

HARDWARE WARRANTY

1. Definitions. "Product" means the hardware product sold by Silver Peak Systems, Inc. ("Company") to the purchaser ("Customer").
2. Sale Conveys No License. The Product is offered for sale and is sold by Company subject in every case to the condition that such sale does not convey any license, expressly by implication, estoppel or otherwise, under any patent claim with respect to which Company can grant licenses covering complete equipment, or any assembly, circuit combination, method or process in which any such Product is used as a component. Company expressly reserves all its rights under such patent claims.
3. Limited Warranty
 - (a) Company warrants that the Product sold will be free from defects in materials and workmanship and substantially perform to Company's applicable published specifications for a period of one (1) year from purchase by Customer, or the period of hardware maintenance if hardware maintenance is purchased by Customer from Company.
 - (b) Products or parts which have been subject to abuse, misuse, accident, alteration, neglect, unauthorized repair or installation are not covered by warranty. Company will make the final determination as to the existence and cause of any alleged defect.
 - (c) This warranty is the only warranty made by Company with respect to the Product delivered hereunder and may be modified or amended only by a written instrument that is signed by a duly authorized officer of Company and accepted by Customer.
 - (d) The liability of Company hereunder shall be limited to, at Company's option, replacing the Product, repairing the Product or refunding the purchase price of the Product. In no case are Products to be returned without first obtaining permission and a customer return order number from Company.
4. WARRANTY DISCLAIMER EXCEPT AS SET FORTH ABOVE, COMPANY AND ITS LICENSORS AND SUPPLIERS MAKE NO WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY REGARDING OR RELATING TO PRODUCT. COMPANY AND ITS LICENSORS AND SUPPLIERS SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND NO FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE PRODUCT AND WITH RESPECT TO THE USE OF ANY OF THE FOREGOING.
5. LIMITATION OF LIABILITY. COMPANY'S LIABILITY RELATING TO THE PRODUCT AND/OR ITS SALE WILL BE LIMITED TO REFUND OF THE PURCHASE PRICE. IN NO EVENT WILL COMPANY BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF PROFIT) WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY. THIS EXCLUSION INCLUDES ANY LIABILITY THAT MAY ARISE OUT OF THIRD-PARTY CLAIMS AGAINST CUSTOMER. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.
6. Assignment. This hardware warranty may not be assigned by Customer, except to the surviving party in a merger of Customer into another entity or in an acquisition of all or substantially all of Customer's assets. An authorized assignment by Customer will not become effective except and until the assignee agrees in writing to be bound by all terms under this hardware warranty.
7. Questions. Should you have any questions concerning the foregoing, please contact Company at the following address:

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