

## GENERAL TERMS AND CONDITIONS

This Order is subject to the following terms and conditions:

1. **PARTIES:** This contract is between Seller and DataPath.
2. **FORMATION OF CONTRACT:** This order (hereinafter "Order") is DataPath's offer to Seller and acceptance by Seller is expressly limited to the terms of this offer. DataPath hereby objects to any additional or different terms contained in Seller's acceptance. Seller may accept this offer by commencement of performance or written acknowledgement of this Order within ten (10) days from the date hereof.
3. **ENTIRE AGREEMENT:** This Order is intended by DataPath and Seller as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement. No course of prior dealings, written or oral, between the Parties, no usage of the trade nor acceptance or acquiescence in a course of performance rendered under this Order shall be relevant to supplement, explain or be relevant to determine the meaning of the terms of this Order even though the accepting or acquiescing Party has knowledge of the nature of the performance and opportunity for objection. No Amendment or change of any kind shall be binding upon DataPath unless in writing and signed by an authorized representative of DataPath.
4. **PACKAGING AND EXTRAS:** No charges will be allowed for transportation, packaging, packing, or returnable containers unless stated in this Order. Damage to any Item(s) resulting from improper packaging will be charged to Seller.
5. **PERFORMANCE REQUIREMENTS:**
  - 5.1 **Quality** - Seller shall comply with DataPath's Quality Requirements Document DPI - 9001, incorporated herein by reference, as well as any other specifications, workmanship standards or instructions specified on any Purchase Order.
    - 5.1.1 **Quality Level** - Seller shall maintain a quality level of zero defects on all Item(s) shipped to DataPath.
    - 5.1.2 **Quality Performance Measurements** - The Parties agree that Seller's quality performance is subject to monitoring and that failure to maintain zero defects quality performance may result in DataPath, in its sole discretion, electing to pursue any or all of the following actions:
      - a. **Supplier Corrective Action Request:** DataPath shall request and Seller hereby agrees to prepare a corrective action analysis and 'get-to-green' recovery plan for specific part numbers ("Item(s)") that fail to meet the quality level of zero defects. The Supplier Corrective Action Request document shall define a Containment plan within three (3) days and an acceptable response including root cause analysis within ten (10) days. Seller's Management will present the corrective action and recovery plan to DataPath for approval.
      - b. **Remedies:** Pursue any remedies provided under this Order, at law or in equity for any breach by Seller of this Remedies Article therein.
  - 5.2 **Forecasts** - In the event DataPath has provided Seller any delivery forecast(s), said delivery forecast(s) are being provided by DataPath without liability or obligation. Seller acknowledges and accepts that changes may occur in the delivery forecast(s) and/or quantities listed therein and Seller releases DataPath from any and all damages and claims resulting from changes to delivery forecast(s) and/or quantity changes made thereto.
  - 5.2.1 **Item Obsolescence** - Seller shall advise DataPath in writing as soon as practicable after Seller identifies any Product(s) or component(s) of any Product(s) as potentially being obsolete ("Obsolete Item"). Twelve (12) months prior to ending its production of the Obsolete Item, Seller shall provide DataPath with a replacement Product(s) for the Obsolete Item which has design parameters and specification documentation fully consistent with the Obsolete Item's then current design parameters and then current specification documentation. Seller shall be liable for all qualification and certification expenses associated with transitioning to the replacement Product(s) or components thereof. At DataPath's request, Seller shall also make a final production run of sufficient quantity of the Obsolete Item to satisfy DataPath's product life requirement.
  - 5.2.2 **On-time Delivery** - Seller shall maintain an on-time delivery level of 100%. Delivery is considered to be on-time with the agreed-upon schedule date when shipments are received no more than three (3) days ahead or zero (0) days after the on-dock due date.
  - 5.2.3 **Delivery Performance Measurements** - The Parties agree that Seller's On-time Delivery performance is subject to monitoring and the parties agree that failure to maintain the agreed to delivery performance waives any DataPath obligation to fulfill any commitment under this Order and may result in termination. In the event DataPath elects not to terminate Seller for failure to meet any scheduled delivery date DataPath and Seller agree that in Order to improve performance, DataPath and Seller will make quarterly reviews of Seller's delivery performance and may initiate a Seller delivery performance improvement plan.
  - 5.2.4 **Delivery Performance Corrective Action** - Should Seller fail to meet the delivery performance improvement plan objective(s), Seller agrees to take the following corrective actions: Seller will prepare a corrective action analysis and 'get-to-green' recovery plan for all part numbers that fail to meet the delivery performance improvement plan.
  - 5.2.5 **Remedies** - The parties agree that failure to meet the Performance Requirements in this Article 5 may render Seller as a non-preferred supplier, in the sole discretion of DataPath, which can be considered as cause for re-negotiation of this Order or termination. Additionally, the following remedies are also available to DataPath:

