

1. **SCOPE.** These terms and conditions shall apply to the sale and licensing of all Infinera Corporation (“Infinera”) XTM and XTG series hardware or software (“Products”) and related services (“Services”), unless the entity ordering those Products and/or Services (the “Buyer”) has signed a separate written agreement with Infinera that is in effect at the time that the Buyer places an order for such Products and Services (an “Order”). Conflicting or additional terms on an Order or elsewhere shall be null and void. Infinera and Buyer are herein sometimes referred to individually as a “Party” and collectively as the “Parties.”

2. **PURCHASE AND SALE.** By accepting an Order or by delivering the Products and/or Services to the Buyer, Infinera agrees to sell the quantity and model of Products identified on the Order. Infinera software included on the Order (the “Software”) and its documentation are licensed as per Section 10 below.

3. **SHIPPING TERMS.** All Products purchased hereunder will be shipped as follows in the table referenced below to the destination specified by Buyer on its Order:

Destination	Shipping Terms	Importer of Record
USA	DAP (Incoterms 2010)	Infinera
EU Member States and Switzerland, Norway & Canada	DDP (Incoterms 2010)	Infinera
All other approved countries	DAT (Incoterms 2010)	Buyer

Prices exclude all freight, insurance, taxes, customs duties and similar charges for the transport of the Products to Buyer’s specified destination. Freight and handling fees will be prepaid by Infinera and added to the invoice as a separate line item for reimbursement by Buyer. The Importer of Record shall be responsible for payment of any applicable customs duties.

4. **TITLE AND RISK OF LOSS:** For purchased Products, title and risk of loss shall pass to Buyer upon delivery of the Products to Buyer’s specified destination. Any loss, damage, or destruction thereafter, except to the extent caused by Infinera, shall not relieve Buyer of its obligations to pay for the Products.

5. **ACCEPTANCE.** Acceptance of Products shall occur upon delivery to Buyer’s specified destination (“Acceptance”). Acceptance of Services will occur upon written notification from Infinera that Services are completed.

6. **PRICING.** Prices are as stated in Infinera’s quote. All prices are stated exclusive of any sales taxes, value added tax (VAT), goods and services tax (GST), or other similar transaction taxes (hereinafter collectively referred to as “Taxes”), with the exception of taxes based on the net income of Infinera. Buyer is responsible for and agrees to pay all Taxes imposed or hereafter levied on any payments due under this Agreement. Taxes that Infinera is registered to collect will be added as a separate item on Buyer’s invoices. If Buyer is required by law to withhold any tax from a payment due to Infinera, Buyer shall provide to Infinera original or certified copies of all tax payment receipts, withholding certificates, or

other evidence of payment of taxes by Buyer with respect to such transactions. If Buyer fails to provide Infinera with applicable tax payment receipts, then Buyer shall reimburse Infinera for any fines, penalties, taxes, and other governmental agency charges resulting from such failure.

7. **PAYMENT.** Subject to credit approval, Infinera shall invoice on Acceptance, and payment is due 30 days from invoice date. Infinera shall invoice Buyer for EF&I Services upon Acceptance and for instructor-led training Services upon completion, and shall invoice for annual support Services, or web-based training, in annual frequency, in advance of performance. In the event of non-payment of the invoiced amount, Infinera may suspend activity with Buyer pending payment of such amount. Unpaid sums are subject to an interest rate, which shall be the lesser of one and one-half percent (1.5%) or the maximum rate legally permitted per month or part thereof. All payments to be made under this Agreement shall be made in cleared funds, without any deduction or set-off and free and clear of and without deduction for or on account of any Taxes now or hereafter imposed by any governmental, fiscal or other authority save as required by law.

8. **WARRANTY.**

(a) Infinera warrants: (i) it has a right to sell or license the Products; (ii) the hardware will perform in accordance with the standard specifications for the Products for a period of 12 months from Acceptance, (iii) Software will perform in accordance with the standard specifications for 90 days from Acceptance (“Warranty Term”).

(b) Warranty does not extend to any Products damaged or modified by anyone other than Infinera or Infinera’s authorized service agents, or to use of the Products other than in accordance with the operational manuals provided. Infinera shall have no obligation with respect to any data stored in Products returned for repair or replacement.

(c) As its sole obligation and Buyer’s exclusive remedy for any breach of warranty, Infinera shall, at its option, either: (i) repair the Products; or (ii) replace the Products; or (iii) refund the purchase price.

(d) Buyer shall make a warranty claim by (i) immediately notifying Infinera in writing of the Product issue and furnishing an explanation; and (ii) returning the Product at its own risk and expense, in appropriate packaging and in compliance with Infinera’s RMA procedures.

(e) Tampering with, opening (except for the packaging), modification, reverse engineering, or de-compilation of the Products voids the warranty.

(f) Any Services included on any Order shall be performed in accordance with Infinera’s standard Services statements of work as available upon request.

(g) EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 8, INFINERA MAKES NO WARRANTIES WITH RESPECT TO THE PRODUCTS OR SERVICES, EXPRESS OR IMPLIED.

9. **LIABILITY.** TO THE EXTENT PERMITTED BY LAW, INFINERA SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL

DAMAGES, OR FOR LOSS OF PROFITS, LOSS OF DATA, OR LOSS OF BUSINESS DIRECTLY OR INDIRECTLY ARISING OUT OF OR IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREUNDER OR THE SALE, PERFORMANCE OR USE OF THE PRODUCTS. SAVE FOR ANY LIABILITY THAT CANNOT BE EXCLUDED OR LIMITED BY APPLICABLE LAW, INFINERA SHALL NOT BE LIABLE TO BUYER, OR TO ANY THIRD PARTY, FOR ANY CLAIMS OR DAMAGES OF ANY KIND IN EXCESS OF THE AMOUNTS PAID BY BUYER TO INFINERA FOR THE PRODUCTS OR SERVICES GIVING RISE TO SUCH CLAIMS OR DAMAGES.

10. SOFTWARE LICENSE. Software and its documentation are licensed, not sold to Buyer. Infinera grants to Buyer a personal, perpetual, non-exclusive, non-transferable, limited license to use the Software and documentation for the purposes of operating the hardware purchased by Buyer from Infinera hereunder. This license does not include any right to reproduce, distribute, or modify the Software in any manner. Except to the extent such a restriction is prohibited by law, Buyer is not permitted to (i) decompile, disassemble, or reverse engineer the Software, in whole or in part, or use the Software for any competitive analysis purposes whatsoever; or (ii) grant any third party any right to access or use the Software in any manner. For purchases in EU countries, the Parties agree to comply with the EU Commission's software directives.

Certain Products may require that Infinera issue a license key for use of the Software ("Key"), where necessary. The Key is personal to Buyer and may not be transferred to or used by any third party, including any successor-in-interest, and Infinera may disable the Key and/or access to the Software if it reasonably determines Buyer has transferred or attempted to transfer or reassign the Key or the Software to a third party. The Software may contain or be delivered with Third Party Software, identified by Infinera in the Product description or documentation or in the Readme.Txt file as being subject to different license terms from those set out herein. Use of the Third Party Software shall be subject to such separate license terms.

11. IP RIGHTS & INDEMNIFICATION. Infinera retains ownership of all right, title and interest in all intellectual property of the Products, except for rights to Third Party Software, which are retained by the applicable owners. At its expense, Infinera agrees to defend or settle any legal action brought against Buyer to the extent based on a claim that Products in the form provided infringe a third party intellectual property right. Infinera's obligations hereunder are conditioned upon Buyer: (a) giving prompt written notice of the claim and its full cooperation in the defense of the claim; and (b) allowing Infinera to control the defense and settlement of such claim. Infinera has no obligation for claims arising from: (i) unauthorized changes to Products; (ii) combination of the Products with any item not provided by Infinera. Infinera may, at its option and expense, replace, modify or obtain a license for the Products that are the subject of such claim, or require Buyer to return the Products, upon which Infinera will refund the amount paid by Buyer for such Products less a reasonable charge for the time the Products were used. This Section 11

states Infinera's entire liability, and Buyer's sole and exclusive remedy, for any infringement or misappropriation of any third party intellectual property right.

12. CONFIDENTIALITY. Buyer shall keep confidential and shall not disclose, publish, transfer, provide or otherwise make available any non-public information about the Products or Infinera's technology or intellectual property or those of Infinera's respective licensors (the "Confidential Information") in any form or on any media to any person, except to those employees of Buyer who must have access to the Confidential Information in order to fulfill the Buyer's obligations hereunder. Buyer shall take all appropriate action, whether by instruction, agreement or otherwise, to ensure the protection and confidentiality of the Confidential Information.

13. CANCELLATION. Buyer may only cancel or delay shipment of its Orders under this Agreement by giving Infinera notice of cancellation or requested delay at least 45 days before the date that Infinera has indicated that the Products will be available for shipment.

14. TERMINATION. Either Party may, by written notice to the other Party, terminate this Agreement for cause. Cause for termination shall include: (i) material failure to perform any provision of this Agreement, or (ii) commencement of proceedings seeking relief, reorganization, arrangement, or protection under any bankruptcy or insolvency laws (or commencement of proceedings against the party not dismissed within thirty (30) days); any assignment by a Party to this Agreement made for the benefit of a Party's creditors or with respect to any substantial portion of its assets; or any liquidation, dissolution or winding up of a party's business.

15. MISCELLANEOUS.

(a) Force Majeure. Infinera shall in no event be liable for any failure or delay in performing its obligations under this Agreement, or for any loss or damage resulting therefrom, due to causes beyond its control.

(b) Export Restrictions. Buyer acknowledges that the Products are U.S. or EU origin goods and agrees not to export, re-export, transfer or allow third parties to access any Products that it purchases or licenses where such export, re-export, transfer or access is not permitted under the applicable rules and regulations of: the U.S. Government and agencies, the EU or its Member States, or any other applicable foreign jurisdiction. Buyer further agrees to indemnify and hold harmless Infinera from any and all fines, damages, losses, costs and expenses (including reasonable attorney's fees) incurred by Infinera as a result of any breach of this section by Buyer. Buyer further agrees to not export, re-export or transfer Products to any U.S. embargoed country, including Iran, Syria, Sudan, North Korea, Cuba, and certain regions of Ukraine (as updated from time to time), without first obtaining the appropriate export license.

(c) Governing Law. This Agreement shall be governed by the laws of the State of New York, without giving effect to choice of laws principles. The parties expressly agree to exclude application of the United Nations Convention on Contracts for the International Sale of Goods.

(d) Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any and all prior oral or written

agreements or representations, including without limitation any terms in any purchase order or similar ordering document, which terms are expressly rejected by Infinera.

(e) Enforceability. In the event that any provision of this Agreement or its application to a particular case shall be held invalid or unenforceable by a court of competent jurisdiction or by any future legislative action, such holding or such action shall not negate the validity or enforceability of any other provision hereof or any other application of such provision.

BUYER: _____

ADDRESS:

SIGNATURE: _____

NAME: _____

TITLE: _____

DATE: _____

(f) Assignment. This Agreement, including any of the rights or licenses granted herein, is not assignable by Buyer without the prior written consent of Infinera, it being understood that an "assignment" shall be deemed to include any sale of all or substantially all of Buyer's business, whether by sale of stock or assets, merger, change of control, or otherwise.

INFINERA CORPORATION

ADDRESS:

140 Caspian Court
Sunnyvale, California 94089 USA

SIGNATURE: _____

NAME: _____

TITLE: _____

DATE: _____