

# COHESITY

## PURCHASING TERMS & CONDITIONS

Cohesity typically sells Offerings to Cohesity Partners under agreements signed by Cohesity, Inc. containing purchasing terms and conditions. However, on an exceptional basis Cohesity, Inc. and/or its affiliates (collectively, “**Cohesity**”) may sell to a third party (“**Direct Purchaser**”) without such an agreement; in all such cases these terms and conditions (“**Purchasing Terms**”) apply as between Cohesity and the Direct Purchaser unless otherwise agreed in writing.

**1. ORDERING:** A Direct Purchaser may order from Cohesity by any valid, binding means authorized by Cohesity, including by submitting an order to Cohesity or accepting an offer via a third-party marketplace or similar (each an “**Order**”). All Orders are subject to acceptance by Cohesity in its discretion and shall reflect a valid Cohesity-issued quote or other written offer. Direct Purchaser agrees to meet its obligations under all Orders (including timely payment of applicable fees, charges, and taxes). All sales are final and Orders are non-cancellable once received and accepted by Cohesity. Any terms contained in Orders inconsistent with, or additional to, the applicable quote/offer and these Purchasing Terms are hereby rejected, irrespective of whether Cohesity accepts such Order. “**Cohesity Partner**” means a Cohesity channel distribution, alliance, and/or resale partner that has the right to transact and resell sales of Offerings, including via a marketplace. “**Offerings**” means products and services sold by Cohesity.

### **2. SHIPMENT / FULFILLMENT:**

**(a)** Shipping/fulfillment dates are scheduled by Cohesity in its sole discretion. Cohesity shall use commercially reasonable efforts to meet preferred dates specified in an Order but failure to do so shall not be a breach of an Order or these Purchasing Terms. All shipments shall be from a location designated by Cohesity. Direct Purchaser is responsible for all documentation necessary for lawful shipment/fulfillment and all costs relating thereto, including duties, customs, taxes, and export/import. Cohesity has no obligation to insure Offerings. Direct Purchaser is importer of record unless a third-party importer of record is specified in the Order and applicable documentation.

**(b)** Where applicable, Direct Purchaser shall (i) designate a carrier for shipment; (ii) instruct the carrier to inspect all Products before loading for shipment at the time of collection. If Direct Purchaser fails to designate a carrier, Cohesity may do so. Upon collection by carrier, (i) Direct Purchaser shall be deemed to accept the Offerings and waive all claims with regard to obvious defects and shipment errors; (ii) delivery will have been deemed to have occurred, and (iii) risk of loss of, and title to, Products shall pass to Direct Purchaser.

**3. RECORDS:** Direct Purchaser agrees to keep all usual and proper records relating to each Order and to provide Cohesity’s designated audit or inspection team reasonable access to such records at Cohesity’s cost unless material discrepancies are uncovered.

### **4. PRICING AND PAYMENT:**

**4.1 Resale.** If a Direct Purchaser is authorized by Cohesity to resell Offerings in an Order, Direct Purchaser has the sole right to independently determine the price for such resale. Direct Purchaser (i) acknowledges that it is Cohesity policy that no Order may be submitted to Cohesity unless and until the end user customer who acquires the Offerings for their own internal use (and not for resale or distribution) has issued a valid purchase order for the Offerings; (ii) warrants that it shall not submit an Order to Cohesity which would violate the foregoing policy, and (iii) agrees that a breach of the foregoing warranty shall be a material breach of the Order and Purchasing Terms.

**4.2 Payment.** Cohesity invoices upon fulfillment, and payment is due 45 days following Cohesity’s invoice date. Fulfillment occurs (a) on Order acceptance for software and Support Services; and (b) on carrier collection for hardware Products (if applicable). Payments shall be made via electronic transfer or check representing payment of the full amount invoiced (without any right of offset whatsoever). Cohesity can, without limiting other remedies, impose a late charge of one percent (1.0%) per month (or the maximum legal rate then in effect, whichever is less) of all overdue amounts, accruing from the due date until payment.

**4.3 Creditworthiness.** Direct Purchaser shall provide to Cohesity on request reasonable financial information (including, without limitation, a credit check).

**4.4 Taxes.** Any prices provided or quoted by Cohesity are exclusive of all Taxes. Direct Purchaser agrees to pay, and to indemnify and hold Cohesity harmless from, any sales, use, excise, withholding, import or export, value added or similar tax (excluding taxes based on Cohesity’s net income), and all government permit or license fees and all customs, duty, tariff and similar fees levied upon the delivery of Offerings or provision of services related thereto, and any costs associated with the collection or withholding thereof, including penalties and interest (collectively, “**Taxes**”). If applicable, Direct Purchaser shall provide Cohesity with a tax exemption certificate acceptable to the appropriate taxing authorities before placing an Order. Without limiting the foregoing, if any amount payable by Direct Purchaser to Cohesity under this Agreement is subjected to any lawful deduction or withholding on account of any tax or charge, Direct Purchaser shall effect such withholding, remit such amounts to the proper authorities, and promptly furnish Cohesity with receipts evidencing the payments of such amounts.

**5. GENERAL.** COHESITY SHALL NOT BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THESE PURCHASING TERMS OR AN ORDER UNDER ANY LEGAL OR EQUITABLE THEORY FOR ANY (A) AMOUNTS IN EXCESS OF THE TOTAL PAID OR PAYABLE BY DIRECT PURCHASER DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE DATE THE CAUSE OF ACTION FIRST AROSE; OR (B) INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES. All disputes hereunder shall be governed (a) by the laws of the State of California as applied to contracts made (and to be performed) in California and the Parties consent to jurisdiction and venue in the U.S. Federal Courts located in the Northern District of California. The applicable Order shall be deemed to incorporate these Purchasing Terms, and together they constitute the entire agreement between the parties and supersede all previous written and oral agreements and communications relating to its subject matter. THE TERMS OF ANY PURCHASE ORDER, CONFIRMATION OR SIMILAR DOCUMENT SHALL HAVE NO EFFECT AND SHALL NOT BE DEEMED AGREED TO BY COHESITY. A waiver of any default

shall not be deemed to be a continuing waiver or a waiver of any other default or of any other provision but shall apply solely to the instance to which such waiver is directed. In the event any provision of this Agreement is found to be invalid, illegal or unenforceable, a modified provision shall be substituted which carries out as nearly as possible the original intent of the Parties, and the validity, legality, and enforceability of any of the remaining provisions shall not be affected or impaired thereby. Neither Party shall be liable under this Agreement by reason of any failure or delay in the performance of its obligations hereunder (except for the payment of money) on account of strikes, shortages, riots, insurrection, internet failure, fires, floods, storms, explosions, acts of God, war, governmental action, cyberterrorism, labor conditions, earthquakes, material shortages, or any other cause which is beyond the reasonable control of such Party. All terms which must survive in order to fulfill their essential purpose shall survive termination or expiration. Customer may not delegate, assign, or transfer its rights or duties hereunder without Cohesity's express prior written consent. As used herein, "including" means "including but not limited to."

**August 1, 2025**