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- a. Seller shall reimburse DataPath for all costs and expenses in connection with providing Seller and/or Seller's subcontractors technical, quality, or manufacturing assistance beyond that which DataPath would customarily provide to Seller or Seller's subcontractors on a day-to-day basis. This shall include but not be limited to, DataPath provided training and support requested by Seller or as provided by DataPath to assist in resolving Seller non-performance issues. Seller shall reimburse DataPath for any such assistance at the established DataPath internal wage rate, which shall include fringe benefits, multiplied by the estimated hours recorded by DataPath, plus the estimated material costs associated with providing such assistance. In addition, Seller shall, at DataPath's request, pay for normal and customary expenses relating to salaries, living expenses, travel and any other reasonable expenses related to the provision of technical services.
  - b. Should SELLER fail to make delivery of any Work in accordance with the delivery schedule in this Purchase Order, Contract or Scheduling Agreement, then DATAPATH shall be entitled to receive, and SELLER shall pay, compensation in the form of liquidated damages and not as a penalty. SELLER shall be entitled to a ten (10) day grace period. In the event SELLER fails to make delivery of an item within the grace period, then the amount of liquidated damages shall accrue at the rate of two and one-half percent (2.5%) of the price of the portion of the Work which is subject to delay for each day of delay beginning on the first day of the scheduled delivery date. SELLER agrees that liquidated damages in the foregoing amounts are reasonable in light of the anticipated harm caused by the late delivery, the difficulties of the proof of loss, and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy. Liquidated damages arising under this Purchase Order, Contract or Scheduling Agreement, may be deducted by DATAPATH, in whole or in part, from any payments due SELLER following the late delivery of any such Work. In no event shall failure to assess liquidated damages be considered a waiver of DATAPATH's rights in this or any other articles or clauses."
  - c. Notwithstanding the foregoing, DataPath reserves all its rights and remedies at law or in equity.
- 5.2.6 **Business Continuity** - During the term of this Order, Seller shall annually identify and review the risks that could significantly impact Seller's ability to meet its performance obligations under this Order and take reasonable loss prevention actions to reduce the frequency and/or severity of the impact of the risk. In addition, Seller shall develop and maintain actionable plans and strategies to limit any disruption of its performance obligations to a period not greater than two (2) weeks. Such plans and strategies shall include an annually updated business continuity plan in general conformance with the NFPA 1600 version 2010 and British Standard (BS) 25999-2 version 2007 or any standards that replaces either. The business continuity plan should identify the steps necessary to recover critical product/service-related functionality including, but not limited to, business activities, technologies, personnel and other resources. Seller shall allow a formal audit by DataPath of Seller's loss prevention and business continuity program. If Seller, in DataPath's reasonable judgment, fails to comply with the requirements stated above, Seller shall provide DataPath with \_\_\_\_\_ (state quantity) of consignment inventory to ensure DataPath that Seller is able to meet its performance obligations under this Order. Seller shall notify DataPath within eight (8) hours after any event that may cause a disruption in the Seller's ability to timely meet its performance obligations.
6. **WARRANTY:**
- 6.1 Seller warrants for a period of sixty (60) months from the date of delivery to DataPath that Item(s) and services supplied by Seller hereunder shall be of merchantable quality, free from any security interest or other lien or encumbrance, free from any defects, whether patent or latent in material and workmanship and conform to DataPath's specifications and to all drawings, samples or other descriptions furnished or adopted by DataPath. Such warranties, together with Seller's service warranties and guarantees, if any, shall survive inspection, test, acceptance, and payment for the Item(s) and shall run to DataPath, its successors, assigns and customers. DataPath may, at its option, either return for credit or refund or require prompt correction or replacement of the defective or nonconforming Item(s). Seller shall be responsible for the cost of shipping goods that are: a) not as warranted and are returned to Seller; and b) supplied by Seller to DataPath as replacements or repairs to those described in (a). Item(s) required to be corrected or replaced shall be subject to the terms of this Article 8, and the Article entitled "Inspection and Acceptance" in the same manner and to the same extent as Item(s) originally delivered under this Order, but only as to the corrected or replaced Item(s).
  - 6.2 Seller shall warrant that items supplied by seller are new unless specifically approved by DataPath in writing. Items shall not be surplus, reconditioned, recovered or remanufactured unless approved by DataPath in writing.
  - 6.3 Seller shall reimburse DataPath for all consequential damages and expenses associated with correcting the defect, failure, authenticity and conformance of the Item(s) including field support, logistics, repair, refurbishment, exchange and any other consequential costs associated with correcting the defect, failure, authenticity and conformance at either DataPath's location or at DataPath's Customer location(s).

