

SECURITIES AND EXCHANGE COMMISSION

FORM 8-K

Current report filing

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FILER

COMMERCE ONE INC

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SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of The Securities Exchange Act Of 1934

Date of Report (Date of earliest event reported) **June 28, 2001**

COMMERCE ONE, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation)

000-26453

(Commission File Number)

68-0322810

(IRS Employer Identification No.)

4440 Rosewood Drive, Pleasanton, California

(Address of principal executive offices)

94588

(Zip Code)

Registrant's telephone number, including area code

(925) 520-6000

(Former name or former address, if changed since last report)

Item 5. Other Events

On June 28, 2001, Commerce One, Inc. ("Commerce One"), New Commerce One Holding, Inc. ("New Commerce One Holding") and SAP Aktiengesellschaft ("SAP AG") entered into a share purchase agreement and related agreements providing for Commerce One's issuance of 47,484,767 shares of its common stock to SAP AG at a purchase price of \$4.75 per share, for a total purchase price of approximately \$225 million. The agreements were entered into in connection with an amendment to the strategic alliance agreement between Commerce One and SAP AG. The transaction is subject to customary closing conditions, including the receipt of Hart-Scott-Rodino antitrust approval and the continuing effectiveness of the strategic alliance agreement.

SAP AG is generally prohibited from transferring its shares for three years from the date of the closing, although it may sell up to 10% of its shares during the first year after the closing, up to 30% during the second year and up to 50% during the third year, subject to certain limitations on open market sales and transfers to persons who after the transfer will hold in excess of 10% of Commerce One's voting power. These restrictions on transfer terminate on the earliest to occur of a change of control of Commerce One, the termination of the strategic alliance agreement (other than as a result of a material breach of the strategic alliance agreement by SAP AG) and the third anniversary of the agreements. SAP AG is also prohibited from transferring the shares to a competitor of Commerce One for six years from the closing date, except in open market transactions. Commerce One has a right of first refusal on any private sale of shares by SAP AG for 54 months following the closing.

SAP AG also agreed to certain standstill restrictions that, for three years following the date of share purchase agreement, generally restrict SAP AG's ability to acquire more than 23% of Commerce One's outstanding common stock, seek control of Commerce One, or participate in groups with respect to the holding or voting of Commerce One's stock. The standstill obligations terminate prior to three years from the date of the share purchase agreement upon the occurrence of certain events, such as a change of control of Commerce One or the acquisition of more than 15% of Commerce One by certain named competitors of SAP AG. These obligations are also suspended in the event of an offer for such a change of control or acquisition, but will be reinstated if the offer is withdrawn or terminated. SAP AG also remains subject to the operation of Commerce One's shareholder rights plan, or "poison pill," which was amended to permit SAP AG to beneficially own shares of Commerce One common stock up to the 23% standstill limit.

Until the earlier of three years from the closing or the end of the standstill period, SAP AG has the right to maintain its pro rata ownership of Commerce One's outstanding shares in the event Commerce One issues additional securities in a private transaction. In addition, SAP AG is entitled to certain registration rights, after one year with respect to shares purchased by SAP AG from Commerce One prior to the transaction, and after two years with respect to the other shares it currently owns, shares acquired in the transaction and any shares it acquires from Commerce One in the future. SAP AG also received the right to nominate a director for election to Commerce One's board of directors for as long as SAP AG owns ten percent or more of Commerce One's common stock. If SAP AG is entitled to nominate a director but no director is nominated or available to attend a meeting of Commerce One's board of directors, SAP AG may send an observer to attend. SAP AG also generally agreed to vote its shares in proportion with the other stockholders of Commerce One only with respect to nominees to Commerce One's board of directors and stockholder proposals to amend or rescind Commerce One's rights plan or SAP AG's standstill agreement during the standstill period. There are no other restrictions on SAP AG's voting rights.

The number of shares of common stock to be sold to SAP AG may be reduced if Commerce One stockholder approval for the sale would be required under Delaware law or the rules of the Nasdaq Stock Market, but in no event shall less than 40,000,000 shares be sold. Upon Commerce One's reorganization into a holding company, New Commerce One Holding will assume the obligations of Commerce One under the agreements.

The above summary is not complete and is qualified in its entirety by the terms of Share Purchase Agreement, Standstill and Stock Restriction Agreement and Investor Rights Agreement which are filed as exhibits hereto and are incorporated herein by reference.

Item 7. Financial Statements and Exhibits

(c) Exhibits

- 10.1 Share Purchase Agreement, dated June 28, 2001, among Commerce One, Inc., New Commerce One Holding, Inc. and SAP Aktiengesellschaft.
- 10.2 Standstill and Stock Restriction Agreement, dated June 28, 2001, among Commerce One, Inc., New Commerce One Holding, Inc. and SAP Aktiengesellschaft.
- 10.3 Investor Rights Agreement, dated June 28, 2001, among Commerce One, Inc., New Commerce One Holding, Inc. and SAP Aktiengesellschaft.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

COMMERCE ONE, INC.

By: /s/ ROBERT M. TARKOFF

Robert M. Tarkoff
Senior Vice President Worldwide Business
Development, General Counsel and Secretary

Date: July 10, 2001

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EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
10.1	Share Purchase Agreement, dated June 28, 2001, among Commerce One, Inc., New Commerce One Holding, Inc. and SAP Aktiengesellschaft.
10.2	Standstill and Stock Restriction Agreement, dated June 28, 2001, among Commerce One, Inc., New Commerce One Holding, Inc. and SAP Aktiengesellschaft.
10.3	Investor Rights Agreement, dated June 28, 2001, among Commerce One, Inc., New Commerce One Holding, Inc. and SAP Aktiengesellschaft.

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SHARE PURCHASE AGREEMENT

by and among

COMMERCE ONE, INC.,

NEW COMMERCE ONE HOLDING, INC.

and

SAP AG

June 28, 2001

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EXHIBIT A – CERTAIN DEFINITIONS

EXHIBIT B – FORM OF OPINION OF WSGR

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EXHIBIT D – FORM OF SAP AG INVESTOR RIGHTS AGREEMENT

EXHIBIT E – FORM OF STANDSTILL AGREEMENT

SHARE PURCHASE AGREEMENT

This Share Purchase Agreement (this "*Agreement*") is entered into as of June 28, 2001, by and between Commerce One, Inc., a Delaware corporation ("*Commerce One*"), New Commerce One Holding, Inc., a Delaware corporation, ("*New Commerce One Holding*") and SAP Aktiengesellschaft, a stock corporation incorporated under the laws of the Federal Republic of Germany ("*SAP AG*").

WHEREAS, SAP AG wishes to purchase from Commerce One, and Commerce One wishes to issue and sell to SAP AG, certain shares of the Common Stock, par value \$0.0001 per share, of Commerce One;

WHEREAS, SAP AG and Commerce One wish to provide for additional rights with respect to the shares of Common Stock to be purchased pursuant to this Agreement and to make certain representations, warranties and covenants in connection with the purchase and sale of such shares of Common Stock;

WHEREAS, New Commerce One Holding will assume all of the rights and obligations of Commerce One hereunder upon the consummation of the reorganization of Commerce One into a holding company structure with New Commerce One Holding as the publicly-traded holding company (the "*Reorganization*"); and

WHEREAS, certain defined terms used herein are defined in *Exhibit A* to this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. Agreement To Sell And Purchase Shares

1.1 *Sale and Purchase of Shares.* Subject to the terms and conditions hereof, Commerce One agrees to issue and sell to SAP AG 47,484,767 shares of Common Stock in exchange for \$225,552,643 (the "*Aggregate Purchase Price*"), and SAP AG, subject to the terms and conditions hereof, agrees to purchase shares of Common Stock in exchange for the Aggregate Purchase Price.

1.2 *Closing*

(a) The closing of the purchase and sale of Common Stock hereunder (the "*Closing*") shall take place at 10 a.m. on the second business day following the satisfaction or waiver of the closing conditions described in Section 4 ("*Closing Date*") at the offices of Wilson Sonsini Goodrich & Rosati, 650 Page Mill Road, Palo Alto, California 94304, or at such other time and place as Commerce One and SAP AG shall mutually agree. Subject to the terms and conditions of this Agreement, at the Closing, SAP AG shall deliver to Commerce One a check or a wire transfer of immediately available funds in the amount of \$225,552,643; and Commerce One shall deliver to SAP AG one or more stock certificates (as requested by SAP AG) representing the 47,484,767 shares of Common Stock (as adjusted by the following proviso, the "*Shares*"); provided, *however*, that if the issuance of such number of Shares to SAP AG hereunder would require Commerce One to obtain stockholder approval of the issuance pursuant to Rule 4350(i)(1)(B) or (D) of the Nasdaq National Market Issuer Designation Requirements or under the DGCL, the number of shares to be issued shall be reduced to the maximum number of shares that may be issued without stockholder approval (but in no event shall SAP AG be required to purchase less than 40,000,000 shares of Common Stock hereunder) and the purchase price shall be appropriately adjusted on pro rata basis based on a price per share of \$4.75.

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(b) When issued pursuant to the terms and conditions of this Agreement, the shares shall be free and clear of any and all Liens (other than any Liens created by the Related Equity Agreements and any restrictions imposed by applicable securities laws).

1.3 *Legends; Stop Transfer Orders*

(a) All certificates representing the Shares shall bear the following legends:

(i) "THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "*ACT*"). SUCH SHARES MAY NOT BE

SOLD OR TRANSFERRED IN THE ABSENCE OF REGISTRATION OR AN EXEMPTION THEREFROM. COMMERCE ONE MAY REQUIRE AN OPINION OF COUNSEL REASONABLY ACCEPTABLE TO IT THAT A PROPOSED TRANSFER OR SALE IS IN COMPLIANCE WITH THE ACT."

(ii) "THE SALE OR TRANSFER OF THE SHARES REPRESENTED BY THIS CERTIFICATE IS RESTRICTED BY THE TERMS OF AN AMENDED AND RESTATED STANDSTILL AND STOCK RESTRICTION AGREEMENT, DATED AS OF JUNE 28, 2001, BY AND BETWEEN COMMERCE ONE, INC., NEW COMMERCE ONE HOLDING, INC. AND SAP AG. COPIES OF THE AGREEMENT MAY BE OBTAINED AT NO COST BY WRITTEN REQUEST MADE BY THE HOLDERS OF RECORD OF THIS CERTIFICATE TO THE SECRETARY OF THE ISSUER OF THESE SHARES AT THE PRINCIPAL EXECUTIVE OFFICES OF THE ISSUER."

(iii) Any legend required by the blue sky or securities laws of any state or jurisdiction to the extent such laws are applicable to the shares represented by the certificate so legended.

(iv) A legend stating such certificate also represents certain rights issued under Commerce One's Stockholder Rights Plan.

(b) The certificates representing the Shares will be subject to a stop transfer order with Commerce One's transfer agent that restricts the transfer of the Shares except in compliance with this Agreement and the Standstill Agreement.

(c) Upon request of SAP AG at any time when any of the Shares are no longer subject to the restrictions set forth in any of the legends described in Section 1.3(a), Commerce One shall, and shall cause its transfer agent to, remove such restrictive legends from the certificates representing such Shares and to cancel the stop order referred to in Section 1.3(b) with respect to such Shares.

2. Representations and Warranties of Commerce One

Commerce One hereby represents and warrants to SAP AG as follows (except as described in the Commerce One disclosure schedule attached hereto):

2.1 Organization, Standing and Power. Commerce One is, and on the Closing Date will be, a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Commerce One has, and on the Closing Date will have, the corporate power and authority to own its properties and to carry on its business as now being conducted (or as being conducted on the Closing Date) and is, and on the Closing Date will be, duly qualified as a foreign corporation to do business and is, and on the Closing Date will be, in good standing in each jurisdiction in which the failure to be so qualified would have, or would be reasonably expected to have, a Material Adverse Effect on Commerce One.

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2.2 Authority; Binding Nature of Agreements. Commerce One has all requisite corporate power and authority to enter into this Agreement and any Related Equity Agreements to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and any Related Equity Agreements to which it is a party and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on the part of Commerce One. No vote or approval of the stockholders of Commerce One is necessary in connection with the execution, delivery and performance by Commerce One of this Agreement or any Related Equity Agreement to which it is a party. This Agreement and any Related Equity Agreement to which Commerce One is a party have been duly executed and delivered by Commerce One and constitute the valid and binding obligations of Commerce One, enforceable in accordance with their terms.

2.3 Non-Contravention; Consents

(a) Neither the execution and delivery by Commerce One, nor the consummation or performance by Commerce One of any of the transactions to be consummated or performed by it under this Agreement or any Related Equity Agreement, will directly or indirectly (with or without notice or lapse of time): (i) violate any provision of Commerce One's Certificate of Incorporation or Bylaws, (ii) constitute or result in

a breach or default by Commerce One or any of its subsidiaries, or give rise to a right of termination, amendment, cancellation or acceleration on the part of any other party, or result in the creation or imposition of any Lien on Commerce One's assets, under any agreement or instrument to which Commerce One or any of its subsidiaries is a party or by which Commerce One or any of its subsidiaries is bound, which breach, default, termination or Lien would have, or would be reasonably expected to have, a Material Adverse Effect on Commerce One, or (iii) constitute a violation by Commerce One or any of its subsidiaries of any Requirement of Law.

(b) Except for the filings under the Hard-Scott-Rodino Antitrust Improvements Act of 1976, as amended, no consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any Governmental Authority or other Person on the part of Commerce One or any of its subsidiaries is required in connection with the execution, delivery and performance by Commerce One of this Agreement and the Related Equity Agreements or the consummation of the transactions contemplated hereby and thereby.

(c) Commerce One is not in violation of any provision of its Certificate of Incorporation or Bylaws or any other agreement, contract, obligation or commitment, which violation would materially affect its ability to perform its obligations under this Agreement or any of the Related Equity Agreements or has, or could reasonably be expected to have, a Material Adverse Effect on Commerce One.

2.4 Capital Structure

(a) As of May 31, 2001, the authorized capital stock of Commerce One consists of 950,000,000 shares of Common Stock, \$.0001 par value, of which 208,742,610 shares (together with the associated rights to purchase Series A Participating Preferred Stock) are issued and outstanding on such date, 50,000,000 shares of Preferred Stock, \$.0001 par value, of which 300,000 shares are designated Series A Participating Preferred Stock, \$.0001 par value, none of which are issued and outstanding of such date, and 49,700,000 shares of which are undesignated Preferred Stock, \$.0001 par value, none of which are issued or outstanding on such date. All such shares of Commerce One have been duly authorized, and all such issued and outstanding shares have been validly issued, are fully paid and nonassessable and are free of any Liens or encumbrances other than any Liens or encumbrances created by or imposed upon the holders thereof. Commerce One has also reserved 75,743,739 shares of Common Stock for issuance pursuant to its employee and director stock and option and stock purchase plans (the "Plans"), 23,219,156 of which were issuable upon exercise of such outstanding stock options as of May 31, 2001 and 24,641,051 of which may be issued in connection with Commerce One's

employee stock option exchange program. In addition, 200,000 other shares of Common Stock are issuable pursuant to outstanding stock options (other than those described above), warrants, rights, convertible or exchangeable securities or other agreements as of May 31, 2001. Upon the Reorganization, New Commerce One Holding's certificate of incorporation and bylaws as in effect immediately following the reorganization will be identical to Commerce One's certificate of incorporation and bylaws, respectively, as in effect immediately prior to the consummation of the Reorganization, and New Commerce One Holding's capitalization will become identical to the capitalization of Commerce One immediately prior to the consummation of the Reorganization, except that an additional 28,800,000 shares of Common Stock will be issued and outstanding following the consummation of the Reorganization. Except as contemplated by this Agreement, there are no other options, warrants, rights, convertible or exchangeable securities, commitments, or agreements of any character to which Commerce One is a party or by which it is bound obligating Commerce One to issue, deliver, sell, repurchase or redeem, or cause to be issued, delivered, sold, repurchased or redeemed, any shares of the capital stock of Commerce One or any securities convertible into or exchangeable for capital stock of Commerce One or obligating Commerce One to grant, extend or enter into any such option, warrant, right, commitment or agreement. There are no outstanding bonds, debentures, notes or other obligations issued by Commerce One which permit the holders thereof to vote with the stockholders of Commerce One on any matter. Except as contemplated by this Agreement, no change in the capitalization of Commerce One or New Commerce One Holding has occurred since May 31, 2001 and through the date of this Agreement, except for (i) issuance of stock options and other rights under Commerce One's and its affiliates' stock and option and stock purchase plans, (ii) exercise of outstanding options and other rights under Commerce One's and its affiliates' stock and option and stock purchase plans.

(b) The shares of Common Stock to be issued pursuant to this Agreement have been duly authorized, and when issued to SAP AG in accordance with the terms hereof, will be validly issued, fully paid and non-assessable, free of any Liens except as provided in this Agreement or any of the Related Equity Agreements or federal and state applicable securities laws. Assuming that the representations and warranties of

SAP AG in Section 3.6 hereof are truthful and accurate, the issuance and sale of the Shares pursuant to this Agreement will be exempt from the registration requirements of Section 5 of the Securities Act.

