DragonWave Technologies FZCO
30-01-BA1177 Jewellery & Gemplex, Dubai, United Arab Emirates
Registration Number: DMCC 189430
License Number: DMCC 798474

Terms & Conditions of Sale

1. Scope

1.1. For the purposes of these terms and conditions of sale, "Customer" means the customer identified in any commercial / pricing proposal issued by DragonWave Technologies FZCO, and "Products" means those products and services to be delivered by DragonWave Technologies FZCO to the Customer.

1.2. These terms and conditions of sale apply to all quotations, and any subsequent sales of Products by DragonWave Technologies FZCO to Customer. Acceptance of Customer's order is made upon the express understanding that it will be governed by the terms and conditions set out herein, and that any additional or conflicting terms and conditions accompanying Customer's order shall, absent express agreement to the contrary as hereinafter provided, be void and of no force or effect.

1.3. Any modifications to these terms and conditions must be specifically agreed to in writing by an authorized officer of each party. These terms and conditions shall be applicable whether or not they are attached to or enclosed with the Products.

2. Quotation

Quoted prices will remain open for acceptance by the Customer for a period of thirty (30) days from the date of quotation. Unless otherwise stated, prices for the Products are firm but may be subject to adjustment for foreign exchange, purchase or sales tax, customs tariff or other direct taxes, between the date of quotation and the date of shipment.

3. Orders

3.1. Customer's orders are subject to final acceptance by DragonWave Technologies FZCO and DragonWave Technologies FZCO reserves the right to accept or to reject any order from the Customer, in whole or in part.

3.2. DragonWave Technologies FZCO may, without prejudice to any other remedy which it may have at law or in equity, cancel or suspend delivery of any uncompleted order in the event of non-payment or other breach of these terms and conditions by Customer. DragonWave Technologies FZCO shall have no liability to Customer for any costs, losses, or damages of any kind whatsoever arising because of any such suspension or cancellation.

3.3. Upon the cancellation of any order, the Customer undertakes to indemnify DragonWave Technologies FZCO against all losses, including the cost of all labour, materials, overhead, damages, charges and expenses arising out of the order and its cancellation.

3.4. Blanket orders will be accepted for annual quantity pricing, if they are firm orders for a stated quantity, and delivery is accepted by the Customer within one year from the date of blanket order entry.

4. Title and Delivery

4.1. The Products shall be delivered FCA (Free Carrier), Incoterms 2010, DragonWave Technologies FZCO's plant, supplier / manufacturer plant or designated warehouse. Title and all liability for loss or damage shall pass to Customer upon DragonWave Technologies FZCO's delivery of the Products to a common carrier for shipment to Customer.

4.2. Absent express instructions from Customer, DragonWave Technologies FZCO shall, in its sole discretion, determine best way shipment, routing and common carrier utilized. DragonWave Technologies FZCO will use reasonable commercial efforts to ship orders within the time quoted for shipment. Times quoted for shipment will date from acceptance by DragonWave Technologies FZCO of the Customer's order and will be subject to the issuance of any necessary import permits and licenses.

4.3. In no event will DragonWave Technologies FZCO be liable for any costs, losses or damages including, without limitation, re-procurement costs arising out of or caused by delay in delivery or non-delivery of the Products.

5. Taxes

All taxes, levies or duties of any nature applicable to the sale, lease or license of the Products shall be paid by the Customer, or in lieu thereof, the Customer shall provide DragonWave Technologies FZCO with a tax exemption certificate acceptable to the taxing authorities.

6. Payments

6.1. All orders are subject to credit approval prior to acceptance. Invoices are due and payable thirty (30) days from the date of invoice.

6.2. If, in DragonWave Technologies FZCO's opinion, the Customer's financial condition does not at any time justify the terms of payment specified, DragonWave Technologies FZCO may cancel any unfilled orders upon written notice unless the Customer immediately pays any outstanding

amounts and/or agrees to pay in advance for all Products ordered but not delivered, at DragonWave Technologies FZCO's option.

6.3. Each shipment shall be considered a separate and independent transaction, and payment therefore shall be made accordingly.

6.4. In the event of any default by the Customer, DragonWave Technologies FZCO may, without prejudice to any other rights that it may have in law or in equity, decline to make further shipments.

6.5. If, despite any default by the Customer, DragonWave Technologies FZCO elects to continue to make shipments, its action shall not constitute a waiver of any default by the Customer or in any way preclude DragonWave Technologies FZCO's right to exercise any other remedies available to it in law or in equity.

6.6. Mark-up shall accrue against any amount which remains unpaid by the Customer under this Agreement for more than thirty days from the date of invoice. Mark-up shall be payable to DragonWave Technologies FZCO at the rate of 1.5% per month compounded (19.56% per annum), or the maximum allowed by law, whichever is less, and shall be payable monthly in arrears.

