

Xyplex Networks Sales Terms and Conditions
For the Sale and Use of Products and Services Worldwide

1. Products & Services - Hardware, Software licenses and Services as listed on the then-current applicable XYPLEX NETWORKS Price List. Or as otherwise made available by Xyplex in the case of refurbished Product or Product made available by Xyplex in connection with any type of Product swap program. The price which applies to any Purchase Order shall be the price in effect as of the date of Acceptance of the Purchase Order by Xyplex Networks.

2. Acceptance of Purchase Order - Xyplex Networks may reject any Purchase Order(s). The sole terms and conditions to govern the purchase of any Product are as set forth in these Sales Terms and Conditions unless issued pursuant to an existing Agreement between Purchaser and Xyplex Networks referenced on the face of the Purchase Order. All Services purchased are subject to the Xyplex Networks Support Agreement(s) applicable to such Service.

3. Payment Terms - Payment in full for all Products and Services purchased is due net thirty (30) days from the date of the XYPLEX NETWORK invoice.

4. Shipments - All shipments shall be FOB point of Origin; risk of loss passes to Purchaser upon delivery to the carrier. Purchaser may request the manner of shipment and the carrier, but Xyplex Networks reserves the right to ultimately designate the manner and means of any shipment(s). Freight charges, if not stated on the Price List as being included in the Price, will be billed to Purchaser separately.

5. Delivery - Xyplex Networks will use reasonable efforts to ship by the estimated ship date contained in the Xyplex Networks Purchase Order Acknowledgment, but will not be liable for any failure to ship by that date, for whatever reason.

6. Title - Title to the Software (including any firmware) and to all applicable licenses and documentation shall at all times remain in Xyplex Networks and, to the extent applicable, to its third party licensors. Title to the Hardware products (excluding any firmware content) shall pass to Purchaser on delivery, subject to the security interest which Xyplex Networks retains, and which Purchaser hereby grants to Xyplex Networks, regarding all Products purchased until the required and applicable purchase price has been paid in full by Purchaser.

7. Warranties - PURCHASER ACKNOWLEDGES THAT XYPLEX NETWORKS MAKES NO EXPRESS WARRANTIES REGARDING PRODUCTS OR SERVICES, THAT ANY WARRANTIES WHICH COULD BE IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, COMPATIBILITY, INTEROPERABILITY, NON-INFRINGEMENT, COMPLIANCE WITH APPLICABLE SPECIFICATIONS, FREEDOM FROM DEFECTS, AND ERROR-FREE UNINTERRUPTED OPERATION ARE EXPRESSLY DISCLAIMED BY XYPLEX NETWORKS. ALL PRODUCTS ARE MADE AVAILABLE HEREUNDER BY XYPLEX NETWORKS ON AN AS-IS BASIS ONLY. However, in the event of a Product Defect, if Purchaser provides Xyplex Networks with written notice of such Product Defect (as well as with the model and serial number of that Product for

validation purposes) within the applicable period specified below, Xyplex Networks warrants that it will repair the Product Defect at no charge, replace the defective Product at no charge, or refund the net purchase price paid by Purchaser for the defective unit of Product. This shall be Purchaser's sole and exclusive remedy, in contract and at law, regarding that Product, and such warranty is non-transferable.

a. Hardware - A Product Defect shall mean a defect in Product materials and workmanship under normal use and service, or a material failure of the Product to perform substantially in accordance with the applicable Product specification in a standard configuration environment, which is reported within one (1) year (for new Product) or thirty (30) days (for refurbished or swap Product), of the date it was first shipped by Xyplex Networks to Purchaser, provided that such failure is not due to any faulty installation of the Product. Xyplex Networks shall have the option, but not an obligation, to repair, replace or grant a refund with regard to the repaired or replaced Product during the remainder of that same period. If Purchaser is provided with replacement Product prior to Purchaser's return to Xyplex of the allegedly defective Product, Xyplex reserves the right to invoice Purchaser for the replacement Product (and Purchaser agrees to pay Xyplex in accordance with the requirements of that invoice) if the Product being replaced is not returned to Xyplex, freight prepaid, within thirty (30) days of Purchaser's receipt of the replacement Product.

b. Software or Firmware - A Product Defect shall mean a defect in the media itself, which is reported to Xyplex Networks by Purchaser within ninety (90) days from the date it was first shipped by Xyplex Networks to Purchaser. Xyplex Networks shall have the option, but not an obligation, to repair, replace or grant a refund with regard to the repaired or replaced Product during the remainder of that same period.

c. Services - Xyplex Networks' responsibility and liability for any defective Service(s) is solely as set forth in the applicable Xyplex Networks Support Agreements. To the extent Xyplex provides any Services without charge, such Services shall be supplied on an AS-IS basis only, and Xyplex shall bear no responsibility or liability for such Services.