2.5 *Litigation.* As of the date hereof, there are no claims, actions, suits, proceedings or investigations pending or, to the knowledge of Commerce One, threatened against Commerce One or any of its subsidiaries or any of their properties or assets before any Governmental Authority which (i) in any manner challenge or seek to prevent, enjoin, alter or materially delay the transactions contemplated by this Agreement or (ii) could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on Commerce One. None of Commerce One or any of its subsidiaries or any of their assets or properties (whether leased or owned) are subject to any orders, judgments, injunctions or decrees which could reasonably be expected to have a Material Adverse Effect on Commerce One.

2.6 *Brokers.* Except for the investment bank(s) previously disclosed to SAP AG, whose fees and expenses will be paid by Commerce One, Commerce One has not granted or become obligated to pay, or taken any action that likely would result in any Person claiming to be entitled to receive from Commerce One, any brokerage commission, finder's fee or similar commission or fee in connection with any of the transactions contemplated by this Agreement.

2.7 *SEC Filings; Financial Statements*

(a) Commerce One has timely and properly filed all forms, schedules, reports, prospectuses, proxy statements and documents required to be filed by Commerce One with the SEC (the "*Commerce One SEC Reports*") and has made available true and correct copies thereof to SAP

AG. The Commerce One SEC Reports (i) at the time they were filed (or if amended or superseded by a filing prior to the date of this Agreement, then on the date of such filing) complied in all material respects with the requirements of the Securities Act or the Exchange Act, as the case may be, and the rules and regulations promulgated thereunder, and (ii) did not at the time they were filed (or if amended or superseded by a filing prior to the date of this Agreement, then on the date of such filing) contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. Commerce One makes no representation or warranty whatsoever concerning the Commerce One SEC Reports as of any time other than the time they were filed, amended or superseded. None of Commerce One's subsidiaries are required to file any forms, reports or other documents with the SEC.

(b) Each of the consolidated financial statements (including, in each case, any related notes thereto) (the "*Commerce One Financial Statements*") contained in the Commerce One SEC Reports has been prepared in accordance with GAAP applied on a consistent basis throughout the period involved (except as may be indicated in the notes thereto) and complied in all material respects with the rules and regulations of the SEC. Each of the Commerce One Financial Statements fairly presents in all material respects the consolidated financial position of Commerce One and its subsidiaries as at the respective dates thereof and the consolidated results of its operations and cash flows for the periods indicated, except that the unaudited interim financial statements were or are subject to normal and recurring year-end adjustments which were not or are not expected to be, individually or in the aggregate, materially adverse to Commerce One and its subsidiaries taken as a whole.

2.8 *No Undisclosed Liabilities, Absence of Certain Events and Changes.* Except as otherwise disclosed in the Commerce One SEC Reports, since March 31, 2001 neither Commerce One nor any of its subsidiaries has incurred any liabilities or obligations (whether absolute or contingent) other than those arising from operations in the ordinary course of business consistent with past practice. Since December 31, 2000, except as disclosed in the Commerce One SEC Reports filed with the SEC and publicly available prior to the date hereof, there has not been any event, occurrence, development or circumstances and there has been no change in or development with respect to the business, condition (financial or otherwise), assets, liabilities, properties, operations or results of operations of Commerce One and its subsidiaries except events, occurrences, developments, circumstances, changes and developments which have not had or could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on Commerce One.

2.9 *Intellectual Property.* Commerce One and its subsidiaries own, free and clear of all Liens, and have good and marketable title to, or hold adequate licenses or otherwise possess all such rights as are necessary to use all patents (and applications therefor), patent disclosures, trademarks, service marks, trade names, copyrights (and applications therefor), inventions, discoveries, processes, know-how, scientific, technical, engineering and marketing data, formulae and techniques (collectively, "Intellectual Property") necessary for the conduct of their business as now conducted. To Commerce One's knowledge, the business of Commerce One as presently conducted does not infringe upon or violate any Intellectual Property rights of others except where such infringement or violation, individually or in the aggregate, would not have a Material Adverse Effect on Commerce One.

2.10 *Material Contracts.* Except as disclosed in the Commerce One SEC Reports, neither Commerce One nor any of its subsidiaries is, nor to the knowledge of Commerce One is any other party, in material default under, or in material breach or material violation of any "material contracts" within the meaning of Item 601 of Regulation S-K of the SEC to which Commerce One or any of its subsidiaries is a party or any material contracts concerning Commerce One's Intellectual Property (collectively, "Commerce One Material Contracts"). All of the Commerce One Material Contracts are valid, binding and in full force and effect in all material respects and enforceable by Commerce One in

accordance with their respective terms. No event has occurred which, with the giving of notice or passage of time or both, would constitute a material default by Commerce One or any of its subsidiaries or, to the knowledge of Commerce One, any other party under any Commerce One Material Contract.

2.11 *Sufficiency of Assets.* Commerce One has good and marketable title to its property and assets, free and clear of all Liens, except such Liens which arise in accordance with the ordinary course of business and do not materially impair Commerce One's ownership or use of such property or assets. With respect to the property and assets it leases, Commerce One is in compliance with such leases and, to its knowledge, holds a valid leasehold interest free of any Liens. The assets and properties of Commerce One and its subsidiaries (including Commerce One's Intellectual Property), whether owned, leased, licensed or otherwise held, constitute (i) all of the material assets and rights that are used by Commerce One and its subsidiaries in the operation of their business as it is being conducted as of the date hereof and (ii) all the property, real and personal, tangible and intangible, necessary for Commerce One and its subsidiaries to conduct such business as it is being conducted as of the date hereof.

2.12 *Compliance with Applicable Law.* Commerce One and its subsidiaries are in compliance in all material respects with all Requirements of Law of any Governmental Authority, including those relating to environmental, occupational health and safety, fair employment and equal opportunity, and no claims or complaints from any Governmental Authorities or other parties have been received by Commerce One or any of its subsidiaries, and, to the knowledge of Commerce One, no claims or complaints are threatened alleging that Commerce One or any of its subsidiaries is in violation of any such Requirement of Law except for such claims or complaints which could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on Commerce One.

2.13 *Section 203 Approval.* The Board of Directors of each of Commerce One and New Commerce One Holding have "approved," for purposes of Section 203(a)(1) of the DGCL, (a) the acquisition pursuant hereto by SAP or any Purchaser Controlled Entity (as defined in the Standstill Agreement) of the Shares and (b) the acquisition by SAP or any Purchaser Controlled Entity of any additional shares of Commerce One Common Stock up to the Standstill Limit (as defined in the Standstill Agreement, which Standstill Limit shall be applicable with respect to the approval described in this Section 2.13 irrespective of whether the Standstill Agreement is in effect at such time or at any time in the future), and all other transactions contemplated hereby or by the Standstill Agreement pursuant to which SAP or any Purchaser Controlled Entity becomes an "interested stockholder" under Section 203 of the DGCL.

2.14 *Amendment of Rights Agreement.* Commerce One's Board of Directors has amended that certain Preferred Stock Rights Agreement, dated as of April 18, 2001, by and between Commerce One and Fleet National Bank as Rights Agent (the "Rights Agreement"), in order to permit the transactions contemplated herein, such that SAP AG shall be excepted from the operation of the Rights Agreement only to the extent of the Standstill Limit specified in the Standstill Agreement (irrespective of whether the Standstill Agreement is in effect at such time or at any time in the future).

3. Representations and Warranties of SAP AG

SAP AG hereby represents and warrants to Commerce One as follows:

3.1 *Organization and Good Standing.* SAP AG is a corporation duly organized, validly existing and in good standing under the laws of the Federal Republic of Germany. SAP AG has the corporate power and authority to own its properties and to carry on its business as now being conducted and is duly qualified to do business and is in good standing in each jurisdiction in which the failure to be so qualified would have a Material Adverse Effect on SAP AG.

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3.2 *Authority; Binding Nature of Agreements.* SAP AG has all requisite corporate power and authority to enter into this Agreement and any Related Equity Agreements to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and any Related Equity Agreements to which it is a party and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on the part of SAP AG. This Agreement and any Related Equity Agreements to which SAP AG is party have been duly executed and delivered by SAP AG and constitute the valid and binding obligations of SAP AG, enforceable in accordance with their terms.

3.3 *Non-Contravention; Consents*

(a) Neither the execution and delivery by SAP AG, nor the consummation or performance by SAP AG of any of the transactions to be consummated or performed by it under this Agreement or the Related Equity Agreements, will directly or indirectly (with or without notice or lapse of time): (i) violate any provision of SAP AG's charter documents, (ii) after giving effect to the amendment and restatement of the Standstill Agreement effective as of the Closing, constitute or result in a breach or default by SAP AG, or give rise to a right of termination, amendment, cancellation or acceleration on the part of any other party, or result in the creation or imposition of any Lien on SAP AG's assets, under any agreement or instrument to which SAP AG is a party or by which SAP AG is bound which breach, default, termination or Lien would have a Material Adverse Effect on SAP AG, or (iii) constitute a violation by SAP AG of any Requirement of Law.

(b) No consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any Governmental Authority on the part of SAP AG is required in connection with the consummation of the transactions contemplated by this Agreement and the Related Equity Agreements except for any filings to be made after the Closing as required by the German Competition Act, European Community Treaty Act and Council Regulation 4064/89.

3.4 *Litigation.* As of the date hereof, there are no actions, suits, proceedings or investigations pending or, to the knowledge of SAP AG, threatened against SAP AG or any of its property or assets before any Governmental Authority which (i) in any manner challenge or seek to prevent, enjoin, alter or materially delay the transactions contemplated by this Agreement or (ii) could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on SAP AG (other than as disclosed in public filings made by SAP AG with the SEC or as disclosed in writing by SAP AG to Commerce One on or before the date hereof).

3.5 *Brokers.* Except for the investment bank previously disclosed to Commerce One, whose fees and expenses will be paid by SAP AG, SAP AG has not granted or become obligated to pay, or taken any action that likely would result in any Person claiming to be entitled to receive from SAP AG, any brokerage commission, finder's fee or similar commission or fee in connection with any of the transactions contemplated by this Agreement.

3.6 *Investment Representations*

(a) SAP AG understands that none of the Shares has been registered under the Securities Act. SAP AG also understands that the Shares are being offered and sold pursuant to an exemption from registration contained in the Securities Act based in part upon SAP AG's representations contained in this Agreement, and that Commerce One is relying upon the truth and accuracy of SAP AG's representations, warranties, acknowledgements and understandings with respect to the material facts set forth herein.

(b) SAP AG is acquiring the Shares for SAP AG's own account for investment purposes only, and not with the current intention of making a public distribution thereof.

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(c) SAP AG has substantial experience in evaluating and investing in private placement transactions of securities in companies similar to Commerce One so that it is capable of evaluating the merits and risks of its investment in Commerce One and has the capacity to protect its own interests. SAP AG, by reason of its business or financial experience, has the capacity to protect its own interests in connection with the transactions contemplated by this Agreement and the Related Equity Agreements. SAP AG is an "accredited investor" as that term is defined in Rule 501(a) of Regulation D under the Securities Act.

(d) SAP AG acknowledges that the Shares may be required to be held indefinitely and that SAP AG must bear the economic risk of this investment indefinitely unless the Shares are subsequently registered under the Securities Act or an exemption from such registration is available. SAP AG understands that Commerce One's obligations to register the Shares are set forth in the SAP Investor Rights Agreement. SAP AG also understands that there is no assurance that any exemption from registration under the Securities Act will be available and that, even if available, such exemption may not allow SAP AG to transfer all or any portion of the Shares under the circumstances, in the amounts or at the times SAP AG might propose.

(e) SAP AG has been advised or is aware of the provisions of Rule 144 under the Securities Act ("*Rule 144*"), which permit limited resale of shares purchased in a private placement subject to the satisfaction of certain conditions, including, among other things: (i) the availability of certain current public information about Commerce One, (ii) the resale occurring not less than one year after a party has purchased and paid for the security to be sold, (iii) the sale being through an unsolicited "broker's transaction" or in transactions directly with a market maker (as said term is defined under the Exchange Act) and (iv) the number of shares being sold during any three-month period not exceeding specified limitations. SAP has been advised or is aware that it may be deemed to be an "affiliate" of Commerce One with the meaning of the Securities Act following the execution of this Agreement.

(f) SAP AG did not receive any information regarding such purchase and sale through any general solicitation or general advertising within the meaning of Rule 502(c) under the Securities Act.

3.7 *Disclosure.* SAP AG has received copies of all Commerce One filings with the SEC that SAP AG has requested. Without limiting Commerce One's obligations with respect to any representations or warranties made by Commerce One in this Agreement, SAP AG has been afforded the opportunity to obtain any additional information deemed necessary by SAP AG to verify the accuracy of any representations made or information conveyed to SAP AG. SAP AG confirms that all documents records and books pertaining to its investment in Common Stock and requested by SAP AG have been made available or delivered to SAP AG. SAP AG has had an opportunity to ask questions of and receive answers from Commerce One, or from a person or persons acting on Commerce One's behalf, concerning the terms and conditions of this investment.

3.8 *Current Common Stock Ownership.* As of the date of this Agreement, SAP AG beneficially owns 9,817,046 shares of Common Stock. Except for such shares, SAP AG does not own any other equity securities of Commerce One, any options, warrants or other rights to acquire equity securities of Commerce One or any other securities convertible into equity securities of Commerce One. SAP is not currently in breach of any of the terms and conditions of Section 2.1(a), (d), (e), (f), and (g) of the Standstill and the Stock Restriction Agreement, dated June 14, 2000, by and between Commerce One and SAP AG.

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4. Conditions to Closing

4.1 *Conditions to SAP AG's Obligations.* SAP AG's obligation to purchase the Shares is subject to the satisfaction, at or prior to the purchase of the Shares, of the following respective conditions (any of which may be waived by SAP AG, in whole or in part):

(a) The representations and warranties of Commerce One contained in Sections 2.1, 2.2 and 2.4 shall be true and correct in all material respects, in each case as of the date of this Agreement and on the Closing Date with the same force and effect as though such representations and warranties had been made on and as of the date of this Agreement and the Closing Date, except for the representations and warranties in Section 2.4 which address matters only as a particular date, which shall be true and correct in all material respects as of such date. The other representations and warranties of Commerce One contained in this Agreement shall be true and correct in all respects, in each case as of the date of this Agreement and on and as of the Closing Date with the same force and effect as though such representations and warranties had been made on and as of the date of this Agreement and the Closing Date (other than representations and warranties made specifically with reference to a particular date, which, subject to the following proviso shall have been true and correct as of such date), except in each case, or in the aggregate, as does not constitute a Material Adverse Effect on Commerce One (it being understood that, for purposes of determining the accuracy of such representations and warranties, all "Material Adverse Effect" qualifications and other qualifications based on the word "material" or similar phrases contained in such representations and warranties shall be disregarded); and SAP AG shall have received a certificate signed by a duly authorized executive officer of Commerce One confirming the foregoing as of the Closing Date with respect to the representations and warranties made by Commerce One.

(b) Commerce One shall have performed and complied with all of its covenants and agreements contained in this Agreement in all material respects through the Closing; and SAP AG shall have received a certificate signed by a duly authorized executive officer of Commerce One confirming the foregoing as of the Closing Date.

(c) There shall not exist, and there shall not have been any event, occurrence, change, development or circumstance (other than as previously disclosed in writing by Commerce One to SAP or disclosed by Commerce One publicly in a filing with the SEC prior to the date of this Agreement), which has had or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on Commerce One.

(d) There shall be no injunction, writ, preliminary restraining order or other order in effect of any nature issued by a court or governmental agency of competent jurisdiction directing that the transactions contemplated by this Agreement or any Related Equity Agreement not be consummated in the manner provided for in this Agreement or a Related Equity Agreement, nor shall there be pending any proceeding brought by a governmental authority or agency seeking any of foregoing.

(e) The applicable waiting period under the HSR Act and any applicable foreign antitrust or competition laws shall have expired or been terminated.

(f) Commerce One shall have duly executed and delivered to SAP AG the SAP Investor Rights Agreement.

(g) SAP AG shall have received the opinion of independent counsel to Commerce One, dated the date of the Closing Date of the purchase and sale of the Shares, in the form of *Exhibit B* hereto.

(h) Commerce One shall have amended the Rights Agreement in the manner contemplated by Section 2.14.

(i) The Strategic Alliance Agreement, dated as of September 18, 2000 by and between Commerce One, SAP AG and SAP Markets, Inc., as amended to date and as may be amended hereafter, and any successor or replacement agreement, (the "Strategic Alliance Agreement") shall not have expired or been terminated, and there shall not be any uncured material breach by Commerce One which, if not cured, would result in SAP AG or SAP Markets, Inc. having the right to terminate of the Strategic Alliance Agreement.

