

Aloha Appliance Terms

These Aloha Appliance Terms (“**Aloha Terms**”) are entered into by the entity set forth on an Order Form referencing these terms (“**Customer**”) and HAProxy Technologies LLC, a Delaware limited liability company, located at 375 Totten Pond Road, Suite 302, Waltham, Massachusetts 02451 (“**Company**”). These Aloha Terms are effective as of the date of Company’s signature on the applicable Order Form (“**Effective Date**”).

1. Hardware; Virtual Appliances: Except as expressly set forth herein, all Aloha appliance hardware (“**Hardware**”) and Aloha virtual appliances (“**Virtual Appliance**”) are provided “as-is” and on an “as-available” basis, without representation or warranty of any kind, including implied warranties of merchantability, non-infringement, title, and fitness for a particular purpose.

2. Hardware Returns:

Provided that Customer is in compliance with all payment obligations and maintained continuous support subscriptions with Company during the term of these Aloha Terms, Customer may return defective Hardware to Company for repair or replacement for a period of up to five (5) years following the Effective Date. Following the expiration of such five-year period, Company may continue to make available fee-based technical support for software included with the Hardware, but will no longer provide technical support for the Hardware.

To request such repair or replacement, Customer should contact the reseller from which Customer purchased the Hardware or Company’s customer service department identified in the support terms or Order Form. Prior to returning any Hardware to Company for repair or replacement, Customer must ensure that (i) the Hardware is free of any legal obligations or restrictions and of any Customer proprietary or confidential information that prevent Company from exchanging, repairing or replacing the Hardware and (ii) Customer has obtained a return authorization from Company. Hardware returned to Company becomes the property of Company at the time it is received by Company and Customer shall assume ownership of all replacement Hardware provided by Company to Customer upon shipment by Company.

If Company notifies Customer of its election to replace Hardware, Company will use reasonable efforts to promptly ship the replacement hardware. If Company elects to replace Hardware, Customer (at its expense) must return the applicable Hardware within eight (8) calendar days of Company’s confirmation, along with all accessories and other equipment originally supplied in appropriate containers for transport of fragile equipment. Customer agrees to pay full retail price for any items, including the Hardware, which are not timely returned to Company.

Customer acknowledges and agrees that Company, in its sole and exclusive discretion, may elect to repair or replace Hardware with different hardware or updated software (including components thereof), provided that doing so shall deliver substantially similar load balancing functionality as that originally rendered by the Hardware.

3. Term; Termination: Each Order Form for support for the Hardware or the Virtual Appliance will be in effect for a period of one (1) year from the Effective Date (the “**Initial Support Term**”) and will automatically renew for successive one (1) year periods (each a “**Renewal Support Term**” and together with the Initial Support Term, the “**Support Term**”). Either party may elect not to renew an Order Form by providing the other party with no less than sixty (60) days’ notice prior to the commencement of a Renewal Support Term. The expiration or termination of an Order Form will not terminate any other Order Form in effect. Either party may terminate these Aloha Terms and all Order Forms with immediate effect: (a) in the event that the other party breaches these Aloha Terms and does not cure such breach within thirty (30) days following of written notice of such breach, (b) in the event that the other party ceases business, becomes insolvent or bankrupt or if a receiver, examiner, administrator or administrative receiver is appointed over any part of that party’s business or if anything analogous occurs in relation to that party under the laws of another jurisdiction, or (c) upon the institution by or against the other party of insolvency, receivership or bankruptcy proceedings in relation to such party.

4. Ownership; Notices. Company will own all intellectual property and proprietary rights in the Hardware and Virtual Appliances, associated documentation, and related works, including but not limited to any modifications and derivative works of the foregoing. Customer will not, nor permit anyone else, to remove, alter, or obscure any proprietary notices or instructional labels on the Hardware or Virtual Appliances without written authorization from Company. Customer will not install, nor permit the installation of additional hardware or software on the Hardware or Virtual Appliances without written authorization from Company or breach any tamper seal on the Hardware.

6. Use Limitations: Customer will use the Hardware and Virtual Appliances solely for its internal business purposes. Customer may not re-sell or engage in marketing activities related to the Hardware or Virtual Appliances or use the Hardware or Virtual Appliances to violate applicable laws. Use of the software included with the Hardware and Virtual Appliances is governed by the software license terms associated with such software, including any open source software licenses.

7. Disclaimers; Limitation of Liability:

Company shall have no liability for any corruption, loss or deletion of configuration or other data or information of Customer or direct or indirect consequences arising therefrom. Customer acknowledges and agrees that Customer is solely responsible and liable for maintaining and backing up configuration and other data and information including in connection with repair or replacement of Hardware and Virtual Appliances. Customer agrees to hold harmless, defend and indemnify Company and waives any claim against Company in connection with such corruption, loss or deletion (including data and information of Customer's customers and end-users).

Notwithstanding anything in these Aloha Terms to the contrary, Company has no liability nor obligation with respect to Hardware or Virtual Appliances (i) damaged by elements outside of Company's control (physical damage, effects of lightning, power surge, electrical problem or fire), (ii) improperly used, misused, or excessively used by Customer, or (iii) modified by Customer or its agents, or (iv) with missing or altered serial numbers.

Hardware or Virtual Appliance support does not include the following: (i) product configuration or on-site technical support, (ii) routine maintenance or cleaning, (iii) configuration other products that may be connected to or used with the Hardware, or (iv) repair or replacement of parts, accessories, or components of the Hardware that fail due to normal wear and tear.

IN NO EVENT WILL COMPANY OR ITS AFFILIATES OR SUPPLIERS BE LIABLE UNDER THESE ALOHA TERMS FOR ANY INDIRECT, RELIANCE, PUNITIVE, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR INCIDENTAL DAMAGES OF ANY KIND AND HOWEVER CAUSED EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

COMPANY AND ITS AFFILIATES' AND SUPPLIERS' AGGREGATE AND CUMULATIVE LIABILITY ARISING OUT OF OR RELATING TO THESE ALOHA TERMS, INCLUDING WITHOUT LIMITATION ON ACCOUNT OF PERFORMANCE OR NON-PERFORMANCE OF OBLIGATIONS, REGARDLESS OF THE FORM OF THE CAUSE OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE), STATUTE OR OTHERWISE WILL BE LIMITED TO DIRECT DAMAGES AND WILL NOT EXCEED THE TOTAL AMOUNT OF FEES PAID TO COMPANY PURSUANT TO THE ORDER FORM GIVING RISE TO THE CLAIM DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE TIME THE CLAIM AROSE.

8. General.

These Aloha Terms and any dispute relating to, or arising out of these Aloha Terms or its formation or termination or actions or omissions contemplated by these Aloha Terms, will be governed by and in accordance with the laws of New York, without giving effect to the conflict of laws provisions. For all disputes arising out of these Aloha Terms, the parties consent to the exclusive jurisdiction of the federal and state courts located in New York.

Unless otherwise specified in these Aloha Terms, all notices will be in writing and will be mailed (via registered or certified mail, return receipt requested), delivered by a nationally recognized express courier service with the ability to track shipments, or personally delivered to the other party at the address set forth above (or at such other address as either party may designate in writing to the other party). All notices will be effective upon receipt.

These Aloha Terms are binding on the parties to these Aloha Terms, and nothing in these Aloha Terms confers upon any other person or entity any right, benefit or remedy of any nature whatsoever. These Aloha Terms are assignable by either party only with the other party's prior written consent, which will not be unreasonably withheld. Notwithstanding the foregoing, either party may assign these Aloha Terms to an affiliated entity or as a result of a merger or a sale of all or substantially all of such party's assets or stock without the prior approval of the other party, provided that Customer's assignment may not increase the scope of an Order Form.

These Aloha Terms are the parties' entire agreement relating to its subject and supersedes any prior or contemporaneous agreements on that subject. All amendments to these Aloha Terms must be in writing, executed by both parties and expressly state that they are amending these Aloha Terms. Notwithstanding the foregoing, HAProxy may modify the technical support offering, provided that HAProxy will not materially reduce such support benefits during the then-current Support Term. Purchase orders will be for the sole purpose of defining quantities, prices and describing the products and support to be provided under these Aloha Terms and to this extent only are incorporated as a part of these Aloha Terms and all other terms in purchase orders are rejected.

Failure to enforce any provision of these Aloha Terms will not constitute a waiver thereof. No waiver will be effective unless it is in writing and signed by the waiving party. If a party waives any right, power, or remedy, the waiver will not waive any successive or other right, power, or remedy the party may have under these Aloha Terms. If any provision is found to be unenforceable, it and any related provisions will be interpreted to best accomplish the unenforceable provision's essential purpose.

Neither party will be liable for failures or delays in performance due to causes beyond its reasonable control, including, but not limited to, any act of God, fire, earthquake, flood, storm, natural disaster, accident, pandemic, labor unrest, civil disobedience, act of terrorism or act of government; however, the inability to meet financial obligations is expressly excluded.