



## NETAPP ICELAND EHF NETAPP ICELAND EHF STANDARD PURCHASE ORDER TERMS AND CONDITIONS

**1. General.** The party providing NETAPP ICELAND EHF, a company organized and existing under the laws of Iceland, having its registered office at Kringlunni 5, 103 Reykjavik, Iceland (hereinafter referred to as "NETAPP ICELAND") with any goods and services, including software ("Seller") agrees to perform the services ("Services") and/or provide the goods, Service deliverables, and software (collectively referred to as "Goods"), described in any purchase order, in accordance with the applicable purchase order, documents agreed to by the parties describing the Services and Deliverables provided by Seller to NETAPP ICELAND, and with these Terms and Conditions (together "Agreement"). Each purchase order shall be deemed to be an (counter-) offer by NETAPP ICELAND to Seller to buy Goods and/or Services and the Agreement shall become effective at the moment the purchase order is accepted in writing by Seller. Notwithstanding the provisions mentioned above, where the Seller has sent or otherwise communicated a(n) (written) offer to which NETAPP ICELAND responds with a purchase order, such purchase order is deemed to be accepted by Seller if such purchase order is not rejected in writing by Seller within five (5) days from the date the purchase order is received by Seller. However, if there is no formal written acceptance of the purchase order by Seller and Seller ships the Goods or Seller starts commencing the Services within the aforementioned period of five (5) days from the date the purchase order is received by the Seller, then the purchase order is deemed to be accepted on the date of shipment of Goods or the date of commencement of Services. Acceptance or deemed acceptance of a purchase order by Seller as described hereinabove will be deemed to be acceptance of the provisions of this Agreement, including all provisions set forth on the face of any applicable purchase order irrespective whether Seller acknowledges or otherwise signs this Agreement or the purchase order, unless Seller explicitly objects to such terms in writing prior to acceptance or deemed acceptance of the purchase order. In the absence of an effective agreement duly executed by NETAPP ICELAND and Seller which sets out Terms and Conditions that govern the purchase of Goods and Services by NETAPP ICELAND from Seller ("Master Agreement"), and subject to any variation under Section 2, the terms and conditions contained in this Agreement are the only conditions on which NETAPP ICELAND is prepared to deal with Seller and they shall govern the contract to the entire exclusion of any other terms or conditions. In the event an applicable Master Agreement exists, the Master Agreement supersedes this Agreement in precedence and will prevail in any conflict or ambiguity among the Terms and Conditions, and govern the purchase. Any terms or conditions contained in any sales terms and conditions, acknowledgement, invoice or other communication of Seller are hereby rejected. To the extent that this Agreement might be treated as an acceptance of Seller's prior offer, such acceptance is expressly made on condition of assent by Seller to the terms hereof, expressly rejecting all other terms, and acceptance or deemed acceptance of the purchase order by Seller shall constitute such assent.

**2. Changes.** NETAPP ICELAND may, prior to acceptance or deemed acceptance of a purchase order by Seller, at any time by a written change order make changes in the general scope and terms of this Agreement; reschedule any delivery or cancel any purchase order. NETAPP ICELAND shall not be subject to any charges, liability or other fees as a result of such changing; rescheduling or cancelling of a purchase order. NETAPP ICELAND may, after acceptance or deemed acceptance of a purchase order by Seller but prior to the scheduled shipment date of Goods or agreed date of commencement of Services, at any time by a written change order request changes or modifications to the Agreement. If Seller considers that the requested changes or modifications affect the agreed upon price and/or scheduled shipment date of Goods or date of commencement of Services, it shall notify NETAPP ICELAND in writing as soon as reasonably possible but no later than five (5) days after notification of the requested changes or modifications. Implementation of NETAPP ICELAND's requested changes or modifications without such notice automatically means that the price and the scheduled shipment date of Goods and/or date of commencement of Services remain unchanged. If NETAPP ICELAND considers the Seller's request for change of price and/or date of shipment of Goods or commencement of Services to be unreasonable in relation to the proposed changes or modifications, NETAPP ICELAND shall have the right to terminate the Agreement in writing and NETAPP ICELAND shall not be subject to any charges, liability or other fees as a result of such termination. Nothing herein shall excuse Seller from proceeding with the Agreement as changed. This Agreement shall not be deemed or construed to be modified, amended, rescinded, cancelled or waived in whole or in part, except by written change order signed by a NETAPP ICELAND authorized purchasing representative. After NETAPP ICELAND's approval or acceptance of the initial qualification prototypes of the Goods, Seller shall not make any changes in the design, material or processes that may affect the form, fit, function, interchangeability, quality or reliability of the Goods without NETAPP ICELAND's prior written consent.

