

Lean VMI Agreement for Cisco Global Hubs

This Lean VMI Agreement for Cisco Global Hubs (the “Agreement”) is entered into by and between _____, a _____ corporation with its principal place of business located at _____ (“EMS Provider”) and _____, a _____ corporation with its principal place of business located at _____ (“Supplier”) as of _____ (“Effective Date”).

Whereas

Cisco Systems, Inc. (“Cisco Inc.”) and Cisco Systems International B.V. (“Cisco BV”) (each, a “Cisco Entity”) have entered into agreements with a third party provider of logistics and warehousing services (“Hub Operator”) pursuant to which Hub Operator will establish warehouse facilities in close geographic proximity to certain EMS Provider facilities at which products are manufactured for Cisco Inc. and/or Cisco BV (each such warehouse, a “Hub”) for the purpose of receiving, storing and forwarding the materials, components and assemblies used in the manufacture of, or bundled with, such products (each such material, component and assembly, a “Component”); and

EMS Provider and Supplier have previously established a set of terms (which may take the form of a written agreement, purchase order terms, course of dealing or other form) governing EMS Provider’s purchases of Components to be incorporated into, or bundled with, Cisco Products (as defined below) (such terms, as EMS Provider and Supplier may alter them from time to time, the “Existing Purchase Terms”); and

EMS Provider and Supplier wish to document the terms under which, among other things, Supplier will deliver Components to one or more Hubs pursuant to instructions from EMS Provider, EMS Provider will request delivery of Components located in the Hubs as needed to produce Cisco Products, Supplier will invoice EMS Provider for such delivered Components and EMS Provider will pay such invoices.

Now Therefore, in furtherance of the foregoing and upon due consideration, the adequacy and receipt of which is hereby acknowledged, the parties agree as follows:

1. Scope

1.1 Cisco Supply Chain Only. This Agreement relates solely to Components ordered by EMS Provider for incorporation into, or bundling with, Cisco Products. This Agreement shall have no application to any commodity or component ordered for any other customer of EMS Provider or for any other purpose.

1.2 Order of Precedence. Subject to Section 1.1 above, this Agreement supplements and is cumulative with the Existing Purchase Terms; provided that in the event of a conflict with the Existing Purchase Terms, the terms of this Agreement will prevail.

1.3 Components Covered. This Agreement shall apply to all Components specified in any Hub Order (as defined below) placed with Supplier by EMS Provider.

2. Definitions

“Cisco Product” means a product manufactured by or for Cisco Inc. or Cisco BV.

“Custom Component” means a Component that the Cisco Entities and Supplier have agreed to designate as ‘Liable’ in connection with the Component costing process (and any applicable purchase agreements between the Cisco Entities and Supplier), as documented in the Cisco Entities’ component attributes database. The parties acknowledge that a Component is generally designated ‘Liable’ when it contains intellectual property of a Cisco Entity or was designed or produced to meet specific requirements unique to a Cisco Product and when Supplier has no alternate redistribution channel.

“Cycle Time to Replenish” or “CT2R” means, with respect to a given Component and a given Hub, the period of time between Supplier’s receipt of a Hub Order for such Component and arrival of such Component at such Hub. CT2R consists solely of Supplier’s order processing time, process planning time, manufacturing cycle time and transit time to the Hub, and does not include lead time for raw materials or other Component inputs.

“EDI” means Electronic Data Interchange.

“Hub Order” or “Replenishment Signal” means an instruction to Supplier to ship Components to one or more Hubs, either on a single date or on multiple pre-scheduled dates. The instruction may take the form of a discrete or blanket purchase order (fax or electronic), EDI demand signal, or any other method agreed between EMS Provider and Supplier.

“MOQ” means minimum order quantity, as agreed between Supplier and EMS Provider or Supplier and the Cisco Entities, whichever is lower.

“MPQ” means minimum package quantity, as agreed between Supplier and EMS Provider or Supplier and the Cisco Entities, whichever is lower. MPQ may be equal to or less than MOQ and/or less than the amount of Product actually shipped by Supplier in a single shipment (i.e. shipment may consist of a pallet, but MPQ consists of an overbox or an individual box, as agreed by Supplier and the Cisco Entities).

“Pull Signal” means an instruction from the EMS Provider to the Hub Operator to ship or deliver Components from a Hub to the EMS Provider.

“Standard Component” means any Component that is not a Custom Component. Standard Components are generally designated ‘Non-liable’ in the Cisco Entities’ component attributes database.

