

NETBURNER, INC.
STANDARD TERMS AND CONDITIONS OF SALE

OCTOBER 2007

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NETBURNER, INC.

STANDARD TERMS AND CONDITIONS OF SALE

THESE NETBURNER TERMS AND CONDITIONS OF SALE ("SALES ORDER TERMS AND CONDITIONS") ARE APPLICABLE TO ALL NETBURNER SALES ORDERS.

1. DEFINITIONS.

As used in the Sales Order:

1.1 "NETBURNER" means NetBurner, Inc., a corporation organized under the laws of the State of California, United States of America.

1.2 "NETBURNER Sales Representative" means NetBurner's representative designated in writing by NetBurner or otherwise assigned to Buyer by NetBurner.

1.3 "Confirmation" means NetBurner's form of confirmation and agreement by Buyer to NetBurner's Sales Order Terms and Conditions.

1.4 "Goods" means goods, items, materials, equipment, supplies, work and the like supplied by NetBurner.

1.5 "Intellectual Property Rights" means United States and worldwide trademarks, service marks, trade names, trade dress, logos, copyrights, rights of authorship, inventions, mask work rights, moral rights, patents, rights of inventorship, all applications, registrations and renewals in connection with any of the above, database rights, know-how, trade secrets, rights of publicity, privacy and/or defamation, rights under unfair competition and unfair trade practices laws, and all other intellectual and industrial property rights related thereto.

1.6 "Confidential Information" means all designs, know-how, technology, data, specifications and drawings that NetBurner may supply to Buyer hereunder, including any proprietary information about the business of NetBurner that NetBurner may disclose to Buyer hereunder.

1.7 "Sales Order" or "Order" means (1) the Sales Order form itself with typed-in terms (sometimes referred to herein as the "face of the Order") or, in the case of an oral Order, the spoken terms accepted and transcribed by NetBurner, (2) these Sales Order Terms and Conditions, and (3) all specifications, drawings, data, instructions, schedules and the like that accompany or are incorporated into the Order by reference and any Sales Order revisions, modifications or amendments that may be made from time to time, with NetBurner's prior approval.

1.8 "Buyer" means (1) the purchaser described on the face of the Order, or in the case of an Order transmitted orally and accepted by NetBurner, the party placing such Order, (2) any affiliates of such purchaser that are described on the face of the Order, provided that such

affiliates shall have agreed in writing to these Purchase Order Terms and Conditions prior to NetBurner's issuance of the Order.

1.9 "Services" means any services that are rendered or performed by NetBurner.

2. ACCEPTANCE AND AUTHORITY.

2.1 Acceptance of Buyer's Purchase Order. Unless a separate written supply or distribution agreement exists between NetBurner and Buyer, these Sales Order Terms and Conditions shall be the exclusive and binding agreement between NetBurner and Buyer with respect to the order of Goods and/or Services from NetBurner by Buyer and the sale of such Goods and/or Services by NetBurner to Buyer. NetBurner's acceptance of Buyer's purchase order is expressly conditioned on Buyer's acceptance of these Sales Order Terms and Conditions. Any proposal for additional or different terms or any attempt by Buyer to vary in any respect any of the terms of these Sales Order Terms and Conditions, by attachment of Buyer's own terms and conditions, by over-stamping, or by any other means is hereby rejected by NetBurner. Buyer shall be deemed to accept these Sales Order Terms and Conditions by Buyer's return of the Confirmation attached hereto. No term or condition set forth in Buyer's purchase order or any other communication to NetBurner shall be binding on NetBurner unless expressly agreed to in writing by NetBurner. NetBurner's acceptance of a Buyer Order for Goods shall occur upon the earlier of NetBurner's commencement of performance under such Order or the transmission of an Order confirmation by NetBurner for such Order.

2.2 Authority. All matters pertaining to administration of Buyer's purchase order and/or the Sales Order, or otherwise requiring NetBurner' approval, shall be referred to, coordinated with and obtained from NetBurner's Sales Representative. No contractual direction, determination, modification, notice, order, approval or ratification hereunder shall be of any effect unless authorized in writing by NetBurner. No oral statement of any person shall in any manner modify or otherwise affect the terms of these Sales Order Terms and Conditions. All correspondence hereunder shall be directed to NetBurner's Sales Representative at the address on the face of the Order.

3. GENERAL TERMS OF SALE.

3.1 Packing, Shipping and Risk of Loss. Communications regarding packing and shipping instructions shall be directed to NetBurner's Sales Representative.

(a) Unless otherwise specified, all Goods to be delivered under the Sales Order shall be stored, packed and/or packaged by NetBurner, in accordance with its customary practices. If required by Buyer, Buyer's purchase order numbers and symbols may be plainly marked on all invoices, packages, bills of lading and shipping orders. Shipping memos or packing lists will accompany the Goods. Bills of lading, tracking numbers or shipping receipts shall be sent to Buyer on the date Goods are shipped.

(b) If terms of shipment [*e.g.*, FCA or EXW (Incoterms 2000)] are designated on the face of the Order, such terms shall prevail as to risk of loss. Unless so designated, Buyer shall bear the risk of loss of, or damage to, the Goods covered by the Order upon shipment from

NetBurner's facilities whether or not the Goods conform to Buyer's purchase order and regardless of the point of inspection.

3.2 Invoices. On shipment of the Goods or completion of the Services, NetBurner shall render an invoice to Buyer, attention: "ACCOUNTS PAYABLE", at the address shown on the face of the Order. The invoices shall reference Buyer's purchase order and shall identify the amounts invoiced thereto, items shipped or affected, along with the part number, item number, quantity and pack shipment number, as applicable.

3.3 Payment. Buyer shall be obligated, upon the receipt of NetBurner's invoices, to pay the prices set forth in the Sales Order for Goods delivered or Services rendered. The date for cash discounts shall commence on the NetBurner invoice date.

3.4 Price. The prices for Goods and/or Services shall be those set forth in NetBurner's price list at the time of receipt by NetBurner of the Confirmation from Buyer agreeing to these Sales Order Terms and Conditions. Unless otherwise provided on the face of the Order, all prices are "Free Carrier (named place)" (FCA, Incoterms 2000) NetBurner facility or other shipping point and do not include special packing, carrier charges, insurance, taxes, duties or similar charges, except as may be expressly provided in the NetBurner price list. Prices are subject to change without notice.

3.5 Delivery. NetBurner shall not be liable for delays in the manufacture or delivery of Goods or the delivery of Services to the extent that such delays are due to causes beyond NetBurner's reasonable control, such as acts of God, acts of civil or military authorities, governmental priorities, fires, flood, epidemics, terrorism, war, or riot, provided that NetBurner has notified Buyer of the occurrence which causes such delay. At NetBurner's option, either (i) the Order delivery date(s) shall be extended by the term of any such suspension, and deliveries omitted because of such suspension shall be made during such extension, or (ii) the total Order quantity shall be reduced by the quantity not delivered during the term of such suspension, but, in either event, Buyer's purchase order shall otherwise remain unaffected.

3.6 Changes. Factors beyond the control of NetBurner and/or the need for continuing improvement of products may require product changes from time to time. NetBurner reserves the right to make reasonable changes of any kind without notice and to deliver revised designs or models of Goods.

3.7 Inspection and Acceptance of Goods. Buyer shall notify NetBurner in writing of (i) any non-conforming Goods or Services (other than a non-conformity in Goods caused by shipment and/or the carrier, which shall be referred to the carrier), and (ii) the particulars of such non-conformity ("Non-Conformity Notice") during an inspection period of fifteen (15) calendar days following Buyer's receipt of the Goods or the completion of the performance of the Services. Buyer may only reject Goods or Services if the non-conformity is substantial. NetBurner shall have the right to cure, by repair or replacement, any non-conforming Goods within a reasonable time after receipt of a Non-Conformity Notice. No non-conformity in a lot or installment shall constitute grounds for rejection of the entire Order, and all lots or installments whose conformity Buyer does not dispute shall be paid for by Buyer in accordance with these Sales Order Terms and Conditions, notwithstanding any dispute relating to other

shipments, installments or undelivered Goods. Failure to give a Non-Conformity Notice (other than for latent defects not discoverable by Buyer on inspection) within the fifteen (15) calendar day inspection period shall constitute Buyer's acceptance of the Goods or Services.

3.8 Return Policy. All returns require an RMA (Return Merchandise Authorization) number, which can be obtained by contacting our Customer Service department or clicking the "RMA" link of your customer support account at <http://support.netburner.com>. All original equipment, components, manuals, cables, documents and packaging must be returned with your item to process your RMA.

