

DATAPATH GENERAL TERMS AND CONDITIONS OF SALE

1. TAXES. Except as otherwise specified, the prices stated do not include any state, federal, or local sales, use or excise taxes applicable to the sale, delivery, or use of equipment sold hereunder, including, as applicable, associated software delivered with such equipment, and the Buyer expressly agrees to pay to Seller, in addition to the prices stated, the amount of any such taxes, domestic or foreign, which may be imposed upon or payable by Seller.

2. PAYMENT TERMS. Notwithstanding any statement of terms or time of payment to the contrary appearing on the face of the order, Seller reserves the right to require payment in advance of shipment or to ship C.O.D. In the event Buyer fails to pay any invoice when due, in addition to any other right reserved hereunder, Seller reserves the right to suspend or limit performance until all past due sums are paid or demand payment of the full amount remaining unpaid under this Agreement, which amount shall become immediately due and payable and Seller may exercise any or all remedies available to it under applicable law and the Agreement. Further, Seller reserves the right to charge interest at the rate of one and one half percent (1.5%) per month, or the maximum rate permitted by law, whichever rate is lower, on any unpaid balance owing by Buyer from the date due until the date paid. It is agreed that title to any equipment described herein not fully paid for at the time of delivery to Buyer shall be retained by and remain in Seller until said purchase price is fully paid and if the purchase price is to be paid on an installment basis, Buyer will prior to the time of delivery execute a note, security agreement and financing statement for such purchase price, all upon forms customarily used by Seller in similar transactions.

3. SECURITY INTEREST IN EQUIPMENT AND SOFTWARE. Buyer grants Seller a first priority security interest in all equipment and software delivered until payment in full for such equipment and software has been received by Seller. Buyer hereby grants Seller the right to file such protective financing or similar statements to confirm and record Seller's security interest in all equipment and software.

4. DELIVERY. Unless otherwise specified, delivery will be made EXW (Incoterms 2000) the place or location of Seller's factory from which Seller elects to make shipment, according to the delivery schedule specified, which schedule is subject to delays due to causes beyond Seller's control. Cancellation or rescheduling of the delivery by Buyer may be subject to additional charges by Seller.

5. FORCE MAJEURE (EXCUSABLE DELAY). Seller shall not be liable for default or for delay in deliveries due to cause beyond its control and without its fault or negligence, including but not limited to inability to obtain material, labor or manufacturing facilities, acts of God, or of the public

enemy, any preference, priority or allocation order issued by the Government, changes in applicable law or any other act of Government, fires, floods, unusually severe weather, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of Seller's suppliers. In the event of such delay, delivery dates shall be extended accordingly for a period equal to the time lost by reason of such delay. Seller shall use its reasonable efforts to remove the cause of delay and resume work as soon as possible and to mitigate delivery schedule delay. In no event shall Seller be liable for any damages. Seller reserves the right to provide, at no change in price, a substitute product of equal or better capability provided however that such substitute product maintains the form, fit and functionality of the original equipment and its associated software.

6. SHIPMENT AND RISK OF LOSS. In the absence of specific instructions, Seller will select the carrier to whom delivery will be made for shipment to Buyer. Except for its obligations under the articles hereof entitled "Warranty" and "Patent and Copyright Indemnification," all responsibility of Seller, including but not limited to risk of loss for all items purchased hereunder by Buyer, shall pass to Buyer EXW (Incoterms 2000) the place or location of Seller's factory from which Seller elects to make shipment at the time the articles are duly delivered to the carrier. All claims to the carrier for equipment damaged or lost in transit shall be made by the Buyer.

7. WARRANTY.

7.1 The equipment sold hereunder and its associated software delivered hereunder are subject to the following warranties:

7.1.1 Seller agrees to repair or replace at its discretion, without charge, any such equipment, which is defective as to design, workmanship or material, and which is returned to Seller at its factory, transportation prepaid, provided: (i) Notice of the claimed defect is given Seller within one (1) year from date of delivery and equipment is returned in accordance with Seller's instructions. (ii) Such equipment shall not be deemed to be defective, if, due to exposure to any condition in excess of those published in the equipment specification, it shall fail to operate in a normal manner. (iii) Seller's obligations with respect to such equipment are conditioned upon the proper installation, operation and maintenance of such equipment by Buyer in accordance with Seller's written directions. (iv) The warranty stated in this Article 7.1.1 shall be void if such equipment is altered or repair is attempted or made by other than Seller or Seller's authorized service center.