3. Forecast and Acknowledgment

3.1 EMS Provider will use commercially reasonable efforts to provide Supplier with a weekly, non-binding, rolling forecast of its requirements for Components for the following fifty-two (52) week or greater period (a “Forecast”). EMS Provider will provide the Forecast electronically in a format agreed between EMS Provider and Supplier.

3.2 Supplier will use Forecasts solely for materials and capacity planning purposes. Forecasts do not create any materials liability or obligation to purchase on EMS Provider’s part.

4. Capacity and Material Planning

Supplier will use commercially reasonable efforts to conduct capacity and materials planning and management sufficient to enable Supplier to meet EMS Provider’s Forecast at then-current CT2Rs agreed between Supplier and EMS Provider, as reflected in EMS Provider’s enterprise resource planning (“ERP”) system (“Agreed CT2R”).

5. Hub Orders and Shipment to Hub

5.1 Inventory Sizing. On a monthly or other periodic basis, EMS Provider will use the Cisco lean manufacturing methodology and algorithms to calculate the optimal amount of each Component that should be driven in the supply chain (the “Supply Chain Target”).

5.2 Hub Orders.

5.2.1 Eligible Components. EMS Provider will not include any Component on any Hub Order prior to the time such Component has been assigned an alphanumeric version code (e.g. ‘A0’) in the Cisco Entities’ ERP system, indicating that the Cisco Entities have approved such Component for use in the manufacture for sale (as opposed to manufacture for test) of a Cisco Product.

5.2.2 Placement of Hub Orders. When inventory on-hand and on-order in the supply chain falls below the desired re-order point levels, EMS Provider will place a Hub Order with Supplier. A Hub Order shall not constitute an offer to purchase, or create an obligation to purchase (other than as set out in Sec. 9.2 hereof (Freshness) and Art. 8 (Reschedules, Cancellations and Returns)), irrespective of the form in which the Hub Order is transmitted (e.g. discrete P.O., the boilerplate terms of which purport to form an offer to purchase). Hub Orders and Supplier’s fulfillment of Hub Orders shall comply with MOQ and MPQ.

5.3 Hub Order Confirmation. Following receipt of each Hub Order, Supplier will transmit a notice to EMS Provider confirming order receipt and committing to ship the quantity of Components specified on the order to the designated Hub(s) on the dates specified, or, if Supplier is unable to commit to such dates, alternate dates consistent with the Agreed CT2R for each Component (an “Alternate Date”); provided, however, that the aggregate quantity of each Component committed to be shipped shall always be the same as the aggregate quantity of such Component requested on the Hub Order. Supplier will use commercially reasonable efforts to transmit the notice to both EMS Provider and Hub Operator within one business day after receipt of the Hub Order.

5.4 Shipment to Hub.

5.4.1 Supplier will ship the quantity of Components specified in each Hub Order to the Hub(s) designated on such order and will use commercially reasonable efforts to ensure that such shipment(s) are made (i) on the date or dates specified on such order; or (ii) any applicable Alternate Date; or (iii) if such order contains no dates, then on a timetable to allow delivery to the destination Hub within the Agreed CT2R. Supplier will not ship Components to any Hub except in response to, and in conformance with, a valid Hub Order.

5.4.2 Supplier will ship Components to the applicable Hub(s) using a carrier approved by the Cisco Entities. EMS Provider will provide a list of such carriers to Supplier and will update such list from time to time. Or, in the event the Cisco Entities determine to manage all shipping from Supplier to Hub, Supplier will coordinate with the Cisco Entities or their designated shipper with respect to all shipments.

5.4.3 Following any shipment of Components to any Hub, Supplier will transmit an advanced ship notice (“ASN”) to Hub Operator. Supplier shall transmit each ASN electronically (or, on an exception-only basis, e.g. when electronic means such as B2B have temporarily failed, by fax), no later than 24 hours prior to scheduled delivery for overseas shipments or 4 hours prior to scheduled delivery for local shipments.

5.4.4 Supplier will retain title and risk of loss for each Component shipped to a Hub until such time as title and risk of loss pass to EMS Provider as provided in Section 6.2 below. Supplier shall maintain insurance on the Products during transit to the Hub and while the Products remain in the Hub, notwithstanding any contrary Incoterm referenced on any quote, invoice, acknowledgement, bills of lading, or other forms utilized or exchanged by the parties in connection with the transportation and/or sale of the Products.

5.5 Inventory Monitoring. Pursuant to Section 5.1 above, EMS Provider shall maintain the primary responsibility for monitoring inventory levels in the Hub. As a supplement to EMS Provider's monitoring activities, Supplier shall monitor the inventory level of each of its Components in each applicable Hub.