4.2 *Conditions to Commerce One's Obligations.* Commerce One's obligation to sell the Shares, is subject to the satisfaction, at or prior to the delivery of the Shares, of the following respective conditions (any of which may be waived by Commerce One, in whole or in part):

(a) The representations and warranties of SAP AG contained in this Agreement shall be true and correct in all respects, in each case as of the date of this Agreement and on and as of the Closing Date with the same force and effect as though such representations and warranties had been made on and as of the date of this Agreement and the Closing Date, (other than representations and warranties made

specifically with reference to a particular date, which, subject to the following provisions, shall have been true and correct as of such date) except in each case, or in the aggregate, as does not constitute a Material Adverse Effect on SAP AG (it being understood that, for purposes of determining the accuracy of such representations and warranties, all "Material Adverse Effect" qualifications and other qualifications based on the word "material" or similar phrases contained in such representations and warranties shall be disregarded); and Commerce One shall have received a certificate signed by a duly authorized executive officer of SAP AG confirming the foregoing as of the Closing Date.

(b) SAP AG shall have performed and complied with all of its covenants and agreements contained in this Agreement in all material respects through the Closing; and Commerce One shall have received a certificate signed by a duly authorized executive officer of SAP AG confirming the foregoing as of the Closing Date.

(c) There shall be no injunction, writ, preliminary restraining order or other order in effect of any nature issued by a court or governmental agency of competent jurisdiction directing that the transactions contemplated in this Agreement or any Related Equity Agreement not be consummated in the manner provided for in this Agreement or a Related Equity Agreement.

(d) SAP AG shall have duly executed and delivered the Standstill Agreement to Commerce One.

(e) The applicable waiting period under the HSR Act and any applicable foreign antitrust or competition laws shall have expired or been terminated.

(f) Commerce One shall have received the opinion of in-house counsel to SAP AG, dated the Closing Date, substantially identical to the opinion given to Commerce One on behalf of SAP AG by Schilling, Zutt & Anschutz, dated June 16, 2000.

(g) SAP AG is not at such time, or would not be after giving effect to the sale of the Shares, in breach of the provisions of Section 2.1 of the Standstill Agreement.

(h) The Strategic Alliance Agreement shall not have expired or been terminated, and there shall not be any uncured material breach by SAP Markets, Inc. or SAP AG which, if not cured, would result in Commerce One having the right to terminate of the Strategic Alliance Agreement.

5. Additional Agreements.

5.1 *Filings and Consents.* Each party hereto will cooperate with each other with respect to obtaining, as promptly as practicable, and in any event prior to the Closing, all necessary consents, approvals, authorizations and agreements of, and the giving of all notices and making of all other

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filings with (including, without limitation, filings under the HSR Act or under applicable foreign antitrust or competition laws), any third parties, including Governmental Authorities, necessary to authorize, approve or permit the transactions contemplated by this Agreement and the Related Equity Agreements.

5.2 *Covenant to Satisfy Conditions.* Subject to the terms and conditions of this Agreement and applicable law, each party agrees to use all commercially reasonable efforts to ensure that the conditions to the other party's obligations hereunder set forth in Section 4, insofar as such matters are within the control of such party, are satisfied as promptly as practicable.

5.3 *Further Assurances.* Each party shall execute and deliver such additional instruments, documents or other writings as may be reasonably requested by any other party in order to confirm and carry out and to effectuate fully the intent and purposes of this Agreement.

5.4 *Adjustment to Number and Type of Securities and Purchase Price.* The type and number of securities of Commerce One issuable hereunder and the Purchase Price per share of such securities are subject to adjustment as set forth below:

(a) Upon any reclassification, exchange, substitution or other event that results in a change of the number and/or class of the securities issuable hereunder or upon the payment of a dividend in securities or property other than Common Stock, SAP AG shall be entitled to receive the number and kind of securities and property that SAP AG would have received if SAP AG had made a purchase hereunder immediately before the record date for such reclassification, exchange, substitution or other event or dividend, subject to further adjustments as provided in this Section 5.4. The provisions of this Section 5.4(a) shall similarly apply to successive reclassifications, exchanges, substitutions or other events or dividends.

(b) If Commerce One is a party to any transaction (including any consolidation or merger of Commerce One with or into any other corporation, entity or person in which Commerce One shall not be the continuing or surviving entity, statutory share exchange, sale of all or substantially all of the assets of Commerce One or a recapitalization or reorganization or other transaction) in each case as a result of which shares of Common Stock are converted into the right, or the holders of Common Stock are otherwise entitled, to receive stock, securities or other property (including cash or any combination thereof) (any such transaction being hereinafter referred to as a "*Recapitalization*"), then, in each such case, SAP AG, at any time after the consummation or effective date of such Recapitalization, shall receive, in lieu of or in addition to (as the case may be) the Common Stock otherwise issuable hereunder prior to the date of such Recapitalization and the stock and other securities and property (including cash or any combination thereof) to which SAP AG would have been entitled upon the date of such Recapitalization if SAP AG had purchased shares of Common Stock hereunder immediately prior thereto. Commerce One shall not be a party to any Recapitalization unless the terms thereof are consistent with the provisions of this Section 5.4 and any successor or acquiring entity has expressly assumed by written instrument the obligations of Commerce One hereunder. The provisions of this Section 5.4(b) shall similarly apply to successive Recapitalization.

(c) In case of any adjustment in the type of securities issuable hereunder, Commerce One will promptly give written notice thereof to SAP AG in the form of a certificate, certified and confirmed by an officer of Commerce One, setting forth such adjustment and showing in reasonable detail the facts upon which such adjustment is based.

(d) Commerce One shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of meeting its obligations under this Agreement, a sufficient number of shares of Common Stock to meet its obligations under this Agreement. If at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to meet the obligations of Commerce One under this Agreement, in addition to such other

remedies as shall be available to SAP AG, Commerce One shall use its reasonable efforts to take such corporate action as may, in the opinion of its legal counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes.

(e) If at any time, as a result of an adjustment made pursuant to this Section 5.4, SAP AG shall become entitled hereunder to receive any shares of capital stock of other than Common Stock, the number of such other shares so receivable shall be subject to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions with respect to the shares of Common Stock contained in this Section 5.4 and the provisions of this Agreement shall apply on like terms to any other such shares.

5.5 No Impairment of Rights. Commerce One hereby agrees that it will not, through the amendment of its Certificate of Incorporation, or through a reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or otherwise, avoid or seek to avoid the observance or performance of any of the terms of this Agreement, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate in order to protect the rights of the holder of the Shares against impairment. Without limiting the generality of the foregoing, Commerce One will (i) take all such action as may be necessary or appropriate in order that Commerce One may validly and legally issue hereunder fully paid and nonassessable shares of Common Stock, free and clear of any liens, encumbrances and restrictions, and (ii) use its best efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction as may be necessary to enable Commerce One to perform its obligations hereunder.

5.6 *Notification of Certain Matters.* Between the date hereof and the Closing Date, each party hereto will give prompt notice in writing to the other party of: (i) the occurrence or non-occurrence of any event which will result, or has a reasonable prospect of resulting, in the failure of any condition, covenant or agreement contained in this Agreement to be complied with or satisfied, (ii) any failure of such party to comply with or satisfy any condition, covenant or agreement to be complied with or satisfied by it hereunder, and (iii) any notice or other communication from any third party alleging that the consent of such third party is or may be required in connection with the transactions contemplated by this Agreement or any Related Equity Agreement or that such transactions otherwise may violate the rights of or confer remedies upon such third party.

5.7 *Public Announcements.* Except to the extent otherwise required by applicable law or any listing agreement concerning Commerce One's or SAP AG's publicly traded securities, none of the parties hereto will disclose to any Person, issue any press release or make any public announcements concerning the transactions contemplated by this Agreement or any Related Equity Agreement or the contents of any thereof without the prior written consent of Commerce One and SAP AG; it being understood and agreed, however, that Commerce One currently expects to file with the SEC complete unredacted copies of this Agreement and the Related Equity Agreements as exhibits to a Form 8-K. Commerce One hereby agrees to provide a copy of such Form 8-K (including exhibits) to SAP AG prior to its filing.

5.8 *Execution of Other Agreements.* Concurrently with the execution of this Agreement, each of Commerce One, New Commerce One Holding and SAP AG, as applicable, shall execute and deliver the Related Equity Agreements and the amendment to the Strategic Alliance Agreement.

5.9 *Updated Capital Structure Information.* At the Closing, Commerce One shall deliver to SAP AG information regarding its capital structure, to the extent and in a similar form as provided in Section 2.4 hereof, as of a date within 10 business days prior to the Closing

6. Termination

6.1 *Termination Events.* Without prejudice to other remedies which may be available to the parties by law or this Agreement, this Agreement may be terminated and the transactions contemplated hereby may be abandoned at any time prior to the Closing:

(a) by mutual written consent of Commerce One and SAP AG;

(b) by either Commerce One or SAP AG by giving written notice to the other party if the Closing shall not have occurred prior to September 30, 2001, unless extended by written agreement of the parties; *provided* that the party seeking termination pursuant to this subsection (b) is not in default or breach hereunder and *provided, further*, that the right to terminate this Agreement under this clause (b) shall not be available (i) to any party whose failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the failure of the Closing to occur on or before such date or (ii) in the event that the Closing shall not have occurred as a result of a failure of any representation to be true and correct and the party seeking termination knew of such breach prior to the date of this Agreement; or

(c) by either Commerce One or SAP AG by giving written notice to the other party if any Governmental Authority shall have issued an injunction or other ruling prohibiting the consummation of any of the transactions contemplated by this Agreement or any Related Equity Agreement and such injunction or other ruling shall not be subject to appeal or shall have become final and unappealable.

6.2 *Effect of Termination.* In the event of any termination of this Agreement pursuant to Section 6.1, all rights and obligations of the parties hereunder shall terminate without any liability on the part of either party or its respective subsidiaries and affiliates in respect thereof, except that (a) the obligations of the parties under Section 5.7 and Section 7 (other than Section 7.4) of this Agreement shall remain in full force and effect and (b) such termination shall not relieve Commerce One or SAP AG of any liability for any breach of this Agreement.

7. Miscellaneous

7.1 Interpretation

(a) The various section headings are inserted for purposes of reference only and shall not affect the meaning or interpretation of this Agreement or any provision hereof. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms.

(b) Each party hereto acknowledges that it has been represented by competent counsel and participated in the drafting of this Agreement, and agrees that any applicable rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in connection with the construction or interpretation of this Agreement.

(c) When a reference is made in this Agreement to a Section, Exhibit or Schedule, such reference shall be to a Section of, Exhibit to or Schedule to this Agreement unless otherwise indicated.

7.2 Fees and Expenses. Each party shall be solely responsible for the payment of the fees and expenses of its advisers, counsel, accountants and other experts, if any, and all other expenses incurred by such party incident to the negotiation, preparation, execution, delivery and performance of this Agreement, except to the extent expressly set forth in this Agreement. Without limiting the generality of the foregoing, each of SAP AG and Commerce One shall pay (i) 50% of all fees payable in connection with the HSR Act filing and (ii) 50% of all stamp and other transfer taxes, if any, which

may be payable in respect of the issuance, sale and delivery to SAP AG of Common Stock pursuant to the terms of this Agreement.

7.3 Governing Law; Jurisdiction and Venue

(a) This Agreement is to be construed in accordance with and governed by the internal laws of the State of Delaware without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of Delaware to the rights and duties of the parties.

(b) Any legal action or other legal proceeding relating to this Agreement or the enforcement of any provision of this Agreement may be brought or otherwise commenced in any state or federal court located in the States of California or Delaware. Each party to this Agreement:

(i) expressly and irrevocably consents and submits to the jurisdiction of each state and federal court located in the States of California or Delaware (and each appellate court located in the States of California or Delaware in connection with any such legal proceeding, including to enforce any settlement, order or award;

(ii) agrees that each state and federal court located in the States of California or Delaware shall be deemed to be a convenient forum; and

(iii) waives and agrees not to assert (by way of motion, as a defense or otherwise), in any such legal proceeding commenced in any state or federal court located in the States of California or Delaware any claim that such party is not subject personally to the jurisdiction of such court, that such legal proceeding has been brought in an inconvenient forum, that the venue of such proceeding is improper or that this Agreement or the subject matter hereof or thereof may not be enforced in or by such court.

(c) Each party hereto agrees to the entry of an order to enforce any resolution, settlement, order or award made pursuant to this Section by the state and federal courts located in the States of California or Delaware and in connection therewith hereby waives, and agrees not to assert by way of motion, as a defense, or otherwise, any claim that such resolution, settlement, order or award is inconsistent with or violative of the laws or public policy of the laws of the States of California or Delaware or any other jurisdiction.

(d) In the event of any legal action or other legal proceeding relating to this Agreement or the enforcement of any provision of this Agreement, the prevailing party shall be entitled to payment by the non-prevailing party of all costs and expenses (including reasonable attorneys' fees) incurred by the prevailing party.

7.4 *Specific Enforcement.* The parties hereto acknowledge and agree that irreparable damage would occur in the event any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached and that such damage would not be compensable in money damages and that it would be extremely difficult or impracticable to measure the resultant damages. It is accordingly agreed that any party hereto shall be entitled to an injunction or injunctions to prevent breaches of the provisions of the Agreement and to enforce specifically the terms and provisions hereof, in addition to any other remedy to which it may be entitled at law or equity, and such party that is sued for breach of this Agreement expressly waives any defense that a remedy in damages would be adequate and expressly waives any requirement in an action for specific performance for the posting of a bond by the party bringing such action.

7.5 *No Third Party Beneficiaries.* This Agreement is intended for the benefit of the parties hereto and their respective successors and permitted assigns and are not for the benefit of, nor may any provision hereof or thereof be enforced by, any other Person.

7.6 *Entire Agreement.* This Agreement and the Related Equity Agreements and the other documents delivered pursuant hereto and thereto, constitute the full and entire understanding and agreement between the parties with regard to the subject matter hereof and no party shall be liable or bound to any other in any manner by any representations, warranties, covenants and agreements except as specifically set forth herein and therein.

7.7 *Severability.* The provisions of this Agreement shall be severable, and any invalidity, unenforceability or illegality of any provision or provisions of this Agreement shall not affect any other provision or provisions of this Agreement, and each term and provision of this Agreement shall be construed to be valid and enforceable to the full extent permitted by law.

7.8 *Amendment and Waiver*

(a) This Agreement may be modified only pursuant to a writing executed by authorized representatives of SAP AG and Commerce One.

(b) No failure to exercise and no delay in exercising any right, power or privilege granted under this Agreement shall operate as a waiver of such right, power or privilege. No single or partial exercise of any right, power or privilege granted under this Agreement shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights or remedies provided by law.

7.9 *Assignment and Successors.* SAP AG may transfer or assign its rights and obligations hereunder to any wholly-owned subsidiary of SAP AG; provided, however, that such rights are transferred in accordance with the terms of the Standstill Agreement, and such transferee executes and delivers a counterpart copy of this Agreement thereby agreeing to be bound by the terms and provisions set forth herein. Further, the parties agree that, in the event that the reorganization of Commerce One into a holding company structure is consummated prior to the Closing Date, that New Commerce One Holding (as the publicly-traded holding company of Commerce One) shall without any further action of the parties automatically assume all of Commerce One's rights and obligations hereunder, and except as the context requires otherwise all references herein to Commerce One shall be deemed to be referenced to New Commerce One Holding. Except as permitted herein, any assignment of rights or delegation of duties under this Agreement by a party without the prior written consent of the other parties shall be void ab initio. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

7.10 *Relationship of the Parties.* For all purposes of this Agreement and the Related Equity Agreements, each of the parties hereto and their respective Affiliates shall be deemed to be independent entities and, anything in this Agreement to the contrary notwithstanding, nothing herein shall be deemed to constitute the parties hereto or any of their respective Affiliates as partners, joint venturers, co-owners, an association or any entity separate and apart from each party itself, nor shall this Agreement make any party hereto an employee or agent, legal or otherwise, of the other parties for any purposes whatsoever. This Agreement does not create or constitute, and shall not be construed as creating or constituting, a voting trust agreement under the Delaware General Corporation Law or any other applicable corporation law. None of the parties to this Agreement is authorized to make any statements or representations on behalf of any other party or in any way to obligate

any other party, except as expressly authorized in writing by the other parties. Anything in this Agreement to the contrary notwithstanding, no party hereto or thereto shall assume nor shall be liable for any liabilities or obligations of the other parties, whether past, present or future.

7.11 *Notices.* All notices required or permitted hereunder shall be in writing and shall be given, and deemed effectively given, if given in accordance with the applicable section of the Strategic Alliance Agreement.

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7.12 *Facsimile; Counterparts.* This Agreement may be executed by facsimile and in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

7.13 *Survival of Representations and Warranties.* The representations and warranties of the parties contained in this Agreement shall survive until the date which is one (1) year following the Closing Date; *provided, however,* that the representations and warranties set forth in Sections 2.2, 2.4(b), 2.13 and 2.14 shall continue in perpetuity.