3.8.1 Development Kits. NetBurner Development Kits may be returned for the full kit purchase price if product is returned freight, applicable taxes, and import/export charges prepaid within 30 days of the NetBurner invoice date.

3.8.2 Standard Hardware Assemblies (non-warranty). Unused NetBurner hardware assemblies may be returned if they have not been removed from their original factory packaging. Any order for NetBurner Standard Products as listed in the published price list that is accepted for return from customer after invoice for shipment, (non-NetBurner initiated), shall be subject to a restock charge of 15% if product is returned freight, applicable taxes, and import/export charges prepaid within 30 days of the NetBurner invoice date. Returns shall not be accepted beyond 30 days of the NetBurner invoice date.

3.8.3 Custom Assemblies (non-warranty). Purchase Orders involving custom configurations or custom sourcing provisions are non-cancelable and are subject to a restock charge of up to 100%, at the discretion of NetBurner Management.

3.9 Limited Warranty.

3.9.1 Materials and Workmanship. NetBurner warrants to Buyer that the Goods shall be free from material defects in materials or workmanship for the periods specified below, measured from the date of shipment from NetBurner:

NETBURNER HARDWARE WARRANTY

NetBurner (hereafter referred to as the Seller) warrants that its hardware products (hereafter referred to as Products) sold hereunder will at the time of shipment be free and clear of all liens and encumbrances, and will be free from defects in material and workmanship.

If products sold hereunder are not as warranted, Seller shall, at its option, refund the purchase price, repair or replace the product, provided proof of purchase and written notice of nonconformance is received by Seller within one (1) year from date of initial shipment, and provided said nonconforming products are, with Sellers written authorization, returned FOB Seller's authorized repair center within thirty (30) days from expiration of said one year period.

This warranty shall not apply to any products Seller determines have been, by Buyer or otherwise, subjected to testing for other than specified electrical characteristics or to operating and/or improper testing, repair, alteration, damage, misuse, mishandling, neglect, assembly or processing that alters physical or electrical properties. This warranty excludes all costs of shipping, customs clearance, and related charges outside the contiguous 48 United States.

In no event shall Seller be liable for any incidental or consequential damages. This warranty extends to Buyer only and not to Buyer's customers or users of Buyer's products and is in lieu of all other warranties whether express, implied or statutory including implied warranties of merchantability or fitness.

SOFTWARE WARRANTY

NetBurner makes no representation or warranties with respect to the performance of this computer program and software, and specifically disclaims any responsibility for any damages, special or consequential, connected with the use of this program or software.

3.9.2 Remedies Are Exclusive. THE FOREGOING REMEDIES ARE EXCLUSIVE. THIS WARRANTY EXPRESSES THE ENTIRE WARRANTY OF NETBURNER FOR THE GOODS AND IS IN LIEU OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE. THERE ARE NO WARRANTIES THAT EXTEND BEYOND THOSE DESCRIBED ABOVE. ANY SERVICES PROVIDED BY NETBURNER ARE PROVIDED "AS IS." NETBURNER DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTIES ARISING OUT OF COURSE OF CONDUCT OR OTHER TRADE CUSTOM OR USAGE, RELATED TO ANY SERVICES PROVIDED BY NETBURNER AND TO ANY RESULTS OF NETBURNER'S PERFORMANCE OF SUCH SERVICES. NETBURNER SHALL IN NO CIRCUMSTANCE BE LIABLE IN CONTRACT, TORT, OR OTHERWISE FOR DIRECT, INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, WHETHER OR NOT FORESEEABLE. NO EMPLOYEE, OFFICER, DIRECTOR, DEALER, DISTRIBUTOR, AGENT, OR REPRESENTATIVE OF NETBURNER IS AUTHORIZED TO MODIFY THIS WARRANTY OR NETBURNER'S STANDARD WARRANTY FOR ANY GOODS. APPLICABLE LAWS OF OTHER JURISDICTIONS MAY GIVE THE BUYER ADDITIONAL REMEDIES. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, NETBURNER'S ENTIRE LIABILITY FOR GOODS OR SERVICES REGARDLESS OF THE FORM OF ACTION SHALL IN NO EVENT EXCEED TOTAL AMOUNT PAID TO NETBURNER FOR THE SPECIFIC GOOD OR SERVICE GIVING RISE TO THE CLAIM.

