1. Scope
These terms of trade ("Terms of Trade") apply to the supply of
Endace hardware, firmware, software and/or documentation
("Products") by Endace Europe Limited (UK company 04834114,
with its principal place of business at Suite 5, Third Floor,
Nicholson’s House, Nicholson’s Walk, Maidenhead, Berkshire
SL6 1LD, United Kingdom and registered office at Squires
House, 205A High Street, West Wickham, Kent, BR4 0PH, United
Kingdom); (referred to as "we", "our" or "us") to the purchaser of
the Products (referred to as "you" or "your").

2. Information
You warrant that all information supplied in the customer
account opening form and all information subsequently
supplied to us is true and complete. You agree that you will (a)
if requested by us, provide adequate information for us to verify
the correctness of any information supplied to us; and (b)
promptly notify us of any changes in any information supplied
to us, including any change in your address.

3. Payment
Unless you have requested and received prior credit approval
from us, payment must be made before we will ship the
Products.

If you have received credit approval and your order is within
your credit limit, payment must be made within 30 days of the
date of the invoice. Invoices are issued on the date of shipment
and are payable via direct bank transfer or as otherwise
arranged with your Endace sales representative. If payment in
full is not received by the due date for payment, we reserve the
right to charge interest at the rate of two percent (2%) per
month from the due date until actual date of payment.

4. Prices
Prices are exclusive of sales taxes, import duties or similar taxes
or duties and any applicable bank charges (which are your sole
responsibility) and are expressed in Euros unless otherwise
stated. To the extent Endace is required by law to collect such
taxes, such taxes shall be added to invoices as separately stated
charges and paid in full by you, unless you are exempt from
such taxes and furnish Endace with a certificate of exemption in
a form reasonably acceptable to Endace. In the event you claim
exemption from such taxes, you agree to indemnify and hold
Endace harmless from any and all subsequent assessments
levied by a proper taxing authority for such taxes, including
interest, penalties and late charges.

5. Default
If (i) any warranty or representation given or made to us
regarding your account is false or materially incomplete; or (ii)
you default in the payment of any monies due; or (iii) you are
otherwise in breach of any obligation owed to us, or to any of
our subsidiaries or related companies; or (iv) you become
insolvent, bankrupt, commit an act of bankruptcy, are placed in
liquidation or a similar event occurs; or (v) we become aware of
information that causes us to believe that any of the above may
occur;

then, without prejudice to any other rights we have, (a) all
invoices, debit memos, and other obligations owed by you to us
of any kind shall immediately become due and (where
applicable) payable to us in full, to the extent permitted by law;
and (b) we may, without liability on our part, cancel or suspend
in whole or in part any contract for the supply of goods or
services to you (and any such cancellation or suspension will not
affect our claim for monies due at the time of cancellation or
suspension or for damages).

6. Indemnity For Costs
You shall indemnify us against any costs or damages (including
our legal costs) incurred in recovering goods or any monies due
by you and such amounts shall be monies due for the purposes
of this document.

7. Delivery
Time for delivery, if stated, is according to our best estimates
but is not guaranteed nor will it be a representation or term of
any contract. You will not be relieved of any obligation to
accept or pay for the Products by reason of any delayed
delivery. We will not be liable for any loss, expense, injury,
damage or claim resulting from any delay however caused.

8. Risk and title
The risk in any hardware Product passes to when made available
to you or your agent or any carrier at our premises or other
delivery point agreed to by us. Ownership of hardware
Products (other than intellectual property rights) will remain
with us until we have received payment in full. Title to Endace
software and all intellectual property rights in the Products
remains with us (or our suppliers) at all times. If prior to making
payment in full of the total price of the Products, you on-sell the
Products in the ordinary course of your business, or if they
become constituents of other products which are sold by you,
you shall be liable to account for such proceeds to us. If you
default in making any payments due to us or if any creditor of
yours takes any steps to recover moneys due by you or has
grounds for taking such steps then we shall be entitled to enter
your premises and take possession of all Products supplied by
us.
9. Use of Products and Product information

Unless we have agreed otherwise in writing, Products supplied in card only form ("Cards") are supplied to you for your own use only or for resale as part of a server or appliance. You agree that you will not sell, rent, loan or otherwise make available to any other person any Card as a card only.