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7. **INSPECTION AND ACCEPTANCE:** All Item(s) to be delivered and services to be performed hereunder shall be in accordance with the specifications and shall be subject to inspection and test at all reasonable times and places, including the period of manufacture, by DataPath and DataPath's customers. All Item(s) and services to be performed are also subject to final inspection and acceptance at DataPath's plant or other specified place of delivery notwithstanding any payments or other prior inspections. Notwithstanding any other terms and conditions of this Order, Seller shall be responsible to correct, at its expense, all latent defects, which cannot be discovered by DataPath through reasonable inspection methods or time of use.
8. **CANCELLATION/TERMINATION:** DataPath shall have the right to cancel/terminate this Order or any part thereof at any time:
  - 8.1 **For Convenience** – Upon receipt of a notice of cancellation/termination from DataPath, Seller shall stop work and immediately take the necessary action to ensure that all work under the Order shall cease and to the extent specified in DataPath's notice of cancellation/termination, that all subcontracts and Orders are forthwith cancelled/terminated immediately. Seller shall also reassign to other customers, all in-process material and components relating to the terminated portion of the Order. Seller shall deliver to DataPath, any completed Item(s), parts, assemblies and components which are not so reassigned. The terms of this Section 10.1 shall not limit or affect the right of DataPath to cancel /terminate this Order for Cause under Section 10.2, and shall not apply to a breach of contract. In case of cancellation/termination by DataPath of all or any part of this Order without cause, any cancellation/termination claim must be submitted to DataPath within thirty (30) days after the effective date of cancellation/termination. Seller shall maintain complete and accurate records of cancellation/termination claims, which shall support Seller's claimed costs. Such records shall be accessible for verification through audit and analysis by DataPath. DataPath's maximum liability shall be limited to the following:
    - a. Payment for those Item(s) already delivered and accepted by DataPath plus the proportionate part of the unit price for those Item(s) in the process of manufacture, inspection, or test pro-rated to the state of their completion by Seller. Seller shall certify, with respect to all Item(s) of cancellation/termination inventory included in the cancellation/termination claim, the costs of which were taken into account in arriving at the amount of the cancellation/termination claim. Certification shall establish that all such Item(s) are properly allocable to the terminated portion of the Order, that such Item(s) are not in excess of the reasonable quantitative requirements of the cancelled/terminated portion of the Order and that such Item(s) do not include any Item(s) reasonably usable without loss to Seller on its other work.
    - b. In no event shall Seller be entitled to any amount which, taken together with monies paid or owing under the Order, shall exceed the value of the cancelled/terminated Order.
    - c. Seller shall have no claim for any damages, or loss of profit, arising out of any termination for convenience.
    - d. Seller shall have no recourse for any costs whatsoever if the Order is terminated due to lack of sales.
  - 8.2 **For Cause** - DataPath may by written notice to Seller, without prejudice to any other rights or remedies provided under this Order, by law or in equity, terminate this Order in whole or in part in any of the following circumstances:
    - a. if Seller has been declared bankrupt, makes an assignment for the benefit of creditors, or is in receivership; or
    - b. if Seller fails to perform the work or deliver the Item(s) in accordance with the performance requirements or delivery schedules specified herein or any extension thereof;
    - c. if Seller fails to comply with Article 19
    - d. if Seller: 1) fails to perform any of the other terms of this Order; or 2) fails to make progress as to endanger the performance of this Order in accordance with its terms, and in either of the two circumstances enumerated in Sections 8.2(a) or 8.2(b), does not cure such failure within a period of ten (10) days (or such longer period as DataPath may authorize in writing) after receipt of notice from DataPath specifying such failure. In the event DataPath terminates this Order in whole or in part as provided in this Section 8.2, DataPath may procure, upon such terms and in such manner as it may deem appropriate, supplies or services similar to those so terminated, and Seller shall be liable to DataPath for any excess costs, reasonably incurred for such similar supplies or services; provided that Seller shall continue the performance of this Order to the extent not terminated under the terms of this Article.
9. **PRICES:** The prices shown herein are fixed and cannot be increased except pursuant to the provisions of this contract. Seller warrants that the prices shown herein are based on the latest information available and are no greater than prices charged to other customers under like circumstances.
10. **INVOICE and PAYMENT:** For each shipment of goods or completed item of services, Seller shall submit an original invoice to the DataPath Accounts Payable Department. Taxes must be separately itemized. Purchase Order number and



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line item number must appear on all invoices, shipping documents, packing sheets, shipping cartons and other documentation designated by DataPath. Should transportation charges be authorized, Seller shall submit with each invoice appropriate shipping documents, (Freight Bills, Air Bills, etc.) substantiating the transportation charges. Determination of payment due date, whether under net or discount terms, unless otherwise agreed to by DataPath and Seller, will be based on the latest of (i) the date goods are received or services are completed; (ii) the date goods or services are accepted by DataPath; or (iii) the date an accurate invoice is received. Payment's deemed to have been made when deposited in the mail.

11. **NONDISCLOSURE:** Seller shall make no disclosure, news releases, public announcements, denial or confirmation with respect to the subject matter hereof without the prior written approval of DataPath.
12. **NON-PUBLICITY:** The Supplier will not directly or indirectly publish, disclose or otherwise use in any advertising promotional material, or press release or interview, the name, logo or any trademark of DataPath, Inc., or any of its affiliates, without the prior written approval of DataPath.
13. **PATENT, TRADEMARK, AND COPYRIGHT INDEMNITY:** If Seller is responsible for the design of any portion of the goods which are to be delivered under this contract, Seller agrees to indemnify, defend, and hold harmless DataPath against any expense, loss, or liability for any actual or alleged infringement of any patent, trademark, or copyright arising from or related to the use, sale, manufacture or disposal of such goods. Upon receipt of timely notice of any claim or suit alleging such Infringement, Seller agrees to defend DataPath at Seller's expense.
14. **ASSIGNMENT:** Seller may not assign this contract without the prior written consent of DataPath. Any attempt to assign or delegate any of the rights, duties or obligations of this contract without such consent is void.
15. **WAIVER AND SEVERABILITY:** The failure of either party to exercise any of its rights or to enforce any of the provisions of this contract on any occasion shall not be a waiver of such right or provision and shall not affect the right of such party thereafter to enforce each and every provision of this contract. If any provision of this contract is invalid or unenforceable then such provision shall be curtailed and limited only to the extent necessary to bring it within legal requirements and this contracts so modified shall continue in full force and effect.
16. **RIGHTS AND REMEDIES:** The rights and remedies of DataPath herein are cumulative and are in addition to any other right or remedies that DataPath may have at law or in equity.
17. **INTELLECTUAL PROPERTY:** Paragraph (a) is NOT applicable for commercial off-the-shelf Work unless such Work is modified or redesigned pursuant to this Contract.