6. Pull Process and Shipment to EMS Provider

6.1 Pull Signal. In order to draw Component inventory from a Hub, EMS Provider will transmit a Pull Signal to Hub Operator specifying at least the following: Component (by Cisco part number, including version) and quantity to be delivered to EMS Provider. Each such quantity shall be (i) no smaller than the MPQ for the applicable Component; and (ii) if greater than such MPQ, shall be a multiple of such MPQ. Hub Operator will retrieve the applicable Components from the Hub and arrange for delivery to EMS Provider. Such Pull Signal must reference the purchase order number included in the original Hub Order or other applicable order number as generated by EMS Provider prior to the Pull Signal.

6.2 Shipment to EMS Provider. For each shipment, Hub Operator will transmit a numbered notice to Supplier (a "Delivery Notice") and will transmit an ASN to EMS Provider. Title and risk of loss will transfer from Supplier to EMS Provider at the point when the Components have been loaded on the carrier's means of transport at the Hub for delivery to EMS Provider. The parties anticipate that freight costs will be paid by the applicable Cisco Entity or Hub Operator, and accordingly, that neither EMS Provider nor Supplier will be required to pay such costs. In the event EMS Provider and Supplier have agreed to GRN-based Invoicing (as defined in Sec. 7.1 below), EMS Provider will transmit a numbered notice to Supplier and Hub Operator upon EMS Provider's receipt of each shipment (a "Goods Received Notice" or "GRN").

7. Invoicing and Payment

7.1 Invoicing. Supplier will invoice EMS Provider for Components once the Components have been shipped from the Hub, or, if Supplier and EMS Provider have so agreed in writing, Supplier will invoice EMS Provider for Components upon Supplier's receipt of EMS Provider's GRN ("GRN-based Invoicing"). Supplier will include the Delivery Notice number (or, if GRN-based Invoicing is in effect, the GRN number) and any purchase order number included in the original Hub Order or other applicable order number as agreed with EMS Provider.

7.2 Pricing. Supplier invoices will reflect Component prices in effect on the date of shipment to EMS Provider, as determined by the Existing Purchase Terms. For Components with respect to which Supplier paid freight and/or duties for transport to the Hub, Supplier's invoice will include the applicable amount of such costs. In the event Supplier has included in any Component price any amount intended to reimburse Supplier for the costs of a previous vendor managed inventory or other hubbing arrangement, Supplier shall reduce such price by such amount prior to including such price on any invoice.

7.3 Payment Terms. EMS Provider shall pay the amount of each invoice (or, in the event of a disputed invoice, the undisputed portion of such invoice) to Supplier within sixty (60) days after the date of such invoice; provided that Supplier shall not date any invoice prior to the date on which the relevant Component was shipped to EMS Provider.

8. Reschedules, Cancellations and Returns

8.1 Reschedules. Rescheduling of Hub Orders prior to Supplier's shipment to a Hub will be governed by the Existing Purchase Terms. Following receipt of any reschedule request, Supplier will transmit a notice to EMS Provider and Hub Operator confirming receipt of the request and committing to new ship dates and/or Component quantities as per the reschedule request, to the extent consistent with the Existing Purchase Terms. Supplier will use commercially reasonable efforts to transmit the notice to both EMS Provider and Hub Operator within one business day after receipt of the reschedule request.

8.2 Cancellations and Returns. Cancellation of Hub Orders and return of Components will be governed by the Existing Purchase Terms. Unless otherwise directed by Supplier or agreed between Supplier and EMS Provider, EMS Provider will not ship Components for return to any Hub location.

9. Inventory Aging, Freshness and Overstock

9.1 Inventory Aging.

a. Supplier will monitor and track aging of all Components in each Hub using information provided by the Hub Operator.

b. In the event any Component in any Hub ages beyond any Component or packaging effectiveness period recommended by Supplier (or, if shorter, any Component or packaging effectiveness period agreed between the applicable Cisco Entity and Supplier) (an "Aged Component"), Supplier will (i) notify EMS Provider and the Cisco Entities; and (ii) arrange with Hub Operator either to rebake, repackage or otherwise refresh such Component if applicable, or to remove such Component from the Hub and replace it with a newer Component. Supplier will undertake such activities at its own expense.

c. For purposes of Section 9.2 below (Freshness), if Supplier replaces an Aged Component with a new or refreshed Component (a "Replacement Component"), the Replacement Component will be deemed to have entered the Hub on the same date as the Aged Component; provided however that any period during which the Aged Component could not be used due to excessive aging beyond the effectiveness period recommended by Supplier (or, if shorter, any Component or packaging effectiveness period agreed between the applicable Cisco Entity and Supplier) shall not be applied towards satisfaction of the applicable Freshness Period.