Endace hardware Products are designed solely for use as or within servers and/or network infrastructure equipment for switching, signalling, transmission and network management. You indemnify us for any losses, damages, suits and other liabilities arising in whole or in part out of any use or resale for purposes outside these usage parameters.

Other than as permitted under law, you must not disassemble, reverse engineer or copy the Products (or any part of them). You acknowledge the confidential nature of all user manuals, programming guides, design, functional or performance data or documentation for the Products, and all information able to be obtained or derived therefrom or from the Products themselves. You agree not to use or disclose any such materials or information other than as reasonably necessary for your legitimate use of the Products for your internal business purposes.

10. Hardware warranties and support

Our warranty for hardware Products is valid for 12 months, and covers full replacement of defective Endace hardware and firmware. Full details are set out in our Hardware Warranty attached.

11. Software licence

Use of any Endace software will be subject to the End User Licence Agreement attached.

12. Exclusion of warranties

TO THE EXTENT PERMITTED BY LAW, WE EXPRESSLY EXCLUDE ALL WARRANTIES, CONDITIONS OR REPRESENTATIONS, EXPRESS OR IMPLIED, NOT EXPRESSLY SET OUT IN THESE TERMS OF TRADE, INCLUDING ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

13. Limitation of liability

OTHER THAN FOR (I) NEGLIGENCE ACTS OR OMISSIONS CAUSING DEATH OR PERSONAL INJURY TO ANY PERSON, OR (II) FRAUD, FOR WHICH WE DO NOT LIMIT OUR LIABILITY:

a. WE WILL NOT HAVE ANY LIABILITY OR RESPONSIBILITY FOR ANY LOSS, DAMAGE OR INJURY WHETHER ARISING IN CONTRACT, TORT, EQUITY OR OTHERWISE WHICH DOES NOT FLOW DIRECTLY OR NATURALLY FROM A BREACH OF THESE TERMS OF TRADE INCLUDING, IN EACH CASE CONSEQUENTIAL LOSS OF BUSINESS OR PROFITS OR OTHER LOSS; AND
b. WE SHALL ONLY BE LIABLE FOR LOSSES WHICH FLOW DIRECTLY OR NATURALLY FROM A BREACH BY US OF THESE TERMS OF TRADE UP TO A MAXIMUM OF THE PRICE PAID FOR THE PRODUCT OR THE COST OF REPAIR OR REPLACEMENT OF THE WHOLE PRODUCT OR THE DEFECTIVE COMPONENTS (WHICHEVER IS THE LESSER).

14. Export control

You agree to comply with all applicable export control laws and regulations and not to export or re-export Products or technical data received other than in compliance with the applicable export control laws and regulations. You are responsible for obtaining such licences to export, re-export or import Products or technical data as may be required.

15. Governing law / jurisdiction

These Terms of Trade will be governed by the laws of England, and the parties submit to the non-exclusive jurisdiction of the courts of England.

16. Entire agreement

These Terms of Trade read together with our quotation, the End User Licence Agreement, the Hardware Warranty and Support Agreement constitute the entire agreement between the parties for the supply of Products. Where there is any inconsistency between these documents, the following order of precedence will apply (a) the End User Licence Agreement; (b) the Hardware Warranty; (c) the Support Agreement (if any); (d) these Terms of Trade; and (e) our quotation.

You acknowledge that you accept these Terms of Trade to the exclusion of any standard terms you may have for purchases. No modification, alteration, or addition to these Terms of Trade will be binding on Endace unless accepted in writing by an authorised Endace signatory.