7.1.2. Seller warrants that any software delivered hereunder, either embedded in equipment described herein or specifically designed for use in or with such equipment, will substantially

provide the functions(s) set forth in the applicable specification (or absent a specification, as described in the applicable Service Bulletin). Seller will, at its option, without charge, revise or replace such nonconforming software provided: (i) Notice of the claimed defect is given Seller within one (1) year from the date of delivery. (ii) Software shall not be deemed to be defective if the software or the host medium is exposed to any computer virus or to any condition in excess of those published in the applicable specification(s). (iii) Seller's obligations are conditioned upon the proper installation and operation of software and the host medium in accordance with Seller's written instructions. (iv) The warranty stated in this Article 7.1.2 shall be void if such software (or its host medium) is altered (or alterations are attempted) by other than Seller or Seller's authorized service center. Exclusions. For purposes of this warranty, the following equipment are excluded from coverage: (i) Expendables, including but not limited to: light bulbs; batteries; cables and accessories, (ii) Equipment and software not manufactured by Seller or from Seller's designs. Such third party equipment and software are subject only to such adjustments as Seller may obtain from the supplier thereof.

7.2 DISCLAIMER. NO OTHER WARRANTIES, EXPRESSED, IMPLIED, OR STATUTORY, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE SHALL BE APPLICABLE TO ANY EQUIPMENT SOLD OR SOFTWARE DELIVERED HEREUNDER, AND THE FOREGOING SHALL CONSTITUTE THE BUYER'S SOLE RIGHT AND EXCLUSIVE REMEDY UNDER THIS GENERAL TERMS AND CONDITIONS OF SALE.

8. PATENT AND COPYRIGHT INDEMNIFICATION.

8.1. IP Indemnity. Seller agrees that it will defend, at its own expense, all suits against Buyer for infringement of any United States patent or copyright covering, or alleged to cover, the equipment or its associated software described herein in the form sold by Seller and Seller agrees that it will pay all sums which, by final judgment or decree in any such suits, may be assessed against the Buyer on account of such infringement, provided that Seller shall be given (i) immediate written notice of all claims of any such infringement and of any suits brought or threatened against Buyer and (ii) authority to assume the sole defense thereof through its own counsel and to compromise or settle any suits so far as this may be done without prejudice of the right of the Buyer to continue the use, as contemplated, of the equipment so purchased. If in any such suit so defended the equipment or its associated software is held to constitute an infringement and its use is enjoined, or if in the light of any claim of infringement Seller deems it advisable to do so, Seller may either procure the right to continue the use of the same for the Buyer, or replace the same with non-infringing equipment or associated software, or

modify said equipment or its associated software so as to be non-infringing, or, if the foregoing options are not reasonably available, take back the infringing equipment or its associated software and refund the purchase price less a reasonable allowance for use, damage or obsolescence.

8.2. Exclusions. Seller, however, will have no liability for any claim based upon or arising out of the (i) combination, operation, or use of any equipment or associated software in a manner for which it was not designed nor contemplated; or (ii) any modification of any equipment or associated software by the Buyer or any third party that causes the equipment or associated software to become infringing. This Article 8 is the entire obligation of Seller with respect to infringements.

9. INDEMNIFICATION. Buyer assumes the entire responsibility and liability for, and agrees to release, indemnify, defend and hold harmless Seller, its affiliates and their respective officers, agents, employees, successors, and assigns, from and against any and all losses, expenses (including without limitation, reasonable attorneys' and other professional fees), costs, damages (including consequential and incidental damages), demands, liabilities, suits and claims in connection with or arising out of any actual or alleged personal injury (including death) or damage or destruction to property (including loss of use) by whomsoever suffered, sustained or alleged to have been sustained by reason of (i) any act, error or omission, whether negligent or not, of Buyer or its agents, employees, suppliers, subcontractors and consultants, provided that such injury, death, damage or destruction is not occasioned by the sole negligence of Seller or its agents, employees and subcontractors, or (ii) any failure of Buyer or its agents, employees, suppliers, subcontractors, or consultants to comply with any applicable law.

10. SOFTWARE LICENSE FOR EQUIPMENT SPECIFIC SOFTWARE. Software delivered hereunder, either embedded in equipment described herein or specifically designed for use in or with such equipment, is copyrighted by Seller and shall remain the sole and exclusive property of Seller. Seller grants the Buyer a perpetual, worldwide, nonexclusive license to use the software only in or with the specific equipment for which it was delivered. The Buyer shall not copy, modify, or disassemble the software, or permit others to do so. Buyer shall not transfer the license granted hereby or possession of the software except as part of or with the equipment, such transfer being subject to the restrictions contained herein. Seller may terminate this license upon written notice for violation of any of the terms of the foregoing license.

