

Professional Services

Terms and Conditions



All offers and related ordering for Extreme professional services as further defined herein are subject to the following terms and conditions. These terms and conditions apply to any and all purchase orders submitted by a channel partner, reseller, or end-user (hereafter referred to as "Customer") relating to the Services and will supersede any different or additional terms on Customer's purchase orders.

For the purpose of this Agreement, "Extreme" shall mean either (a) Extreme Networks, Inc. with its billing address at 145 Rio Robles, San Jose, CA 95134, or (b) Extreme Networks Ireland Limited, with its billing address at Rineanna House, Shannon Industrial Estate, Co Clare, Republic of Ireland, VAT No IE8215318B, as such entity is designated in the sales quotation and corresponding order documentation issued hereunder. Billing matters should be directed to CreditAndCollections@extremenetworks.com for e-mail inquiries or you may call 1-408-579-2800 for further direction. If you are exempt from sales tax please furnish a copy of your exemption certificate in the name of Extreme Networks, Inc., or as otherwise reasonably requested by Extreme.

Services. Extreme will provide to Customer network engineering and/or consulting services as further identified by Extreme on its posted Price List and as further described pursuant to your applicable order documentation (the "Services"). Beyond the standard services descriptions as identified in your order documentation, delivery of Services may be further conditioned as set forth in a statement of work, letter of engagement, request for schedule, and/or any other document outlining the scope of services to be performed in accordance with these terms and conditions (hereinafter referred to as a "Scope Document").

Fees, Rates and Payment. Services fees and rates will be as published on Extreme's then-current applicable price list or as specified in the Scope Document, if any. If an hourly rate is specified, Customer will pay for each hour of Services without proration. If a flat rate is specified, Customer will pay at the rate specified. In addition to labor fees, Customer is responsible for all travel and out-of-pocket expenses related to the Services. Travel expenses may include without limitation: lodging, train fare, airfare, parking, tolls and mileage. Shipping expenses, if any, are the sole responsibility of Customer. Shipping expenses include: freight charges from Extreme to the staging area, freight charges from the staging area to the Customer site, overnight courier charges for replacement components, cables, etc. Services may be provided in a number of ways including on-site, telephone, and/or remote support. Fees and rates do not include, and Customer is responsible for, all sales, use, value-added and other taxes, and all customs, duties and tariffs, or export fees now or hereafter claimed or imposed by any governmental authority upon payments to Extreme under this Agreement. Payment on each invoice is due within thirty (30) days of date of such invoice. Extreme will have the right to use subcontractors to perform all or part of the Services as it deems appropriate, provided that Extreme shall remain responsible for such subcontractor's performance of such Services.

Change Orders. In order to add or change any terms or conditions of these Terms and Conditions, a written change order signed by both parties ("Change Order") is required. Extreme will prepare all Change Orders. The parties must mutually agree to all Change Orders. Pending such agreement, Extreme will continue to perform and be paid as if such Change Order had not been requested or recommended.

Deliverables and Acceptance. For purposes of these Terms and Conditions, the term "Deliverables" means the tangible results of the Services. Upon completion of the Services, Customer shall have five (5) days to verify that the Services and Deliverables provided substantially conform to these Terms and Conditions. Customer must notify Extreme of its non-acceptance within such five (5) day period. Any notification of non-acceptance will include a reasonably detailed description of the reasons for such non-acceptance. Extreme shall have thirty (30) days from the date of such notification to rectify the problem, following which Customer shall have another five (5) day period to review the applicable Services or Deliverables. In the event that Customer either (a) does not notify Extreme of any non-acceptance during the relevant five (5) day period, or (b) confirms its acceptance of the applicable Services or Deliverables, in writing within the relevant five (5) day period, the applicable Services or Deliverables shall be deemed accepted. Notwithstanding the foregoing, the acceptance criteria or procedures for Deliverables set forth in any Scope Document will only apply to the Services provided.

License and Ownership. Upon Customer acceptance of a Deliverable and receipt by Extreme of payment in full, Extreme grants Customer a non-exclusive, perpetual, non-transferable license to use such Deliverable for its own internal purposes. Customer's license confers no title or ownership in the Deliverable and will not be construed as a sale of any rights in the Deliverable or the media on which it is recorded or printed. All copyrights and other intellectual property rights existing prior to the date of performance of Services shall belong to the party that owned such rights immediately prior to the date of performance of Services. Neither party shall gain by virtue of these Terms and Conditions any rights of ownership, patents, trade secrets, trademarks or any other intellectual property rights owned by the other. Extreme shall own all copyright, patents, trade secrets, trademarks and other intellectual property rights, title and interest in or pertaining to any techniques, know-how, software, inventions, processes, data, design, diagrams, documentation and all other information and materials created by Extreme in performing the Services hereunder.

Confidentiality. Each party shall hold in confidence all materials or information disclosed to it hereunder which are marked as confidential or proprietary, or if disclosed verbally, would ordinarily be regarded as confidential in the course of business on account of the nature of the information or the circumstances of its disclosure ("Confidential Information"). Each party agrees to take precautions to prevent any unauthorized disclosure or use of Confidential Information consistent with precautions used to protect such party's own confidential or proprietary information, but in no event less than reasonable care. The obligations of the parties hereunder shall not apply to any Confidential Information which: (i) is now, or hereafter becomes, through no act or failure to act on the part of the receiving party, generally known or available; (ii) is known by the receiving party at the time of receiving such information; or (iii) is independently developed by the receiving party without use of any of the other party's Confidential Information. Notwithstanding the foregoing, disclosure of Confidential Information shall not be precluded if such disclosure is in response to a valid order of a court or other governmental body or otherwise required by law; provided, however, that the responding party shall first have given notice to the other party hereto to enable such other party to seek a protective order or otherwise prevent such disclosure.

Limited Warranty. Extreme will use reasonable commercial efforts to provide the Services in a professional and workmanlike manner. EXTREME MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY UNDER THESE TERMS AND CONDITIONS AND SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. EXTREME'S TOTAL LIABILITY ARISING FROM THESE TERMS AND CONDITIONS SHALL BE LIMITED TO THE TOTAL AMOUNT PAID TO EXTREME UNDER THIS AGREEMENT. EXTREME WILL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES OF ANY KIND UNDER THESE TERMS AND CONDITIONS. Extreme will not be responsible in any way for any losses or other consequences arising from its failure to meet any schedule due to any delay, inability or failure by Customer or third party to deliver or provide access to any information or materials required for performance of the Services.

EXTREME NETWORKS
PROFESSIONAL SERVICES TERMS AND CONDITIONS

Limitation of Liability. UNDER NO CIRCUMSTANCES WILL EXTREME, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR AFFILIATES BE RESPONSIBLE OR LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR OTHER INDIRECT DAMAGES, INCLUDING LOST PROFITS, ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY OR OTHER LEGAL THEORY, EVEN IF EXTREME WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE MAXIMUM AGGREGATE LIABILITY OF EXTREME, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND AFFILIATES, FOR DAMAGES HEREUNDER IS LIMITED TO THE AMOUNTS THAT CUSTOMER HAS PAID EXTREME UNDER THE SCOPE DOCUMENT UNDER WHICH CUSTOMER'S CLAIM AROSE.

CUSTOMER AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS EXTREME, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND AFFILIATES FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, LOSSES, COSTS, AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) INCURRED BY THEM ARISING IN CONNECTION WITH THE PERFORMANCE OF SERVICES HEREUNDER EXCEPT TO THE EXTENT RESULTING FROM EXTREME'S WILLFUL OR KNOWING MISCONDUCT.

Noninterference with Business. During this Agreement, and for a period of two (2) years immediately following this Agreement's termination or expiration, Customer agrees not to interfere with the business of Extreme in any manner. By way of example and not of limitation, Customer agrees not to solicit or induce any employee or independent contractor to terminate or breach an employment, contractual or other relationship with Extreme.

Master Services Agreement. Except as otherwise governed pursuant to a valid and current written and duly executed agreement between Customer and Extreme (a "Services Agreement") in the event of a conflict between such Services Agreement and these Terms and Conditions, the terms of the Services Agreement will prevail as applied against such conflicting terms.

Miscellaneous. Extreme is and at all times shall be an independent contractor in all matters relating to these Terms and Conditions. These Terms and Conditions will be governed by the laws of California, without regard to that body of law controlling conflicts of law. All disputes arising under these Terms and Conditions 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. Either party shall have the right to terminate these Terms and Conditions upon the material breach of the other party; provided the breaching party has failed to cure such breach within thirty (30) days after receipt of written notice of such breach. A provision of these Terms and Conditions will survive expiration or termination of these Terms and Conditions if the context of the provision indicates that it is intended to survive. If these Terms and Conditions is terminated, Customer will promptly pay Extreme for Services performed prior to the termination date, plus any expenses incurred. These Terms and Conditions 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 these Terms and Conditions 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. These Terms and Conditions shall be binding upon, and inure to the benefit of, the successors and assigns of the parties thereto. No waiver will be implied from conduct or failure to enforce rights, and no waiver will be effective unless in writing signed on behalf of the party against whom the waiver is asserted. Neither party will have the right to claim damages or to terminate these Terms and Conditions 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 these Terms and Conditions), 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, natural disasters, governmental action or terrorism. If any part of these Terms and Conditions is found invalid or unenforceable, that part will be enforced to the maximum extent permitted by law and the remainder of these Terms and Conditions will remain in full force.