED USE, OR BY ACCIDENT, FIRE, LIGHTNING OR OTHER HAZARD. The hardware and software are not designed or intended for use in on-line control of aircraft, air traffic, aircraft navigation or aircraft communications, or in the design, construction, operation or maintenance of any nuclear facility, or in the operation or maintenance of any direct life support system. Zerowait disclaims any express or implied warranty of fitness for such uses. Customer agrees that it will not use or license the hardware or software for such purposes.

15. Limitation of Liability. IN NO EVENT, WHETHER BASED IN CONTRACT OR TORT INCLUDING NEGLIGENCE, SHALL ZEROWAIT BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND, OR FOR LOSS OF REVENUE, LOSS OF BUSINESS OR OTHER FINANCIAL LOSS ARISING OUT OF OR IN CONNECTION WITH THE SALE, INSTALLATION, MAINTENANCE, USE, PERFORMANCE, FAILURE OR INTERRUPTION OF ITS PRODUCTS. NOTWITHSTANDING ANY OTHER PROVISION OF THESE GENERAL TERMS AND CONDITIONS OF SALE, ZEROWAIT'S MAXIMUM LIABILITY FOR DAMAGES HEREUNDER SHALL NOT EXCEED THE PURCHASE PRICE OF THE PRODUCTS PURCHASED DURING THE TERM OF THIS AGREEMENT. THIS DISCLAIMER OF LIABILITY FOR DAMAGES WILL NOT BE AFFECTED IF ANY REMEDY PROVIDED HEREUNDER SHALL FAIL OF ITS ESSENTIAL PURPOSE. CUSTOMER HAS ACCEPTED THE DISCLAIMER OF LIABILITY FOR DAMAGES AS PART OF A BARGAIN TO LOWER THE PRICE OF THE GOODS AND UNDERSTANDS THAT THE PRICE OF THE GOODS WOULD BE HIGHER IF ZEROWAIT WERE REQUIRED TO BEAR ADDITIONAL LIABILITY FOR DAMAGES.

16. Product Changes. Zerowait reserves the right to change, improve or add any new Product or discontinue any Product at any time.

17. Indemnity. Customer agrees to indemnify and hold Zerowait harmless from any claims or damages (inclusive of reasonable attorney's fees), including claims of infringement, made against Zerowait as a result of alleged negligence, misrepresentation, or error or omission on the part of Customer or its employees or representatives.

18. Entire Agreement. These general terms and conditions of sale are the complete, final and exclusive statement of the terms of the agreement between the parties and supersedes any and all other agreements between them relating to the subject matter hereof. This Agreement may be modified at any time by Zerowait, but if a customer purchased Products under a previous Agreement, the terms of the previous Agreement will stand. The terms and conditions of this Agreement shall prevail notwithstanding any variance with the terms and conditions of any Purchase Order or other instrument submitted by Customer.

19. Force Majeure. Zerowait shall not be liable to Customer for any alleged loss or damages resulting from the delivery of the Products being delayed by acts of Customer or Customer's agents, acts of civil or military authority, governmental priorities, fire, floods, epidemics, quarantine, energy crises, strikes, labor trouble, war, riots, accidents, shortages, delays in transportation, or any other causes beyond the reasonable control of Zerowait.

20. Waiver. A waiver of any default, or of any of these general terms and conditions, shall not be deemed to be a waiver of any other default or of any other term or condition, but shall apply solely to the instance to which such waiver is directed. The exercise of any right or remedy provided in this Agreement shall be without prejudice to the right to exercise any other right or remedy provided by law or equity.

21. Severability. In the event any provision of this Agreement is found to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

22. Assignment. Assignment of this Agreement shall be prohibited without the express written consent of the other party, except that Zerowait reserves the right to subcontract any support, maintenance or warranty obligation. Any other attempted assignment in violation of this provision shall be null and void.

23. Governing Law; Venue. This Agreement shall be construed in accordance with, and all disputes hereunder shall be governed by, the laws of the State of Delaware.

24. Attorney's Fees. In any action to enforce this Agreement, the prevailing party shall be awarded all court costs and attorney's fees incurred.

25. Restricted U.S. Government Rights. If Customer is an agency or instrumentality of the United States Government: Software is provided with Restricted Rights under FARS and DFARS; the Software has been developed at private expense; no portion of the Software has been developed with U.S. Government funds; the Software is a trade secret and proprietary information of its manufacturer; and the ownership of the Software and any reproductions shall remain with the manufacturer. Use, duplication or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software-Restricted Rights at 48 CFR 52.227-19, as applicable.