**3. Purchase Order Number.** NETAPP ICELAND's purchase order number must appear on all invoices, packing lists and bills of lading and shall appear on each package, container or envelope on each shipment made pursuant to such purchase order.

**4. Delivery Documentation.** All deliveries of Goods to NETAPP ICELAND must contain a packing list referencing Goods delivered. Each copy must show the NETAPP ICELAND purchase order number, part number, and quantity of Goods shipped. Bills of Lading shall be mailed in triplicate to the destination address shown on the face of the NETAPP ICELAND purchase order, or to the consignee of such purchase order on the day shipment is made. Delivery and acceptance of Services shall be evidenced by an authorized representative of NETAPP ICELAND signing the submitted invoice or certificate of completion specifically accepting the Services and referencing the appropriate purchase order number.

**5. Packaging and Shipment.** Unless otherwise specified in the NETAPP ICELAND purchase order, packaging must conform to NETAPP ICELAND's specifications and should be constructed for handling with a mechanical device. A complete packing list specifying NETAPP ICELAND's applicable purchase order number, quantity of Goods shipped, and part number shall be enclosed with all shipments hereunder.

**6. Delivery.** Time is of the essence. Deliveries are to be made in such quantities and at such times as are specified herein. If no delivery schedule is specified, the order shall be filled promptly and delivery will be made by the most expeditious form of transportation. Delivery shall be Delivery Duty Paid, as referred to in the Incoterms 2020, to the location indicated on the purchase order upon request Seller shall provide NETAPP ICELAND notice of the departure of any shipment of Goods from Seller's site. Seller shall provide NETAPP ICELAND notice as soon as it is aware that any delivery will not be on time. At NETAPP ICELAND's request, Seller will provide NETAPP ICELAND with daily

notification of shipping delays or of the progress of delayed Goods in transit. Such notification will include action plans for recovery or expediting of the affected Goods. If Seller fails to deliver the Goods or perform the Services as scheduled, NETAPP ICELAND, without limiting its other rights and remedies available under this agreement or in law, may, at its option, either: (a) direct expedited routing, and any excess costs incurred thereby shall be debited to Seller's account; or (b) in accordance with Section 12 hereof, terminate all or any part of the NETAPP ICELAND purchase order in the event Seller fails to deliver Goods as scheduled. With regard to any Goods delivered in advance of schedule NETAPP ICELAND may, at its option, either: (a) return the Goods at Seller's expense for proper delivery, or (b) accept the Goods with payment only in accordance with Section 8 below and with the right to charge Seller for storage of the Goods.

**7. Loss of Goods.** Seller assumes all risk of loss until receipt by NETAPP ICELAND (Delivery Duty Paid) in accordance with Section 6. Ownership or title of property to the Goods shall pass free from any factual or legal encumbrances to NETAPP ICELAND only upon actual receipt by it of the Goods at the designated destination. If the Goods ordered are destroyed prior to title passing to NETAPP ICELAND due to an event other than the fault or negligence of the Seller (such as but not limited to a force majeure event), NETAPP ICELAND may at its option cancel the Agreement or relevant purchase order, as applicable, or require delivery of substitute Goods of equal quantity and quality. Such delivery will be made as soon as commercially practicable. If loss of Goods is partial, NETAPP ICELAND shall have the right to require delivery of the Goods not destroyed.

**8. Invoice and Payment Terms.** For Goods, Seller shall send the invoice to NETAPP ICELAND upon the delivery of the Goods in conformity with the relevant delivery term as specified in Section 6. For Services, Seller shall send the invoice to NETAPP ICELAND upon written acceptance by NETAPP ICELAND of such Services. Unless stated otherwise in a specific purchase order, to the maximum extent permitted by applicable laws, invoices shall be due sixty (60) days from the end of the calendar month in which the invoice is dated. Invoices will be paid on the 3rd day of each month (or next business day) after they come due. Incorrect invoices will be returned to Seller for correction and/or credit. After Seller resubmits the corrected invoice, NETAPP ICELAND will pay Seller sixty (60) days from the end of the calendar month in which NETAPP ICELAND's Accounts Payable Department receives the corrected invoice. NETAPP ICELAND shall assume all responsibilities for taxes on shipments or provide Seller with a tax exemption certificate acceptable to the taxing authorities. On orders for shipment outside the United States all required import duties, licenses and fees shall be payable by the Seller and shall be included in the quoted pricing to NETAPP ICELAND.

**9. Inspection.** Seller shall test the Goods to ensure that the Goods meet NETAPP ICELAND's specifications and acceptance criteria, and Seller shall not ship any Goods that do not conform thereto. Unless agreed otherwise, NETAPP ICELAND may, at its option, inspect all Goods (including raw materials, components, subassemblies and end products) or inspect a statistical sample selected from each lot within a period of fifteen (15) days of receipt of the Goods. If any Goods are defective in materials or workmanship, or are otherwise not in conformity with the requirements of this Agreement, it shall be at NETAPP ICELAND's sole discretion, whether or not payment has been made, to notify Seller and to reject such Goods, return them to Seller at Seller's expense, and receive a refund for the purchase price (if payment has been made) or require that such Goods be corrected or replaced promptly with satisfactory materials or workmanship. If NETAPP ICELAND doesn't notify Seller of any defect or non-conformity within a period of fifteen (15) days of receipt of the Goods, the Goods shall be deemed to have been accepted by NETAPP ICELAND. The rights and remedies of NETAPP ICELAND provided in this Section 9 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement. Payment shall not constitute acceptance and shall at all times be subject to a proper receipt and full acceptance by NETAPP ICELAND of the Goods and Services. In no event shall NETAPP ICELAND be liable for any reduction in value of any Goods used in connection with any inspection or test. Seller further agrees to maintain adequate authenticated inspection test documents that relate to work performed under this Agreement. Such records shall be retained by Seller for a period of three (3) years after completion of this Agreement or as otherwise specified by NETAPP ICELAND and made available to NETAPP ICELAND upon request. Seller agrees to supply NETAPP ICELAND with inspection and test reports, affidavits, certifications or any other documents as may be reasonably requested.

**10. Confidential Information.** The Parties acknowledge and agree that during the term of this Agreement, each Party may acquire knowledge of the other Party's Confidential Information (as defined below) in connection with its performance hereunder and agrees to keep such Confidential Information in confidence during the term of this Agreement. "Confidential Information" includes but is not limited to all information, whether written or oral, in any form, including without limitation, information relating to the research, development, products, methods of manufacture, trade secrets, business plans, customers, vendors, finances, personnel data, Work Product (as defined herein) and other material or information considered proprietary or marked as such by the disclosing Party relating to the current or anticipated business or affairs of the disclosing Party which is disclosed directly or indirectly to the recipient Party. In addition, Confidential Information means any third party's proprietary or confidential information disclosed to the recipient Party in the course of fulfilling the Agreement. Confidential Information does not include any information (i) which the recipient Party lawfully knew without restriction on disclosure before the disclosing Party disclosed it to the recipient Party, (ii) which is now or becomes publicly known through no wrongful act or failure to act of the recipient Party, (iii) which the recipient Party developed independently without use of the Confidential Information, as evidenced by appropriate documentation, or (iv) which is hereafter lawfully furnished to the recipient Party by a third party as a matter of right and without restriction on disclosure. In addition, the recipient Party may disclose Confidential Information which is required to be disclosed pursuant to a requirement of a government agency or law so long as the recipient Party provides prompt notice to the disclosing Party of such requirement prior to disclosure. The recipient Party agrees not to copy, alter or directly or indirectly disclose any Confidential Information. Additionally, the recipient Party agrees to limit its internal distribution of Confidential Information to the recipient Party's employees, agents or subcontractors who have a need to know, and to take steps to ensure that the dissemination is so limited, including the execution by the recipient Party's employees, agents or subcontractors of nondisclosure agreements with provisions substantially similar to those set forth herein. In no event will the recipient Party use less than the degree of care and means that it uses to protect its own information of like kind, but in any event not less than reasonable care to prevent the unauthorized use of Confidential Information. The recipient Party further agrees not to use the



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Confidential Information except in the course of performing hereunder, and agrees not to use such Confidential Information for its own benefit or for the benefit of any third party. The recipient Party agrees not to design or manufacture any products which incorporate Confidential Information of the disclosing Party. All Confidential Information is and shall remain the property of the disclosing Party. Upon the disclosing Party's written request or the termination of this Agreement, the recipient Party shall return, transfer or assign to the disclosing Party all Confidential Information, including all Work Product, as defined herein, and all copies thereof.