9.2 Freshness. With respect to Custom Components, Supplier will notify EMS Provider and the Cisco Entities in the event any such Component has remained in any Hub for more than ninety (90) days (the "Freshness Period"). Upon receipt of such notice, EMS Provider will, within two business days, issue a Pull Signal to Hub Operator with respect to such Component, subject to the following exceptions:

a. Components shipped to any Hub in excess of amounts specified in a valid Hub Order will be excluded; and;

b. With respect to any Components that have been subject to any quality-related quarantine or hold while in the Hub, the Freshness Period will be extended by the duration of such quarantine or hold.

This Section 9.2 shall not apply to Standard Components.

9.3 Overstock. In the event that inventory of a given Standard Component at a given Hub is greater than the Supply Chain Target for such Component in such Hub, Supplier may instruct Hub Operator to remove the amount of such inventory from such Hub that is greater than the Supply Chain Target and to ship such inventory pursuant to Supplier's direction or to make such inventory available for pickup by Supplier or its authorized agent. Prior to instructing Hub Operator to remove any such inventory, Supplier shall so notify EMS Provider and the applicable Cisco Entity in writing and shall confirm with EMS Provider that future demand will not consume such inventory.

10. Component Changes

10.1 Quality-related Changes. In the event Supplier implements a recall or other quality-related change to any Standard Component or Custom Component located in a Hub, Supplier will notify EMS Provider and the Cisco Entities of the change, including whether the Component can be reworked at the Hub and the date on which Supplier will have replacement or re-worked Components available at the Hub. Upon agreement between Supplier and EMS Provider to the changes proposed, Supplier will carry out such changes or replace such Component in the Hub. Supplier will undertake such activities at its own expense.

10.2 Other Changes. Engineering change orders ("ECOs") and other changes to Custom Components not governed by Section 10.1 above will be governed by the Existing Purchase Terms.

11. Movement of Components Between Hubs

In the event EMS Provider or Supplier wishes to move Components between Hubs, the party that wishes to move the Components will obtain the written approval of the other and of the applicable Cisco Entity prior to instructing the Hub Operator to move the Components, and such moves shall be reflected in the appropriate records. The party initiating the move will forward the approvals of the other party and of the applicable Cisco Entity to the Hub Operator contemporaneously with the move instructions. Costs of moving Components between Hubs will be borne by the party initiating the move, unless the parties agree otherwise in writing.

12. Term and Termination

This Agreement shall be effective from the Effective Date until one of the parties gives 90 days prior written notice of its intent to terminate. The party providing such notice shall provide copies to the Cisco Entities contemporaneously.

13. Confidentiality

The terms of this Agreement shall constitute confidential information pursuant to the Existing Purchase Terms or other existing confidentiality terms in place between EMS Provider and Supplier; provided however that either party may disclose the existence of this Agreement, and the terms of this Agreement in their entirety to Cisco Inc., Cisco BV and/or their authorized agents.

14. General Provisions

14.1 Dispute Resolution. In the event of a dispute arising between the parties under this Agreement that remains unresolved following good faith commercial negotiations between the parties, the parties shall escalate such matter to their respective contacts at the Cisco Entities for assistance. In the event

such dispute is not thereafter resolved within a reasonable time, the parties shall proceed to resolve such dispute in accordance with the Existing Purchase Terms.

14.2 Governing Law. The governing law and venue for this Agreement will be as specified in the Existing Purchase Terms.

14.3 Third Party Beneficiaries. The parties agree that each of Cisco Inc. and Cisco BV is an intended third party beneficiary of this Agreement, and is entitled to enforce its terms. There are no other third party beneficiaries. This agreement shall not be interpreted to alter any party's obligations to Cisco Inc. or Cisco B.V. under any existing or future agreement with Cisco Inc. or Cisco BV.

14.4 Entire Agreement. This Agreement, together with the Existing Purchase Terms, constitutes the entire agreement between the parties with respect to the transactions contemplated hereby and supersedes all prior agreements and understandings between the parties relating to such transactions.

14.5 No Oral Waiver. No change, modification or waiver of any of the terms and conditions of this Agreement shall be binding upon the parties unless made in writing and signed by duly authorized representatives of the parties.

In witness whereof and intending to be bound hereby, each party has caused a duly authorized representative to execute this Agreement as of the Effective Date.

Accepted and Agreed:

EMS Provider

By: _____

Name:

Title:

Date:

Accepted and Agreed:

Supplier

By: _____

Name:

Title:

Date: