

# **IN8: Purchase Agreement**

## **Standard Terms & Conditions of Sale**

### **Sale of Hardware**

iN8 shall make available for sale and the undersigned may purchase hardware from iN8 at the price set by iN8. The undersigned understands that iN8 may sell hardware owned directly by iN8 or on behalf of select third parties. iN8 reserves the right to change CloudX hardware prices at any time without any notice.

### **Delivery**

iN8 shall deliver purchased hardware to the undersigned once said hardware has arrived at an authorized IN8 Data Center. Hardware may be delivered at any time and iN8 makes no representation or guarantee as to the date when said hardware will be delivered. The undersigned understands and acknowledges that a significant amount of time may pass from the time they purchase the hardware to when said hardware is delivered.

### **Refunds:**

**All hardware sales to the undersigned are final; iN8 does not offer any money-back guarantees on hardware purchases. You recognize and agree that you shall not be entitled to a refund for any purchase from iN8 under any circumstances.**

### **Restocking Fee:**

Except as expressly set forth herein, Buyer may not return any hardware packs without Seller's written consent. All returns are subject to a restocking fee of up to 20% of the purchased price, which may change from time to time. Contact Seller to determine the exact amount. If the goods are specially ordered by the Buyer, and cannot be returned to the manufacturer, Seller shall have no obligation to accept the return of the goods, and Buyer shall remain liable for the entire purchase price of the goods.

### **Disclaimer of Warranties**

Hardware ARE SOLD 'AS IS'. iN8 EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

The undersigned understands and agrees that each individual hardware pack may only have a useful life cycle of up to 5 years. In the event that the functionality of the hardware in operation is no longer optimal for performing the services of Cloud Computing, IN8 may at their discretion elect to shift the undersigned to newer generations of hardware. If the undersigned elects to update their hardware to a newer generation, then the undersigned will have sixty (60) days to host and maintain their hardware with IN8 as well as pay the required upgrade fee provided via invoice.

### **Offer and Acceptance**

The undersigned agrees that these Standard Terms and Conditions of Sale (the "IN8's Terms"), as supplemented by any purchase order of IN8 IN8 (the "Purchase order") shall constitute an agreement (the "Agreement") between the parties and shall govern all past and future purchases of goods and services from IN8. These terms shall prevail over any additional or different terms or conditions provided to the undersigned, regardless of whether or when the undersigned has submitted its purchase order or such terms, and any such terms or conditions provided by the undersigned are deemed to be a material alteration of this Agreement and are hereby objected to by IN8 and shall be deemed inapplicable to any sale of IN8's goods or services, unless specifically agreed to in a writing signed by an authorized representative of IN8.

The Purchase Order shall constitute an offer to the undersigned on these IN8's Terms for the sale of IN8's goods and services which shall be deemed accepted by the undersigned upon the delivery and non-rejection of IN8's goods. Any acceptance of IN8's offer is limited to IN8's Terms and shall constitute the undersigned's consent to IN8's Terms as stated in this Agreement, which are in lieu of and supersede any and all terms and conditions stated on the the undersigned's purchase order or other materials provided by the the undersigned. Fulfillment of the undersigned's order does not constitute acceptance of any of the undersigned's terms and conditions and does not serve to modify or amend these Terms. In the event that the undersigned's purchase order or other material provided by the undersigned shall be deemed to be the offer, IN8 hereby rejects such offer and proposes that a contract be formed on the terms hereof.

### **Terms of Payment**

All payments shall be made Net 15 days from the Purchase Order date to IN8 in U.S. Dollars to iN8 Technologies LLC or another location if so requested by IN8. All shipments and deliveries are subject to approval of the undersigned's credit standing by IN8. IN8 reserves the right to decline or postpone shipments for any reason except upon receipt and acceptance of payment or upon terms and conditions acceptable to IN8.