**11. Tooling.** Unless otherwise specified in this Agreement, all tooling and/or all other articles required for the performance hereof shall be furnished by Seller, maintained in good condition and replaced when necessary at Seller's expense. If NETAPP ICELAND agrees to pay Seller 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 in NETAPP ICELAND upon payment therefore.

**12. Termination for Default.** NETAPP ICELAND may, after having given notice to Seller to cure any non-performance within a particular notice period as stipulated by NETAPP ICELAND, as of right and without a prior court intervention being required, terminate the whole or any part of this Agreement if Seller fails to remedy its non-performance within the relevant notice period. However, if Seller fails to comply with any of its obligations under the Agreement for which a fixed term or date was agreed or an authorized extension of such term or date was granted, NETAPP ICELAND may immediately – as of right and without a prior court intervention being required - terminate the whole or any part of this Agreement upon notice without any notice period being required. If this Agreement is only partly terminated by NETAPP ICELAND, then in addition to any other rights provided in this Agreement, NETAPP ICELAND may for the other part require Seller to transfer title and deliver to NETAPP ICELAND in the manner and to the extent directed by NETAPP ICELAND, any other completed or partially completed Goods and any materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and manufacturing materials specifically produced or acquired for performance of this Agreement. If, after notice of termination of the Agreement under the provisions of this Section 12, it is determined for any reason that Seller was not in default or that the default was excusable, 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. The rights and remedies of NETAPP ICELAND provided in this Section 12 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

**13. Termination for Convenience.** NETAPP ICELAND may, at any time after acceptance or deemed acceptance of a purchase order by Seller and with or without cause or giving any reason, terminate the Agreement giving a reasonable notice period. NETAPP ICELAND's exclusive liability and Seller's exclusive remedy will be payment for the actual (labour and material) costs incurred by Seller. Seller shall make every reasonable attempt to reduce such costs. In no event will NETAPP ICELAND's liability in the aggregate exceed the total price which would have been paid hereunder for the Goods and/or Services had it not been terminated.

**14. NETAPP ICELAND's Property.** Title in property furnished to Seller by NETAPP ICELAND or paid for by NETAPP ICELAND shall remain with NETAPP ICELAND. Seller shall not alter or use such property for any purpose other than that specified by NETAPP ICELAND, or for any other person, without the prior written consent of NETAPP ICELAND. Seller shall keep adequate records of such property and such records shall be made available to NETAPP ICELAND upon request, and shall store, protect, preserve, repair and maintain such property in accordance with sound commercial practice, all at Seller's expense. Unless otherwise agreed to by NETAPP ICELAND, Seller shall insure NETAPP ICELAND'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 NETAPP ICELAND's property becomes lost or damaged to any extent while in Seller's possession, Seller agrees to indemnify NETAPP ICELAND or replace such property at Seller's expense, in accordance with NETAPP ICELAND's request. At the completion or termination of this Agreement, Seller shall request disposition instructions for all such property or the remainder thereof, whether in its original form or in semi-processed form. Seller agrees to make such property available as directed by NETAPP ICELAND, including preparation, packaging and shipping. The use of NETAPP ICELAND's name, logo or reference to any association or partnership is expressly prohibited without NETAPP ICELAND's written permission.

**15. Independent Contractor.** NETAPP ICELAND is interested only in the results obtained under this Agreement; the manner and means of achieving the results are subject to Seller's sole control. Seller is an independent contractor for all purposes, without express or implied authority to bind NETAPP ICELAND by contract or otherwise. Neither Seller nor its employees, agents or subcontractors ("Seller's Assistants") are agents or employees of NETAPP ICELAND, and therefore are not entitled to any employee benefits of NETAPP ICELAND, including but not limited to, any type of insurance. Seller shall be responsible for all costs and expenses incident to performing its obligations under this Agreement and shall provide Seller's own supplies and equipment.

**16. Ownership of Work Product.** For purposes of this Agreement, "Work Product" shall include, without limitation, all designs, discoveries, creations, works, devices, masks, models, work in progress, Service deliverables, inventions, products, computer programs, procedures, improvements, developments, drawings, notes, documents, business processes, information and materials made, conceived or developed by Seller alone or with others which result from or relate to the Services performed hereunder. Standard Goods manufactured by Seller and sold to NETAPP ICELAND without having been designed, customized or modified for NETAPP ICELAND do not constitute Work Product. All Work Product shall at all times be and remain the sole and exclusive property of NETAPP ICELAND. Seller hereby agrees to irrevocably assign and transfer to NETAPP ICELAND and does hereby assign and transfer to NETAPP ICELAND all of its worldwide right, title and interest in and to the Work Product upon its creation including all associated intellectual property rights to the maximum extent permitted by applicable laws. NETAPP ICELAND will have the sole right to determine the treatment of any Work Product, including the right to keep it as trade secret, execute and file patent applications on it, to use and disclose it without prior patent application, to file registrations for copyright, design rights or trademark in its own name or to follow any other procedure that NETAPP ICELAND deems appropriate. Seller agrees: (a) to disclose promptly and upon its creation in writing to NETAPP ICELAND all Work Product in its possession; (b) to assist NETAPP ICELAND in every

reasonable way, at NETAPP ICELAND's expense, to secure, perfect, register, apply for, maintain, and defend for NETAPP ICELAND's benefit all copyrights, patent rights, design rights, trade marks, mask work rights, trade secret rights, and all other proprietary rights or statutory protections in and to the Work Product in NETAPP ICELAND's name as it deems appropriate; and (c) to otherwise treat all Work Product as NETAPP ICELAND Confidential Information as described above. These obligations to disclose, assist, execute and keep confidential survive the expiration or termination of this Agreement. All tools and equipment supplied by NETAPP ICELAND to Seller shall remain the sole property of NETAPP ICELAND and in particular the right of reproduction (including the right to copy, use, install deploy), the right of performance, the right of modification (right to correct, fix, revise, translate, improve, adapt or perform any other modifications), the right to study and test, the right to decompile, the right to disclose to third parties, the right to commercialise and to sublicense, for the term of the legal protection of the applicable intellectual property rights and whatever the media whether present or future Seller will ensure that Seller's Assistants upon their creation appropriately waive any and all claims and assign to NETAPP ICELAND any and all rights or any interests in any Work Product or original works created in connection with this Agreement to the maximum extent permitted by applicable laws. Seller irrevocably agrees not to assert against NETAPP ICELAND or its direct or indirect customers, assignees or licensees, or distributors any claim of any intellectual property rights of Seller affecting the Work Product.

NETAPP ICELAND will not have rights to any works conceived or reduced to practice by Seller which were developed entirely on Seller's own time without using equipment, supplies, facilities or trade secret or Confidential Information of NETAPP ICELAND, unless (i) such works relate to NETAPP ICELAND's business, or NETAPP ICELAND's actual or demonstrably anticipated research or development, or (ii) such works result from any Services performed by Seller for NETAPP ICELAND. Except for works within (i) or (ii) of the preceding sentence which shall be works owned by NETAPP ICELAND, for any other works within the preceding sentence not owned by NETAPP ICELAND but which are necessary to use the Goods and Services for their intended purposes, Seller hereby grants NETAPP ICELAND a non-exclusive, irrevocable, perpetual, worldwide, royalty free, fully paid-up license to make, have made, sell, demonstrate, use, reproduce, modify, create derivative works based on such works, and sublicense such works, including the right to sublicense through multiple tiers of distribution.

**17. Indemnification.** Seller shall indemnify and hold harmless NETAPP ICELAND from and against any loss, claim, damage, liability, expense, or cost (including without limitation attorney's fees and court costs) awarded against or incurred or paid by NETAPP ICELAND as a result of or in connection with: (a) defective workmanship, quality or materials; (b) any failure to fully comply with all applicable laws, rules, regulations and ordinances in the delivery of Goods or performance of Services under this Agreement; and (c) any claim made against NETAPP ICELAND in respect of any liability, loss, damage, injury, cost or expense sustained by NETAPP ICELAND's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Goods and/or Services as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of this Agreement by Seller or those acting on Seller's behalf.

