

SOLARWINDS INVOICE TERMS AND CONDITIONS

1. **CONTRACT:** The terms of this invoice constitute a contract for sale between SolarWinds Worldwide, LLC ("SolarWinds") and Buyer (designated on the face hereof) which shall be made in and governed by the laws of the State of Texas without regard to choice of law provisions of that state. These terms apply to all sales of products by SolarWinds except as modified by SolarWinds' written agreement, quotes or confirmations. No additions or modifications are effective unless accepted by SolarWinds in writing. These terms and conditions as well as the End User License Agreements and SolarWinds Service and Support Agreement shall constitute the entire agreement between the Parties. All other terms are expressly rejected.
2. **TERMS:** All prices, whether herein named or heretofore quoted or proposed, shall, at SolarWinds option, be effective at time of shipment. Unless otherwise agreed in writing, payment terms are cash, certified check, C.O.D., or irrevocable Letter of Credit (L/C), U.S. dollars, without right of setoff. No discounts are authorized. Subject to Seller's approval of Buyer's credit, payment is due thirty (30) days from date of invoice. All sales are subject to prior approval of SolarWinds' Credit Department. The amount of credit or terms of payment may be changed by SolarWinds at any time for any reason
3. **PRODUCTS:** All products are governed by their respective End User License Agreement and all Intellectual Property Rights shall remain the property of SolarWinds.
4. **TAXES:** The amount of the present or future sales, revenue, excise, and all other taxes, whether city, state or federal city, applicable to the goods, shall be added to the purchase price and shall be the responsibility of Buyer.
5. **RETURN OF GOODS:** Buyer agrees not to return goods for any reason.
6. **INFORMATION DISCLOSED:** No information or knowledge heretofore or hereafter disclosed to SolarWinds in the performance of or in connection with the terms, hereof, shall be deemed to be confidential or proprietary, unless otherwise expressly agreed to in writing by SolarWinds, and any such information or knowledge shall be free from restrictions, other than a Claim for patent infringement for which Buyer shall defend, settle, and fully indemnify SolarWinds, as part of the consideration hereof.
7. **CONFIDENTIALITY:** Buyer and Solarwinds agree to maintain the confidentiality of the Software and any information exchanged by the parties that is marked or otherwise identified as confidential or proprietary ("Proprietary Information"). Nothing in this Agreement shall be construed to convey any title or ownership rights to the Proprietary Information between the parties.
8. **WARRANTIES.** SOLARWINDS PROVIDES THE SOFTWARE "AS IS" AND WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE OR WARRANTIES OF QUALITY OR PERFORMANCE. THIS IS THE SOLE AND EXCLUSIVE WARRANTY GIVEN BY SOLARWINDS (EXPRESS OR IMPLIED) WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT.
9. **LIMITATIONS OF LIABILITY.** IN NO EVENT WILL SOLARWINDS BE LIABLE TO THE OTHER OR ANY THIRD PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES. SOLARWINDS' LIABILITY HEREUNDER SHALL NOT EXCEED, IN THE AGGREGATE, THE FEES PAID BY BUYER FOR THE SPECIFIC SOFTWARE WHICH GAVE RISE TO SUCH DAMAGES.