### **Price**

Prices for IN8's products shall be those stated on the front side of the Purchase order, which, unless otherwise stated in a writing signed by an authorized representative of IN8, do not include costs incurred for special packaging, shipping, or taxes. If prices are contingent on the purchase of a minimum quantity that is not met by the undersigned, IN8 shall have the right to adjust the price accordingly. Unless otherwise specified in the Purchase order, the undersigned shall pay all Purchase order amounts due to IN8 on the terms set forth on the Purchase order. the undersigned shall not, and acknowledges that it shall have no right under these IN8's Terms

or otherwise to withhold, offset, recoup or debit any amounts owed or to become due and owing to IN8 or any of its affiliates against any other amount owed or to become due and owing to it by IN8 or its affiliates.

### **Ex Works (EXW) and Risk of Loss**

All shipments covered by this Agreement are Ex Works (EXW) IN8's facility (Incoterms 2010), unless otherwise specified in a Purchase Order and agreed to in writing by an authorized representative of IN8. For all deliveries EXW, IN8's liability for delivery shall terminate upon making IN8's products available to the carrier at IN8's facility (the "Shipment Time"), at which time title to and responsibility for damage to or loss of products shall pass to the undersigned. If for any reason the undersigned fails to accept delivery of any of IN8's goods at the Shipment Time, title and risk of loss to IN8's goods shall pass to the undersigned and IN8, at its option, may store the goods until the undersigned retrieves them, whereupon the undersigned shall be liable for all related costs and expenses (including without limitation storage and insurance).

As collateral security for the payment of the purchase price of IN8's goods, the undersigned hereby grants to IN8 a lien on and purchase money security interest in and to all of the right, title and interest, whether now existing or hereafter arising, of the undersigned in, to and under the IN8's goods and all proceeds (including insurance proceeds) thereof.

### **Inspection and Rejection of Nonconforming Goods**

Upon receipt, and no later than 14 days from Delivery Time (the "Inspection Period"), the undersigned will complete inspection of IN8's goods for conformance with the Purchase Order. the undersigned will be deemed to have accepted the goods unless it notifies IN8 in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by IN8. "Nonconforming Goods" means only the following: (i) the goods shipped are different than identified in the Purchase order; (ii) the goods label or packaging incorrectly identifies its contents; or (iii) goods are DOA ("Dead on Arrival").

If the undersigned timely notifies IN8 of any Nonconforming Goods, IN8 shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming goods or (ii) credit or refund the price for such Nonconforming Goods. the undersigned shall ship, at its expense and risk of loss, the Nonconforming Goods to IN8's facility. The undersigned acknowledges and agrees that the remedies set forth in this section are its exclusive remedies for the delivery of Nonconforming Goods.

### **Intellectual Property Rights**

IN8 agrees that it will indemnify and defend, at its own expense, all suits against the undersigned for infringement of any patent covering product sold by the IN8. The responsibility of the IN8 shall be however subject to the the undersigned (i) promptly notifying the IN8 in writing of a claim for infringement and in no event later than ten (10) workings days after the receipt of such claim, and (ii) allowing the IN8, except in case of conflict of interest, to have the exclusive and full control of the defense of said claim and any related settlement action, being understood that the the undersigned shall provide the IN8 with any reasonable assistance that may be requested therewith. The IN8 shall however have no liability if the infringement results from (i) any association, combination or use of the product or any part thereof with any other item, device, equipment or product which is not customarily used in association with the product and which is not supplied by the IN8, (ii) any repair, modification, improvement or enhancement of the product or any part thereof not made by or made without the prior written consent of the IN8 or (iii) any use of the product or any part thereof for a purpose not contemplated by or authorized any order. The above provisions constitute the entire liability of any claim for infringement of intellectual property related to the product.

### **Limitation of Liability**

NEITHER PARTY SHALL BE LIABLE FOR ANY FAILURE TO PERFORM ON ITS PART WHICH IS DUE TO CAUSES BEYOND ITS CONTROL, EXCEPT FOR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. THE LIABILITY OF EACH PARTY, IF ANY, ARISING OUT OF AN AGREEMENT TO PURCHASE OR OTHERWISE WITH REGARD TO ANY GOOD FOR ANY AND ALL CLAIMS, COSTS, DAMAGES, LOSSES, LIABILITIES AND EXPENSES, WHETHER ARISING FROM NEGLIGENCE OR OTHER TORT, BREACH OF CONTRACT, BREACH OF WARRANTY, INDEMNITY, OR OTHERWISE SHALL NOT EXCEED THE TOTAL PRICE FOR THE GOODS AND SERVICES PURCHASED.

IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING FROM THE USE OR INABILITY TO USE IN8'S PRODUCTS OR DOCUMENTATION, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING WITHOUT LIMITATION, LOST OF REVENUES OR PROFITS. IN8 SHALL NOT BE LIABLE FOR ANY HARDWARE, SOFTWARE, OR DATA STORED OR USED WITH ANY PRODUCT, INCLUDING WITHOUT LIMITATION THE COSTS OF REPAIRING, REPLACING, INTEGRATING, INSTALLING OR RECOVERING SUCH HARDWARE, SOFTWARE OR DATA.

**Compliance with Laws and Export Regulations**

Each Party agrees to comply with all applicable laws, rules, regulations, orders and ordinances of the United States and in any other state or country with jurisdiction over it or its activities in performance of its obligations hereunder.

The commodities, software and services listed herein on this Agreement and elsewhere may be subject to U.S. export control laws and regulations, including without limitation the Export Administration Regulations and the sanctions programs administered by the Office of Foreign Assets Control. The Parties acknowledge that any products, software, and technical information (including, but not limited to, services and training) provided by either Party under this Contract are or may be subject to export laws and regulations of the United States and the destination country(ies) and any use or transfer of such products, software and technical information must be authorized under those Laws. The Parties agree that they will not use, distribute, transfer or transmit the products, software or technical information (even if incorporated into other products) except in compliance with export Laws. If requested by either Party, the other Party agrees to sign all necessary export-related documents as may be required to comply with export Laws. Any export, re-export, or transfer or use of these commodities must be conducted in compliance with such applicable laws and regulations. The undersigned shall not intentionally do anything to cause IN8 to be in violation of such export control laws and regulations.

**Force Majeure**

Neither Party shall be liable for any loss, delay of failure to perform resulting from any force majeure event, including, but not limited to, acts of God, acts of terrorism, fire, natural disaster, epidemics, disease, labor stoppage, strike, shortage of parts or materials, any order, regulation, request of any national or local authority, government department or other competent authority of any country (including without limitation IN8's inability to obtain any export license or other approval that may be required by any government of competent jurisdiction), war or military hostilities, inability of carriers to make scheduled deliveries, or any other act beyond the control of either Party. Any delivery date may be extended, at IN8's option, to the extent of any delay resulting from any force majeure event.

**Jurisdiction and Venue**

All sales, transactions, and/or disputes between IN8 and the undersigned shall be governed by and construed in accordance with the laws of the State of Utah, as well as applicable federal statutes of the United States of America. The State of Utah, County of Salt Lake shall be the exclusive venue for the resolution of any disputes between IN8 and the undersigned arising

from any Purchase order, any agreement to purchase or otherwise. The undersigned's acceptance shall constitute consent to the jurisdiction and venue of the courts of Salt Lake County. The prevailing party shall be entitled to a reasonable compensation of attorney's fees, legal expenses, and costs.

**Entire Agreement**

The terms and conditions contained herein and in IN8's Purchase Order together with the documents incorporated into any Purchase order by reference, shall constitute the complete and exclusive agreement between the IN8 and the undersigned which supersedes any prior or contemporaneous representations or agreements.

Any terms or conditions furnished by either Party that conflict with those stated in this Agreement shall be deemed inapplicable to any sale and shall not be binding on IN8. No modification, amendment, or waiver of the terms on this Agreement shall be binding on either Party absent a writing signed by the Parties.

**CloudX Hardware Purchase Order**

Date	Description	QTY	Amount
		Total	

The undersigned agrees to the terms and conditions set forth above as demonstrated by their signature as follows:

**Name:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Wiring Instructions:**

IN8 Technologies LLC  
769 Tanglewood Loop  
North Salt Lake, UT 84054

Bank: Mountain America Credit Union  
Account: 501013659290  
Routing: 324079555

Date: \_\_\_\_\_