**18. LIMITATION OF LIABILITY.** IN NO EVENT SHALL NETAPP ICELAND BE LIABLE TO SELLER OR SELLER'S ASSISTANTS, OR ANY THIRD PARTY FOR ANY INDIRECT OR CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO LOSS OF REVENUE; LOSS OF ACTUAL OR ANTICIPATED PROFITS; LOSS OF THE USE OF MONEY; LOSS OF ANTICIPATED SAVINGS OR OTHER FINANCIAL LOSSES; LOSS OF BUSINESS OR TURNOVER; LOSS OF OPPORTUNITY; LOSS OF GOODWILL; LOSS OF REPUTATION; LOSS OF, DAMAGE TO OR CORRUPTION OF DATA; LOSS OF USE OF DATA; COST OF REMOVAL AND REINSTALLATION OF GOODS; BUSINESS INTERRUPTIONS ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT, WHETHER OR NOT NETAPP ICELAND WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE LIABILITY OF NETAPP ICELAND FOR ANY AND ALL CLAIMS ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO DIRECT DAMAGES AND SHALL UNDER NO CIRCUMSTANCES EXCEED THE VALUE OF THE GOODS AND SERVICES PROVIDED HEREUNDER. THESE LIMITATIONS OF LIABILITY DO NOT APPLY TO DAMAGES AS A RESULT OF GROSS NEGLIGENCE OR WILFUL MISCONDUCT CAUSED BY NETAPP ICELAND OR ITS EXECUTIVE STAFF.

**19. Assignments and Subcontracts.** Seller shall not assign or subcontract this Agreement or any right or obligation hereunder without the prior written consent of NETAPP ICELAND. NETAPP ICELAND may from time to time assign this Agreement or any rights, obligations, or benefits hereunder to its related, affiliated, or successor corporations.

**20. Delays.** Whenever any cause delays or threatens to delay the timely performance of this Agreement or any work or service hereunder, Seller shall immediately notify NETAPP ICELAND of all relevant information with respect to such cause. If Seller is or will be delayed in any performance or delivery by more time than is acceptable to NETAPP ICELAND in NETAPP ICELAND's sole judgment, then NETAPP ICELAND may terminate this Agreement in whole or in part as referred to in Section 12.

**21. Services Warranty.** Seller represents and warrants that all Services shall be completed in a professional, workmanlike manner, with the degree of skill and care that is required by current, good and sound professional procedures. Further, Seller represents and warrants that the Services shall be completed in accordance with applicable specifications and shall be correct and appropriate for the purposes contemplated in this Agreement. Seller represents and warrants that the performance of Services under this Agreement will not conflict with, or be prohibited in any way by, any other agreement or statutory restriction to which Seller is bound.

**22. Goods Warranty.** Seller warrants that all Goods provided will be new and will not be used or refurbished. Seller warrants that all Goods delivered shall be free from defects in materials and workmanship and shall conform to all applicable specifications, drawings, samples or other descriptions given, including those set forth in this Agreement and Seller's sales literature, to be of merchantable quality, to correctly process, provide, and/or receive date data within and between the twentieth and twenty-first centuries, and, if of Seller'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



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run to NETAPP ICELAND, its successors, assigns, and the users of Goods covered by this Agreement. Seller agrees to replace or to correct any Goods not conforming to the foregoing requirements when notified by NETAPP ICELAND or its successors within three (3) years after final acceptance. Seller hereby agrees that it will make spare parts available to NETAPP ICELAND for a period of five (5) years from the date of shipment at Sellers then current price, less applicable discounts. If Seller, upon notice of defect, fails promptly to correct or replace the Goods, NETAPP ICELAND may do so without further notice and Seller shall reimburse NETAPP ICELAND for all costs incurred thereby. No inspection, test or approval of any kind, including approval of designs, shall affect Seller's obligation under this Section. Goods which have been rejected shall not thereafter be tendered for acceptance unless the former rejection and correction are identified. Replaced or repaired Goods shall be subject to the provisions of this Section 22 to the same extent as the original Goods except that the warranty shall run from the last delivery date. NETAPP ICELAND may return rejected Goods or hold them at Sellers risk and expense, and may in either event charge Seller with costs of transportation, shipping, unpacking, examining, repacking, reshipping, and the like.

**23. Software Warranty.** Seller warrants that the software will perform in accordance with the agreed functional specifications and its documentation and that the documentation will be fit for its purpose and the documentation shall accurately describe the software. Seller shall for a warranty period of one year from the delivery of the software provide NETAPP ICELAND free of any charge with corrective maintenance, releases, and first-line and second-line support. Seller warrants that the software is free from any computer "virus" or other malicious program code. This shall apply to all CD's, tapes, PC hard drives and any other form of program and file delivery whether tangible or intangible including any software delivered electronically via a telecommunications network. Seller warrants that there is no functionality designed into or otherwise included in any software to be supplied which could be harmful to or shall prevent the operation in whole or in part of the software or any computer system on which the software is intended to run. Seller shall advise NETAPP ICELAND of any functionality in any program forming part of or allowing automated administration or record-keeping of the software. This applies in particular to any functionality that provides access to functions and resources (whether part of the software or not) that NETAPP ICELAND may reasonably be expected to wish to use or control. This shall include, without limitation, any functionality that potentially or actually undermines or circumvents any security provisions of the software or any third party software.