[The remainder of this page is intentionally left blank]

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth in the first paragraph hereof.

COMMERCE ONE, INC.

By: /s/ PETER F. PERVERE
Name: Peter F. Pervere
Title: Senior Vice President and Chief Financial Officer

NEW COMMERCE ONE HOLDING, INC.

By: /s/ PETER F. PERVERE
Name: Peter F. Pervere
Title: Senior Vice President and Chief Financial Officer

SAP AG

By: /s/ WERNER BRANDT
Name: Werner Brandt
Title:

By: /s/ MICHAEL JUNGE
Name: Michael Junge
Title: General Counsel

[Signature page to Share Purchase Agreement]

EXHIBIT A

CERTAIN DEFINITIONS

For purposes of the Agreement (including this *Exhibit A*):

"*Business Day*" shall mean any day other than a Saturday or Sunday or other day on which commercial banks in California are authorized or required by law to close.

"*Common Stock*" shall mean the common stock, par value \$0.0001 per share, of Commerce One, Inc., a Delaware corporation and the associated stock purchase rights.

"*DGCL*" shall mean the Delaware General Corporation Law.

"*Dollars*" or "\$" shall mean United States dollars.

"*Entity*" shall mean any corporation (including any non profit corporation), general partnership, limited partnership, limited liability partnership, joint venture, estate, trust, cooperative, foundation, society, political party, union, company (including any limited liability company or joint stock company), firm or other enterprise, association, organization or entity.

"*Exchange Act*" shall mean the Securities Exchange Act of 1934, as amended.

"*Governmental Authority*" means any nation or government, any state or other political subdivision thereof or court, arbitral or other tribunal and any Entity properly exercising executive, legislative, judicial, regulatory or administrative functions of government.

"*HSR Act*" shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"*Lien*" shall mean any charge, equitable interest, lien, encumbrance, claim, option, proxy by way of security, pledge, security interest, mortgage, right of first refusal, right of preemption, transfer or retention of title agreement, or restriction by way of security of any kind or nature, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

"*Material Adverse Effect*" shall mean, with respect to Commerce One or SAP AG, any change event or effect that is materially adverse to (a) the business, assets, financial condition, operations or results of operations of such company and its subsidiaries taken as a whole; or (b) the ability of such company to consummate the transactions contemplated by this Agreement or the Related Equity Agreements or perform its obligations with respect thereto; *provided, however*, that in no event shall a decline in the market price of an entity's publicly traded securities, in and of itself, constitute a Material Adverse Effect.

"*Person*" shall mean any individual, Entity or Governmental Authority.

"*Preferred Stock*" shall mean the preferred stock, par value \$0.0001 per share, of Commerce One, Inc., a Delaware corporation.

"*Purchase Price*" shall have the meaning specified in Section 1 of the Agreement.

"*Related Equity Agreements*" shall mean the Standstill Agreement and the SAP Investor Rights Agreement.

"*Requirements of Law*" shall mean, as to any Person, the certificate of incorporation and bylaws or other organizational or governing documents of such Person, and all federal, state, local and foreign laws, rules and regulations, including, without limitation, securities, antitrust, communications, licensing, health, safety, labor and trade laws, rules and regulations, and all orders, judgments, decrees and other determinations of any Governmental Authority or arbitrator, applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"*SAP Investor Rights Agreement*" shall mean the SAP Investor Rights Agreement to be entered into concurrently herewith in the form attached hereto as *Exhibit D*.

"*Securities Act*" shall mean the Securities Act of 1933, as amended.

"*SEC*" shall mean the U.S. Securities and Exchange Commission.

"*Standstill Agreement*" shall mean the Amended and Standstill and Stock Restriction Agreement to be entered into concurrently herewith by and between Commerce One and SAP AG, in the form attached hereto as *Exhibit E*.

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AMENDED AND RESTATED
STANDSTILL AND STOCK RESTRICTION AGREEMENT

by and among

COMMERCE ONE, INC.,

NEW COMMERCE ONE HOLDING, INC.

and

SAP AG

JUNE 28, 2001

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AMENDED AND RESTATED STANDSTILL AND STOCK RESTRICTION AGREEMENT

This Amended and Restated Standstill and Stock Restriction Agreement (hereinafter the "Agreement") is made as of June 28, 2001 by and between Commerce One, Inc., a Delaware corporation (the "Company"), New Commerce One Holding, Inc., a Delaware corporation ("New Commerce One Holding") and SAP Aktiengesellschaft, a stock corporation incorporated under the laws of the Federal Republic of Germany (the "Purchaser").

WHEREAS, subject to the terms and conditions of the Share Purchase Agreement by and between the Company and SAP AG dated June 14, 2000 (the "Prior Share Purchase Agreement") the Company sold shares of its common stock to the Purchaser.

WHEREAS, in connection with the Prior Share Purchase Agreement, the Company and the Purchaser entered into, and are a party to, that certain Standstill and Stock Restriction Agreement dated as of June 14, 2000 (the "Prior Standstill and Stock Restriction Agreement").

WHEREAS, subject to the terms and conditions of the Share Purchase Agreement, of even date herewith, by and between the Company and the Purchaser (the "Share Purchase Agreement"), the Company has agreed to sell additional shares of its common stock to the Purchaser.

WHEREAS, as a condition precedent to the Company entering into the Purchase Agreement and completing the purchase contemplated therein, simultaneously with entering into the Share Purchase Agreement, the parties have agreed to amend and restate in its entirety the Prior Standstill and Stock Restriction Agreement;

WHEREAS, New Commerce One Holding will assume all of the rights and obligations of Commerce One hereunder upon the consummation of the reorganization of Commerce One into a holding company structure with New Commerce One Holding as the publicly-traded holding company; and

NOW THEREFORE, in consideration of the covenants and promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree, effective upon the Closing (as defined in the Share Purchase Agreement) the Prior Standstill and Stock Restriction Agreement is hereby amended and restated in its entirety as set forth herein.

**ARTICLE I
DEFINITIONS**

For the purpose of this Agreement, the following terms shall have the meanings specified with respect thereto below:

"Affiliate" shall have the meaning set forth in Rule 12b-2 of the rules and regulations promulgated under the Exchange Act; *provided, however,* that for purposes of this Agreement, the Purchaser and its Affiliates, on the one hand, and the Company and its Affiliates, on the other, shall not be deemed to be "Affiliates" of one another.

"Beneficially Own," "Beneficially Owned," or "Beneficial Ownership" shall have the meaning set forth in Rule 13d-3 of the rules and regulations promulgated under the Exchange Act.

"Board Approval" shall mean the affirmative vote of a majority of the Disinterested Directors of the Company or a unanimous written consent of the Board of Directors of the Company duly obtained in accordance with the applicable provisions of the Company's certificate of incorporation, bylaws and applicable law.

"Change in Control of the Company" shall mean any of the following: (i) a merger, consolidation or other business combination or transaction to which the Company is a party if the stockholders of the

Company immediately prior to the effective date of such merger, consolidation or other business combination or transaction, as a result of such share ownership, have Beneficial Ownership of voting securities representing less than 50% of the Total Current Voting Power of the surviving entity following such merger, consolidation or other business combination or transaction; (ii) an acquisition by any person, entity or 13D Group of direct or indirect Beneficial Ownership of Voting Stock of the Company resulting in such person, entity or 13D Group having direct or indirect Beneficial Ownership of 50% or more of the Total Current Voting Power of the Company; (iii) an acquisition by any Competitor of direct or indirect Beneficial Ownership of Voting Stock of the Company resulting in such Competitor having director indirect Beneficial Ownership of 15% or more of the Total Current Voting Power of the Company; (iv) a sale of all or substantially all of the assets of the Company; (v) a liquidation or dissolution of the Company; (vi) the institution of any proceeding by or against the Company under the provisions of any insolvency or bankruptcy law which is not dismissed within ninety (90) days, the appointment of a receiver of a material portion of the assets or property of the Company, or the issuance of an order for an execution on a material portion of the property of the Company pursuant to a judgment which is not dismissed within ninety (90) days; or (vii) during any period of two consecutive years, individuals who at the beginning of such period constituted the Board of Directors of the Company (together with any new directors whose election by such Board of Directors or whose nomination for election by the stockholders of the Company was approved by a vote of a majority of the directors of the Company then still in office who were either directors at the beginning of such period or whose election or nomination for election was previously so approved, other than a director designated by a person who has entered into an agreement with the Company to effect a transaction described in the preceding clauses) cease for any reason to constitute a majority of the Board of Directors of the Company then in office.

"Company Common Stock" shall mean shares of the Common Stock of the Company.

"Company Competitor" shall mean (i) Ariba Inc., BEA Systems, Inc., Clarus Corporation, Oracle Corporation, International Business Machines corporation, i2 Technologies, Inc., Manugistics Group, Inc., Microsoft Corporation, Peoplesoft, Inc., SeeBeyond Technology Corporation, Siebel Systems, Inc., VerticalNet, Inc. and WebMethods, Inc. and their successors, (ii) any person in which any of the persons set forth in clause (i) own more than twenty percent (20%) of the Total Current Voting Power of such person or (iii) any person with which any of the persons set forth in clause (a) have a strategic alliance or similar agreement that provides for the joint offering of a solution that substantially competes with a solution offered by the Company.

"Competitor" shall mean (i) Oracle Corporation, International Business Machines Corporation, i2 Technologies, Inc., J.D. Edwards & Company, Manugistics Group, Inc., Peoplesoft, Inc., Baan Company, N.V., Siebel Systems, Inc. and Ariba Inc. and their successors, (ii) any person in which any of the persons set forth in clause (i) own more than twenty percent (20%) of the Total Current Voting Power of such person or (iii) any person with which any of the persons set forth in clause (i) have a strategic alliance or similar agreement that provides for the joint offering of a solution that substantially competes with a solution offered by SAPMarkets, Inc. or its Affiliates.

"Competitor Offer" shall mean (i) a bona fide public tender offer subject to the provisions of Regulation 14D of the rules and regulations promulgated under the Exchange Act made by a Competitor when first commenced within the meaning of Rule 14d-2(a) of the rules and regulations promulgated under the Exchange Act, by a person or 13D Group (which is not made by and does not include the Purchaser or any Affiliate of the Purchaser) to purchase or exchange for cash or other consideration any Voting Stock and which consists of an offer that, if consummated, would result in the Competitor having Beneficial Ownership of Voting Stock of the Company representing more than 15% of the Total Current Voting Power of the Company or (ii) the execution of a definitive agreement between the Company and a Competitor that provides for the Competitor acquiring Beneficial

Ownership of Voting Stock of the Company, which if consummated, would result in the Competitor Beneficially Owning more than 15% of the Total Current Voting Power of the Company.

"Confidentiality Agreement" shall mean the Confidentiality Agreement among the Purchaser, the Company and New Commerce One Holding attached as *Exhibit A* to the Investor Rights Agreement among the Company, New Commerce One Holding and the Purchaser.

"Control" or "Controlled by" shall have the meaning set forth in Rule 12b-2 of the rules and regulations promulgated under the Exchange Act.

"Disinterested Director" means a member of the Board of Directors of the Company who is not (i) an employee or consultant of Purchaser or any of its Affiliates; (ii) a member of the Board of Directors of Purchaser or any of its Affiliates; or (iii) the holder of more than three percent (3%) of the voting stock of Purchaser or any of its Affiliates.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

"Fair Market Value" means, as of any date of determination, (i) in the case of equity securities, the simple average of (x) the simple average of the closing price per share of common stock of the Company on the Nasdaq Stock Market (or such other market or exchange on which such common stock is listed or quoted) for the twenty (20) days preceding such date of determination and (y) the weighted average of the closing price per share of common stock of the Company on the Nasdaq Stock Market (or such other market or exchange on which such common stock is listed or quoted) for the twenty (20) days preceding such date of determination, such weighed average to be calculated based on the daily trading volume of the common stock as reported on the Nasdaq Stock Market (or such other market or exchange on which such common stock is listed or quoted) during such period, and (ii) in the case of property other than cash or publicly-traded securities, the fair market value of such property on such date of determination as determined in good faith by a majority of the Supervisory Board (Aufsichtsrat) of the Purchaser; *provided, however*, if the Company disputes such determination, then the fair market value shall be as determined by two Investment Banks, with one Investment Bank to be selected by each of the Company and the Purchaser for such purpose. Each such Investment Bank shall determine the fair market value and shall deliver its written valuation to the Company and the Purchaser within thirty (30) days after selection. In the event that such Investment Banks do not agree on the fair market value, the fair market value shall be the average of the two valuations, except that if the higher of the two valuations is greater than twice the lower valuation, the Investment Banks shall select another Investment Bank of similar qualifications who shall determine the fair market value independently of such selection in accordance with the procedures specified in the foregoing sentence. None of the Company, the Purchaser or the initial Investment Banks shall provide the third Investment Bank with information regarding the valuation of the initial Investment Banks. The valuation of the third Investment Bank shall be arithmetically averaged with the two prior valuations and the valuation farthest from the average of the three valuations shall be disregarded. The fair market value shall be the average of the two remaining valuations. The Company and the Purchaser shall each pay one-half of the expense of the valuation.

"Non-Voting Convertible Securities" shall mean any securities of the Company that are convertible into, exchangeable for or otherwise exercisable to acquire Voting Stock of the Company, including convertible securities, warrants, rights or options to purchase Voting Stock of the Company.

"Opposed Tender Offer" shall mean a Third Party Tender Offer pursuant to which the Board of Directors of the Company, pursuant to Rule 14e-2 of the rules and regulations promulgated under the Exchange Act, has publicly published, sent or given to security holders of the Company a statement disclosing that the Company recommends rejection of the Third Party Tender Offer.

"Open Market Transaction" shall mean resales on the open market through unsolicited broker's transactions or through transactions directly with a market maker in which the market maker is not

soliciting purchasers of the shares on behalf of the Purchaser, its Affiliates, or any 13G Group of which Purchaser or any Affiliate of Purchaser is a party on the Nasdaq National Market or such other exchange or public quotation system upon which the Company Common Stock trades.

"person" shall mean an individual, corporation, partnership, limited liability company, association, trust, or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

"Purchaser Controlled Entity" shall mean an entity of which the Purchaser collectively owns not less than a majority of the outstanding voting power entitled to vote in the election of directors of such entity (or, in the event the entity is not a corporation, the governing members, board or other similar body of such entity).

"Rights Plan" shall mean the Preferred Stock Rights Agreement, dated as of June 18, 2001, between Commerce One, Inc., a Delaware corporation and Fleet National Bank, as amended from time to time, or any successor thereto, or any other stockholder rights plan (commonly referred to as a "poison pill") adopted by the Company.

"Rule 144" shall mean Rule 144 as promulgated under the Securities Act.

"SEC" shall mean the U.S. Securities and Exchange Commission.

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Shares" shall mean the shares of Company Common Stock held by Purchaser as of the date of this Agreement and the shares of Company Common Stock sold by the Company to Purchaser on the date hereof or hereafter (including without limitation the shares sold pursuant to the Share Purchase Agreement) together with all securities of Company issued with respect to such shares pursuant to the reorganization of the Company into a holding company structure, stock splits, stock dividends and similar events.

"Standstill Limit" shall mean 23% of the Total Current Voting Power of the Company, as the same may be adjusted in accordance with the provisions of this Agreement or by the written agreement of the parties hereto.

"Standstill Period" shall mean the period beginning on the date hereof and ending on the occurrence of a Standstill Termination Event.

"Standstill Reinstatement Event" shall mean the occurrence of the withdrawal or termination (including, without limitation, as a result of a temporary restraining order or an injunction issued by a governmental entity) of a Competitor Offer prior to the third anniversary of the date of this Agreement.

"Standstill Revised Limit" shall mean the percentage of the Total Current Voting Power of the Company represented by all Voting Stock held by Purchaser as of the occurrence of a Standstill Reinstatement Event.

"Standstill Termination Event" shall mean the earliest to occur of the following: (i) a Change in Control of the Company (other than a Change in Control of the Company involving the Purchaser or any Affiliate of the Purchaser or a 13D Group of which Purchaser or any Affiliate of Purchaser is a member), (ii) a Competitor Offer or (iii) the third anniversary of the date of this Agreement, *provided, however*, that upon a Standstill Reinstatement Event, the Standstill Termination Event triggered by a Competitor Offer shall not be deemed to have occurred and the Standstill Period shall be deemed to be reinstated so long as no other Standstill Termination Event shall have occurred and, *provided, further*, that if upon a Standstill Reinstatement Event the Standstill Revised Limit is greater than the Standstill Limit, then the Standstill Revised Limit and not the Standstill Limit shall thereafter be deemed the Standstill Limit for all purposes hereunder.

"Strategic Alliance Agreement" shall mean the Strategic Alliance Agreement dated September 18, 2000 among the Company, Purchaser and SAPMarkets, Inc., as amended to date and as may be amended hereafter, and any successor or replacement agreement.

