

### 1. Acceptance

These terms and conditions and the written or electronic purchase order to which they relate (collectively, "Contract") shall be deemed accepted by Supplier upon the earliest to occur of Supplier's (a) confirmation, or (b) delivery of the goods ("Goods") or starting performance of the services ("Services") described on the face of the related purchase order. Goods and/or Services shall collectively be referred to as "Deliverables."

### 2. Agreement

Unless the supplier listed on the purchase order ("Supplier") and Infinera Corporation, or any entity that is controlled by Infinera Corporation, where "control" means (a) the direct or indirect beneficial ownership of at least fifty percent (50%) of the votes in an entity, or (b) the ability to directly or indirectly (i) control the composition of an entity's board of directors or equivalent body or (ii) direct an entity's affairs, have entered into a separately executed written agreement which is currently in effect, this Contract sets forth all of the promises, agreements and conditions regarding its subject matter, supersedes all prior understandings (whether written, oral or otherwise) and constitutes the entire agreement between the Infinera entity issuing this purchase order ("Infinera") and Supplier (collectively the "Parties"). Modifications to this Contract, or any terms or conditions listed in Supplier's acknowledgment, invoice, quote, or other future communications, shall be void unless agreed in a writing signed by Infinera and Supplier. The Contract is not assignable by Supplier without Infinera's prior written consent.

### 3. Changes

Infinera may issue additional instructions or make changes to the following: (a) drawings, designs or specifications, (b) quantity of Goods purchased, (c) method of shipment or packing, or (d) place or date of delivery. If such instructions or changes increase or decrease Supplier's cost of performance, then the Parties shall agree in writing on a price adjustment within (at most) fourteen (14) days after Infinera's notification of such instructions or changes.

### 4. Termination

Infinera may terminate the Contract in whole or in part by written notice at any time for convenience. Supplier shall stop delivery of Goods or performance of Services on the date specified in the termination notice. Infinera will pay Supplier the order price for Goods received or Services completed before the effective date of termination; provided that Infinera confirms its acceptance thereof. If Infinera terminates the Contract for Cause, then Infinera may purchase similar Goods or complete the Services on its own or via third parties and Supplier shall be responsible for any excess costs that Infinera incurs. "Cause" includes, but is not limited to: (a) Supplier fails to deliver Goods in compliance with the specified delivery time or quantities; (b) Supplier fails to begin or complete any part of the Services as scheduled; (c) Deliverables do not conform to the specifications; (d) Deliverables are alleged to infringe an intellectual property right or are sold or manufactured in violation of a law, regulation, order, directive or the like; or (e) Supplier refuses to furnish appropriate guarantees to protect Infinera as permitted by law. Except as expressly stated above, Infinera shall have no other liability to Supplier for termination.

### 5. Shipping and Delivery; General Instructions

All Goods shall be received and Services completed by the delivery or completion dates specified in the Contract; but not earlier than thirty (30) days prior to such dates. Supplier shall include a packing list with each Goods shipment. If Goods are not received or Services completed within the specified dates, then Infinera may claim liquidated damages (and not penalties) at the rate of one and one-half percent (1.5%) of the price of such late or undelivered Deliverables for each week of delay; up to a maximum of fifteen percent (15%) of such price. Termination shall not release Supplier from paying liquidated damages to Infinera. The purchase order number shall appear on all packages, packing lists, bills of lading, invoices and correspondences. If a carrier's tariff freight rates depend on the value of Goods shipped, then Supplier shall declare the lowest accurate value when releasing Goods to the carrier and not purchase additional insurance. Goods shall be delivered to Infinera DDP, Infinera named premises (Incoterms 2010). Rejected Goods shall be shipped by Infinera to Supplier FCA, Infinera named premises (Incoterms 2010). Supplier represents and warrants that each Good's country of origin and/or manufacture is accurately stated on all commercial invoices that accompany the Good, and the Good itself is marked accordingly. Supplier shall provide Infinera with a certificate of origin prior to the first shipment of a Good. Supplier shall advise Infinera at least ninety (90) days prior to a change in, or addition to, a Good's country of manufacture or origin and shall provide an updated certificate of origin prior to shipping such Good.

### 6. Extra Charges

No extra charges shall be claimed by Supplier, including those for boxing, packing, crating, insurance or otherwise.

### 7. Warranties

Supplier represents and warrants that: (a) Goods (i) shall conform to specifications, drawings, samples or other descriptions furnished or specified by Infinera, (ii) are merchantable, (iii) are suitable for their ordinary or intended uses and purposes, (iv) are of high quality and free from defects in design, material and workmanship, (v) are free of all liens and encumbrances, and (vi) conform to all relevant legal and regulatory design and manufacturing requirements, including but not limited to the European Union's Restriction on the use of Hazardous Substances (RoHS) Directive, 2002/95/EC, and Waste Electrical and Electronic Equipment (WEEE) Directive, 2002/96/EC, and Supplier shall promptly provide evidence of its conformance with such Directives upon Infinera's request; (b) Supplier has good and warrantable title to the Goods and the right to grant any rights and licenses

granted herein; and (c) Services shall be performed in a diligent, professional and workmanlike manner in accordance with standard industry practice. Supplier shall repair or replace defective Goods or accept a return of such Goods and fully refund all payments for such Goods. Supplier shall re-perform deficient Services in a fully compliant manner, or fully refund all payments for such Services. Supplier shall bear all transportation costs and risk of loss pertaining to repaired or replaced goods. All warranties shall survive acceptance and payment and are in addition to any other warranties implied in fact or by law.