7. Warranty

7.1. **Hardware**

7.1.1. DragonWave Technologies FZCO warrants that the Products which are hardware will be free from defects in material and will comply with normal industry standards of workmanship, for a period of twelve (12) months from the date of shipment. DragonWave Technologies FZCO shall incur no liability under the foregoing warranty unless:

7.1.1.1. the allegedly defective Products are returned prepaid to DragonWave Technologies FZCO within fifteen (15) days of the date of discovery of the alleged defect, in accordance with DragonWave Technologies FZCO's then current repair procedures; and

7.1.1.2. DragonWave Technologies FZCO's tests disclose that the alleged defect is due solely to defects in material or workmanship.

7.1.2. The liability of DragonWave Technologies FZCO under this hardware warranty shall in any event be limited, at DragonWave Technologies FZCO's option and expense, to either the repair or replacement of the defective Product, or the reimbursement of the purchase price paid by Customer to DragonWave Technologies FZCO for the defective Products.

7.1.3. In no event will DragonWave Technologies FZCO be liable for damage to the Products resulting from improper handling during or after shipment, misuse, neglect, improper installation, operation or repair (other than by personnel authorized by DragonWave Technologies FZCO), alteration, accident, force majeure or for any other cause not attributable to defects in materials or workmanship on the part of DragonWave Technologies FZCO or its suppliers or manufacturers.

7.2. Software

7.2.1. DragonWave Technologies FZCO warrants that any software supplied as a Product or as part of a Product will function substantially in accordance with the functional description set out in the software documentation provided to the Customer for a period of ninety (90) days from the date of shipment to Customer.

7.2.2. DragonWave Technologies FZCO's sole obligation and Customer's sole remedy for a breach of this warranty shall be DragonWave Technologies FZCO's good faith efforts to rectify the non-conformity or, if after reasonable efforts DragonWave Technologies FZCO is unable to rectify the non-conformity, DragonWave Technologies FZCO shall accept return of the software and refund to Customer the purchase price thereof. This warranty is available only once in respect of each licensed software program.

7.2.3. DragonWave Technologies FZCO shall have no obligation under this warranty if the software is modified or if the software is used with hardware or software not supplied or approved by DragonWave Technologies FZCO.

7.3. Limited Warranty Liability

7.3.1. In no event shall DragonWave Technologies FZCO's liability to Customer or to any other party for breach of any of the foregoing warranties exceed the purchase price paid by Customer to DragonWave Technologies FZCO for the defective Hardware or Software product.

7.3.2. The express warranties set out in this section 7 are in lieu of all other warranties, representations or conditions, expressed or implied, including implied warranties of merchantability or fitness for a particular purpose, or those arising from statute or usage of trade. Customer shall not make any representations or warranties of any kind whatsoever relating to the products or DragonWave Technologies FZCO, which exceed those made by DragonWave Technologies FZCO in this clause 7.

8. Intellectual Property Rights

8.1. Customer recognizes and acknowledges the great value of the goodwill associated with the name and trade-marks of DragonWave Technologies FZCO and its suppliers, and the identification of the Products therewith. Customer shall not obscure, effect or permit the removal or alteration of any trademarks, patent numbers, labels, serial numbers or the like affixed to any Product, related materials or packaging.

8.2. All rights, title, and interest in and to the designs, models, patterns, specifications, copyrights, patents, trade secrets, trade-marks and other intellectual and industrial property in the Products, documentation and related materials shall remain vested in DragonWave Technologies FZCO or its third-party suppliers. Customer shall not copy, make extracts from, translate or otherwise modify any of the Products, documentation or related materials provided by DragonWave Technologies FZCO.

8.3. Customer expressly acknowledges and agrees that any software delivered as a Product or as part of a Product is not sold, but rather is licensed to Customer. All rights, title and interest in and to the software shall remain vested in DragonWave Technologies FZCO or its third-party suppliers, and Customer is granted only a limited license to use the software in conjunction with DragonWave Technologies FZCO Products. Customer shall not, and shall prevent others from copying, translating, modifying, creating derivative works, reverse engineering, decompiling or otherwise using the software except as expressly permitted under the terms of the End User License Agreement.

8.4. If any software is being acquired hereunder by or on behalf of any unit or agency of the United States Government, the following provision shall apply: if the software is supplied to the Department of Defense, it shall be classified as "Commercial Computer Software" and the United States Government is acquiring only "restricted rights" in the software as defined in DFARS 227-7202-1(a) and 227.7202-3(a), or equivalent. If the software is supplied to any other unit or agency of the United States Government, rights will be defined in Clause 52.227-19 or 52.227-14 of the FAR, or if acquired by NASA, Clause 18-52.227-86(d) of the NASA Supplement to the FAR, or equivalent. If the software was acquired under a contract subject to the October 1988 Rights in Technical Data and Computer Software regulations, use, duplication and disclosure by the Government is subject to the restrictions set forth in DFARS 252-227.7013(c)(1)(ii) 1988, or equivalent. The owner of the software is DragonWave Technologies FZCO, or its third-party supplier.

9. Intellectual Property Indemnity

9.1. The Customer shall indemnify and hold DragonWave Technologies FZCO harmless against any damage, expense or loss resulting from any claims for actual or alleged infringement of patents,

copyrights, trade-marks, trade secrets or other industrial or intellectual property rights resulting from unauthorized use or modification of the Products by Customer, or from DragonWave Technologies FZCO's compliance with Customer's designs, specifications or instructions.

9.2. The sale of Products by DragonWave Technologies FZCO does not convey any license by implication, estoppel, or otherwise, under any patent, copyright, trade secret, trademark or other intellectual or industrial property right.

9.3. In the event that the Products or any part thereof become, or in DragonWave Technologies FZCO's opinion are likely to become the subject of a claim of infringement of a patent, copyright trade secret, trade-mark or other industrial or intellectual property right, or the use of the Products or any part thereof is enjoined as a result of any such claim, the Customer shall permit DragonWave Technologies FZCO or its 3rd party supplier, at its option and expense, to either (a) procure for the Customer the right to continue using the Products; (b) to replace the affected Products with non-infringing Products; (c) modify the affected Products so that they become non-infringing; or (d) remove the affected Products, and refund the purchase price thereof, less a reasonable amount for depreciation.

9.4. The foregoing states the entire liability of DragonWave Technologies FZCO with respect to any actual or alleged infringement of any patent, copyright, trade secret, trade-mark, mask work or other intellectual or industrial property right.

10. No Returns

Products may not be returned without prior written authorization from DragonWave Technologies FZCO, which authorization may be withheld for any reason, or subject to any such reasonable terms and conditions as DragonWave Technologies FZCO may require.

11. Assignment

The Customer shall not assign its order or any interest therein, or any rights accruing under these terms and conditions, without the prior written consent of DragonWave Technologies FZCO.

12. Limitation of Liability

12.1. In no event whatsoever, regardless of the form or cause of action whether in contract or tort or the number of claims, and whether in respect of a breach or default in the nature of a breach of condition or fundamental term or a fundamental breach or as a result of negligence, shall DragonWave Technologies FZCO, its employees', directors', officers' and agents' total collective liability to customer for any claim exceed the amount paid for the specific item or product that is the subject matter of or that is directly related to the claim; provided however

that in no event shall the total collective cumulative liability of DragonWave Technologies FZCO, its employees, officers, agents and directors for all claims arising under or related to the purchase order referred to in this document exceed the amount paid by customer for the products referred to in such purchase order.

12.2. DragonWave Technologies FZCO, its employees, agents, officers and directors shall not be liable in any way whatsoever, whether as a result of a claim or action in contract or tort or otherwise for any indirect, special, consequential or punitive damages, or for any lost profits or lost business revenue, lost business, failure to realize expected savings, or other commercial or economic loss of any kind whatsoever, or for any damages, direct or indirect, special or consequential arising out of any claim against customer by any person whether or not such damages are foreseeable and whether or not DragonWave Technologies FZCO, its employees, agents, officers or directors have been advised of the possibility of such damages.

12.3. The foregoing provisions limiting the liability of DragonWave Technologies FZCO's employees, agents, officers, and directors shall be deemed to be trust provisions for the benefit of such employees, officers, directors, and agents, and shall be enforceable by such as trust beneficiaries.

13. Hazardous Uses Prohibition

Customer acknowledges that DragonWave Technologies FZCO products are intended for standard commercial uses. Without the appropriate network design engineering, the Products must not be sold, licensed or otherwise distributed for use in any hazardous environments requiring fail safe performance, such as in the operation of nuclear facilities, aircraft navigation or communications systems, air traffic control, direct life support machines, weapons systems, or any other application in which the failure of the Products could lead directly to death, personal injury, or severe physical or environmental damage. Customer hereby agrees that the use, sale, license or other distribution of the Products for any such application without the prior written consent of DragonWave Technologies FZCO shall be at Customer's sole risk. Customer agrees to defend and hold DragonWave Technologies FZCO harmless from any claims for loss, costs, damage, expense or other liabilities which may arise out of or in connection with the use, sale, license or other distribution of the Products for such applications.

14. Export Restrictions

Customer shall comply with all export regulations pertaining to the Products in effect from time to time. Without limiting the generality of the foregoing, Customer expressly warrants that it will not directly or indirectly export, re-export, or transship the Products or any part thereof in violation of any export laws, rules or regulations of Canada, the United States, the European Union or the Netherlands.

15. Interpretation

This is the entire agreement between the parties with respect to the subject matter hereof. Any modification of these terms and conditions shall be in writing and shall be signed by each party's authorized representative. This Agreement shall be governed by the laws of the Netherlands, and the courts of the Netherlands shall have exclusive jurisdiction over all matters arising hereunder. The parties expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods (the Vienna Convention, 1980).