"Strategic Alliance Agreement Termination" shall mean the expiration or sooner termination of the Strategic Alliance Agreement in accordance with its terms, other than a termination by the Company due to a material breach by Purchaser.

"Third Party Tender Offer" shall mean a bona fide public tender offer subject to the provisions of Regulation 14D of the rules and regulations promulgated under the Exchange Act when first commenced within the meaning of Rule 14d-2(a) of the rules and regulations promulgated under the Exchange Act, by a person or 13D Group (which is not made by and does not include any of the Company, the Purchaser or any Affiliate of the Purchaser) to purchase or exchange for cash or other consideration any Voting Stock and which consists of an offer to acquire more than 50% of the Total Current Voting Power of the Company.

"Total Current Voting Power" shall mean, with respect to any entity, at the time of determination of Total Current Voting Power, the total number of votes which may be cast in the election of members of the board of directors of the corporation if all securities entitled to vote in the election of such directors are present and voted (or, in the event the entity is not a corporation, the governing members, board or other similar body of such entity).

"Total Shares" shall mean the number of shares of Company Common Stock Beneficially Owned by the Purchaser on the date of this Agreement plus all shares of Company Common Stock that the Purchaser acquires Beneficial Ownership of on the date hereof or hereafter (as adjusted for reorganizations, stock splits, stock dividends and similar events).

"Transfer" shall mean any direct or indirect sale, transfer, pledge, contract to sell, sale of any option or contract to purchase, purchase of any option or contract to sell, grant of any option, right or warrant to purchase, transfer of the economic risk of ownership of, or other disposition.

"Transfer Ceiling" shall be equal to 10% of the Shares commencing on the Closing Date, shall increase to 30% of the Shares commencing on the first anniversary of the Closing Date and shall further increase to 50% of the Shares commencing on the second anniversary of the Closing Date.

"Transfer Restriction Termination Date" shall mean the earlier of (i) the date a Change of Control of the Company occurs, (ii) the date of a Strategic Alliance Agreement Termination or (iii) the third anniversary of the date of this Agreement.

"Voting Stock" shall mean shares of the Company Common Stock and any other securities of the Company having the ordinary power to vote in the election of members of the Board of Directors of the Company.

"Written Approval" shall mean a certificate signed by the Secretary of the Company evidencing Board Approval.

"13D Group" means any group of persons that would be required under Section 13(d) of the Exchange Act, and the rules and regulations promulgated thereunder, to file a statement on Schedule 13D or Schedule 13G with the SEC as a "person" within the meaning of Section 13(d)(3) of the Exchange Act if such group Beneficially Owned Voting Stock representing more than 5% of any class of Voting Stock then outstanding.

ARTICLE II STANDSTILL OBLIGATIONS AND TRANSFER RESTRICTIONS

2.1 *The Purchaser's Standstill Obligations.*

(a) During the Standstill Period, none of Purchaser, any Purchaser Controlled Entity, Affiliate of Purchaser or any 13D Group of which Purchaser or any of its Affiliates is a member shall, without first obtaining Written Approval, directly or indirectly, acquire or Beneficially Own Voting Stock in excess of the Standstill Limit or authorize or make a tender offer, exchange offer or other offer to acquire Voting Stock, if the effect of such acquisition would be to increase the percentage of Total Current Voting Power of the Company represented by all Voting Stock Beneficially Owned by Purchaser, any Purchaser Controlled Entity or Affiliate of Purchaser (and any 13D Group of which Purchaser or any of its Affiliates is a party) to more than the Standstill Limit.

(b) Purchaser shall not be deemed to have violated its covenants under this *Section 2.1* solely by virtue of (and only to the extent of) any increase in the aggregate percentage of the Total Current Voting Power of the Company represented by Voting Stock Beneficially Owned by Purchaser, its Purchaser Controlled Entities, or its Affiliates if such increase is the result of a recapitalization of the Company, a repurchase of securities by the Company or other actions taken by the Company or any of its Affiliates that have the effect of reducing the Total Current Voting Power of the Company.

(c) During the Standstill Period, Purchaser shall promptly (and in no case later than 10 calendar days after such event) notify the Company in writing if the aggregate Beneficial Ownership of Voting Stock of Purchaser and its Purchaser Controlled Entities and Affiliates (and any 13D Group of which Purchaser or any of its Affiliates is a party) exceeds the aggregate Beneficial Ownership of Voting Stock specified in Purchaser's most recent prior notice to the Company under this *Section 2.1(c)* (or if no such notice has yet been given, the aggregate Beneficial Ownership of Voting Stock purchased pursuant to the Purchase Agreement together with the Purchaser's aggregate Beneficial Ownership of Voting Stock as represented and warranted by Purchaser in the Share Purchase Agreement) by more than 1% of the outstanding Voting Stock. Such notice shall specify the amount of Voting Stock Beneficially Owned by Purchaser and its Purchaser Controlled Entities and Affiliates (and any 13D Group of which Purchaser or any of its Affiliates is a party) as of the date of the notice. Notwithstanding any provision of this *Section 2.1(c)* to the contrary, the provisions of this *Section 2.1(c)* requiring notice to the Company shall be deemed satisfied by the delivery by Purchaser to the Company of any Schedule 13D or Schedule 13G filed by Purchaser with respect to the Voting Stock (or any amendment thereto) provided that such Schedule 13D or Schedule 13G specifies Purchaser's aggregate Beneficial Ownership of Voting Stock.

(d) During the Standstill Period, Purchaser and its Purchaser Controlled Entities and Affiliates (and any 13D Group to which Purchaser and its Affiliates is party) shall not, without first obtaining Written Approval, solicit or participate in any solicitation of proxies with respect to any Voting Stock, nor shall they seek to advise or influence any person with respect to the voting of any Voting Stock (other than as otherwise provided or contemplated by this Agreement).

(e) During the Standstill Period, neither Purchaser or any of its Purchaser Controlled Entities or Affiliates (nor any 13D Group of which Purchaser or any of its Affiliates is party) shall, without first obtaining Written Approval, deposit any Voting Stock in a voting trust or, except as otherwise provided or contemplated herein, subject any Voting Stock to any arrangement or agreement with any third party with respect to the voting of such Voting Stock.

(f) During the Standstill Period, neither Purchaser nor any of its Purchaser Controlled Entities or Affiliates shall, without first obtaining Written Approval, join a 13D Group (other than a group comprising solely Purchaser and its Affiliates) for the purpose of acquiring, holding, voting or disposing of Voting Stock or Non-Voting Convertible Securities.

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(g) During the Standstill Period, neither Purchaser nor any of its Purchaser Controlled Entities or Affiliates (nor any 13D Group of which Purchaser or any of its Affiliates is party) shall, without first obtaining Written Approval, act, alone or in concert with others, directly or indirectly, to seek, or state any intention to seek, amendment and rescission of this Agreement or make any proposal to amend, support any proposal to amend or rescind, or publicly comment on any proposal to amend or rescind, the Rights Plan, in the case of each proposal, that is not recommended for approval by the Company's Disinterested Directors.

(h) During the Standstill Period, neither Purchaser nor any of its Purchaser Controlled Entities or Affiliates (nor any 13D Group of which Purchase or any of its Affiliates is party) shall, without first obtaining Written Approval, act, alone or in concert with others, directly or indirectly, to publicly state its intention or desire to acquire the Company or all or a material portion of assets of the Company (including, without limitation, upon expiration of the Standstill Period), engage in transaction that would result in a Change of Control of the Company (including, without limitation, upon expiration of the Standstill Period) or take any other action which would otherwise be prohibited under this *Section 2.1*.

(i) During the Standstill Period, neither Purchaser nor any of its Purchaser Controlled Entities or Affiliates (nor any 13D Group of which Purchaser or any of its Affiliates is party) shall, without first obtaining Written Approval, otherwise act, alone or in concert with others, to seek control the management, Board of Directors or policies of the Company.

(j) Nothing contained in this Section 2.1 shall prevent the Purchaser from (i) making an offer to the Board of Directors to acquire additional shares of Company Common Stock, *provided, however*, that such offer is made on a confidential basis and would not reasonably be expected to require the Company to make public disclosure of such offer and (ii) from speaking in the ordinary course with other stockholders of the Company, so long as Purchaser complies with the other provisions of this Section 2.1.

2.2 *The Purchaser's Transfer Restrictions.*

(a) Purchaser shall not (and shall cause any Purchaser Controlled Entity not to), until the Transfer Restriction Termination Date, Transfer any Shares except:

(i) to the Company;

(ii) to a Purchaser Controlled Entity so long as such Purchaser Controlled Entity agrees, by executing a counterpart to this Agreement, to (A) hold such Shares subject to all of the provisions of this Agreement as if it were the Purchaser, and (B) promptly transfer such Shares to Purchaser or another Purchaser Controlled Entity if, prior to the six year anniversary of the Closing Date, it ceases to be a Purchaser Controlled Entity;

(iii) in response to a bona fide public tender offer or exchange offer subject to Regulation 14D or Rule 13e-3 of the rules and regulations promulgated under the Exchange Act for cash or other consideration that is made by or on behalf of the Company;

(iv) in response to a Third Party Tender Offer with respect to which the Board of Directors of the Company shall have recommended to the stockholders of the Company that they accept such offer pursuant to Rule 14d-9 of the rules and regulations promulgated under the Exchange Act and shall have not withdrawn such recommendation prior to such transfer;

(v) in response to an Opposed Tender Offer, *provided, however*, that Purchaser's tender of shares into such Opposed Tender Offer is expressly conditioned upon receipt by the person making such Opposed Tender Offer of valid tenders which are not revoked or withdrawn as of the "scheduled expiration date" as set forth in the bidder's offer to purchaser or other disclosure pursuant to Item 1004(a)(1)(iii) of Regulation M-A of the rules and regulations promulgated by

the SEC, or any extension of such scheduled expiration or the expiration of any "subsequent offering period" as set forth in Rule 14d-11 of the rules and regulations promulgated under the Exchange Act, as the case may be, of shares of Voting Stock representing at least fifty-one percent (51%) of the Total Current Voting Power of the Company by persons other than the Purchaser, any Purchaser Controlled Entity, its Affiliates and any 13D Group of which Purchaser or any of its Affiliates is party.

(vi) in connection with a Change in Control of the Company that has received Board Approval.

(vii) in a Transfer that (A) when taken together with all prior Transfers of Shares by Purchaser and its Affiliates does not exceed the Transfer Ceiling then applicable; (B) is made in compliance with Rule 144 of the rules and regulations promulgated under the Securities Act, pursuant to an effective registration statement filed with the SEC, or pursuant to any other transaction in which the Company has received an opinion of counsel reasonably acceptable to the Company that an exemption from registration is available; and (C) is made without public disclosure other than as may be required pursuant to Rule 144 of the rules and regulations promulgated under the Securities Act, pursuant to disclosure requirements of Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, or under other applicable law, in each case solely to the minimum extent required under such rule, regulation or law, in the Purchaser's reasonable judgment.

(b) Other than Transfers of the type described in *Section 2.2(a)(i)* through *Section 2.2(a)(vi)* hereof, Purchaser shall not (and shall cause any Purchaser Controlled Entity not to), until the 54 month anniversary of the Closing Date, Transfer any Shares to any Person or 13D Group in a transaction other than an Open Market Transaction hereunder without first offering such Shares to the Company on the following terms and conditions:

(i) The Purchaser shall give prior written notice (the "Transfer Notice") to the Company in writing of its intention to Transfer Shares, specifying the name of the proposed purchaser or transferee, the number of Shares proposed to be the subject of such Transfer, the proposed price therefor and the other material terms upon which such disposition is proposed to be made.

(ii) The Company shall have the right, exercisable by written notice given by the Company to Purchaser within ten (10) business days after receipt of such Transfer Notice (the "Response Notice"), to purchase all, but not less than all, of the Shares specified in such Transfer Notice for cash at the price per share specified in the Transfer Notice or, if consideration other than cash is specified in the Transfer Notice, in an amount equal to the Fair Market Value of such non-cash consideration. Such right shall not be conditional upon the Company having sufficient financing, at the time the right arises, to purchase the Shares; *provided, however*, in any event the Company is required to obtain such financing within the time period set forth in *Section 2.2(b)(iii)*.

(iii) If the Company exercises its right of first refusal hereunder, the closing of the purchase of the Shares with respect to which such right has been exercised (the "First First Refusal Closing") shall take place within twenty-five (25) business days after the Company delivers the Response Notice to the Purchaser or, if later due to the need to determine the Fair Market Value of any non-cash consideration, within five (5) business days of such determination of the Fair Market Value of any non-cash consideration. Upon exercise of its right of first refusal, the Company and Purchaser shall be legally obligated to consummate the purchase and sale contemplated thereby and shall use their respective best efforts to secure any approvals required in connection therewith.

(iv) If the Company does not exercise its right of first refusal hereunder within the time specified for such exercise in *Section 2.2(b)(ii)*, the Purchaser shall be free, during the sixty

(60) business day period following the expiration of such time for exercise, to Transfer or tender for Transfer those Shares specified in such Transfer Notice with respect to which the Company has not exercised its first refusal rights (but not less than the total number of Shares specified in the Transfer Notice) to the proposed purchaser or transferee specified in such Transfer Notice and on terms not significantly less favorable to the Purchaser than the terms specified in such Transfer Notice.

(v) The Company may assign its right of first refusal under this *Section 2.2(b)* to any other person or persons except a Purchaser Competitor, provided such persons or persons have the financial ability to complete such purchase, as determined by the Company and Purchaser, each with good faith and in the exercise of its reasonable business discretion. In the event that the Company assigns its right of first refusal under this *Section 2.2(b)(v)* to any person or persons, such persons or person exercise the right to purchase Shares from the Purchaser pursuant to *Section 2.2(b)(ii)* and *Section 2.2(b)(iii)* and such person or persons breaches their obligation to purchase such Shares from Purchaser, the Purchaser may Transfer such Shares in accordance with *Section 2.2(b)(iv)*; *provided, however*, that in such case the sixty (60) day period shall run from the date of the breach.

(c) Other than Transfers of the type described in *Section 2.2(a)(i)* through *Section 2.2(a)(vi)*, Purchaser shall not (and shall cause any Purchaser Controlled Entity not to), from the Closing Date until the sixth anniversary of the Closing Date, Transfer any of Shares to any person or 13D Group of which Purchaser has knowledge, after reasonable inquiry, is a Company Competitor (other than through Open Market Transactions).

(d) Other than Transfers of the type described in *Section 2.2(a)(i)* through *Section 2.2(a)(vi)* hereof, until the third anniversary of the Closing Date, Purchaser shall not (and shall cause any Purchaser Controlled Entity not to)

(i) Transfer in one or a series of Open Market Transactions (A) more than five percent (5%) of the Shares in any single five (5) consecutive trading day period, or (B) more than two percent (2%) of the Shares in any single trading day;

(ii) Transfer more than fifty percent (50%) of the Shares in any six month period in Open Market Transactions, or Transfer any Shares in a Transfer which is not an Open Market Transaction unless the transferee agrees to be bound by the restrictions set forth in this *Section 2.2(d)(ii)*; or

(iii) Transfer any Shares to any Person or 13D Group of which Purchaser has knowledge, after reasonable inquiry, will hold (including the Shares to be received in the transfer) more than ten percent (10%) of the Current Voting Power of the Company (other than through Open Market Transactions); *provided, however*, the restrictions set forth in this *Section 2.2(d)(iii)* shall not apply following a Strategic Alliance Agreement Termination that occurs prior to the third anniversary of the Closing Date.

(e) During the pendency of a Competitor Offer, (i) the restrictions on Transfer set forth in *Section 2.2(a)* and *Section 2.2(d)* hereof shall be suspended and (ii) the time period for the Company to provide a Response Notice pursuant to *Section 2.2(b)(ii)* shall be reduced to five (5) business days after receipt of the Transfer Notice and the time period for the First Refusal Closing shall be reduced to fifteen (15) business days after the Company delivers the Response Notice to Purchaser.

(f) Any attempted Transfer of any of the Total Shares by a Purchaser, a Purchaser Controlled Entity or any other person that is a party to this Agreement that is not in compliance with this *Section 2.2*, shall be null and void ab initio.

2.3 *Company Notice to Purchaser.* In the event that, during the Standstill Period, the Company's Board of Directors resolves to seek a potential acquiror of the Company, and directs the Company's executive officers to seek offers from multiple (three or more) potential acquirors, the Company shall within five (5) days of such resolution give written notice of the Company's intention to seek offers for the acquisition of the Company. Such notice shall be kept confidential by Purchaser pursuant to the terms of the Confidentiality Agreement.