8. Responsibility - Xyplex Networks' responsibility for repairing, replacing or refunding the net purchase price paid by Purchaser for Products with Product Defects applies only to Product Defects present when shipped by Xyplex. Accordingly, and for example, Xyplex is not responsible for repairing, replacing or refunding the purchase price paid for Products with Product Defects arising out of any accident, abuse, misapplication, alteration, attached equipment, improper handling or installation, improper operation, operation outside of the environmental specifications for the Products, or any other cause outside of Xyplex's control.

9. Infringement - Xyplex Networks retains the exclusive right to defend Purchaser against any claim(s) based on a Xyplex Networks Product (excluding Third Party Product content) infringing a patent or a copyright. If Purchaser provides Xyplex Networks with prompt written notice of a claim(s) or any threat of such a claim(s), and provided that Purchaser gives Xyplex Networks all assistance required in connection with such defense and Purchaser is not in breach of its obligations hereunder, Xyplex will pay all damages finally awarded. However, Xyplex Networks may, at its option, settle any such claim(s), purchase a license under the allegedly infringed patent or copyright, replace or modify the Product to avoid the infringement asserted, or grant Purchaser a refund or

credit not to exceed the purchase price paid by Purchaser for the infringing unit(s) of Product. Subject to Paragraph 10 below, Xyplex Networks' responsibility or liability with regard to infringement claim(s) shall apply only to the infringement of a patent or a copyright by the unmodified Xyplex Networks Product on a standalone basis. Accordingly, and for example, Xyplex Networks shall have no responsibility or liability for any intellectual property infringement claim(s) arising out of the combination, operation or use of any Xyplex Networks Product(s) with hardware, software or firmware not owned or licensed by Xyplex Networks hereunder.

10. Third Party Products - To the extent any Product includes hardware, software or firmware purchased or licensed by Xyplex Networks from a third party ("Third Party Products"), Purchaser's right to use such third party content shall be subject to the terms and conditions packaged with such contents. Xyplex Networks' only responsibility and liability for any Third Party Products shall be limited to passing through whatever warranty protections, support, licensing and indemnification protections it is entitled to pass through to Purchaser.

11. License - Subject to the provisions of Paragraph 10 above, Xyplex Networks grants Purchaser a non-transferable, non-exclusive personal license to use the Xyplex Networks Software at a Purchaser facility which is owned and controlled by Purchaser, solely to communicate to Xyplex Networks Hardware at that same facility for Purchaser's own end-use purposes at such facilities. Such end-use specifically excludes any right to, and Purchaser agrees not to (i) decompile, reverse compile, disassemble, reverse engineer or perform any other activity which has as its purpose or otherwise results in the derivation of Xyplex Networks Software source code; (ii) copy except as authorized in Paragraph 13 below; (iii) modify; or (iv) transfer, the Xyplex Networks Software and/or any documentation associated therewith. This license will terminate if, as and when Purchaser fails to comply with any term or condition of this Agreement.

12. Indemnification - Purchaser agrees to indemnify and hereby holds Xyplex Networks harmless from any liabilities, claims, or damages, in contract and at law, arising out of any (i) any act or omission of Purchaser (including but not limited to any use of a Product), or (ii) Xyplex Networks' compliance with Purchaser's instructions, specifications or requirements.

13. Backup - Purchaser may make one (1) single copy of the Xyplex Networks Software solely for backup purposes but provided that all legends, notices and logos appearing on the original copy supplied to Purchaser are accurately reproduced on the backup copy.

14. Audit - Xyplex Networks shall have the right to inspect the Purchaser's facility(s) where the Xyplex Networks Products are located, and to audit Purchaser's records to satisfy itself that Purchaser is complying with all requirements of this Agreement.

15. Product and Methods of Doing Business Changes - Xyplex Networks reserves the right to modify as well as obsolete any and all of its Products, associated Product offerings as well as the basis of their availability, at any time and without notice.

16. Insolvency - In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency, brought by or against

Purchaser, including any proceeding under the applicable Federal or State Bankruptcy law currently in effect, or in the event of the appointment, with or without 'Xyplex Networks' consent, of any assignee for the benefit of creditors or of a receiver, Xyplex Networks shall be entitled to accelerate the due date for payment of any invoices then outstanding and to cancel any unfilled part of any outstanding Purchase Order issued by Purchaser, without liability or penalty.

17. Overshipment or Undershipment - Purchaser shall be obligated and agrees to promptly pay for all Products in accordance with Paragraph 3. Shipment to Purchases of less than the quantity of Products ordered shall not entitle Purchaser to withhold payment for those Products already received. Shipment of more than the quantity of Products ordered shall entitle Purchaser to withhold payment for Products not ordered, provided such Products are shipped (prepaid) back to Xyplex Networks in their original, unopened containers, within ten (10) days of their receipt.

18. Data Rights - The Xyplex Networks Software Products and the software programs contained in any Third Party Products, as well as the related documentation, are "commercial computer software" or "commercial computer software documentation". Purchaser's rights with respect to such Xyplex Networks Products, Third Party Products and documentation are limited by the Xyplex terms and conditions set forth herein or which are otherwise published, pursuant to FAR 12.212(a) and/or DFARS 227.7202-1(a), as applicable.

19. High-Risk - The Xyplex Networks Products and Third Party Products purchase hereunder are not fault-tolerant and are not designed, certified, manufactured or intended for use in hazardous environments requiring fail-safe or uninterrupted performance, including without limitation, the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, weapons systems, or disposal of hazardous waste, in which the failure of such software programs could lead, directly or indirectly, to death, personal injury, or severe physical or environmental damage ("High Risk Activities"). Purchaser agrees not to in any manner represent, directly or indirectly, that any Xyplex Networks Product or Third Party Product is in any way suitable for such Activities. XYPEX NETWORKS HAS NOT MADE ANY EXPRESS WARRANTIES, AND SPECIFICALLY DISCLAIMS ALL WARRANTIES WHICH COULD BE IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF FITNESS FOR ANY PARTICULAR PURPOSE SUCH AS HIGH RISK ACTIVITIES. Purchaser shall, and agrees to indemnify and hereby holds Xyplex harmless from and against any and all claims for losses, costs, damages, expenses, or liability which may arise out of, or be connected with, Purchaser's failure to comply with this obligation.

20. Limitation of Remedies - TO THE EXTENT ENFORCEABLE, AND AS PART OF THE BARGAINED FOR CONSIDERATION, XYPEX NETWORKS' LIABILITY, IN CONTRACT AND AT LAW (IRRESPECTIVE OF FAULT OR NEGLIGENCE), SHALL BE LIMITED TO DIRECT DAMAGES SUFFERED BY PURCHASER AND SHALL BE LIMITED TO THE PURCHASE PRICE PAID BY PURCHASER TO XYPEX FOR THE XYPEX PRODUCT(S) WHICH IS/ARE THE SUBJECT OF A SPECIFIC CLAIM. IN NO EVENT SHALL XYPEX NETWORKS BE

RESPONSIBLE OR LIABLE TO PURCHASER OR TO ANY THIRD PARTY FOR ANY DAMAGES, HOWEVER CHARACTERIZED, WHICH EQUATE TO LOST PROFITS, LOST SAVINGS, LOSS OF USE, LOSS OF BUSINESS OPPURTUNITES, OR ARE PUNITIVE, INCIDENTAL, SPECIAL, INDIRECT, OR CONSEQUENTIAL IN NATURE, OR WHICH OTHERWISE ARISE OUT OF THE USE OF OR INABILITY TO USE ANY XYPLEX NETWORKS PRODUCT(S) OR THIRD PARTY PRODUCTS, EVEN IF XYPLEX NETWORKS WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. IN NO EVENT SHALL XYPLEX NETWORKS' CUMULATIVE MAXIMUM AGGREGATE LIABILITY EXCEED THE TOTAL PURCHASE PRICE PAID HEREUNDER BY PURCHASER FOR XYPLEX PRODUCTS.

21. Assignment of Rights - Purchaser shall not delegate any duties nor assign any rights or claims under this contract or for breach thereof without the prior written consent of Xyplex Networks, and no attempted delegation or assignment absent such consent shall be binding on Xyplex Networks.

22. Remedies - The rights and remedies provided to Purchaser herein shall be exclusive and in lieu of any other rights and remedies provided by law or equity (or provided under the Uniform Commercial Code).

23. Waiver - Waiver of a breach of any of these terms and conditions shall not constitute waiver of full compliance with such provision, nor shall it be construed as a waiver of any other breach.

24. Governing Law - These terms and conditions shall be interpreted, governed and enforced in all respects according to the laws and by the courts of the Commonwealth of Massachusetts (excluding its conflicts of law provisions).

25. Export - Purchaser agrees not to ship, transfer or export, directly or indirectly, any Products nor any direct product thereof, outside of the U.S. unless in full compliance with all applicable export requirements, and in no event into any country prohibited by the United States Export Administration Act and the regulations thereunder.

26. Acknowledgment - PURCHASER REPRESENTS THAT IT HAS READ AND UNDERSTANDS THIS AGREEMENT, HAS HAD THE BENEFIT OF LEGAL COUNSEL IN THIS REGARD, AND AGREES TO BE BOUND BY THESE TERMS AND CONDITIONS. THIS AGREEMENT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE UNDERSTANDINGS REACHED BETWEEN PURCHASER AND XYPLEX NETWORKS AND SUPERCEDES ALL PROPOSALS, AND PRIOR WRITINGS AND AGREEMENTS, VERBAL OR WRITTEN, BETWEEN THESE PARTIES RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT.