

PURCHASE ORDER TERMS AND CONDITIONS

DEFINITIONS

“Buyer” means Cogent, Inc., and any of its applicable trade names for the specific purchase. “Seller” means the entity or person(s) selling the specified equipment, goods and/or services to Buyer. “Order” means the contract or agreement between Buyer and Seller for Buyer to purchase the specific equipment, goods and/or services from Seller, as specified in Buyer’s Purchase Order, including any amendment to the Purchase Order confirmed in writing by Buyer, any documents specifically incorporated by reference in the Purchase Order or amendment, and these Purchase Order Terms and Conditions.

1. CONFLICTING TERMS AND INTEGRATION. The Order is based upon the specific definitions noted above, and constitutes the final and entire agreement between the parties. The Order supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and communications between the parties, both oral and written. Any different or additional terms and conditions set forth in Seller’s acceptance of the Order shall have no force or effect, unless specifically agreed to in writing by Buyer.
2. AMENDMENT/SUPPLEMENT. The Order cannot be amended or supplemented unless stated in a written document signed by an authorized representative of Buyer.
3. PRICE. The price for the equipment, goods and/or services identified in the Order is the price stated in the Order. If no price is stated in the Order, the price shall be the price set forth in Seller’s published price list in force as of the date of this Order. The price cannot be increased for any reason without a written document signed by an authorized representative of Buyer.
4. ACCEPTANCE BY SELLER. In addition to any document or written communication issued by Seller to Buyer accepting Buyer’s Purchase Order, Seller’s commencement of performance or delivery of the equipment and/or goods shall constitute an acceptance of the Purchase Order. Buyer reserves the right to withdraw or void the Purchase Order prior to the acceptance of the Purchase Order by Seller.
5. TIME IS OF THE ESSENCE. Seller shall deliver the specified equipment, goods and/or services in the quantities specified, on the dates specified, and to locations specified in the Order. Timely delivery of the equipment, goods and/or services are of the essence. If Seller fails to deliver the equipment, goods and/or services as specified in the Order, Buyer may terminate the Order immediately by sending written notice to Seller. Seller shall indemnify and/or pay to Buyer any losses, claims, damages and reasonable attorney’s fees and costs caused by Seller’s failure to deliver the equipment, goods and/or services as specified in the Order.
6. TITLE, DELIVERY AND RISK OF LOSS. Title for any equipment and/or goods passes to Buyer upon delivery of the equipment and/or goods to the location specified in the Order. Seller bears all risk of loss or damage to the equipment and/or goods until their delivery to the location specified in the Order. Seller shall give notice to Buyer when the equipment and/or goods are picked up by, or delivered to, the carrier. The Purchase Order number must appear on all shipping documents, invoices and any other documents pertaining to this Order.
7. PACKAGING. The equipment and/or goods must be packaged for shipment as specified in the Order. If no packaging requirements are stated in the Order, then Seller shall package the equipment and/or goods to ensure that they are delivered in an undamaged condition.

8. PAYMENT TERMS. Seller shall issue an invoice to Buyer only after deliver of the equipment and/or goods as set forth in the Order, or completion of the services set forth in the Order, unless otherwise specified in the Order. Payment to Seller shall be due no sooner than forty-five (45) days from the invoice date. If Buyer disputes an invoice, Buyer shall give notice to Seller reasonably describing each disputed charge in the invoice. Seller shall continue performing its obligations under the Order while the parties are in good faith negotiations to resolve the disputed invoice charges.

9. SET-OFF. Without prejudice to any other right or remedy Buyer may have based on the Order and/or applicable law, Buyer reserves the right to set off any amount owed to Buyer by Seller, against any amount invoiced by Seller to Buyer.

10. SELLER'S WARRANTIES. Seller warrants to Buyer that all equipment, goods and/or services in the order shall: conform to applicable specifications, drawings, designs, samples and other requirements specified by Buyer; shall be merchantable, free from defects in workmanship, materials and design; shall be fit for their intended purpose and operate as intended; and shall be free and clear of all liens, security interests or other encumbrances. Equipment, goods and/or services provided by Seller shall not infringe upon or misappropriate any patent or other intellectual property rights. Seller's warranties are cumulative, and are in addition to any warranties provided by applicable law or in the Order. If Buyer gives notice to Seller of a warranty claim, Seller shall replace or repair the defective or nonconforming equipment, goods and/or services at no cost to Buyer, including but not limited to any delivery charges for return of any equipment and/or goods, or shipment of the repaired or replaced equipment and/or goods.

11. TERMINATION FOR CAUSE. Buyer may, by giving written notice to Seller, terminate the Order, or any portion of the Order, if: (a) Seller fails to deliver any of the equipment and/or goods or services as specified in the Order; (b) if Seller becomes insolvent, files a petition in bankruptcy, makes an assignment for the benefit of creditors, or has commenced against Seller a bankruptcy proceeding or a receivership; or (c) Buyer receives information on Seller's financial responsibility or condition that causes Buyer in good faith to become insecure as to Seller's ability to perform all of its obligations under the Order. If Buyer terminates the Order for cause, Seller's sole and exclusive remedy is for Buyer to pay Seller for the equipment, goods and/or services accepted by Buyer prior to the Order's termination.

12. TERMINATION FOR CONVENIENCE. Buyer may, by giving written notice to Seller, terminate the Order or any portion of the Order, for Buyer's convenience, for the undelivered portion of the equipment and/or goods, or services not then performed. Upon receipt of such cancellation notice, Seller shall immediately discontinue all work with respect to the canceled portion of the Order, except as may be necessary to preserve and protect the work in progress. Seller shall also use Seller's best efforts to cancel all then existing orders placed by Seller which are chargeable to the canceled portion of the Order. In any termination for convenience by Buyer, Buyer shall pay Seller for all equipment and/or goods and services previously accepted by Buyer under the Order, as well as all reasonable direct costs necessarily incurred by Seller in connection with the canceled portion of the Order, conditioned upon Seller delivering to Buyer all such equipment and/or goods, and/or the component parts for that equipment and/or goods, associated with those costs.

13. LIMITATION OF LIABILITIES. Except as otherwise provided by applicable law, in no event shall Buyer's liability arising from or relating to the Purchase Order and any subsequent Order resulting from the Purchase Order exceed fifty percent (50%) of the price stated in the Purchase Order, or Order, as applicable. In no event shall Buyer's obligations and liabilities under the Purchase Order, or Order, as applicable include

any indirect, punitive, special, incidental or consequential damages or losses, including but not limited to lost revenues, that Seller may suffer or incur in connection with an alleged breach by Buyer of the Purchase Order, or Order, as applicable, even if Seller advised Buyer of the possibility of such damages.

14. INDEMNITY. Seller shall defend, indemnify and hold harmless Buyer, its affiliates, officers, directors, employees, successors and assigns, and Buyer's customer that receives the equipment and/or goods and services that are the subject of the Order (the "Indemnitees"), against any and all loss, injury, death, damage, liability, claim, lien, fine, penalty, cost or expense, including reasonable professional fees, attorney's fees and costs, arising out of or occurring in connection with the equipment and/or goods and services that are the subject of the Order, or caused by Seller's negligence, willful misconduct, or breach of the Order. This indemnity clause includes any claims alleging infringement upon or misappropriation of any patent or other intellectual property rights.

15. INSURANCE. Seller shall maintain Commercial General Liability insurance with limits of no less than \$1 million per occurrence, and \$2 million in the aggregate, for bodily injury and property damage combined, including the following coverage features: (a) blanket contractual liability, (b) products liability, (c) complete operations and (d) independent contractors coverage. Where allowable under law, a waiver of subrogation in favor of Buyer and its insurers. Seller shall give Buyer written notice at least thirty (30) days in advance of any material change, cancellation or non-renewal of any identified insurance coverages.

16. SUBCONTRACTORS. If Seller uses subcontractors in the manufacture of the equipment and/or goods or services that are the subject of the Order, Seller shall be responsible and liable for all acts or omissions of its subcontractors. Seller shall obtain from all of its subcontractors, waivers and releases of all liens which may be imposed by the subcontractors against the equipment and/or goods or services which are the subject of the Order, as well as to Buyer's premises or Buyer's customer's premises, as applicable.