  - a. Seller agrees that DataPath shall be the owner of all inventions, technology, designs, works of authorship, mask works, technical information, computer software, business information and other information conceived, developed or otherwise generated in the performance of this Contract by or on behalf of Seller. Seller hereby assigns and agrees to assign all right, title, and interest in the foregoing to DataPath, including without limitation all copyrights, patent rights and other intellectual property rights therein and further agrees to execute, at DataPath's request and expense, all documentation necessary to perfect title therein in DataPath. Seller shall maintain and disclose to DataPath written records of, and otherwise provide DataPath with full access to, the subject matter covered by this clause and that all such subject matter will be deemed information of DataPath and subject to the protection provisions of the clause entitled "Information of DataPath". Seller shall assist DataPath, at DataPath's request and expense, in every reasonable way, in obtaining, maintaining, and enforcing patent and other intellectual property protection on the subject matter covered by this clause.
  - b. Seller warrants that the Work performed or delivered under this Contract will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country. Seller shall defend, indemnify, and hold harmless DataPath and its customers from and against any claims, damages, losses, costs, and expenses, including reasonable attorney's fees, arising out of any action by a third party that is based upon a claim that the Work performed or delivered under this Contract infringes or otherwise violates the intellectual property rights of any person or entity.
  - c. To the extent that any pre-existing inventions, technology, designs, works of authorship, mask works, technical information, computer software, and other information or materials are used, included, or contained in the Work or deliverable items and not owned by DataPath pursuant to this or a previous agreement with Seller, Seller grants to DataPath an irrevocable, nonexclusive, world-wide, royalty-free license to: (i) make, have made, sell, offer for sale, use, execute, reproduce, display, perform, distribute (internally or externally) copies of, and prepare derivative works based upon, such pre-existing inventions, technology, designs, works of authorship, mask works, technical information, computer software, and other information or materials and derivative works thereof; and (ii) authorize others to do any, some or all of the foregoing.
  - d. The tangible medium storing copies of all reports, memoranda or other materials in written form including machine readable form, prepared by Seller and furnished to DataPath pursuant to this Contract shall become the sole property of DataPath.
18. **PRECEDENCE:** In the event of any conflict among the provisions of this contract, the following Order of precedence shall apply: (i) special terms and conditions contained in the Order; (ii) DataPath specifications, (iii) general terms and conditions contained in this form; and (iv) all other documents incorporated herein by reference. DataPath's specifications



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shall prevail over any subsidiary documents referenced therein. Seller shall not use any specifications in lieu of those contained in this contract without the written consent of DataPath.

