

**McDATA CORPORATION
STANDARD PURCHASE ORDER TERMS AND CONDITIONS**

1. GENERAL:

- (a) This Purchase Order ("Order") is placed subject only to the Terms and Conditions included in this Order and any reference herein to any proposal from Vendor is solely for the purpose of specifying basic information concerning price, the description of item(s), quantities, terms of payment, and delivery and then only as such terms are consistent with the terms and conditions herein.
- (b) By shipping the goods, or by providing the services or by acknowledging receipt of this Order or by performing the work described in this Order, Vendor agrees to the Terms and Conditions as set forth in the Order. Any different or additional items in Vendor's acceptance of the Order are hereby objected to and will be considered as proposals for addition to this Order and will not be binding unless agreed to in writing by McDATA. Commencement or performance by the Vendor in the absence of McDATA's agreement to such proposals will constitute the Vendor's acceptance of the Terms and Conditions set forth herein.

2. QUANTITY ACCEPTABLE ON THIS ORDER: McDATA will accept only the quantity of goods shown in the "Quantity" column of this Order unless otherwise specified on the face hereof.

3. CHANGES: McDATA may at any time, by a written Change Order, make changes in the general scope and terms of the Order. If any such changes cause an increase or decrease in the cost of, or the time required for performance of any part of the work under this Order or affects any other provisions of this Order, an equitable adjustment shall be made in the Order price or delivery schedule, or both, and in such other provisions of the Order as may be affected. Any claim by Vendor for adjustment under this clause must be asserted in writing within ten (10) business days of the Vendor's receipt of the Change Order. Where the cost of any property made obsolete or surplus as a result of a change is included in Vendor's claim for adjustment, McDATA shall have the right to prescribe the manner of disposition of such property. Nothing herein shall excuse Vendor from proceeding with this Order as changed. This Order shall not be deemed or construed to be modified, amended, rescinded, cancelled or waived in whole or in part, except by written Change Order hereto signed by a McDATA's authorized representative.

4. PURCHASE ORDER NUMBER: McDATA's Order number must appear on all invoices, packing lists and bills of lading and shall appear on each package, container or envelope or each shipment made pursuant to this Order.

5. INVOICES/CASH DISCOUNTS: Invoices shall be billed in United States dollars and shall be submitted in duplicate and shall contain the following information: purchase order number, item number, description of item, sizes, quantities, unit prices, and extended totals in addition to any other information specified elsewhere herein. Bill of lading or express receipt shall accompany each invoice. Payment of invoices shall not constitute acceptance of supplies and shall be subject to adjustment for errors, shortages, defects in the supplies or other failure of Vendor to meet the requirements of the Order. Payment of invoices shall be made by McDATA (i) with a 2% discount if payment is made within ten (10) days of the Time specified in (a), (b), or (c) below, or (ii) net forty-five (45) days of the Time specified in (a), (b), or (c) below. McDATA may deduct from Vendor's invoices any monies owed to McDATA by Vendor.

Time in connection with above payment terms will be computed from the later of:

- (a) the scheduled delivery date
- (b) the date of the actual deliver, or
- (c) the date a valid invoice is received

Payment is deemed to be made for the purpose of earning the discount on the date of mailing of McDATA's check.

6. PACKAGING AND SHIPMENT:

- (a) All articles are to be packed in accordance with sound commercial practices to obtain the lowest transportation rates unless otherwise specified in this Order and comply with requirements of common carrier.
- (b) Shipments will be valued as to obtain the lowest transportation rates. Transportation insurance for loss or damage will not be purchased unless specifically directed. Excess transportation costs resulting from failure to comply with the provisions of this paragraph will be debited to the Vendor's account.
- (c) Packages should be constructed for handling with a mechanical device.
- (d) A complete package for specifying McDATA's applicable Order number and quantity of goods shipped shall be enclosed with all shipments hereunder.
- (e) Vendor shall mark each container with necessary lifting, loading and shipping information, including the McDATA Order number date of shipment and name and address of consignor and consignee.
- (f) Vendor shall bear the expense of any premium transportation charges unless otherwise agreed.
- (g) Prepaid transportation charges appearing on Vendor's invoice must be supported by freight bill or equivalent.
- (h) Unless otherwise specifically provided in this Order, the product shall be delivered DDP, INCO Terms 2000.