11. EXPORT CONTROL. The Office of Foreign Assets Controls (OFAC), the Export Administration Regulations (EAR), and the International Traffic in Arms Regulations (ITAR) regulate or prohibit the export or re-export of certain commercial items to certain foreign countries. Buyer

acknowledges that the equipment and/or software that is the subject of any sales agreement between Seller and Buyer are not destined for delivery to an end user in a prohibited country under OFAC, EAR, or ITAR or to an entity located in such country. Further, Buyer agrees to abide by all US Government laws and export regulations, including without limitation those applicable to re-export, and when required by such laws or regulations, Buyer shall apply for the necessary and appropriate export licenses. Seller shall, at no charge to Buyer, promptly provide reasonable support and documentation if required for such export license application.

12. FEDERAL ACQUISITION REGULATION (FAR) CLAUSES APPLICABLE TO SALES TO THE U.S. GOVERNMENT.

12.1 The word “Contractor,” as used in the FAR, shall be synonymous with the word “Seller” as used in these General Conditions of Sale and any reference to the “Government” or to the “Contracting Officer” shall be synonymous with the word “Buyer.” Similarly, any reference to the word “Supplies” shall be synonymous with the word “Products.” B. The clause set forth at FAR 52.212-4, CONTRACT TERMS AND CONDITIONS –COMMERCIAL ITEMS as tailored herein [pursuant to FAR 12.302], shall be applicable to all sales made directly to the U.S. Government. (i) With respect to paragraphs (a) and (o) of the FAR clause, the Seller’s Warranty set forth above at Article 7 shall have precedence and shall govern in the event of any post acceptance activity contemplated by said paragraph (a).

12.2 The Seller’s Warranty shall supersede and replace the *Warranty* set forth at said paragraph (o) of the FAR clause. (ii) With respect to paragraph (h) of the FAR clause, the Seller’s PATENT AND COPYRIGHT INDEMNIFICATION set forth above shall supersede and replace the *Patent Indemnity* set forth at said paragraph (h) of the FAR clause. (iii) With respect to paragraph (k) of the FAR clause, the Seller’s provision entitled “TAXES” as set forth above at Article 1 shall supersede and replace the *Taxes* provision set forth at said paragraph (k) of the FAR clause. (iv) With respect to paragraph(s) of the FAR clause, the clarifications set forth in this paragraph shall have precedence over all other provisions of this contract.

12.3 The clause set forth at FAR 52.212-5, CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES EXECUTIVE ORDERS – COMMERCIAL ITEMS, as clarified herein, shall be applicable to all sales made directly to the U.S. Government. (i) Paragraphs (b) and (c) of said clause shall only be applicable when Buyer and Seller have duly executed an addendum to these General Conditions of Sale specifically citing which of the clauses referenced in paragraphs (b) and (c) are applicable to this contract.

13. FEDERAL ACQUISITION REGULATION (FAR) CLAUSES APPLICABLE TO SALES TO COMMERCIAL CONCERNS IN SUPPORT OF SALES TO THE U.S. GOVERNMENT. The clause set forth at FAR 52.244-6, SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS, and the FAR clauses cited therein, shall be applicable to sales made hereunder only when such sales are specifically identified in the order as being in support of U.S. Government prime contract requirements. The actions required under the referenced clauses made applicable under this paragraph shall constitute the entirety of Seller’s FAR obligations hereunder for such sales.

14. INFORMATION OF SELLER.

14.1 Information provided by Seller to Buyer remains the property of Seller. Buyer shall comply with the terms of any proprietary information agreement with Seller and comply with all proprietary information markings and restrictive legends applied by Seller to anything provided hereunder to Buyer. Buyer shall not use any Seller provided information for any purpose except to perform this Agreement and shall not disclose such information to third parties without the prior written consent of Seller. Buyer shall maintain data protection processes and systems sufficient to adequately protect Seller provided information and comply with any law or regulation applicable to such information.

14.2 If Buyer becomes aware of any compromise of information provided by Seller to Buyer, its officers, employees, agents, suppliers, or subcontractors (an “Incident”), Buyer shall take appropriate immediate actions to investigate and contain the Incident and any associated risks, including prompt notification to Seller after learning of the Incident. As used in this Article 14, “compromise” means that any information provided by Seller has been exposed to unauthorized access, inadvertent disclosure, known misuse, loss, destruction, or alteration other than as required for performance pursuant to this Agreement. Buyer shall provide reasonable cooperation to Seller in conducting any investigation regarding the nature and scope of any Incident.

14.3 Any costs incurred in investigating or remedying Incidents shall be borne by Buyer. Any Seller provided information identified as proprietary or subject to restrictions on public disclosure by law or regulation shall be encrypted (i) if transmitted via the Internet, or (ii) during electronic storage if potentially accessible by the Internet or otherwise by non-authorized users. The provisions set forth above are in addition to and do not alter, change or supersede any obligations contained in a proprietary information agreement between the parties.

15. CONFIDENTIALITY.

15.1 In the event that the Buyer and Seller have signed a confidentiality agreement prior to the signature of the

Agreement, concerning the subject-matter of this Agreement, said confidentiality agreement shall prevail over this Article. The terms and conditions of that certain pre-existing non-disclosure agreement between the Parties are incorporated herein by this reference and shall continue in full force and effect throughout the term of this Agreement and five (5) additional years after termination, rescission or expiration of this Agreement.

15.2 In the event there is no pre-existing non-disclosure agreement between the Buyer and Seller, throughout the duration of performance of this Agreement, along with any related agreement, for a duration of five (5) years following its expiry, termination or rescission, the Parties agree not to communicate, to any persons other than those required for the performance of this Agreement, any proprietary documents, specifications, plans and other written and/or oral information, in any form and/or on any medium whatsoever, received from the other Party in the performance of this Agreement or any related agreement. Each Party agrees to take all steps necessary with its personnel and with respect to those persons and/or companies with which it has relations so that this prohibition shall be strictly complied with.

15.3 The terms and conditions of this Agreement as well as its existence cannot under any circumstances be the subject of direct or indirect publicity without the prior written agreement of the parties.

15.4 Exclusions. This restriction shall not apply to any proprietary or confidential information which is already known by the receiving party, is or becomes publicly available through no fault of the receiving party, or is required to be disclosed by government or judicial order. All proprietary and confidential information provided to a party under this Agreement shall be returned to the disclosing party or destroyed promptly upon termination of this Agreement.

15.5 With regard to confidential information that constitutes a trade secret, the obligations in this Article 15 will continue for so long as such information constitutes a trade secret under applicable law.

16. TERMINATION.

16.1 Termination for Cause. If either party commits a material breach of any provision of this Agreement and if such breach is not cured within ten (10) days after receiving written notice from the other party specifying such breach in reasonable detail, the non-breaching party shall have the right to terminate this Agreement by giving written notice thereof to the party in breach, which termination shall go into effect immediately on receipt.

16.2 Termination on Insolvency. Either party has the right to terminate this agreement where the other party becomes insolvent, fails to pay its bills when due, makes an assignment

for the benefit of creditors, goes out of business, or ceases production.

17. LIMITATION OF LIABILITY. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE SELLER WILL NOT BE RESPONSIBLE TO BUYER FOR CONSEQUENTIAL, EXEMPLARY, PUNITIVE, SPECIAL OR INCIDENTAL DAMAGES (SUCH AS LOSS OF PROFITS OR EMPLOYEE'S TIME OR LOSS DATA) REGARDLESS OF THE REASON EVEN IF THE SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR FOR ANY CLAIM AGAINST THE BUYER BY ANY OTHER PARTY. TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL THE AGGREGATE LIABILITY AND/OR OBLIGATIONS OF SELLER UNDER THE AGREEMENT OR ARISING OUT OF THE PURCHASE, LEASE, LICENSE, AND/OR USE OF THE EQUIPMENT AND ITS ASSOCIATED SOFTWARE BY THE BUYER OR OTHERS EXCEED THE PURCHASE PRICE OF THE EQUIPMENT REGARDLESS OF THE FORM OF THE ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING NEGLIGENCE.

18. INDEPENDENT CONTRACTOR. The Seller's relationship with the Buyer is that of an independent contractor and nothing in this Agreement will be construed to create a joint partnership, joint venture, agency or employer-employee relationship.

19. INSURANCE. Each party agrees to maintain insurance in commercially reasonable amounts calculated to protect itself and the other party to this Agreement from any and all claims of any kind or nature for damage to property or personal injury, including death, made by anyone, that may arise from activities performed or facilitated by this contract, whether these activities are performed by that company, its employees, agents, or anyone directly or indirectly engaged or employed by that party or its agents.

