

## Extreme Networks, Inc. Terms of Sale

THESE TERMS OF SALE (the "AGREEMENT") SHALL APPLY TO YOUR PURCHASE OF EXTREME PRODUCTS DIRECTLY FROM EXTREME. HOWEVER, IN THE EVENT YOU HAVE AN EXISTING SET OF TERMS AND CONDITIONS IN PLACE WITH EXTREME THAT IS APPLICABLE TO YOUR PURCHASE (an "EXISTING AGREEMENT"), THEN SUCH EXISTING AGREEMENT WILL BE THE SOLE SET OF TERMS APPLICABLE TO SUCH PURCHASE. IN THE ABSENCE OF AN EXISTING AGREEMENT, YOUR PURCHASE SHALL BE GOVERNED BY THIS AGREEMENT. YOUR ISSUANCE OF A PURCHASE ORDER TO EXTREME INDICATES YOUR ACCEPTANCE OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. EXTREME HEREBY EXPRESSLY REJECTS ANY AND ALL ADDITIONAL OR DIFFERENT TERMS THAT MAY ACCOMPANY YOUR PURCHASE ORDER.

1. Definitions. In addition to the terms defined elsewhere in this Agreement, the following terms have the following meanings:

1.1 "Customer" (or "You" or "Your") means a purchaser of the Products who acquires such Products for ordinary business usage or for resale to an End User of the Products and/or Services.

1.2 "Customer Documentation" means Product documentation, Product specifications and other related materials.

1.3 "Customer Personal Data" means all personal data (as defined in the Data Protection Law) which is processed by Extreme on Your behalf, or on behalf of an end user, in connection with the Services.

1.3 "Data Protection Law" means all applicable laws relating to data protection and privacy including (without limitation) the EU Data Protection Directive (95/46/EC) as implemented in each jurisdiction, the EU General Data Protection Regulation (2016/679), the EU Privacy and Electronic Communications Directive 2002/58/EC, as implemented in each jurisdiction, and any amending or replacement legislation from time to time.

1.4 "End User" means a purchaser of the Products or Services who acquires such Products or Services for ordinary business usage and not for purposes of further distribution or resale.

1.5 "Extreme" shall mean the Extreme entity accepting a purchase order from Customer, which may be Extreme Networks, Inc., or an affiliate, including but not limited to Extreme Networks Ireland Ops Limited, authorized to accept such purchase order hereunder as further defined in Customer's applicable order documentation.

1.6 "Intellectual Property Rights" means any and all current and future (i) rights associated with works of authorship, including but not limited to copyrights, moral rights, and mask-work rights; (ii) patent rights, rights of priority, and design rights; (iii) trade secret rights; (iv) trademark rights (including service mark rights) and trade dress rights; (v) all other intellectual and industrial property rights of every kind and nature which may exist anywhere in the world, whether registered or unregistered; and (vi) any and all applications and registrations, renewals, extensions, provisionals, continuations, continuations-in-part, divisions, reissues or reexaminations of any of the foregoing.

1.7 "Price List" means Extreme's suggested retail price list applicable to the delivery location in effect at the time of order acceptance by Extreme, which price list is subject to revision from time to time in Extreme's sole discretion.

1.8 "Products" mean Extreme commercial networking products as identified in the Price List, including (i) hardware products with embedded Software, (ii) Software Products in object code form, (iii) End User Documentation, and (iv) other materials related to the foregoing, if any, supplied to You in a commercial package.

1.9 "Services" mean the maintenance and support services provided by Extreme under the

ExtremeWorks Support Program (or similar support arrangement), the Premier Services Program (PSP) Foundation Services, and ExtremeManaged Services, or any other end user services provided by Extreme. Such Services are provided by Extreme subject to the Terms of Support posted at [www.extremenetworks.com](http://www.extremenetworks.com).