**24. Other Warranty.** The aforesaid expressed warranties shall be in addition to any warranty implied by law and any standard warranty or guarantee of Seller shall be construed as conditions as well as warranties and shall not be exclusive.

**25. Patents.** Unless an infringement arises exclusively from a design that is proprietary to NETAPP ICELAND and provided by NETAPP ICELAND, Seller shall, at its expense, hold harmless and defend NETAPP ICELAND, its customers, and all persons claiming under NETAPP ICELAND against any suit or suits for the infringement of any patent, trade secret, copyright, design right, trademark or other intellectual property right of a third party and shall indemnify the aforesaid parties against all damages, claims, losses, liabilities, costs and expense of any kind or nature (including without limitation attorney's fees and court costs) arising there from by reason of the manufacture, sale or the normal and intended use of the articles covered by this Agreement. Where performance under this Agreement includes experimental, developmental or research effort and such work is paid for in whole or in part by NETAPP ICELAND, Seller agrees to disclose to NETAPP ICELAND all confidential processes, know how and trade secrets resulting there from and, on request, to assign to NETAPP ICELAND each invention and property right resulting there from. Should the use by NETAPP ICELAND or its customers of any of the Goods be enjoined, or in the event Seller desires to minimize its liabilities hereunder, Seller may, at its option, either: (a) substitute a fully equivalent non-infringing item; (b) modify the infringing item so that it no longer infringes but remains functionally equivalent; (c) obtain for NETAPP ICELAND or NETAPP ICELAND's customers, at Seller's expense, the right to continue use of such item. If none of the foregoing is feasible, NETAPP ICELAND may, at its option, require that Seller take back such infringing item and refund to NETAPP ICELAND or its customers the purchase price therefore.

**26. Data Protection.** To the extent that Seller receives any information that relates to an identified or identifiable individual ("Personal Data") from or on behalf of NETAPP ICELAND in connection with any Agreement, Seller will process such Personal Data solely for the purpose of providing the goods and services specified in such Agreement, in accordance with all applicable agreements with NETAPP ICELAND, including without limitation any applicable data processing agreement, and in compliance with all applicable laws and regulations. Without limiting the foregoing, Seller will not retain, use, or disclose such Personal Data for any purpose other than providing the goods or services specified in such Agreement, including without limitation for any commercial purpose other than providing such goods or services to NETAPP ICELAND, and in no event may Seller sell such Personal Data to any third party. Seller certifies that it understands the foregoing restrictions and will comply with them. To the extent Seller provides any Personal Data to NETAPP ICELAND, Seller shall ensure that it has provided all required notices and obtained any required consents to enable NETAPP ICELAND to receive, transfer, and otherwise process such Personal Data in accordance with the NETAPP ICELAND Privacy Policy, as may be amended from time to time, the current version of which is posted at [www.netapp.com](http://www.netapp.com).

**27. Governing Law; Venue.** This Agreement shall be construed in accordance with, and all disputes hereunder shall be governed by the laws of the Netherlands. The Courts of The Hague shall have exclusive jurisdiction and venue over all controversies in connection herewith. The applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.

**28. Notices; Manner of Giving Notice.** All notices hereunder shall be in writing and shall be deemed to have been duly given if delivered personally, two days after delivery to an internationally or nationally recognized overnight delivery service, charges prepaid, five days after sent by registered or certified mail, postage prepaid, or when receipt is confirmed by facsimile or other telegraphic means to such address as shall be provided by the parties from time to time in writing. Any party may change its address for such communications by giving notice thereof to the other party in conformance with this Section.