ARTICLE III VOTING OBLIGATIONS

3.1 *The Purchaser's Voting Obligations.*

(a) During the Standstill Period, Purchaser shall take such action as may be required so that all Voting Stock Beneficially Owned by Purchaser (and shall cause any Voting Stock Beneficially Owned by a Purchaser Controlled Entity and shall use commercially reasonable efforts to cause any Voting Stock Beneficially Owned by an Affiliate of Purchaser or any 13D Group of which Purchaser or any Affiliate of Purchaser is a party) is voted or cast in the same manner and proportion as the votes cast by the holders of Voting Stock other than Purchaser, any Purchaser Controlled Entity, any Affiliate of Purchaser and any 13D Group of which Purchaser or any Affiliates of Purchaser is a party, with respect to (i) nominees to the Board of Directors of the Company, and (ii) any proposal of a stockholder of the Company to amend or rescind the Rights Plan or this Agreement.

(b) During the Standstill Period, Purchaser, as a holder of Voting Stock, shall be present, in person or by proxy, (and shall cause any Purchaser Controlled Entity holding Voting Stock to be so present and shall use commercially reasonable efforts to cause its Affiliates holding Voting Stock and any 13D Group of which Purchaser or any Affiliate of Purchaser is a party and which holds Voting Stock to be so present) at all meetings of stockholders of the Company so that all shares of Voting Stock Beneficially Owned by such Persons may be counted for purposes of determining the presence of a quorum at such meetings.

(c) During the Standstill Period, in connection with any merger, consolidation or other reorganization which is approved by the Company's Board of Directors which is proposed to be accounted for as a pooling-of-interests transaction, Purchaser hereby covenants to enter into (and to cause any Purchaser Controlled Corporation to enter into and to use commercially reasonable efforts to cause any Affiliate of Purchaser and any 13D Group of which Purchaser or any Affiliate of Purchaser is a party to enter into) a standard pooling affiliate lock-up agreement if requested by the Company and if required to maintain pooling-of-interests treatment with respect to such transaction (based upon the recommendation of an independent accounting firm retained by either the Company or the potential acquiror of the Company).

ARTICLE IV MISCELLANEOUS

4.1 *Governing Law; Jurisdiction and Venue.*

(a) This Agreement is to be construed in accordance with and governed by the internal laws of the State of Delaware without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of Delaware to the rights and duties of the parties.

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(b) Any legal action or other legal proceeding relating to this Agreement or the enforcement of any provision of this Agreement may be brought or otherwise commenced in any state or federal court located in the State of Delaware. Each party to this Agreement:

(i) expressly and irrevocably consents and submits to the jurisdiction of each state and federal court located in the State of Delaware (and each appellate court located in the State of Delaware in connection with any such legal proceeding, including to enforce any settlement, order or award;

(ii) agrees that each state and federal court located in the State of Delaware shall be deemed to be a convenient forum; and

(iii) waives and agrees not to assert (by way of motion, as a defense or otherwise), in any such legal proceeding commenced in any state or federal court located in the State of Delaware, any claim that such party is not subject personally to the jurisdiction of such court, that such legal proceeding has been brought in an inconvenient forum, that the venue of such proceeding is improper or that this Agreement or the subject matter hereof or thereof may not be enforced in or by such court.

(c) Each party hereto agrees to the entry of an order to enforce any resolution, settlement, order or award made pursuant to this *Section 4.1* by the state and federal courts located in the State of Delaware and in connection therewith hereby waives, and agrees not to assert by way of motion, as a defense, or otherwise, any claim that such resolution, settlement, order or award is inconsistent with or violative of the laws or public policy of the laws of the State of Delaware or any other jurisdiction.

4.2 *Survival.* The representations, warranties, covenants and agreements made herein shall survive any investigation made by Purchaser and the closing of the transactions contemplated by the Purchase Agreement.

4.3 *Assignment.* Except as expressly provided in this Agreement, no party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the other parties; provided, however, that Purchaser may, without the prior written approval of the Company, assign this Agreement and its rights and obligations hereunder in connection with a transfer of any Voting Stock as provided in Section 2.2 hereof and, provided, further, the parties agree that, in the event that the reorganization of Commerce One into a holding company structure is consummated, New Commerce One Holding (as the publicly-traded holding company of Commerce One) shall without any further action of the parties automatically assume all of Commerce One's rights and obligations hereunder and, except as the context requires otherwise, all references herein to Commerce One shall be deemed to be references to New Commerce One Holding. Except as expressly provided herein, any assignment of rights or delegation of duties under this Agreement by a party without the prior written consent of other parties shall be void ab initio. Subject to this Section 4.3, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

4.4 *Third Party Beneficiaries.* This Agreement is intended for the benefit of the parties hereto and their respective successors and permitted assigns and, except as expressly provided herein, are not for the benefit of, nor may any provision hereof or thereof be enforced by, any other Person.

4.5 *Entire Agreement; Amendment.* This Agreement and the agreements referred to herein constitute the full and entire understanding and agreement between the parties with regard to the subject hereof, and no party shall be liable or bound to any other party in any manner by any warranties, representations or covenants except as specifically set forth herein and in the agreements referred to herein. Except as expressly provided herein, neither this Agreement nor any term hereof may be amended, waived, discharged or terminated other than by a written instrument signed by the party against whom enforcement of any such amendment, waiver, discharge or termination is sought.

4.6 *Notices, etc.* All notices and other communications required or permitted hereunder shall be made in the manner and to the addresses set forth in the Purchase Agreement.

4.7 *Delays or Omissions.* Except as expressly provided herein, no delay or omission to exercise any right, power or remedy accruing to a party under this Agreement shall impair any such right, power or remedy nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring.

4.8 *Expenses.* Except as otherwise specifically provided herein, the Company and Purchaser shall bear their own expenses incurred with respect to this Agreement and the transactions contemplated hereby.

4.9 *Specific Performance.* The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific intent or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions, without bond, to prevent or cure breaches of the provisions of this Agreement and to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which they may be entitled by law or equity, and any party sued for breach of this Agreement expressly waives any defense that a remedy in damages would be adequate.

4.10 *Stop Transfer Orders; Legends.* The stock certificates representing the Shares shall bear legends, and be subject to stop transfer orders as provided in the Purchase Agreement.

4.11 *Further Assurances.* The parties hereto shall do and perform or cause to be done and performed all such further acts and things and shall execute and deliver all such other agreements, certificates, instruments or documents as any other party may reasonably request from time to time in order to carry out the intent and purposes of this Agreement and the consummation of the transactions contemplated hereby. Neither the Company nor Purchaser shall voluntarily undertake any course of action inconsistent with satisfaction of the requirements applicable to them set forth in this Agreement and each shall promptly do all such acts and take all such measures as may be appropriate to enable them to perform as early as practicable the obligations herein and therein required to be performed by them.

4.12 *Facsimile; Counterparts.* This Agreement may be executed by facsimile and in any number of counterparts, all of which together shall constitute one and the same instrument. This Agreement shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered to the other parties, it being understood that all parties need not sign the same counterpart.

4.13 *Severability.* In the event that any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision; *provided, however,* that no such severability shall be effective if it materially changes the economic impact of this Agreement on any party.

4.14 *Interpretation.*

(a) The various section headings are inserted for purposes of reference only and shall not affect the meaning or interpretation of this Agreement or any provision hereof. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms.

(b) Each party hereto acknowledges that it has been represented by competent counsel and participated in the drafting of this Agreement, and agrees that any applicable rule of construction to

the effect that ambiguities are to be resolved against the drafting party shall not be applied in connection with the construction or interpretation of this Agreement.

(c) When a reference is made in this Agreement to a Section, Exhibit or Schedule, such reference shall be to a Section of, Exhibit to or Schedule to this Agreement unless otherwise indicated.

(d) When a reference is made to a statute, rule, regulation or form, such reference shall be deemed to be a reference to such statute, rule, regulation or form as it may, from time to time, be in effect, amended, or superceded by a successor statute, rule, regulation or form.

4.15 *Attorneys' Fees.* In any action at law or suit in equity in relation to this Agreement, the prevailing party in such action or suit shall be entitled to receive a reasonable sum for its attorneys' fees and all other reasonable costs and expenses incurred in such action or suit.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

COMMERCE ONE, INC.

/s/ PETER F. PERVERE

By: Name: Peter F. Pervere
Title: Senior Vice President and Chief Financial
Officer

NEW COMMERCE ONE HOLDING, INC.

/s/ PETER F. PERVERE

By: Name: Peter F. Pervere
Title: Senior Vice President and Chief Financial
Officer

SAP AG

/s/ WERNER BRANDT

By: Name: Werner Brandt
Title:

/s/ MICHAEL JUNGE

By: Name: Michael Junge
Title: General Counsel

[Signature page to Amended and Restated Standstill and Stock Restriction Agreement]

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INVESTOR RIGHTS AGREEMENT

This INVESTOR RIGHTS AGREEMENT (this "Agreement") is made as of June 28, 2001, by and between Commerce One, Inc., a Delaware corporation (the "Company"), New Commerce One Holding, Inc., a Delaware corporation ("New Commerce One Holding") and SAP Aktiengesellschaft, a stock corporation organized under the laws of the Federal Republic of Germany ("SAP AG").

WHEREAS, subject to the terms and conditions of the Share Purchase Agreement by and between the Company and SAP AG, dated June 14, 2000 (the "Prior Share Purchase Agreement"), the Company sold shares of its common stock to SAP AG;

WHEREAS, in connection with the Prior Share Purchase Agreement, the Company and SAP AG entered into, and are a party to, that certain Registration Rights Agreement, dated June 14, 2000 (the "Prior Registration Rights Agreement");

WHEREAS, subject to the terms and conditions of the Share Purchase Agreement, of even date herewith, by and between the Company and SAP AG (the "Share Purchase Agreement"), the Company has agreed to sell additional shares of its common stock to SAP AG (together with the shares of common stock of the Company sold pursuant to the Prior Share Purchase Agreement, the "Shares");

WHEREAS, New Commerce One Holding will assume all of the rights and obligations of Commerce One hereunder upon the consummation of the reorganization of Commerce One into a holding company structure with New Commerce One Holding as the publicly-traded holding company; and

WHEREAS, subject to the terms and conditions set forth herein, in connection with the sale of the Shares, SAP AG and the Company have agreed to amend and restate in its entirety the Prior Registration Rights Agreement and to grant certain registration rights to SAP AG with respect to the Shares effective upon the Closing (as defined in the Share Purchase Agreement).

NOW, THEREFORE, in consideration of the promises, mutual covenants and conditions herein contained, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree, effective upon the Closing, (i) the Prior Registration Rights Agreement is hereby amended and restated in its entirety as set forth herein; and (ii) as follows:

1. *Definitions.* For purposes of this Agreement, the following terms shall have the following respective meanings:

"1933 Act" means the Securities Act of 1933, as amended.

"1934 Act" means the Securities Exchange Act of 1934, as amended.

"Additional Shares" means common stock issued or sold by the Company, provided, that "Additional Shares" shall not include common stock issued directly or upon the conversion of securities convertible into or exercisable or exchangeable for common stock (i) in connection with a transaction covered by Rule 145 under the 1933 Act or any other merger, acquisition or asset purchase, or the resale of securities issued in any such transaction, (ii) in a transaction that is registered under the 1933 Act, (iii) upon the conversion or exchange of any debt securities, (iv) upon the conversion or exercise of any warrants or other rights outstanding as of the Closing (v) as a dividend or other distribution, (vi) issued to employees, consultants or other service providers to the Company, or (vii) in connection with the rights issued under the Company's Stockholder Rights Plan.

"Automaker Holders" means General Motors Corporation, Ford Motor Company or any assignee or transferee of either that possesses registration rights pursuant to the Automaker Registration Rights Agreement.

"Automaker Registration Rights Agreement" means the Registration Rights Agreement, dated December 8, 2000, by and among the Company, General Motors Corporation, Ford Motor Company and certain other parties.

"Beneficially Own" shall have the meaning set forth in the Standstill Agreement.

"Closing" shall have the meaning set forth in the Share Purchase Agreement.

"Current Market Value" means the simple average of (i) the simple average of the closing price per share of common stock of the Company on the Nasdaq Stock Market (or such other market or exchange on which such common stock is listed or quoted) for the twenty (20) days preceding the delivery of the Proposal Notice or Sale Notice (as defined in Section 11.1 below) and (ii) the weighted average of the closing price per share of common stock of the Company on the Nasdaq Stock Market (or such other market or exchange on which such common stock is listed or quoted) for the twenty (20) days preceding the delivery of the Proposal Notice or Sale Notice, such weighed average to be calculated based on the daily trading volume of the common stock as reported on the Nasdaq Stock Market (or such other market or exchange on which such common stock is listed or quoted) during such period.

"Eligible Period" means the period (a) commencing on the second anniversary of the date of this Agreement and (b) terminating on the sixth anniversary of the date of this Agreement; provided, however, that with respect to Registrable Shares purchased pursuant to the Prior Share Purchase Agreement only, the Eligible Period shall commence on June 14, 2002.

"Existing Registration Rights Agreement" means the Sixth Amended and Restated Registration Rights Agreement, dated December 8, 2000, by and among the Company and certain of its stockholders.

"Holders" shall have the meaning ascribed to it in the Existing Registration Rights Agreement.

"Register," "registered," and "registration" refers to a registration effected by preparing and filing a registration statement or similar document in compliance with the 1933 Act, and the declaration or ordering of effectiveness of such registration statement or document.

"Registrable Shares" means (i) the shares of common stock of the Company held by SAP AG as of the date hereof, (ii) the shares of common stock of the Company issuable to SAP AG in accordance with the terms and conditions of the Share Purchase Agreement, (iii) any shares of common stock of the Company purchased by SAP AG from the Company after the Closing (including pursuant to Section 11 hereof), and (iv) any securities of the Company issued as a dividend on or other distribution with respect to, or in exchange for or replacement of, the common stock described in subparagraphs (i), (ii) and (iii).

"Registration Statement" means any registration statement described in Sections 2.1 or 2.2 of this Agreement.

"Rule 144" means Rule 144 promulgated under the 1933 Act.

"SEC" means the Securities and Exchange Commission.

"Standstill Agreement" shall mean that Amended and Restated Standstill and Stock Restriction Agreement, of even date herewith, by and between the Company and SAP AG.

"Standstill Period" shall have the meaning ascribed to it in the Standstill Agreement.

"Stockholder" shall mean SAP AG or any assignee or transferee to which SAP AG's rights and obligations under this Agreement have been assigned pursuant to Section 14.5

2.1 Demand Registration.

(a) If at any time during the Eligible Period the Stockholder requests in writing (the "Stockholder Demand") that the Company file a registration statement on Form S-3 (or any successor form to Form S-3, or, if Form S-3 is not then available, on Form S-1 or any other available form) for a public offering of shares of the Registrable Shares, the anticipated aggregate offering price of which, net of standard underwriting fees and discounts, is at least five million dollars (\$5,000,000), the Company shall, subject to Section 4.1 hereof, file such Registration Statement with the SEC within forty-five (45) days after its receipt of such request. The Company shall use commercially reasonable efforts to cause such Registration Statement to be declared effective as soon thereafter as practicable and keep such registration statement effective until the Stockholder notifies the Company in writing that the Company is no longer required to keep such Registration Statement effective. In no event, however, shall the Company be required to (i) effect more than four (4) registrations pursuant to this section or (ii) keep one or more registration statements filed pursuant to this section effective for more than an aggregate of one hundred twenty (120) days. In the event the registration is proposed to be part of a firm commitment underwritten public offering, the substantive provisions of Section 2.3 hereof shall be applicable to each such registration initiated under this Section 2.1 and the piggyback registration rights of Holders and Automaker Holders (to the extent provided for in the Existing Registration Rights Agreement and the Automaker Registration Rights Agreement) shall be applicable, subject to Section 2.3 below, to a registration effected pursuant to this Section 2.1.

(b) Notwithstanding the foregoing, the Company shall not be obligated to take any action pursuant to subparagraph (a):

(i) if the Company, within ten (10) days of the receipt of the Stockholder Demand, gives notice of its *bona fide* intention to effect the filing of a registration statement with the SEC within forty-five (45) days of receipt of such demand (other than a registration relating primarily to the sale of securities to participants in a Company stock plan of employee benefit plan, a transaction covered by Rule 145 under the 1933 Act or the resale of securities issued in such a transaction, a registration in which the only stock being registered is Common Stock issuable upon conversion or exchange of debt securities which are also being registered, any registration on any form which does not include substantially the same information as would be required to be included in a registration statement covering the sale of the Registrable Shares, or a registration initiated under Section 2.1 or 2.2 of Automaker Registration Rights Agreement) *provided, however*, that if such registration statement is not filed by the Company within 45 days of receipt of such Stockholder Demand and declared effective by the Commission within 120 days after the Company's receipt of such Stockholder Demand, the Company shall be obligated to cause such Registrable Shares of the Stockholder to be registered in accordance with the provisions of this Section 2.1 provided that the Company is actively employing in good faith all reasonable efforts to cause such registration statement to become effective;

(ii) during the period starting with the Company's date of filing of, and ending on the date ninety (90) days immediately following, the effective date of any registration statement pertaining to securities of the Company, which registration was either filed as a result of the exercise by Stockholder of its rights pursuant to Section 2.1 hereof or was subject to Section 2.2 hereof.