1.10 “Software” or “Software Products” mean Extreme software products in object code form which are either sold separately or embedded into Extreme hardware products. Software Products are licensed to You under the then-current software license terms, posted at [www.extremenetworks.com](http://www.extremenetworks.com), for the Software Product in effect at the time of order acknowledgement by Extreme.

1.11 “Trademarks” mean “Extreme Networks” and the applicable Product trademarks as listed in Extreme’s usage guidelines, subject to revision from time to time in Extreme’s sole discretion.

## 2. Ordering and Payment Terms.

2.1 The terms and conditions of this Agreement will apply to any and all purchase orders submitted by Customer to Extreme. Extreme expressly rejects any additional or different terms on Customer’s purchase orders.

2.2 Each purchase order must be acknowledged and accepted by Extreme in writing prior to Extreme incurring any obligation under such purchase order. Extreme reserves the right to reject any order.

2.3 All orders placed with Extreme will be non-cancelable, and all fees paid to Extreme shall be non-refundable.

2.4 Customer’s purchase orders to purchase Products may request quantities and delivery dates. Requested delivery dates must observe at least the lead-time for the Products. Extreme will use commercially reasonable efforts to make deliveries in a timely manner of accepted orders, but Extreme will not be liable to Customer or to any other person for Extreme’s failure to fill any orders or for any delay in delivery or error in filling any orders for any reason whatsoever. If requested quantities of Products in a purchase order exceed Extreme’s available inventory, Extreme will allocate its available inventory as Extreme deems equitable.

2.5 Except as otherwise reasonably required by Extreme, Customer shall pay all invoices issued under this Agreement within thirty (30) calendar days from the date of Extreme’s invoice. Invoices for Products will be issued on or after the actual date of shipment of such Products. Payment will be made in the invoiced currency by check, irrevocable letter of credit, wire transfer or other means satisfactory to Extreme. Without liability to any person and without prejudice to any other remedy, Extreme may withhold or delay shipment of any order if You are late in any payment due to Extreme or are otherwise in breach of these terms and conditions.

## 3. Price.

3.1 The price of the Products shall be as set forth in Extreme’s Price List then in effect when Extreme accepts Customer’s order, less any applicable discount agreed to by Extreme. Extreme reserves the right to change its Price List without prior notice. Prices do not include freight, insurance, taxes, or other similar charges. Any such charges will be added to the price and separately invoiced to Customer.

3.2 The prices on the Products do not include, and Customer will pay, indemnify, and hold Extreme harmless from, any and all sales, use, excise, import or export, value added or similar tax that is not based on Extreme’s net income or any duty, fee or charge (collectively the “Taxes”) and any penalties or interest associated with any of the Taxes, imposed by any governmental authority with respect to any payment to be made by Customer to Extreme under invoices issued to Customer or any Product or Services to be delivered by Extreme to Customer. From time to time, Customer will be responsible to withhold any and all required withholding tax amounts as applicable based on its purchase from Extreme. Customer will remit to Extreme the amounts owed for the Products, as appropriate, and pay the proper taxing authority the withholding tax as required. Customer shall issue the certificate of withholding tax to Extreme as soon as practically available following payment. The certificate shall disclose the amounts paid, Taxes withheld and the same having been deposited with the tax authorities. If the certificate is not issued to Extreme within a reasonable timeframe, Customer will immediately make payment to Extreme an amount equal to the amount withheld for tax.

4. Shipment & Acceptance of Products

4.1 All shipping terms described herein are per Incoterms 2010. All shipments shall be made CIP El Paso Texas, except that shipments within the United States shall be FOB Origin (Extreme's place of shipment). Customer shall identify mode of shipment and freight carrier in the purchase order for all FOB Origin shipments. Extreme will select the mode of shipment and the freight carrier for CIP El Paso shipments. Customer shall identify their freight carrier delivery address in El Paso Texas for all CIP El Paso shipments. Customer shall instruct their freight carrier to provide Extreme Networks a copy of the Export Bill of Lading and a copy of the Automated Export System data transmission as indicated in the Foreign Trade Regulations Subpart A Section 30.10 for all applicable US export shipments under the CIP El Paso Texas term.