**29. Export Law Compliance.** Seller shall fully and unconditionally comply with all applicable export laws in the performance of this Agreement. The Seller shall notify NETAPP if the delivery of any supplied Goods or Services to NETAPP is subject to US International Traffic in Arms Regulations ("ITAR"), US Export Administration Regulations ("EAR"), EU Export Controls Regulations (including Regulation EC (No) 1334/2000) and/or any other national and/or international Export Controls regulations (hereafter "Export Control Regulations"). Neither Seller nor NETAPP shall export or import directly or indirectly, any information acquired under this Agreement or any Goods utilizing any such information to any country or entity for which any export or import authority, or any agency thereof, at the time of export or import either prohibits or requires a license or other government authorization without first obtaining such license or approval. The Seller is responsible for obtaining all necessary licenses, agreements or approvals needed for the delivery of Goods and Services pursuant to the NETAPP purchase order to NETAPP from the appropriate authorities. If the Seller fails to obtain or to retain such license, agreement or approval, the delivery of the Goods or Services shall be cancelled and NETAPP is entitled to terminate the Agreement without incurring any liability versus Seller and the Seller must compensate NETAPP for all direct and indirect damages consequential to the Seller's failure to deliver the Goods or Services. Seller must inform NETAPP promptly if the necessary license, agreements or approvals are not issued, delayed or withdrawn as well as of any circumstances which may give cause for such non-issuance, delay or withdrawal. Seller shall notify NETAPP if the supply to and/or use by NETAPP of any Goods or Services is covered by an appropriate U.S. or other governmental license, agreement or approval, and provide date, reference and full details of the issuing governmental authority of such license, agreement or approval. Seller shall indemnify NETAPP for any claims, costs, penalties and/or damages (including reasonable attorney's fees) incurred by NETAPP consequential to Seller's failure to comply with applicable Import or Export Controls Regulations and/or required license, agreement or approval. Without prejudice to Seller's responsibility to obtain and retain licenses, agreements or approvals as set out above, NETAPP will, upon request, at the Seller's expense endeavour to assist the Seller in obtaining licenses, agreements or approvals from the governmental authorities, but NETAPP will not be liable in the event of non-issuance, withdrawal or non-renewal of any licenses, agreements or approvals. If applicable, the Seller shall adequately mark all Goods and Services supplied to NETAPP pursuant to the purchase order and Agreement (if applicable) as "ITAR-controlled", "EAR-Controlled" or "EU-controlled" by specifying (if applicable) the Technical Assistance Agreement reference number and Export Controls Classification Number and include these with the relevant Harmonized System number in the shipping documentation. The Seller is responsible for complying with any legislation governing the import of Goods and Services including but not limited to payment of customs duties, unless parties have agreed otherwise in writing. The Seller must provide assistance to NETAPP for the use of supplied Goods and Services by NETAPP which may include export, re-export, or transfer of Goods or Services by NETAPP. This assistance shall include: providing all information necessary to obtain any relevant export or import license, authorization or approvals; providing all information related to export or import license, authorizations or approvals including copies of license, approvals, classification numbers, copies of draft license applications, statements related to the country of origin of the Goods; and providing any other reasonable assistance that NETAPP reasonably requires from the Seller.

**30. Compliance with Regulations on Hazardous Substances and Waste Electrical Engineering Components.** Seller shall comply with all applicable laws relating to the restriction on the use of hazardous substances in electrical and electronic equipment ("ROHS") in connection with the manufacture by or for Seller of such Goods, and collection, treatment, recycling and disposal of waste electrical and electronic equipment ("WEEE") in connection with any disposal activities conducted by Seller for such Goods.

**31. Compliance.** Seller shall fully and unconditionally comply with all applicable laws in the performance of this Agreement including, but not limited to, employment, tax, import, and environmental controls and laws. With respect to any transactions under these purchase order terms and conditions, both parties will cooperate in any reasonable manner to affect compliance with foreign sales corporation rules as set forth under the applicable tax regulations.

**32. Disclaimer of Trademark Rights.** Seller hereby disclaims any interest in any trademark, trade names, or goodwill associated therewith belonging to NETAPP ICELAND and further hereby assigns to NETAPP ICELAND any such rights Seller may acquire in such trademarks, trade names or goodwill, however acquired, whether by operation of law, estoppel or otherwise.

**33. Survival.** Seller's obligations under Sections 10, 14, 15, 16, 17, 18, and 22 through 34, shall survive any termination of this Agreement. If any provision of this Agreement is held to be invalid, illegal, or unenforceable, the remaining provisions of this Agreement will not in any way be affected or impaired, and the invalid, illegal, or unenforceable provision will be restated to reflect the original intentions of the Parties under this Agreement as nearly as possible in accordance with applicable law preserving to the fullest extent possible the intent and agreements of the Parties as set forth in this Agreement.

**34. Entire Agreement.** In the absence of a Master Agreement, this Agreement, including all of these terms and modifications, if any, constitutes the exclusive and entire agreement between NETAPP and Seller and supersedes any and all prior discussions, correspondence, understandings and/or agreements pertaining to its subject matter.