3.10 Laws and Regulations. NetBurner shall conform with all applicable United States laws, ordinances, rules and regulations which affect the Goods and/or Services to be supplied and/or performed under the Sales Order.

3.11 Compliance with U.S. Export Control Laws and Regulations. Buyer acknowledges it is familiar with the United States Export Control Laws (Export Control Laws), including the regulations (Regulations) of the Commerce Department's Bureau of Industry and Security (BIS), the State Department's Office of Defense Trade Controls (ODTC), and the Treasury Department's Office of Foreign Asset Control (OFAC). Buyer shall comply with such Export Control Laws and Regulations if any Goods sold under the Sales Order is re-exported from the United States and hereby indemnifies and shall hold Seller harmless from any loss, cost or liability that arises directly or indirectly out of any claim that Buyer failed to observe such Export Control Laws and Regulations.

3.12 NetBurner Security Interest. Buyer hereby grants to NetBurner a security interest in all Goods now or hereafter sold by NetBurner to Buyer and all proceeds thereof (collectively, the "Collateral") to secure the payment of the purchase price of the Goods and/or Services and all amounts now or hereafter owing from Buyer to NetBurner. Buyer authorizes NetBurner to file one or more financing statements in all states, counties and other jurisdictions as NetBurner may elect without Buyer's signature if permitted by law. Buyer shall cooperate fully with NetBurner in executing any additional documents, instruments, financing statements or amendments thereto as NetBurner may request to perfect or continue the security interest granted herein. Upon a breach by Buyer of any of its obligations to NetBurner, NetBurner shall have all rights and remedies of a secured party under the California Uniform Commercial Code, which rights and remedies shall be cumulative and not exclusive. Buyer shall pay NetBurner' reasonable costs and expenses (including but not limited to attorneys' fees and costs and any fees and costs incurred in connection with a bankruptcy proceeding of or involving Buyer or Collateral) incurred to collect any amount unpaid or to enforce NetBurner' other rights and remedies, whether or not suit is commenced.

4. INTELLECTUAL PROPERTY. All Confidential Information disclosed by NetBurner to Buyer hereunder is and shall remain NetBurner's sole property, and NetBurner shall retain all United States and worldwide Intellectual Property Rights therein. All information related to methods, equipment and processes of manufacturing the Goods, whether developed solely by NetBurner or resulting from the parties' joint cooperation, belongs to NetBurner, and NetBurner shall retain all Intellectual Property Rights therein. To the extent that Buyer is deemed a co-inventor thereof, as additional consideration for the favorable provisions of this Agreement, Buyer shall assign and hereby does assign and transfer all worldwide rights, title and interest to such methods, equipment and processes of manufacturing the Goods, all enhancements, derivatives and improvements thereto, and all Intellectual Property Rights therein.

5. DISPUTES AND GOVERNING LAW.

5.1 In the event of (1) any difference between NetBurner and Buyer in the interpretation of Buyer's purchase order or these Sales Order Terms and Conditions, (2) any controversy between them arising out of or relating thereto (including this Section 5.1) or the validity, breach or termination thereof ("Dispute"), either party may give written notice to the

other of such Dispute, and within ten (10) calendar days of the receipt of any such notice, NetBurner and Buyer shall attempt to settle such Dispute by friendly discussions between two senior executives of NetBurner and Buyer with the specific authority to settle the Dispute. If the parties shall have failed to resolve the Dispute within another ten (10) calendar days each party shall, within five (5) calendar days thereafter, nominate a senior officer of its management to meet at NetBurner's offices, or at any other mutually agreed location, to resolve the dispute. Should the parties be unable to resolve the dispute to their mutual satisfaction within sixty (60) calendar days from the date of the original notice, each party shall have the right to enforce any and all rights available to it pursuant to this Section 5.

5.2 Any Dispute not resolved under Section 5.1 shall be finally settled by arbitration in the City of San Diego, California in accordance with the then current Commercial Rules of the American Arbitration Association and judgment upon the award rendered by the Arbitrator(s) may be entered in any Court having jurisdiction thereof. Arbitrators shall be attorneys who have practiced law for at least fifteen years specializing in either general commercial litigation or general corporate or commercial matters. Each party to the arbitration shall be entitled to discovery as permitted by Section 1283.05 of the California Code of Civil Procedure, as such may be amended from time to time. This provision shall not preclude the pleading-in or joining of one of the parties hereto by the other in an action brought by a third party and all matters with respect thereto shall be decided by the court or body deciding that action.