4.2 All Products ordered by Customer will be deemed accepted by Customer upon delivery to the first carrier under all Incoterms. Risk of loss or damage, and title to Products (except with regard to title of Software) will pass to Customer upon delivery to the first carrier. Customer will pay all costs, including, without limitation, costs of transportation, insurance, export and import fees, customs brokerage expenses and similar charges in accordance with respective CIP El Paso or FOB Origin Incoterms. Customer, at its expense, may make and negotiate any claims against any carrier, insurer, customs broker, freight forwarder or customs collector under all Incoterms.

5. Services. In the event Customer's order includes Services, the provision of Services by Extreme shall be subject solely to the Terms of Support posted at [www.extremenetworks.com](http://www.extremenetworks.com) (the "Terms of Support"). Where Customer and Extreme are already parties to terms of an agreement applicable to such Services being ordered by Customer, then such existing agreement shall apply instead of the Terms of Support.

6. Restrictions on Copying and Reverse Engineering. As a material consideration for this Agreement, Customer expressly agrees not to translate, disassemble, reverse compile or reverse engineer the Products, including the Software Products, in whole or in part, except to the extent such prohibition is restricted by applicable law. Customer will not copy, modify, create derivative works, rent, lease, loan or use for timesharing or service bureau purposes any Products, including Software Products, in whole or in part without the prior written approval of Extreme, which approval may be withheld in Extreme's sole discretion.

7. No Removal of Markings. Customer agrees to comply with all legends that appear on or in the Products and not to remove or destroy any patent, copyright, logo, trademark, trade name, proprietary marking, or confidentiality legend placed upon or contained within Products, containers or End User Documentation supplied by Extreme.

8. Ownership of Intellectual Property Rights; License; Non-Disclosure.

8.1 Intellectual Property Rights. Customer acknowledges that the Products are proprietary to Extreme and its suppliers, and that Extreme and its suppliers retain exclusive ownership of all Intellectual Property Rights in and to the Products, including in and to any Software Products and Trademarks. You and Customer will take all reasonable measures to protect Extreme's Intellectual Property Rights in any Product. Except as expressly provided herein, Customer is not granted any right to any Intellectual Property Rights with respect to any Product.

8.2 License. Software is licensed to End User subject to the terms and conditions of the then-current Extreme End User License Agreement ("EULA") for such Software in effect at the time the Software is provided. Extreme's EULA can be found at [www.extremenetworks.com](http://www.extremenetworks.com). In the case of third-party software, the third-party software is licensed by the third party to Customer subject to any applicable terms and conditions. Customer agrees that Customer will not attempt, and will use Customer's best efforts to prevent Customer's employees and contractors from attempting, to reverse engineer, disassemble, modify, translate, create derivative works, rent, lease, loan, distribute or sublicense the Products, in whole or in part. Title to and ownership of the Software and Documentation, and any improved, updated, modified or additional parts thereof, and all copyright, patent, trade secret, trademark and other intellectual property rights embodied in the Products, shall at all times remain the property of Extreme or Extreme's licensors.

8.3 **Non-Disclosure.** Customer may be exposed to certain confidential information of Extreme including, but not limited to, information concerning the business, technology, and customers of Extreme, which Customer knows, or should reasonably know, is Extreme's confidential and proprietary information (herein "Confidential Information"). Customer agrees that while this Agreement is in effect and for a period of three (3) years thereafter, Customer will not: (i) use the Confidential Information for any purpose other than to perform under this Agreement; or (ii) disclose to any third party any Confidential Information without the prior written consent of Extreme. Customer may disclose Confidential Information only to its employees or contractors on a need to know basis and as is reasonably necessary to allow the party to perform under this Agreement; provided that each such employee or contractor is under a written obligation of nondisclosure which protects the Confidential Information under terms at least as stringent as these terms. This Section will not apply to Confidential Information after such information is made public by Extreme. If any Confidential Information is required to be disclosed by Customer as a matter of law or by order of a court or other legal process, Customer will promptly notify Extreme of such obligation to disclose and reasonably assist Extreme in obtaining a protective order or otherwise limiting such disclosure.

