

Equinix Terms and Conditions of Sale

1. ORDERS; ORDER ACCEPTANCE. These Terms and Conditions of Sale (the "Terms") constitute the only terms and conditions that apply between Equinix, LLC ("Equinix") and you (the "Customer" or "you") regarding your purchase of Equinix products that are sold or otherwise provided by Equinix to Customer from time to time (collectively, the "Products"). These Terms will govern any order, such as a purchase order or Customer's signature on a quotation or proposal (each an "Order") accepted by Equinix. Customer's placement of an Order with Equinix constitutes acceptance of these Terms. To the extent that these Terms constitute an offer or counteroffer by Equinix, acceptance of such offer or counteroffer is expressly limited to these Terms and Conditions and conditioned upon the rejection of any conflicting, additional, or different terms or conditions in any purchase order, specification or other document or communication issued by Customer (collectively, "Customer Documents"). Notwithstanding that these Terms may conflict with certain terms and conditions specified in a Customer Document, Equinix's acceptance of any Customer Document is expressly conditional on Customer's assent to these Terms and the invalidity of conflicting, additional, or different terms or conditions in the Customer Document. Equinix's failure to object to any Customer Document shall not be deemed a waiver of these Terms. Any acceptance, use or payment of or for products by Customer will constitute acceptance by Customer of these Terms. The Terms set forth herein shall be applicable whether or not they are attached to or enclosed with the products sold hereunder. You agree to submit your Orders for Products in writing, stating the quantities and descriptions of Product required, applicable purchase prices, requested delivery dates and billing/shipping instructions, and any other relevant Order information, and such information shall specify either (i) individual part numbers, as may be necessary, or ii) an explicit reference to the relevant Equinix quote or order number. Equinix reserves the right to reject any Order that fails to comply with these Terms.

2. PRICE; INVOICES; PAYMENT TERMS

a. Price. Equinix proposals or quotations constitute an offer to sell Products under these Terms. Equinix's invoice price for Product ordered by you will be the applicable price either provided to you by Equinix or the applicable price in effect on the date Equinix receives your Order. The price does not include transportation or installation charges (except as otherwise set forth in Equinix's then-current installation policy). An accepted Order can be canceled only with Equinix's written consent, and only on terms that will indemnify Equinix against resulting losses (including, but not limited to, any costs already incurred by Equinix in performing the Order). In no event will a cancellation be allowed after Products have shipped. A cancellation charge may be assessed to Customer in accordance with Equinix's then-current cancellation policy. Equinix grants to Customer the right to cancel the outstanding portion of an accepted Order if Equinix fails to ship the Product within thirty (30) days after the scheduled ship date provided the delay in shipment is not due to credit issues or other actions taken by Customer.

b. Invoices; Payment. Equinix will invoice Customer, and Customer will pay, the amounts set forth in the applicable invoice delivered by Equinix to you (the "Invoice"). Equinix issues all Invoices upon shipment of Product. If Equinix has, in its sole discretion, agreed to extend sufficient credit to Customer to cover the applicable Invoice (and all other outstanding Invoices), then Customer shall make payment within thirty (30) days from the date of Invoice. Equinix reserves the right to establish, terminate or alter credit limits and terms, to delay shipment of Orders, to require full or partial prepayment or to require alternate terms and conditions based upon Customer's payment history, financial condition or any other matter that, in Equinix's determination, adversely affects the likelihood that Customer will make timely payment in full. Without limiting the generality of the

foregoing, if Customer fails to timely pay any Invoice, or if its financial condition becomes impaired or unsatisfactory to Equinix, Equinix may require Customer to provide satisfactory security and may withhold further deliveries until such security is received. Any amount payable by Customer that remains unpaid after the applicable payment due date will be subject to a late charge equal to the lesser of one and one-half percent (1.5%) per month or the maximum rate allowable by law from the due date until such amount is paid. Customer shall reimburse Equinix for reasonable attorneys' fees and any other costs associated with collecting delinquent payments. All payments will be made in U.S. dollars unless otherwise agreed by Equinix in writing on a case-by-case basis.

c. Security Interest. Customer hereby grants, and agrees to grant, to Equinix a continuing security interest, and a purchase money security interest, in all the Products and the proceeds thereof, to secure payment of the amounts set forth on the Invoices issued by Equinix to Customer. These security interests will be satisfied upon payment in full of all Invoices. Customer authorizes Equinix to file a copy of the Invoice and/or a financing statement with appropriate government authorities at any time in order to perfect the foregoing security interests in compliance with the Uniform Commercial Code ("UCC") of any state or federal law. Upon the written request of Equinix, Customer will execute financing statements and other instruments Equinix requires to perfect its security interests.