20. NONASSIGNABILITY. Without the prior written consent of the Seller, the Buyer may not assign this Agreement. Any attempt by the Buyer to assign any of the rights or obligations of the Agreement without such consent is void.

21. WAIVER. No failure by either party to exercise and no delay in exercising any right, power or privilege hereunder will operate as a waiver hereof, nor will any single or partial exercise of any right or privilege hereunder preclude further exercise of the same right or the exercise of any right hereunder. A waiver on one or more occasions of any of the provisions hereof shall not be deemed a

continuing one.

22. COMPLIANCE WITH LAWS. Both Seller and Buyer will comply, at their own expense, with all laws applicable to the Agreement.

23. GOVERNING LAW AND VENUE.

23.1 This Agreement shall be construed in accordance with, and the rights of the parties shall be governed by, the laws of the State of Georgia, U.S.A., as the same would be applied to transactions between residents thereof, but without regard to that state's conflict of laws principles and specifically excluding the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods. For purposes of determining venue in the event that legal action is brought by either party for this Agreement, the parties specifically agree to bring any and all legal action(s) regarding interpretation, enforcement, and/or any other aspect of this Agreement or other claims related to this Agreement in the federal or state courts of Fulton County, Georgia, and each party waives any objection to the laying of venue of any such proceeding in the courts of Fulton County, Georgia.

23.2 EACH PARTY, KNOWINGLY AND AFTER CONSULTATION WITH COUNSEL, FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, WAIVES ALL RIGHT TO TRIAL BY JURY OF ANY CLAIM ARISING WITH RESPECT TO THIS AGREEMENT OR ANY MATTER RELATED IN ANY WAY THERETO.

24. NOTICES. All notices shall be in writing and shall be delivered personally, by United States certified or registered mail, postage prepaid, return receipt requested, or by a recognized overnight delivery service. Any notice must be delivered to the parties at their respective addresses set forth below their signatures or to such other address as shall be specified in writing by either party according to the requirements of this Article 24. The date that notice shall be deemed to have been made shall be the date of delivery, when delivered personally; on written verification of receipt if delivered by overnight delivery; or the date set forth on the return receipt if sent by certified or registered mail.

25. SEVERABILITY. If any provision of the Agreement is found to be invalid, illegal or unenforceable, then, notwithstanding such invalidity, illegality or unenforceability, the Agreement and the remaining provisions shall continue in full force and effect. In this event the parties will agree upon a valid, binding and enforceable substitute provision which shall be as close as possible to the commercial interests of the invalid or unenforceable provision.

26. HEADINGS. The headings used in this Agreement are inserted for the convenience of the parties and shall not define, limit, or describe the scope or the intent of the provisions of this Agreement.

27. AMENDMENT. Changes to the Agreement must be in writing and must be signed by both parties.

28. CONFLICT. In the event that these general terms and conditions conflict with any term or condition set forth in any related agreement or other document, the term or condition set forth herein shall control unless otherwise specified by the parties. This Agreement will prevail over any conflicting provisions of any purchase order or any other instrument of the Buyer.

29. COUNTERPARTS. This Agreement may be executed in multiple counterparts, any one of which will be considered the original, but all of which will constitute one and the same instrument.

30. SURVIVABILITY. Any provision of this Agreement that logically ought to survive termination or expiration of this Agreement shall survive, including but not limited to, all rights and obligations under this Agreement with respect to restrictions on the use of products and services, protection of intellectual property rights, payment of fees, confidentiality, governing law, limitations of liability and indemnifications shall survive the expiration or termination of this Agreement.

31. COMPLETE AGREEMENT. Buyer acknowledges that it has read the Agreement, understands it, and agrees to be bound by its terms and conditions. Further, Buyer represents and agrees that the Agreement, including its applicable exhibits and schedules (Statement of Work, Product Specifications, Pricing and Delivery, etc.) along with the "*Software License Agreement*" and/or "*Software Maintenance Plan*", if applicable, set forth the complete and exclusive statement of the agreement including the governing terms and conditions between the parties, which shall prevail over and supersede all proposals, printed provisions on subordinate Buyer documents including purchase orders, oral or written agreements, the Buyer's general terms and conditions and all other communications between the parties relating to the subject matter of the Agreement. Buyer's acknowledgment and/or payment, or Seller's commencement of performance, shall constitute Buyer's unqualified acceptance of this Agreement.

IN WITNESS WHEREOF, executed by the duly authorized representatives of the parties:

Buyer

DataPath, Inc.

Name of Company

By

Print Name

Print Title

Date

By

Print Name

Print Title

Date