7. DELIVERY: Time and delivery are the essence of this Order. Deliveries are to be made both in quantities and at times specified herein. If Vendor's deliveries shall fail to meet schedule, McDATA, without limiting its other rights or remedies, may direct expedited routing and any excess costs incurred thereby shall be debited to Vendor's account. McDATA may in accordance with Section 11 hereof cancel all or part of this Order in the event Vendor fails to deliver goods as scheduled herein. With regard to any goods delivered in advance of schedule McDATA may, at its option either:

- (a) return the goods at Vendor's expense for proper deliver, or
- (b) place the goods in storage and withhold payment therefore until scheduled delivery date.

8. INSPECTION: All supplies (including raw materials, components, subassemblies and products) may be inspected and tested by McDATA at all reasonable times and places before, during or after manufacture. If any supplies are defective in materials, workmanship, or are otherwise not in conformity with the requirements of the Order, McDATA shall have the right, whether or not payment has been made by McDATA, to reject them or require that such supplies be corrected or replaced promptly with satisfactory materials or workmanship. The rejected supplies may, at McDATA's discretion, be returned to Vendor at Vendor's expense. In no event shall McDATA be liable for any reduction in value of samples used in connection with any inspection or test. If any inspection or test is made on the premises of Vendor, Vendor shall, without additional charge, provide reasonable facilities and assistance for the safety and convenience of inspectors in such manner as not unduly to delay the work. Vendor further agrees to maintain adequate authenticated inspection and cost documents that relate to work performed under this Order. Such records shall be retained by Vendor after completion of the Order or as otherwise specified by McDATA and made available to McDATA upon request. Vendor agrees to supply McDATA with inspection and cost reports, affidavits, certifications or any other documents as may be reasonably requested.

9. CONFIDENTIAL and PROPRIETARY INFORMATION: As used herein, "Confidential and Proprietary Information" shall include any information that is clearly identified in writing at the time of disclosure as confidential or proprietary as well as any information that, based on the circumstances under which it was disclosed, a reasonable person would believe to be confidential or proprietary. Confidential and Proprietary Information includes any and all technical or business information, including drawings, specifications or data to the benefit of itself or any other party third party information, furnished or disclosed, in whatever form or medium (regardless of whether tangible, intangible, visual or oral), by McDATA to the Vendor, or which the

Vendor may have access to, including but not limited to information regarding patents and patent applications, trade secrets, works of authorship, software programs, software source documents, software architecture, algorithms, formulae, ideas, techniques, know-how, processes, inventions, apparatuses, equipment, models, information related to current, future and proposed products and services, research, experimental work, development, design details, specifications and engineering information, financial information, procurement, purchasing and manufacturing requirements, customer lists, investors, employees, business and contractual relationships, business forecasts, sales and merchandising information, marketing plans and information regarding third parties. Confidential and Proprietary Information includes information directly or indirectly acquired by the Vendor as a result of entering the nonpublic areas of McDATA's facilities, including information on whiteboards and in overheard conversations.

The Vendor will not, during any involvement with McDATA or during the three (3) years following the termination of Vendor's affiliation with McDATA, directly or indirectly use, divulge, furnish or make accessible to anyone any knowledge or information with respect to the Confidential and Proprietary Information. In addition, Vendor will not, without the prior written consent of an officer of McDATA, retain any of McDATA's Confidential and Proprietary Information.

Vendor shall keep confidential all information, submitted by McDATA to Vendor under, pursuant to, or in connection with this Order and shall upon request, return all documents furnished by McDATA. Except as required for the efficient performance of this Order, Vendor shall not make copies of any documents provided by McDATA.

10. TOOLING: Unless otherwise specified in this Order, all tooling and/or other articles required for the performance hereof shall be furnished by Vendor, maintained in good condition and replaced, when necessary, at Vendor's expense. If McDATA agrees to pay Vendor for special tooling or other items either separately or as a stated part of the unit price of goods purchased herein, title to same shall be and remain McDATA's property.

11. LIMITATION OF LIABILITY: IN NO EVENT SHALL McDATA BE LIABLE FOR INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. McDATA's liability to Vendor shall in no event exceed the amount of this Order

12. DEFAULT/CANCELLATION:

- (a) McDATA may, by written notice of default to the Vendor, terminate the whole or any part of this Order if the Vendor fails to make delivery of the supplies or to perform the services within the time specified herein or any authorized extension.
- (b) If this Order is terminated as provided herein, McDATA, in addition to any other rights provided in this Order, may require the Vendor to transfer the title and delivery to McDATA in the manner and to the extent directed by McDATA, any completed or partially completed supplies and any materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and manufacturing materials specifically produced or acquired for performance of this Order.
- (c) If, after notice of termination of the Order under the provision of this Section 12, it is determined for any reason that the Vendor was not in default, or that the default was excused, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section 13 hereof.
- (d) The rights and remedies of McDATA provided in this Section 12 shall not be exclusive and are in addition to any other rights and remedies provided by law under this Order.

13. TERMINATION: This Order may be terminated in whole or in part at any time by McDATA. Upon notice of termination, Vendor shall submit promptly to McDATA, but in no event later than three (3) months from the effective date of termination, a claim for reimbursement for the actual costs incurred by the Vendor by reason of such termination. Such actual costs shall exclude any charges for the interest or loss of material or parts which can be delivered or diverted to others. The claim shall not exceed the pro-rate portion of this Order which is cancelled. All completed or partially completed

items and all materials for which compensation is paid to Vendor upon termination shall become the property of McDATA. Such claim shall be Vendor's sole remedy for such termination.

14. WORKMAN'S COMPENSATION INSURANCE: Vendor agrees to maintain proper Workman's Compensation Insurance covering all of Vendor's employees and subcontractors performing work on McDATA's premises under this Order.

15. MCDATA'S PROPERTY: Title to all property furnished to Vendor by McDATA or paid for by McDATA shall remain with McDATA. Vendor shall not alter or use such property for any purpose other than that specified by McDATA, or for any other purpose without written consent of McDATA. Vendor shall keep adequate records of such property and such records shall be made available to McDATA upon request and shall store, protect, preserve, repair and maintain such property in accordance with sound industrial practices all at Vendor's expense. Unless otherwise agreed to by McDATA, Vendor shall insure McDATA's interest in such material against loss or damage by reason of fire (including extended coverage), flood accident, theft, riot or civil commotion. In the event that McDATA's property becomes lost or damaged to any extent while in Vendor's possession, Vendor agrees to indemnify McDATA or replace such property at Vendor's expense in accordance with McDATA's request. At the completion or termination of the Order, Vendor shall request disposition instructions for all such property or the remainder thereof, whether in its original form or semi-processed form. Vendor agrees to make such property available as directed by McDATA including preparation, packaging and shipping. Preparation for shipment shall be a McDATA's expense and shipment shall be FOB Vendor's plant.

16. COMPLIANCE WITH LAWS: Vendor shall in the performance of work or services under this Order, fully comply with all applicable international, federal, state and local laws, regulations and ordinances and shall indemnify and hold harmless McDATA from and against any loss, claim, damage, liability, expense or cost (including without limitation attorney's fees and court costs) resulting from failure of such compliance.

17. ASSIGNMENTS AND SUBCONTRACTS: Vendor shall not assign any proceeds or subcontract this Order or any right or obligation hereunder without the prior written consent of McDATA.