3. TAXES, DUTIES AND CUSTOMS. All prices quoted and payable for Products are exclusive of all taxes (including, but not limited to, sales, use, excise and withholding taxes), duties, broker charges and customs requirements in each case imposed now or in the future by any governmental authority on the transactions or amounts payable hereunder. All such taxes or other charges (such as, but not limited to import duties, customs fees, sales and use taxes, broker charges, value added taxes ("VAT"), and all other taxes except taxes based on Equinix's income) will be included in Equinix's Invoice as separate items, which you agree to pay or, in the case of taxes, to supply appropriate tax exemption certificates in a form satisfactory to Equinix. Equinix may, in its discretion, either pay such taxes, duties and charges directly for Customer's benefit and include such amounts in an Invoice, or else require Customer to pay such taxes, duties and charges directly to the appropriate authorities. All special export packaging costs will be invoiced to Customer. Export of certain Products may be subject to government restrictions.

4. DELIVERY, RISK OF LOSS; TITLE. All Products delivered within the United States shall be shipped to you F.O.B. Origin. All Products delivered outside of the United States shall be shipped C.P.T. (pursuant to Incoterms, 2010). Risk of loss and/or damage and title to Products will pass to Customer upon delivery to the carrier. Customer shall be solely responsible for obtaining appropriate insurance coverage for such shipments, unless insurance is included in a written quotation provided by Equinix and accepted by Customer. Unless otherwise agreed by the parties, Equinix shall arrange shipping on Customer's behalf to the destination specified by Customer in its Order. Unless you have specified a carrier in your Order, Equinix will select the carrier for you with the express understanding that the carrier is not an agent of Equinix. Customer will be responsible and will reimburse Equinix for any shipping charges incurred by Equinix, including, but not limited to, transportation charges and all taxes, VAT, duties, and any other governmental assessment applicable to any shipment. Equinix may ship and invoice you for your Order in one or more installment(s). In conjunction with its Order for Products hereunder, in the event Customer also orders Equinix customer support services under Equinix's Smart Hands™, such support services will commence upon shipment of Product.



5. LIMITED WARRANTY; LIMITATIONS.

a. Limited Warranty. Equinix warrants only that all products ordered and delivered hereunder shall substantially conform to Equinix's specifications therefore, subject to the conditions and procedures stated in these Terms and Conditions. This warranty shall extend from the date of shipment of the products and shall continue thereafter for a period of twelve (12) months ("Warranty Period"). The foregoing warranty shall not apply, and Equinix will have no obligation or liability hereunder, with respect to any non-conformity that arises from abuse, misuse, neglect, disassembly, tampering, alteration, accident, unauthorized or improper installation, use or repair, use or attempted use of the product(s) other than that supported by Equinix. Further, the limited warranty provided hereunder extends to the original Buyer only, and not to Buyer's customers or other secondary purchasers. This limited warranty is effective for the warranty period specified therein, and such warranty period begins on the date of the original shipment of the product(s). If you discover a defect in the product(s) during the warranty period, as your exclusive remedy for breach of warranty, Equinix will repair or, at Equinix's sole discretion, replace the defective part at no charge to you, provided that you (i) immediately notify Equinix of the defect during the warranty period, and (ii) upon request, provide with your notice, proof of purchase, and a copy of the bill of sale, or packing list for the product(s), bearing the applicable Equinix or other product serial number(s) to establish the original date of your purchase.

b. Limitations. THE FOREGOING WARRANTY IS IN LIEU OF, AND EQUINIX DISCLAIMS, ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD-PARTY RIGHTS. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY EQUINIX, OR ITS DEALERS, RESELLERS OR DISTRIBUTORS WILL CREATE A WARRANTY OR INCREASE THE SCOPE OF THIS WARRANTY.

6. LIMITATIONS OF LIABILITY. IN NO EVENT SHALL EQUINIX BE LIABLE FOR EXEMPLARY, INCIDENTAL, SPECIAL, PUNITIVE, CONSEQUENTIAL OR INDIRECT DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THESE TERMS, SALE OR USE OF PRODUCTS, OR YOUR RELATIONSHIP WITH EQUINIX, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSS. THESE LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. EQUINIX'S MAXIMUM LIABILITY ARISING OUT OF THESE TERMS SHALL NOT EXCEED THE AMOUNTS RECEIVED BY EQUINIX FROM CUSTOMER FOR THE PRODUCTS THAT ARE THE BASIS FOR THE LIABILITY. IN NO EVENT WILL EQUINIX BE LIABLE FOR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS BY YOU OR ANY OTHER PERSON OR ENTITY. THE LIMITATIONS IN THIS SECTION WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. ALL INFORMATION, MATERIALS, PRODUCTS, AND OTHER SERVICES INCLUDED ON OR OTHERWISE MADE AVAILABLE TO YOU ARE PROVIDED BY EQUINIX ON AN "AS IS" AND "AS AVAILABLE" BASIS. YOU EXPRESSLY AGREE THAT YOUR PURCHASE AND USE OF THE PRODUCTS ORDERED AND DELIVERED IS AT YOUR SOLE RISK. Equinix has set its prices for the products covered by this order in reliance on the disclaimers, exclusions and limitations of warranties, liabilities and remedies set forth in these Terms and Conditions, which represent the allocation of risks agreed upon between Equinix and Customer and form a fundamental basis of Equinix's bargain, without which Equinix would not have been willing to accept this order or provide the products covered by this order. Each party agrees that such provisions will survive and have full force and effect notwithstanding any failure of essential purpose of any limited remedy or limitation of liability.

7. INDEMNIFICATION. Customer shall defend, indemnify, and hold Equinix harmless from all expenses, damages, costs and losses

resulting from (a) any suit or proceeding insofar as such suit or proceeding is based on a claim of infringement or misappropriation of any patent, maskwork, copyright, trademark or other intellectual property right arising from (i) Equinix's compliance with product design specifications or instructions or (ii) use of any product or part thereof furnished hereunder in combination with products not supplied by Equinix, or (b) any breach by Customer of these Terms and Conditions.

8. GENERAL.

a. Notices. Any notice required to be given hereunder shall either be via e-mail to the Customer's assigned contact, deemed to be delivered upon receipt, or in writing and shall be deemed to have been delivered when deposited in the United States mail as registered or certified mail with a return receipt requested, with adequate postage affixed and addressed to Equinix to the attention of Equinix Legal Department, One Lagoon Drive, Redwood City, CA 94065 (or such future address as Equinix may specify in writing), or if to Customer at the address set forth on Customer's Purchase Order or any address at which the Products have been delivered (unless a different notice address has been provided in writing by Customer).

b. Force Majeure. Neither party will incur any liability to the other party for any loss or damages resulting from any delay or failure to perform its obligations (other than the obligation to pay money due and owing) under these Terms if such failure is caused by events beyond its reasonable control.

c. Publicity. Neither party shall disclose any of the terms and conditions of these Terms without the prior written consent of the other except to (i) its attorneys, accountants, and other professional advisors under a duty of confidentiality, (ii) as required by law, or (iii) in connection with a proposed merger, financing, or sale of such party's business provided that any third-party to whom these Terms are to be disclosed is under a duty of confidentiality.

d. Applicable Law; Venue. These Terms shall be governed by and interpreted in accordance with the laws of the State of California, U.S.A., excluding its choice of laws rules. The U.N. Convention on the International Sale of Goods shall not apply to the sale of Products hereunder or otherwise to these Terms. Customer consents to the exclusive jurisdiction of, and venue in, the California state courts in San Mateo County, California, U.S.A., or if there is federal jurisdiction the U.S. District Court for the Northern District of California, U.S.A., and the prevailing party shall recover all of its costs, including reasonable attorneys' fees.

e. No Waiver. The failure of either party at any time to require performance by the other party of any provision hereof will not affect, in any way, the full rights to require such performance at any time thereafter, nor will the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself.

f. Export. You warrant that you do not intend to, and will not knowingly, export, either directly or indirectly, any Product or any portion of Product, to any country for which such approval is required, without the prior written approval of the Office of Export Administration of the U. S. Department of Commerce or any other applicable U.S. Government agency. Customer will comply fully with all relevant export laws and regulations of the United States, including without limitation the U.S. Export Administration Regulations (collectively "Export Controls").

g. Assignment. Customer may not assign any Orders under these Terms without the prior written consent of Equinix and any such attempt by Customer to assign without such consent will be null and void. Subject to the preceding sentence, these Terms will bind each party and its permitted successors and assigns.

h. Use. Products are not designed or intended for use in connection with the actual construction, maintenance, and/or operation of any nuclear facility, aircraft, aircraft communication or aircraft ground support system, life support system or life threatening surgical procedure. Equinix shall not be liable to you for any claims or damages arising from any use or resale by you to a third party for such purposes. You shall indemnify, defend (with counsel approved in writing in advance by Equinix) and hold Equinix harmless against any claims for cost, damage, expense (including reasonable attorneys' fees) or liability arising out of or in connection with any such use or



resale.

i. Product Changes and Discontinuation. Equinix reserves the right, from time to time and in its discretion, to modify, alter, change, improve or discontinue Products.

j. Technical Data. Customer shall not, without Equinix's prior written consent, use, duplicate, or disclose any technical data or information, or any information related to the functionality, performance, or construction of the Products delivered or disclosed by Equinix to Customer, for any purposes other than for the purposes of installation, operation or maintenance of Products by persons who have agreed to preserve the confidentiality of such technical data and information. All such technical data and information shall remain the confidential information and sole property of Equinix.

k. Actions; Attorneys Fees. Any action resulting from any alleged breach by Equinix must be commenced within six (6) months after the cause of action has accrued. If one party to these Terms brings an action against the other party to enforce its rights under these Terms, the prevailing party shall be entitled to recover its costs and expenses, including, without limitation, reasonable attorneys' fees and costs incurred in connection with such action, including any appeal of such action.

l. No Third-Party Beneficiaries. There are no third-party beneficiaries to these Terms, and these Terms do not provide a third-party with any remedy, claim, liability, reimbursement, cause of action or other right or privilege.

m. Unenforceable Provisions. In the event that any of the Terms are held by a court or other tribunal of competent jurisdiction to be unenforceable, the remaining Terms will remain in full force and effect, provided that in such event the parties agree to negotiate in good faith substitute enforceable provisions that most nearly affect the parties' intent hereunder.

n. Modification. Any modifications to these Terms proposed by Customer are expressly rejected by Equinix and shall not become part of these Terms in absence of Equinix's written acceptance. Such acceptance may only be confirmed either by i) the signing of a written amendment to the Terms by duly authorized representatives of both parties or ii) Equinix's issuance and delivery to you of the applicable Equinix Invoice referencing the applicable Customer Order number, and inclusive of such modified terms and conditions.

o. Complete Agreement. These Terms, Equinix's Invoice, and any other applicable agreement(s) constitute the final, complete and exclusive statement of the agreement between the parties regarding your Order, and supersede all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of these Terms.

p. Authority. Customer warrants and represents that the individual ordering Products pursuant to these Terms has full authority to order and accept these Terms on behalf of Customer.

q. Ownership. For Products described in any Order which is subject to these Terms, the Parties agree that Customer shall own all such Products. Customer agrees to pay the Non-recurring Charges set forth in the applicable Order even if Equinix performs and/or furnishes any Smart Hands™ services with fewer parts and/or less labor required. Customer shall obtain and provide to Equinix the consent of Customer's subcontractors and third party providers that is necessary for Equinix and its subcontractors to have the right to use and access Customer's equipment and any third party software provided by Customer for the purpose of performing and/or furnishing the Products and any Smart Hands™ services. The Parties agree that upon termination or expiration of any Order that is subject to these Terms Customer's failure to remove any or all Products from the Licensed Space is deemed abandonment of the remaining Products, and Equinix shall have the right to use or dispose of the Products in its discretion and shall have no obligation to (i) notify Customer or (ii) liquidate the Products for Customer's benefit.