17. COMPLIANCE WITH LAWS. For all equipment and/or goods or services supplied to Buyer or Buyer's customer which are the subject of the Order, Seller agrees to be bound by, and to comply with, all applicable foreign and United States federal, state and local laws, rules, orders, regulations, guidelines, standards, controls, prohibitions, disclosures of product content, labeling and other requirements contained in, issued under, or adopted pursuant to such laws, etc. Seller's compliance includes without limitation, the United States Toxic Substances Control Act, anti bribery and anti corruption laws, and all Federal Acquisition Regulations. Delivery of the equipment and/or goods or services under the Order shall constitute Seller's representation to Buyer that Seller has been and will be in full compliance with all applicable laws, etc.

18. NO WAIVER. No waiver by Buyer of any provision or aspect of the Order shall be effective unless put in writing and signed by an authorized representative of Buyer.

19. CONFIDENTIAL INFORMATION AND OWNERSHIP OF CONFIDENTIAL MATERIALS. Seller shall treat as confidential, and shall not disclose any non-public or proprietary information received from Buyer in connection with the Order, to any person or entity not authorized by Buyer in writing to receive that information. Seller shall use such information only as is necessary to fulfill its obligations under the Order. Upon termination or completion of its obligations under the Order, all such confidential information shall be returned by Seller to Buyer, or at Buyer's option, be destroyed by Seller.

20. FORCE MAJEURE. Neither party shall be liable to the other party for any delay or failure in performing its respective obligations under the Order due to force majeure. Force majeure means any event or circumstances beyond the parties' reasonable control, including but not limited to natural disasters, wars,

strikes, riots, epidemics, criminal actions, changes in applicable laws and failures of suppliers or transportation. Under these circumstances, each party's time for performance shall be extended in an amount equal to the period of time for the party to recover from the causal event, and shall notify the other party within a reasonable period of time of the expected delay. Buyer reserves the right to terminate the Order if a force majeure event prevents Seller from meeting its obligations under the Order for a period of fourteen (14) consecutive days or more.

21. ASSIGNMENT. Seller shall not assign, transfer or delegate any of its rights or obligations under the Order without Buyer's prior written consent. No assignment approved in writing by Buyer shall relieve Seller of its obligations under the Order.

22. RELATIONSHIP OF PARTIES. The relationship between the parties is that of independent contractors. The Order does not create any agency, partnership, joint venture or other form of joint enterprises, employment or fiduciary relationships between the parties. The Order is for the sole benefit of the parties, and there are no third-party beneficiaries of the Order.

23. GOVERNING LAW AND JURISDICTION. In any commercial transaction, the Purchase Order and any subsequent Order resulting from the Purchase Order shall be governed by the laws of the state of Missouri, where Buyer's corporate headquarters are located (without reference to principles of conflicts of laws). Seller further agrees that venue and jurisdiction shall be appropriate in the county and/or federal court venue in which Buyer's corporate headquarters office is located. This paragraph shall survive any termination, cancellation or expiration of the Purchase Order, or Order, as applicable. If any dispute between Buyer and Seller ends up in litigation or arbitration, the prevailing party is entitled to an award of reasonable attorney's fees and costs.

24. NOTICES. All notices, requests, consents, claims, demands, waivers, and other communications ("Notices") relating to the Purchase Order and any subsequent Order resulting from the Purchase Order shall be in writing and delivered to Buyer or Seller as applicable at the physical address shown on the Purchase Order and/or resultant Order. If a facsimile number or e-mail address is shown on the Purchase Order and any subsequent Order resulting from the Purchase Order, then Notices can be sent by facsimile transmission or e-mail.

25. MISCELLANEOUS. The captions or titles in these Terms and Conditions are for reference only, and shall have no role nor effect in the interpretation or construction of the Purchase Order and any subsequent Order resulting from the Purchase Order. Buyer's failure to insist, on any one or more instances, upon Seller's performance of the Order, or to exercise any rights conferred in the Order, shall not constitute a waiver or relinquishment of such right, or the right to insist upon Seller's performance in any other respect. The partial or complete invalidity of any one or more provisions in these Terms and Conditions, or any part of the Order, shall not affect the validity or continuing force and effect of any other provisions. Provisions of the Purchase Order and any subsequent Order resulting from the Purchase Order, which by their nature should apply after any expiration or termination of the Purchase Order or Order as applicable, shall remain in force. Unless specifically stated otherwise in these Terms and Conditions, Buyer possesses all other legal and equitable rights that may be found in the applicable law.