2.2 Piggyback Registration.

(a) If at any time during the Eligible Period, the Company proposes to register (for its own account, on behalf of its existing stockholders, or a combination of the foregoing) any of its common stock under the 1933 Act in connection with a public offering of such common stock solely for cash (other than a registration relating primarily to the sale of securities to participants in a Company stock plan of employee benefit plan, a transaction covered by Rule 145 under the 1933 Act or the

resale of securities issued in such a transaction, a registration in which the only stock being registered is Common Stock issuable upon conversion or exchange of debt securities which are also being registered, any registration on any form which does not include substantially the same information as would be required to be included in a registration statement covering the sale of the Registrable Shares or a registration initiated under Section 2.1 or 2.2 of the Automaker Registration Rights Agreement) the Company shall, at such time, give the Stockholder notice of such registration. Upon the written request of the Stockholder, given within ten (10) days after notice has been given by the Company in accordance with Section 14.1 hereof, the Company shall, subject to Section 2.3 hereof, cause to be registered under the 1933 Act all of the Registrable Shares that the Stockholder has requested to be registered.

(b) In the event that any registration is initiated pursuant to Sections 2.1 or 2.2 of the Automaker Registration Rights Agreement, the Company shall, upon written notice from the Stockholder of its desire to "piggyback" on such registration statement, use reasonable efforts to seek written consent from the Automaker Holders to permit such "piggyback" on the registration statement by the Stockholder in accordance with the terms of this Agreement (it being understood that the Company shall not be required to make any payment to the Automakers or incur additional obligations with respect to the Automakers to obtain such consent).

2.3 Underwriting Requirements.

(a) In connection with any underwritten public offering, the Company shall not be required to include any of the Stockholder Registrable Shares in such underwriting unless the Stockholder accepts the terms of the underwriting as agreed upon between the Company and the underwriters for the offering (which underwriters shall be selected by the Company).

(b) If the total amount of securities, including Registrable Shares, requested to be included in an underwritten public offering exceeds the amount of securities that the underwriters determine in their sole discretion is compatible with the success of the offering, then the Company shall be required to include in the offering only that number of such securities, including Registrable Shares, which the underwriters determine in their sole discretion will not jeopardize the success of the offering. In such event, the Company may reduce the number of or exclude Registrable Shares proposed to be offered by Stockholder prior to reducing the number of or excluding the shares proposed to be offered by (i) the Company (except with respect to a registration pursuant to Section 2.1 hereof), (ii) the holders of registration rights under the Existing Registration Rights Agreement (the "Existing Holders") to the extent required by the Existing Registration Rights Agreement and (iii) the holders of registration rights under the Automaker Registration Rights Agreement to the extent required by Automaker Registration Rights Agreements, *provided, however*, that if the Stockholder is not permitted to include at least seventy-five percent (75%) of the number of Registrable Shares proposed by the Stockholders to be included in a registration pursuant to Section 2.1 as a result of the foregoing sentence, such registration shall be deemed not to be a registration by the Stockholder pursuant to Section 2.1.

(c) Notwithstanding Section 2.3(b) hereof, following the Closing, the Company will use commercially reasonable efforts to obtain the consent of the Existing Holders such that (A) in the event of registration pursuant to Section 2.1 hereof, the Company shall reduce the number of or exclude the shares proposed to be offered by the Existing Holders prior to reducing the number of or excluding the Registrable Shares proposed to be offered by Stockholder, and (B) in the event of registration pursuant to Section 2.2 hereof, the Company shall reduce the number of or exclude the shares proposed to be offered by the Existing Holders (and, if the consent described in Section 2.3(d) hereof is obtained with respect to such offering, the Automaker Holders) on a pro rata basis with the number of Registrable Shares proposed to be offered by Stockholder (calculated on the basis of the number of shares of common stock proposed to be offered), it being understood that, in each case, the

Company shall not be required to make any payment to the Existing Holders or incur additional obligations with respect to the Existing Holders to obtain such consent.

(d) Notwithstanding Section 2.3(b) hereof, upon a registration pursuant to Section 2.1 or Section 2.2 hereof, the Company will use reasonable efforts to obtain the consent of the Automaker Holders with respect to such registration such that (A) in the event of a registration pursuant to Section 2.1 hereof, the Company shall reduce the number or exclude the shares proposed to be offered by the Automaker Holders prior to reducing the number of or excluding the Registrable Shares proposed to be offered by Stockholder, and (B) in the event of a registration pursuant to Section 2.2 hereof, the Company shall reduce the number of or exclude the shares proposed to be offered by the Automaker Holders (and, if the consent described in Section 2.3(c) hereof is obtained, the Existing Holders) and on a pro rata basis with the number of Registrable Shares proposed to be offered by Stockholder (calculated on the basis of the number of shares of common stock proposed to be offered), it being understood that, in each case, the Company shall not be required to make any payment to the Automaker Holders or incur additional obligations with respect to the Automaker Holders to obtain such consent.

3. Further Obligations of the Company after Registration.

3.1 *Blue Sky Compliance.* The Company shall, as soon as reasonably possible after the effectiveness of a Registration Statement, use its best efforts to register and qualify the Registrable Shares covered by the Registration Statement under such other securities or "blue sky" laws of such jurisdictions as shall be reasonably requested by the Stockholder, provided that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions unless the Company is already subject to service in such jurisdiction and except as may be required by the 1933 Act.

3.2 *Furnishing of Prospectus.* With respect to a Registration Statement filed pursuant to Sections 2.1 hereof or 2.2 hereof, the Company shall furnish to the Stockholder copies of any preliminary prospectus and, as soon as reasonably possible after the effectiveness of the Registration Statement, furnish to the Stockholder such numbers of copies of a final prospectus in conformity with the requirements of the 1933 Act, and such other documents as the Stockholder may reasonably request, in order to facilitate the resale or other disposition of Registrable Shares owned by it.

3.3 *Amendments.* With respect to a Registration Statement filed pursuant to Section 2.1 hereof or 2.2 hereof of this Agreement, and, subject to Section 4.1 hereof of this Agreement, the Company shall prepare and file with the SEC such amendments to the Registration Statement and amendments or supplements to the prospectus contained therein as may be necessary to keep such Registration Statement effective and such Registration Statement and prospectus accurate and complete for the entire period for which the Registration Statement remains effective.

3.4 *Notices.* The Company shall:

(a) Notify the Stockholder, promptly after it shall receive notice thereof, of the date and time when any Registration Statement and each post-effective amendment thereto has become effective;

(b) Notify the Stockholder promptly of any request by the SEC for the amending or supplementing of any Registration Statement or prospectus or for additional information;

(c) Notify the Stockholder, at any time when a prospectus relating to the Registrable Shares is required to be delivered under the Securities Act, of any event which would cause any such prospectus or any other prospectus as then in effect to include an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and, subject to

Section 4.1 hereof, promptly prepare and file with the SEC, and promptly notify the Stockholder of the filing of, such amendments or supplements to any Registration Statement or prospectus as may be necessary to correct any such statements or omissions;

(d) Notify the Stockholder, promptly after it shall receive notice of the issuance of any stop order by the SEC suspending the effectiveness of any Registration Statement or the initiation or threatening of any proceeding for that purpose and, subject to Section 4.1 hereof, promptly use commercially reasonable efforts to prevent the issuance of any stop order or to obtain its withdrawal if such stop order should be issued.

4. *Conditions and Limitations on Registration Rights.* The registration rights granted by this Agreement are subject to the following additional conditions and limitations:

4.1 *Delays and Suspension.* The Company may delay the filing of, or suspend or delay the effectiveness of a Registration Statement for up to thirty (30) days, if the Company shall furnish to the Stockholder a certificate signed by the Chief Executive Officer of the Company stating that in the good faith judgment of the Board of Directors it would be seriously detrimental to the Company or its stockholders for such a registration statement to be filed or declared effective or for an effective registration statement not to be suspended. In such event, the Company's obligation under this Agreement to file a registration statement, seek effectiveness of a registration statement or keep such registration statement effective shall be deferred for a period not to exceed sixty (60) days from the receipt of the request to file such registration by the Stockholder, provided that the Company may not exercise this right of deferral for an aggregate of in excess of seventy-five

(75) days in any one year period. If the Company suspends the effectiveness of a Registration Statement, the Company will promptly deliver notice to the Stockholder of such suspension and will again deliver notice to the Stockholder when such suspension is no longer necessary. The duration for which the Company is required to keep a Registration Statement effective shall be extended by an additional number of days equal to the length of any suspension period.

4.2 *Amended or Supplemented Prospectus.* The Stockholder agrees that, upon receipt of any notice from the Company described in Section 4.1 hereof that suspends an effective registration statement, the Stockholder shall forthwith discontinue disposition of Registrable Shares until such Stockholder's receipt of copies of a supplemented or amended prospectus from the Company, or until it is advised in writing by the Company that the use of the prospectus may be resumed, and has received copies of any additional or supplemental filings which are incorporated by reference in the prospectus. If so directed by the Company, the Stockholder will deliver to the Company all copies of the prospectus covering such Registrable Shares current at the time of receipt of such notice of suspension.

5. *Indemnification.*

5.1 The Company will indemnify the Stockholder, each of its officers, directors and partners, legal counsel, agents and each person controlling the Stockholder within the meaning of Section 15 of the 1933 Act, with respect to which registration, qualification or compliance has been effected pursuant to this Agreement, and each underwriter, if any, and each person who controls any underwriter within the meaning of Section 15 of the 1933 Act, against all expenses, claims, losses, damages and liabilities (or actions in respect thereof), including any of the foregoing incurred in settlement of any litigation, (commenced or threatened), arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any registration statement, prospectus, or other document, or any amendment or supplement thereto, incident to any such registration, qualification or compliance, or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, or any violation by the Company of the 1933 Act, the 1934 Act, and any state securities laws or any rule, regulation or qualification promulgated thereunder, and the Company

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will reimburse the Stockholder, each of its officers, directors, and partners, legal counsel, agents and each person controlling the Stockholder, each such underwriter and each person who controls any such underwriter, for any legal and any other expenses reasonably incurred, in connection with investigating, preparing or defending any such claim, loss, damage, liability or action, *provided, however*, that the Company will not be liable in any such case to the extent that any such claim, loss, damage, liability or expense arises out of or is based on any untrue statement or omission or alleged untrue statement or omission, made in reliance upon and in conformity with written information furnished to the Company by the Stockholder, controlling person or underwriter expressly for use therein.

The foregoing indemnity is subject to the condition that, insofar as it relates to any such untrue statement, alleged untrue statement, omission or alleged omission made in a preliminary prospectus on file with the SEC at the time the registration statement becomes effective or the amended prospectus filed with the SEC pursuant to Rule 424(b), as amended from time to time (the "Final Prospectus"), such indemnity shall not inure to the benefit of: (a) the Stockholder (i) if a copy of the Final Prospectus was not furnished by the Stockholder to the person asserting the loss, liability, claim or damage at or prior to the time such action as required by the 1933 Act and such Final Prospectus would have cured the defect giving rise to the loss, liability, claim or damage or (ii) to the extent that such untrue statement, alleged untrue statement, omission or alleged omission is made in reliance upon and in conformity with written information furnished to the Company by the Stockholder expressly for use therein, or (b) any underwriter (i) if a copy of the Final Prospectus was not furnished to the person asserting the loss, liability, claim or damage at or prior to the time such action as required by the 1933 Act and the Final Prospectus would have cured the defect giving rise to the loss, liability, claim or damage or (ii) to the extent that such untrue statement, alleged untrue statement, omission or alleged omission is made in reliance on and in conformity with written information furnished to the Company by the underwriter for use therein.

5.2 The Stockholder will, if Registrable Shares held by the Stockholder are included in the securities as to which such registration, qualification or compliance is being effected, indemnify the Company, each of its directors and officers, each underwriter, if any, of the Company's securities covered by such a registration statement, each person who controls the Company or such underwriter within the meaning

of Section 15 of the 1933 Act, against all expenses, claims, losses, damages and liabilities (or actions in respect thereof), including any of the foregoing incurred in settlement of any litigation (commenced or threatened), arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any such registration statement, prospectus, offering circular or other document, or any amendment or supplement thereto, incident to such registration, qualification or compliance, or any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, and, severally, and not jointly, will reimburse the Company, such directors, officers, persons, underwriters or control persons for any legal and any other expenses reasonably incurred, in connection with investigating or defending any such claim, loss, damage, liability or action, in each case to the extent, but only to the extent, that such untrue statement (or alleged untrue statement) or omission (or alleged omission) is made in such registration statement, prospectus, offering circular or other document in reliance upon and in conformity with written information furnished to the Company by the Stockholder expressly for use therein. Notwithstanding the foregoing, the liability of the Stockholder under this Section 5 shall be limited to an amount equal to the net proceeds received by the Stockholder from the sale of shares in such registration.

5.3 Each party entitled to indemnification under this Section 5 (the "Indemnified Party") shall give notice to the party required to provide indemnification (the "Indemnifying Party") promptly after such Indemnified Party has actual knowledge of any claim as to which indemnity may be sought, and shall permit the Indemnifying Party to assume the defense of any such claim or any litigation

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resulting therefrom, provided that counsel for the Indemnifying Party, who shall conduct the defense of such claim or litigation, shall be approved by the Indemnified Party (whose approval shall not unreasonably be withheld), and the Indemnified Party may participate in such defense at such party's expense, and provided further that the failure of any Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its obligations under this Agreement, unless the failure to give such notice is materially prejudicial to an Indemnifying Party's ability to defend such action, and provided further that an Indemnified Party shall have the right to retain its own counsel, with the fees and expenses of such counsel to be paid by the Indemnifying Party, if representation of such Indemnified Party by the counsel retained by the Indemnifying Party would be inappropriate due to actual or potential differing interests between such Indemnified Party and any other party represented by such counsel in such proceeding. No Indemnifying Party, in the defense of any such claim or litigation, shall, except with the consent of each Indemnified Party, consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party of a release from all liability in respect to such claim or litigation.

5.4 If the indemnification provided for in this Section 5 is held by a court of competent jurisdiction to be unavailable to an Indemnified Party with respect to any losses, claims, damages or liabilities referred to herein, the Indemnifying Party, in lieu of indemnifying such Indemnified Party thereunder, shall to the extent permitted by applicable law contribute to the amount paid or payable by such Indemnified Party as a result of such loss, claim, damage or liability in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party on the one hand and of the Indemnified Party on the other in connection with the violation(s) that resulted in such loss, claim, damage or liability, as well as any other relevant equitable considerations. The relative fault of the Indemnifying Party and of the Indemnified Party shall be determined by a court of law by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the Indemnifying Party or by the Indemnified Party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission; provided, that in no event shall any contribution by the Stockholder hereunder exceed the net proceeds from the offering received by the Stockholder.

5.5 The obligations of the Company and the Stockholder under this Section 5 shall survive completion of any offering of Registrable Securities in a registration statement and the termination of this Agreement.

6. *Information from Stockholder.* It shall be a condition precedent to the obligations of the Company to take any action pursuant to this Agreement with respect to the Registrable Shares of the Stockholder that the Stockholder shall furnish to the Company such information regarding itself, the Registrable Shares held by it, and the intended method of disposition of such securities, as shall be required to effect the registration of the Registrable Shares.

7. *Expenses of Registration.* The Company shall pay all registration, filing and qualification fees (including SEC filing fees and the listing fees of the Nasdaq Stock Market or any stock exchange on which the Company securities are traded) attributable to the Registrable Shares registered under this Agreement, and any legal, accounting or other professional fees or expenses incurred by the Company; *provided, however,* with respect to any registration requested by the Stockholder pursuant to Section 2.1 hereof, the Stockholder shall pay one-half of the SEC filing fee for the registration of the Registrable Securities. The Stockholder shall pay all underwriting discounts, selling commissions and stock transfer taxes, if any, attributable to the sale of such securities registered by the Stockholder and any legal, accounting or other professional fees incurred by the Stockholder.

8. *Reports Under the Securities Exchange Act.* The Company agrees to file with the SEC in a timely manner all reports and other documents and information required of the Company under the

1934 Act, and take such other actions as may be necessary to assure the availability of Form S-3 for use in connection with the registration rights provided in this Agreement and Rule 144 for use in connection with resales of the Registrable Shares.

9. *Rule 144.* In the event that all of the Stockholder's Registrable Shares may, under Rule 144, be resold or otherwise disposed of in a ninety (90) day period without registration under the 1933 Act, the registration rights granted under this Agreement to such Stockholder and the obligations of the Company hereunder (other than its obligations under Sections 5 and 8 and this Section 9) to such Stockholder, shall automatically terminate in their entirety and be of no further force and effect whatsoever without any further action on the part of the Company or the Stockholder.