5.3 Buyer's purchase order and these Sales Order Terms and Conditions shall be governed by, take effect, and be construed according to the laws from time to time in force in the State of California, U.S.A., applicable to agreements among California residents made and to be performed entirely within California.

6. BUYER INDEMNIFICATION. Buyer shall indemnify, defend and hold NetBurner harmless from and against any and all claims, actions, losses, damages, demands, liabilities, costs and expenses, including reasonable attorney's fees and expenses, whether a suit or other proceeding is initiated or not, which may arise from: (i) representations or misrepresentations made by Buyer; (ii) inadequate installation, deployment, maintenance, support by Buyer or end-users or any neglect or abuse to Goods by Buyer or end-users; (iii) Buyer's or end-users' use of Goods not in compliance with published specifications thereto or not for their intended purposes, (iv) Buyer's or end-users' modifications or alterations of Goods, and (v) Damage from operation outside of the environmental specifications for the Goods, or improper site preparation or maintenance.

7. MISCELLANEOUS.

7.1 Notices. Any notification that Buyer may have to issue to NetBurner pursuant to the terms of these Sales Order Terms and Conditions must be in writing and addressed to NetBurner' Authorized Representative at the address or fax number that appears on the face of the Order. Any notification that NetBurner may have to issue to Buyer pursuant to the terms of these Sales Order Terms and Conditions shall be in writing and addressed to Buyer at Buyer's address or fax number that appears on the face of the Order or, in the case of oral Orders, to Buyer's last known address or fax number provided by Buyer. All notices shall be sent by (i) U.S. Mail, (ii) a nationally recognized courier Service requiring a written receipt thereof, or (ii)

facsimile, and shall be effective upon receipt; provided, however, that notices sent by fax and received after 4:00 P.M. local time at the point of receipt or on a holiday or weekend shall be deemed received the next working day following the date of actual receipt.

7.2 Survival and Construction. The terms, provisions, representations and warranties contained in these Sales Order Terms and Conditions shall survive the delivery and acceptance of the Goods, provision of the Services and any payment made hereunder and shall be binding upon the successors and assignees of each party. Headings and captions herein are merely for convenience and shall not in any way affect or modify the provisions of these Sales Order Terms and Conditions.

7.3 Entire Agreement and Modification. UNTIL BUYER RETURNS THE CONFIRMATION ATTACHED HERETO, BUYER'S ACCEPTANCE OF ANY GOODS COVERED HEREBY SHALL BE DEEMED ACCEPTANCE OF ALL THE TERMS AND CONDITIONS STATED HEREIN. NETBURNER'S FAILURE TO OBJECT TO ANY PROVISIONS CONTAINED IN ANY COMMUNICATION FROM BUYER SHALL NOT BE DEEMED A WAIVER OF THE PROVISIONS CONTAINED HEREIN. Unless a separate written supply or distribution agreement exists between NetBurner and Buyer, Buyer's purchase order, these Sales Order Terms and Conditions, and all documents referred to in Buyer's purchase order (but specifically excluding any different terms or conditions proposed by Buyer or any attempt by Buyer to vary in any respect any of the terms of these Sales Order Terms and Conditions) shall constitute the entire agreement between NetBurner and Buyer, and shall supersede any and all prior agreements relating to the subject matter of Buyer's purchase order. Any modification to these Sales Order Terms and Conditions must be evidenced by a writing signed by NetBurner.

7.4 Severability. If any provision of these Sales Order Terms and Conditions, or part hereof, is declared by an arbitral tribunal to be invalid, void or unenforceable, each and every other provision, or part thereof, shall nevertheless continue in full force and effect.

End of NetBurner's Sales Order Terms and Conditions

Effective as of October 2007

The exchange of copies of these Terms and Conditions and of signature pages by facsimile transmission shall constitute effective execution and delivery of these Terms and Conditions as to the parties hereto and may be used in lieu of the original Terms and Conditions for all purposes. Signature of the BUYER hereto transmitted by facsimile shall be deemed to be their original signatures for all purposes.

Company: _____

Signature: _____

Name: _____

Title: _____