9. Limitation of Liability & Consequential Damages Waiver.

9.1 **NO CONSEQUENTIAL DAMAGES.** EXCEPT IN CASE OF BODILY INJURY OR DEATH WHERE, AND THEN ONLY TO THE EXTENT THAT, APPLICABLE LAW REQUIRES SUCH LIABILITY, UNDER NO CIRCUMSTANCES WILL EXTREME BE LIABLE FOR (I) ANY LOST PROFITS (EVEN IF THEY ARISE AS A DIRECT OR IMMEDIATE CONSEQUENCE OF THE EVENT THAT GENERATED THE DAMAGES), OR (ii) ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOST BUSINESS, LOST REVENUE OR LOST SAVINGS, LOSS OF USE, LOSS OR DAMAGE TO DATA OR GOODS OR INTERRUPTION OF BUSINESS, IN EACH CASE HOWSOEVER CAUSED, AND WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF WARRANTY, STRICT LIABILITY OR OTHERWISE, EVEN IF EXTREME HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY EXCLUSIVE REMEDY PROVIDED HEREIN. IN NO EVENT WILL EXTREME BE LIABLE FOR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES.

9.2 **LIMITATION ON LIABILITY.** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, EXCEPT IN CASE OF BODILY INJURY OR DEATH WHERE, AND THEN ONLY TO THE EXTENT THAT APPLICABLE LAW REQUIRES SUCH LIABILITY, EXTREME'S AGGREGATE LIABILITY FROM OR IN RELATION TO THIS AGREEMENT, WHETHER ARISING IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, SHALL BE LIMITED TO THE TOTAL AMOUNT PAID BY COMPANY TO EXTREME FOR THE PRODUCT GIVING RISE TO THE CLAIM. THIS LIMITATION SHALL APPLY TO ALL CAUSES OF ACTION IN THE AGGREGATE.

10. Privacy and Cookies Policies. You understand and agree that Extreme may collect, store, use, and disclose the information we obtain relating to Customer, including Your IP address, name, mailing address and email address. Customer's use of such information is pursuant to Extreme's Privacy and Cookies Policies, published at <https://www.extremenetworks.com/company/legal/privacy/>. Please review the link to learn how information Extreme collects is handled.

11. Miscellaneous.

11.1 **Marketing Materials.** Customer agrees Extreme has the express right to use Customer's company logo and name in sales and marketing materials such as press releases, social media, case study briefs/project summaries, Extreme's website or brochures and other communications solely to identify Customer as an Extreme customer. Other than as expressly stated herein, neither party shall use the other party's marks, codes, drawings or specifications without the prior written permission of the other party.

11.2 **Notices.** Any notices permitted or required under this Agreement will be in writing and will be deemed given when delivered in person, by overnight courier upon written verification of receipt, by confirmed facsimile, or by certified or registered mail, return receipt requested, five (5) days after deposit in the mail. Notices to Extreme shall be sent to: Extreme Networks, Inc., 6480 Via del Oro, San Jose, California 95119,

Attention: Legal Department, with a copy sent via email to [contractsadmin@extremenetworks.com](mailto:contractsadmin@extremenetworks.com). Notices to Customer will be sent to the address provided at time of order placement. Either party may change its address by giving written notice of such change in the manner provided.

11.3 Assignment. This Agreement may not be assigned by Customer by operation of law or otherwise without the prior written approval of Extreme. Extreme's rights and obligations, in whole or in part, under this Agreement may be assigned or delegated by Extreme to any affiliated company or subsidiary or in connection with a merger, reorganization, consolidation or sale of all or substantially all of Extreme's assets. This Agreement shall bind and inure to the benefit of the parties and their successors and permitted assigns.