19. **COMPLIANCE WITH STATUTES AND REGULATIONS:** In the performance of this contract, Seller shall comply with all applicable laws and regulations of governmental bodies and agencies. Seller shall indemnify, save harmless and defend DataPath from and against any expense, loss or liability for any actual or alleged failure by Seller to comply with any such laws and regulations.
20. **APPLICABLE LAW:** This contract shall be governed by and construed in accordance with the laws of the State of Georgia.
21. **LIMITATION OF LIABILITY - EXCEPT WHERE THE PARTIES HAVE OTHERWISE AGREED TO REIMBURSE OR INDEMNIFY THE OTHER PARTY, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE OR SPECIAL DAMAGES SUFFERED BY SUCH OTHER PARTY (INCLUDING WITHOUT LIMITATION DAMAGES FOR HARM TO BUSINESS, LOST REVENUES, LOST SAVINGS, OR LOST PROFITS SUFFERED BY SUCH OTHER PARTY), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY, OR TORT, INCLUDING WITHOUT LIMITATION NEGLIGENCE OF ANY KIND WHETHER ACTIVE OR PASSIVE. EACH PARTY HEREBY RELEASES THE OTHER PARTY (AND SUCH OTHER PARTY'S SUBSIDIARIES AND AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND SUBCONTRACTORS) FROM ANY SUCH CLAIM. NOTHING HEREIN SHALL LIMIT DATAPATH'S OR SUBCONTRACTOR'S RIGHT TO DIRECT DAMAGES HEREUNDER.**

Amounts paid to the Government by Data Path as damages or in settlement of claims, assessments, fines, penalties or credits, to the extent that they were caused by the acts or omission of Subcontractor, shall be considered direct damages to DataPath, for which Subcontractor shall reimburse DataPath. For purposes of this clause, DataPath's out-of-pocket costs attributable to claims or actions for damages of any kind against DataPath as a result of Subcontractor's acts or omissions (including without limitation, damages recovered from DataPath for outages in Communications Services) shall be deemed direct damages of DataPath, for which Subcontractor shall reimburse DataPath. Out-of-pocket costs include, but are not limited to, reasonable costs for attorneys' fees, travel, lodging and meal expenses, and courier expenses'.

22. **FORCE MAJEURE:** Neither party shall be liable for damages for delay in delivery arising out of causes beyond its reasonable control and without its fault or negligence, including, but not limited to, acts of God or of the public enemy, acts of any Government authority, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather. If the delay is caused by the delay of a subcontractor of Seller and if such delay arises out of causes beyond the reasonable control of both Seller and the subcontractor, and without the fault or negligence of either of them, Seller shall not be liable to DataPath in damages unless the Item(s) or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Seller to meet the required delivery schedule. Seller will notify DataPath in writing within ten (10) days after the beginning of any such delay.
23. **INDEPENDENT CONTRACTOR:** Seller is an independent contractor for all purposes. In no event shall Seller, its agents, representatives, or personnel that it supplies to DataPath under this contract be deemed to be employees of DataPath. Seller's employees shall be paid exclusively by Seller for all services performed and Seller shall be responsible for and shall comply with all requirements and obligations relating to such employees under local, state or federal law, (or foreign law as applicable) including but not limited to minimum wage, social security unemployment insurance, state and federal Income tax, and workman's compensation. DataPath has no responsibility for withholding any portion of salary or wages due to employees of Seller to comply with any of the aforementioned taxes or obligations.
24. **LIMITATION ON DATAPATH'S LIABILITY:** In no event shall DataPath be liable for penalties, anticipated profits or for incidental or consequential damages. DataPath's liability on any claims of any kind for any loss or damage arising out of or in connection with or resulting from this agreement or from the performance or breach thereof shall in no case exceed the price allocable to the goods or services or unit thereof which gives rise to the claim. Seller is an independent contractor and DataPath has no liability to any person for acts committed or admitted by the Seller and those retained by him.
25. **STATUTE OF LIMITATIONS:** Any action resulting from any breach on the part of DataPath as to the goods or services delivered hereunder must be commenced within one year after the cause of action has accrued.



Defying Boundaries by Design™

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*THE PRINTED COPY OF THIS DOCUMENT IS CURRENT AS OF THE DAY IT IS PRINTED. SUBSEQUENT USE OF THIS PRINTED DOCUMENT REQUIRES DATE VERIFICATION ON THE DATAPATH SUPPLY CHAIN MANAGEMENT DOCUMENTS AND RESOURCES PUBLIC WEB PAGE*