18. LABOR DISPUTES: Whenever any actual or potential labor dispute delays or threatens to delays the timely performance of this Order Vendor shall immediately notify McDATA of all relevant information with respect to such dispute.

19. PRICE WARRANTY: Vendor warrants that the prices specified in this Order do not exceed the prices charged for like quantities of the same or substantially similar articles to any other purchaser.

20. WARRANTY: Vendor warrants the supplies delivered hereunder to be free from defects in workmanship and materials to be new and of the most suitable grade of their respective kinds, to conform to applicable specifications, drawings, samples or other descriptions given including those set forth in the Order and Vendor's sales literature to be of merchantable quality and, if of Vendor's design, to be suitable for the purpose intended, to meet all of the performance requirements, and to be free from defects in design. This warranty shall run to McDATA, its successor and assigns and the users of supplies covered by this Order. The aforesaid express warranties shall be in addition to any standard warranty or guarantee of the Vendor, shall be construed as conditions as well as warranties and shall not be exclusive. Vendor agrees to replace or correct any supplies not conforming to the foregoing requirements when notified by McDATA within two (2) years after that acceptance or within one (1) year from installation, whichever is earlier. If Vendor, upon notice of defect fails promptly to correct or replace the supplies, McDATA may do so without further notice and Vendor shall reimburse McDATA for all costs incurred thereby. No inspection, cost or approval of any kind, including approval of designs shall affect Vendor's obligation under this Section 20. Supplies that have been rejected shall not thereafter be tendered for acceptance unless the former rejection and correction are identified. Replaced or repaired supplies shall be subject to the

provisions of this Section 20 to the same extent as the original supplies, except that the warranty shall run from the last delivery date.

21. PATENTS: The Vendor shall at its expense defend and hold harmless McDATA, its customers and all persons claiming under McDATA against any suit or suits for the infringement of the patent, copyright or trademark and shall indemnify the aforesaid parties against all damages, claims, losses, liabilities, costs and expenses of any kind or nature (including without limitation attorney's fees and court costs) arising therefrom by reason of the manufacturer's sale or the normal and intended use of the articles covered by this Order. Where performance under this Order includes experimental, developmental or research effort and such work is paid for in whole or in part by McDATA, Vendor agrees to disclose to McDATA all confidential processes, know-how and trade secrets resulting therefrom and, on request, to assign to McDATA each invention and property right resulting therefrom.

22. APPLICABLE LAW: This Order will be construed and interpreted in accordance with the laws of the state of Colorado.

23. EQUAL EMPLOYMENT OPPORTUNITY: The terms and conditions of Executive Order 11240, as amended, governing equal employment opportunity, and Section 503 of the Rehabilitation Acts of 1973, as amended (29USO793), and Section 102 of the Vietnam Era Veteran's Readjustment Assistance Act of 1974 (38USC2012), along with rules and regulations promulgated thereunder, are incorporated herein as part of the P.O. with which Vendor represents that Vendor will comply to the extent applicable.

24. SMALL BUSINESS CONCERNS, MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES: To the extent applicable there are hereby incorporated the provisions of the United States Government's Procurement Requisitions governing Utilization of Small Business Concerns, Utilization of Minority and Women-Owned Business Enterprises in the performance of work and rendition of services under Government procurement contracts.

25. ASSIGNMENT: Vendor shall not assign or delegate all or substantially all of its substantive duties under this Order nor transfer to another any intellectual property right that is licensed to McDATA without McDATA's prior written consent.

26. GOVERNMENT CONTRACT: If this Order is issued for any purpose which is either directly or indirectly connected with the performance of a contract with the government or a subcontractor hereunder, the terms that the Federal Acquisition Regulations or other appropriate regulations, require to be inserted in contracts or subcontracts shall be deemed to apply to this Order.

27. EXPORT LAW: All products delivered under this Order are subject to United States Export control laws and may be subject to export/import regulations in other countries. Vendor agrees to comply strictly with all such laws and regulations and acknowledges that it has the responsibility to obtain such licenses to export, re-export or import as may be required.