11.4 Waiver; Severability. The waiver by either party of a breach of any provisions contained herein shall be in writing and shall in no way be construed as a waiver of any succeeding breach of such provision or the waiver of the provision itself. In the event that any provision of this Agreement shall be unenforceable or invalid under any applicable law or be so held by applicable court decision, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and, in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such provision within the limits of applicable law or applicable court decisions.

11.5 Injunctive Relief. It is expressly agreed that a violation of certain sections of this Agreement could cause irreparable harm to Extreme and that a remedy at law could be inadequate. Therefore, in addition to any and all remedies available at law, Extreme will be entitled to seek injunctive relief or other equitable remedies in the event of any threatened or actual violation of any or all of the provisions hereof.

11.6 Controlling Law; Venue. This Agreement shall be governed in all respects exclusively by the laws of the State of California and the United States of America without regard to conflicts of law principles. The United Nations Convention on the International Sale of Goods is hereby expressly excluded from application to this Agreement. All disputes arising under this Agreement shall be brought in Superior Court of the State of California in Santa Clara County or the Federal District Court of San Jose, as permitted by law, and Customer consents to personal jurisdiction in such courts.

11.7 Timing of Disputes. All disagreements or controversies of any kind whether claimed in tort, contract or otherwise concerning this Agreement shall be brought within one (1) year after the occurrence of the event giving rise to the disagreement or controversy.

11.8 No Agency. Nothing contained herein shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties.

11.9 Export Control and Economic Sanctions. Customer acknowledges that it must comply with all economic sanctions and applicable laws and regulations of the United States that may restrict the export, re-export, or transshipment of certain commodities and technical information, including the Products, the Services and technical information relating thereto, in any medium. Customer will obtain and maintain all approvals and licenses, including export licenses, permits and authorizations, from the appropriate governmental authorities as may be required to enable Customer to fulfill its obligations under this Agreement and shall comply with all applicable laws, rules, policies and procedures of the United States government. Customer acknowledges that, unless prior written authorization is obtained from the relevant authorities in the United States, it will not export, re-export, or transship, directly or indirectly, any Products, Services or technical information relating thereto, in any medium, that would be in contravention to any applicable laws and regulations of the United States then in effect. Customer will not export, reexport, or otherwise bring Products or Services into any of the following countries or regions: Russia, Cuba, Iran, North Korea, Syria, the Crimea region of Ukraine, the so-called Luhansk People's Republic or the so-called Donetsk People's Republic. Customer shall indemnify and hold harmless Extreme for any violation or alleged violation by Customer of such laws or regulations. Customer's obligations pursuant to this Section shall survive and continue after any termination of rights under this Agreement.

11.10 Force Majeure. Neither party will have the right to claim damages if this Agreement is breached or terminated as a result of the other party's failure or delay in performance due to circumstances beyond its reasonable control (except for obligations relating to fees payable under this Agreement), including, but not

limited to, labor disputes, strikes, lockouts, shortages of or inability to obtain labor, energy, components, raw materials or supplies, war, riot, insurrection, epidemic, pandemic, natural disasters, governmental action or terrorism.

11.11 **Survival of Terms.** The following Sections will survive any expiration or termination of this Agreement for whatever reason: sections 6 (“Restrictions on Copying and Reverse Engineering”), 7 (“No Removal of Markings”), 8 (“Ownership of Intellectual Property Rights; License; Non-Disclosure”), 9 (“Limitation of Liability & Consequential Damages Waiver”), and 11.11 (“Survival of Terms”).

11.12 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto relating to the subject matter hereof and, except as otherwise stated herein, its terms supersede and govern, all prior and contemporaneous proposals, negotiations, commitments, understandings, agreements or other communications between the parties, oral or written, regarding such subject matter, including any prior click through agreements.

*-End of Agreement-*