10. *Market Stand-Off.* So long as the Stockholder Beneficially Owns at least five percent (5%) of the Company's outstanding common stock, the Stockholder agrees that, upon the request of the underwriters managing any underwritten public offering of the Company's securities in connection with an effective registration statement under the 1933 Act, it will not offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of (other than to donees who agree to be similarly bound), directly or indirectly, the Registrable Shares other than those included in the registration, without the prior written consent of such underwriters, for such period of time, not to exceed ninety (90) days (or such lesser period as executive officers or directors of the Company are so restricted with respect to the transfer of shares of common stock of the Company held by them) after the effective date of the registration statement relating thereto. The Stockholder agrees that, if requested by the underwriters for such an offering, it will enter into a lock-up agreement directly with the underwriters on substantially the same terms and conditions as described above. The Stockholder agrees that the Company may instruct its transfer agent to place stop-transfer notations in its records to enforce the provisions of this Section 10.

11. *Pro Rata Right.* Subject to the terms and conditions specified in this Section 11, the Company hereby grants to SAP AG a pro rata right to participate with respect to future sales by the Company of Additional Shares (the "Pro Rata Right"). Beginning on the Closing and until the earlier of (i) the third anniversary of the Closing and (ii) the end of the Standstill Period, each time the Company proposes to offer any Additional Shares, the Company shall offer to SAP AG the opportunity to purchase a number of shares equal to SAP AG's pro rata portion of such Additional Shares in accordance with the following provisions:

11.1 *Notice.* The Company shall deliver to SAP AG a notice (a "Notice") not later than thirty calendar (30) days following the sale of Additional Shares. In lieu of a Notice provided following the sale of the Additional Shares (such Notice, a "Sale Notice"), the Company may, in its sole discretion, elect to provide a Notice to SAP AG in advance of a proposed sale of Additional Shares in lieu of a Sale Notice (such Notice, a "Proposal Notice").

11.2 *Contents of Notice.*

(a) *Contents of Sale Notice.* If the Company delivers a Sale Notice, such Notice shall state (i) that the Company has completed the sale of Additional Shares, (ii) the number of such Additional Shares sold, (iii) the number of Pro Rata Shares pursuant to which SAP is entitled to purchase pursuant to Section 11.7 hereof and (iv) the Price and, if applicable, the Additional Terms, (each as determined in accordance with Section 11.4 hereof) for the purchase of such shares.

(b) *Contents of Proposal Notice.* If the Company elects to deliver a Proposal Notice in lieu of a Sale Notice, such Notice shall state (i) that the Company proposes to sell Additional Shares, (ii) the number of such Additional Shares to be sold, (iii) the number of Proposed Pro Rata Shares pursuant to which SAP is entitled to purchase pursuant to Section 11.7 hereof and (iv) the Price

and, if applicable, the Additional Terms, (each as determined in accordance with Section 11.4 hereof) for the purchase of such shares.

11.3 *Election.* Within 10 business days after receipt of a Sale Notice or the Proposal Notice, as the case may be, SAP AG may elect to purchase, all, but not less than all, of the Pro Rata Shares (in the case of a Sale Notice) or the Proposed Pro Rata Shares (in the case of a Proposal Notice) on the Price and other applicable Additional Terms set forth in the Sale Notice or Proposal Notice, as the case may be, by delivering notice to the Company (the "Election Notice").

11.4 *Price.* The price (the "Price") and additional terms, if any, (the "Additional Terms") for the sale of the Pro Rata Shares or the Pro Rata Additional Shares, as applicable, shall be calculated as follows.

(a) *Prior to First Anniversary of Closing.* In the event that the Additional Shares are sold prior to the first anniversary of the Closing or a Proposal Notice is delivered prior the first anniversary of the Closing, at the option of SAP AG, the consideration payable for the Pro Rata Shares, which consideration shall be specified in the election notice, shall be either (i) the Price and Additional Terms for the Pro Rata Shares or Proposed Pro Rata Shares shall be equal to the price and additional terms, if any, pursuant to which the Additional Shares are sold (in the event of a Sale Notice), or proposed to be sold (in the event of a Proposal Notice) or (ii) the Price shall be the Current Market Value and there shall be no Additional Terms (except as set forth in Section 11.5 hereof).

(b) *On or after First Anniversary of Closing.* In the event that the Additional Shares are sold on or after the first anniversary of the Closing or a Proposal Notice is delivered on or after the first anniversary of the Closing, the Price shall be the Current Market Value and there shall be no Additional Terms (except as set forth in Section 11.5 hereof).

11.5 *Closing.* In the case of a Sale Notice, if SAP AG elects to purchase the Pro Rata Shares, the sale of the Pro Rata Shares shall occur no later than thirty (30) days following the Election Notice (subject to extension by thirty (30) days solely to comply with regulatory requirements). In the case of Proposal Notice, if SAP AG elects to purchase the Proposed Pro Rata Shares, the sale of the Pro Rata Shares shall occur contemporaneously with, and conditioned upon, the sale of the Additional Shares described in the Proposal Notice. SAP AG's purchase of the Pro Rata Shares or the Proposed Pro Rata Shares, as the case may be, shall be conditioned upon the execution by SAP AG and the Company of customary documentation, including without limitation, a stock purchase agreement containing representations and warranties substantially similar to those contained in the Share Purchase Agreement.

11.6 *Sales After Notice.*

(a) *Sale Notice.* In the event the Company has delivered a Sale Notice, and SAP does not timely elect to purchase the Pro Rata Shares or Proposed Pro Rata Shares in accordance with Section 11.3, SAP AG shall be deemed to have made an irrevocable election on the to not purchase the Pro Rata Shares or the Proposed Pro Rata Shares, as the case may be.

(b) *Proposal Notice.* In the event that the Company delivers a Proposal Notice and SAP AG either fails to timely elect to purchase the Proposed Pro Rata Shares pursuant to Section 11.3 hereof or elects to not purchase Proposed Pro Rata Shares, the Company may, any time during the ninety (90) day period following the delivery of the Proposal Notice, enter into an agreement for the sale or issuance of such Additional Shares and, except as provided in the following sentence, shall not be required to issue a Sale Notice pursuant to Section 11.1 hereof with respect to such Additional Shares. If the Company does not sell the Additional Shares described in the Proposed Notice within the ninety (90) period, or the price for the sale of the Additional Shares is less than that specified in the Proposal Notice and/or terms of the Proposed Sale have changed so as to be significantly more

favorable than those specified in the Proposal Notice, the Pro Rata Right shall be deemed to be revived and the Company shall be obligated to either deliver a Sale Notice or, it so elects, a Proposal Notice, to SAP AG with respect to any Additional Shares in accordance with terms of Section 11.1 hereof.

11.7 *Pro Rata Portion.* The number of shares SAP AG shall be entitled to purchase pursuant to the exercise of the Pro Rata Right shall be determined as follows.

(a) "Pro Rata Shares" shall equal a number of shares such that the SAP Percentage Prior to the Issuance shall equal the SAP Percentage After the Issuance. The "SAP Percentage Prior to the Issuance" shall equal the quotient obtained by dividing (i) the number of shares of common stock beneficially owned by SAP AG immediately prior the sale of the Additional Shares specified in the Sale Notice by (ii) the total number of shares of common stock outstanding immediately prior to the sale of the Additional Shares specified in the Sale Notice and the Pro Rata Shares, and the "SAP Percentage After the Issuance" shall equal the quotient obtained by dividing (x) the sum of (A) the number of shares of common stock beneficially owned by SAP AG immediately prior the sale of the Additional Shares specified in the Sale Notice and (B) the number of Pro Rata Shares, divided by (y) sum of (X) the total number of shares of common stock outstanding immediately following the sale of the Additional Shares specified in the Sale Notice and (Y) the number of Pro Rata Shares.

(b) "Proposed Pro Rata Shares" shall equal a number of shares equal to the product obtained by multiplying (A) the number of Additional Shares proposed to be sold by the Company set forth in the Proposal Notice by (B) the quotient obtained by dividing (x) the number of Registrable Shares of common stock held by SAP AG immediately prior the sale of the Additional Shares by (y) the total number of shares of common stock outstanding prior to the sale of the Additional Shares specified in the Proposal Notice.

11.8 *Pro Rata Right with Respect to Shares Issued Before Closing.* Upon the Closing, the Company shall provide an Additional Share Notice with respect to any Additional Shares issued after the date hereof and prior to the Closing, and SAP AG shall have the right to exercise its Pro Rata Right under this Section 11 with respect to the issuance of such Additional Shares. In such event, the purchase price for such Additional Shares shall be equal to the lowest of the (i) the price per Share paid by SAP under the Share Purchase Agreement, (ii) the price and additional terms, if any, pursuant to which the Additional Shares are sold and (iii) the Current Market Value.

11.9 *Stockholder Approval.* Nothing contained in this Section 11 shall require the Company to issue any Pro Rata Shares or Proposed Pro Rata Shares if such issuance would require the Company to obtain stockholder approval of the issuance pursuant to Rule 4350(i)(1)(B) or (D) of the Nasdaq National Market Issuer Designation Requirements or under the Delaware General Corporation Law.

12. *Board of Directors Matters.*

12.1 *SAP AG Appointed Director.* Beginning upon the Closing and until SAP AG Beneficially Owns less than ten percent (10%) of the outstanding Common Stock of the Company, (the "Director End Date"), at the first meeting of the Board of Directors of the Company following the Company's receipt of a written request from SAP AG that the Company appoint an SAP designated person to the Company's Board of Directors, the Company shall appoint, a mutually agreed upon (in the exercise of the reasonable discretion of the Company and SAP AG) person to serve as a director of the Company (the "SAP Director") to serve until such director's successor is duly qualified and elected or his or her prior resignation, removal or death.

12.2 *SAP AG Board Observer.* Beginning upon the Closing and until the Director End Date, SAP AG shall be entitled to designate one executive board member of SAP AG mutually agreeable to SAP AG and the Company (in the exercise of their reasonable discretion) to attend each

meeting of the Board of Directors of the Company, at SAP AG's expense, in a non-voting observer capacity (such designee, an "SAP Observer"). Until the earlier to occur of (i) the appointment of the SAP Director pursuant to Section 12.1 or (ii) the Director End Date, the Company shall give to the SAP Observer notice of all meetings of the Company's Board of Directors in the manner provided in the Company's Amended and Restated Bylaws. In no event, however, shall the SAP Observer attend any meeting of the Board of Directors of the Company that is attended by the SAP Director. The Company shall have the right in its sole discretion: (A) to exclude the SAP Observer from all or any

portion of a meeting of the Company's Board of Directors and (B) exclude SAP AG and the SAP Observer from access to any notices, minutes, consents or other materials provided to the directors of the Company, in each case, if the Company reasonably believes that such exclusion is reasonably necessary (x) to preserve the attorney-client privilege, (y) to protect confidential or proprietary information of the Company, including without limitation the Company's trade secrets and (z) to prevent violation of any applicable antitrust or competition laws.

12.3 *Confidentiality.* SAP AG shall treat any confidential information of the Company obtained through the material provided to SAP AG pursuant to *Section 12.2* hereof or from the SAP Director or SAP Observer in accordance with a confidentiality agreement between the Company, New Commerce One Holding and SAP AG (in a form to be mutually agreed to in good faith by the Company and SAP AG prior to the Closing) (the "Confidentiality Agreement"). The SAP Observer shall execute a form of confidentiality agreement (in a form to be mutually agreed to in good faith by the Company and SAP AG prior to the Closing) before attending any meeting of the Board of Directors.

13. *Information Rights.*

13.1 *Financial Information.* Until such time SAP AG no longer accounts for its investment in the Company under the equity method of accounting (the "Equity Method Period"), the Company shall: (i) not later than eight (8) business days after the end of a fiscal quarter, provide to SAP AG a consolidated balance sheet, consolidated income statement and consolidated statement of stockholders' equity for such quarter; (ii) no later than fifteen (15) business day after the end of a fiscal year, provide to SAP AG, a consolidated balance sheet, a consolidated income statement and a consolidated statement of stockholders' equity for such fiscal year; and (iii) not later than the twentieth (20th) day of each month, provide rolling forecasts of its expected quarterly income statement results for the following four (4) quarters.

13.2 *Outstanding Shares Information.* Until the end of the Equity Method Period, Commerce One will, within 15 business days following the end of a fiscal quarter, inform SAP AG as to the number of shares of its outstanding common stock as of the end of such quarter and, further, will update such information to SAP AG at any time that the number of shares of Commerce One's outstanding common stock increases or decreases by more than 1% from the number most recently reported to SAP AG.

13.3 *Confidentiality of Information.* Any information provided under this Section 13 shall be kept confidential by SAP AG pursuant to the Confidentiality Agreement.

14. *Miscellaneous.*

14.1 *Notices.* All notices and other communications required or permitted hereunder shall be made in the manner and to addresses set forth in the Share Purchase Agreement.

14.2 *Interpretation.* The words "include," "includes" and "including" when used herein shall be deemed in each case to be followed by the words "without limitation." The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

14.3 *Counterparts.* This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party, it being understood that all parties need not sign the same counterpart.

14.4 *Entire Agreement.* This Agreement and the documents and instruments and other agreements among the parties hereto referenced herein: (a) constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof; and (b) are not intended to confer upon any other person any rights or remedies hereunder.

14.5 *Assignment.* SAP AG may transfer or assign its rights and obligations hereunder without the consent of the Company, except those rights and obligations set forth in Sections 11 and 12 hereof, together with any Registrable Shares transferred or assigned in accordance

with the terms of the Standstill Agreement to any Purchaser Controlled Entity (as defined in the Standstill Agreement), as long as such transferee or assignee of the Registrable Shares executes and delivers a counterpart copy of this Agreement thereby agreeing to be bound by the terms and provisions set forth herein. In addition, any person to whom SAP transfers Registrable Shares in one or more private, unregistered transaction(s), who beneficially owns not less than the greater of (i) eleven million five hundred thousand (11,500,000) Registrable Shares and (ii) twenty-five percent (25%) of the Registrable Shares (a "Transferee"), shall be entitled, upon the exercise by SAP AG of its rights under Sections 2.1 and 2.2 hereof, to exercise the rights set forth in Section 2.2 hereof, on a pro rata basis with SAP AG and all other Transferees (as determined by the number of Registrable Shares requested by SAP AG and all Transferees to be included in such registration). SAP AG shall provide to the Company, upon completion of the transfer of Shares to a Transferee, a notice specifying (i) the date on which such transfer was completed, (ii) the identity of the Transferee and (iii) the number of shares transferred (the "Transfer Notice"). The rights of the transferee set forth in this Section 14.5 are conditional upon the receipt by the Company of the Transfer Notice. Further, the parties agree that, in the event that the reorganization of Commerce One into a holding company structure is consummated, that New Commerce One Holding (as the publicly-traded holding company parent of Commerce One) shall without any further action of the parties automatically assume all of Commerce One's rights and obligations hereunder, and except as the context requires otherwise all references herein to Commerce One shall be deemed to be references to New Commerce One Holding. Except as permitted herein, any assignment of rights or delegation of duties under this Agreement by a party without the prior written consent of the other parties, unless such consent is expressly not required hereby, shall be void ab initio. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

14.6 *Severability.* In the event that any provision of this Agreement or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement will continue in full force and effect and the application of such provision to other persons or circumstances will be interpreted so as reasonably to effect the intent of the parties hereto. The parties further agree to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of such void or unenforceable provision.

14.7 *Certain Company Representations.* This Agreement has been duly authorized by all necessary action by the Company, and the Company's execution, delivery and performance of this Agreement does not violate any other agreement or instrument to which it is currently a party. As of the date hereof, the Company has not granted registration rights to any holder of its securities except pursuant to this Agreement, the Existing Registration Rights Agreement that grants registration rights to certain stockholders of the Company with respect to 4,528,170 shares of common stock and the Automaker Registration Rights Agreement that grants to the Automaker Holders registration rights

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with respect to 28,800,000 shares of common stock. The Company hereby agrees not to grant or amend any registration rights that materially impair the registration rights granted to the Stockholder hereunder.

14.8 *Attorneys' Fees.* In any action at law or suit in equity in relation to this Agreement, the prevailing party in such action or suit shall be entitled to receive a reasonable sum for its attorneys' fees and all other reasonable costs and expenses incurred in such action or suit.

14.9 *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof.

14.10 *Term.* Except as provided herein, including without limitation in Sections 10, 12 and 13, and except with respect to Section 14 as it is applicable to other Sections of this Agreement, the rights and obligations hereunder shall terminate six (6) years from the date of this Agreement.

[The remainder of this page is intentionally left blank]

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IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

COMMERCE ONE, INC.

By: /s/ PETER F. PERVERE

Name: Peter F. Pervere

Title: Senior Vice President and Chief Financial
Officer

NEW COMMERCE ONE HOLDING, INC.

By: /s/ PETER F. PERVERE

Name: Peter F. Pervere

Title: Senior Vice President and Chief Financial
Officer

SAP AG

By: /s/ WERNER BRANDT

Name: Werner Brandt

Title:

By: /s/ MICHAEL JUNGE

Name: Michael Junge

Title: General Counsel

[SIGNATURE PAGE TO INVESTOR RIGHTS AGREEMENT]

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