#### **8. Inspection and Acceptance**

Deliverables are subject to inspection by Infinera at any time prior to acceptance. Infinera may reject any Deliverables that do not conform exactly to the Contract. Infinera may return rejected Goods to Supplier or hold them while awaiting Supplier's instructions; all at Supplier's risk and expense. Supplier shall repair or replace rejected Goods, or re-perform rejected Services, within the original time for performance as stated in the related purchase order, or within such other timeframe agreed by Infinera in advance in writing. Payment for Deliverables before inspection shall not constitute acceptance thereof. Acceptance shall occur upon Infinera's written verification that Goods conform to all specifications or Services have been performed properly.

#### **9. Intellectual Property**

Supplier represents and warrants that the use or sale of Deliverables will not infringe any patent, copyright, trademark, trade secret or other intellectual property right and shall indemnify and hold Infinera, its agents, customers and their respective successors and assigns harmless from all liabilities, losses, costs and expenses (including attorneys' fees) by reason of any such infringement or claim thereof, and, after notice, Supplier agrees to defend at its own expense any suits or proceedings arising from any such infringement or claim thereof. Infinera shall retain exclusive right, title and ownership in any Goods that are manufactured in accordance with specific specifications, drawings, requirements and/or other technical documentation of Infinera ("Special Goods"). Special Goods and any Services related thereto (including the results thereof) are "Work Made for Hire" as defined by the United States Copyright Law. Any ownership or other rights arising out of Special Goods, and Services related thereto, which are not otherwise vested automatically in Infinera are hereby assigned to Infinera, including any moral rights; and Supplier makes no claim of ownership in any of the above. No licenses under any patents, copyrights, trademarks, trade secrets or other intellectual property rights, express or implied, are granted by Infinera to Supplier under this Contract.

#### **10. Nondiscrimination in Employment**

This Section shall apply if the Infinera entity purchasing the Deliverables is incorporated in the United States. If the related purchase order is subject to Executive Order No. 11246, Supplier shall not discriminate against any employee or applicant for employment because of race, creed, color, national origin, handicap, sex or Vietnam Era Veteran status. Supplier shall take affirmative action to ensure that Equal Employment Opportunity is implemented in employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. All other applicable provisions of the rules and regulations of the office of Federal Contract Compliance are herein incorporated by reference.

#### **11. Injury to Person or Property; Insurance**

Supplier shall defend at its own expense, indemnify and hold Infinera, its agents, customers and their respective successors and assigns harmless from any claim, loss, liability, damage, injury, cost or expenses (including attorneys' fees) pertaining to:

(a) personal injury or property damage arising from the Deliverables or Supplier's performance hereunder, or (b) claims by persons furnished by Supplier or any subcontractors under Worker's Compensation or similar acts. Before providing any Deliverables, Supplier shall procure public liability and contractual liability insurance against the foregoing risks and liabilities in accordance with such laws and regulations as shall apply at such place where the Supplier's obligations are being discharged. Upon request, Supplier shall present to Infinera policies, certificates or other evidence of such insurance with liability limits reasonably satisfactory to Infinera and naming Infinera as an additional insured; provided that the limits of liability or coverage in any such insurance shall not limit the risks and liabilities assumed by Supplier.

#### **12. Occupational Safety and Health Act**

This Section shall apply if the Infinera entity purchasing the Deliverables is incorporated in the United States. Supplier shall comply with the provisions of the Occupational Safety and Health Act of 1970 and the standards and regulations issued thereunder (collectively, "Act") and certifies that all Deliverables will conform to and comply with said Act. Supplier shall defend at its own expense, indemnify and hold Infinera, its agents, customers and their respective successors and assigns harmless from any damages arising from failure to comply with such Act.

#### **13. Compliance with Laws**

Supplier represents and warrants that it shall comply with all applicable laws, rules and regulations and procure any permits or licenses necessary to perform the Contract, including Infinera's Data Protection Standards terms and EU Standard Contractual Clauses, available at [Infinera data protection standards](#). Supplier shall hold Infinera, its agents, customers and their respective successors and assigns harmless from any liability, cost or expense arising from failure of such compliance. Any provisions, representations or agreements required by any law or regulation to be included in the contract resulting from acceptance of the PO are hereby incorporated by reference into these terms and conditions. While on the premises of Infinera or any of its affiliates (the "Premises"):

- a) Supplier shall comply with all rules and regulations while on and applicable to the Premises;

- b) Supplier shall be responsible for its personnel and agents while they are on the Premises whether or not any of their actions fall outside the scope and course of employment or engagement by Supplier; and
- c) Supplier shall ensure that its personnel and agents proceed directly to the site where Services are to be provided and do not enter any other part of the Premises, except as directed by Infinera.

**14. Taxes**

Supplier shall be responsible for all taxes (including withholding, value added, goods and services, excise, use or other taxes) pertaining to the production, sale, delivery or use of the Deliverables.

**15. Price and Payment Terms**

If the price is omitted on the face of the related purchase order, then Supplier's price shall be the lowest prevailing market price at the time Supplier acknowledges the order; but not higher than the price last quoted by Supplier to Infinera. If Infinera's purchase price is bound to a foreign exchange and a fluctuation in such exchange rate increases Infinera's purchase price by more than two percent (2%), then any fluctuations beyond such two percent (2%) limit shall be ignored. Supplier shall issue invoices after Infinera's receipt and acceptance of the pertinent Deliverable. Infinera shall pay undisputed invoices within sixty (60) days after Infinera's receipt of such invoice. Applicable taxes shall be stated separately on the invoice. The cash discount period, if any, shall date from Infinera's receipt of the invoice. Notwithstanding the same, Infinera may withhold all or part of such payment if Infinera determines that Supplier has failed to perform any part of its obligations. Supplier shall not impose any interest, fees or charges against such withheld payments. Unless otherwise agreed, Infinera shall make payment to Supplier in such mode and manner as Infinera shall determine.

**16. Title and Risk of Loss**

Title to Goods shall pass to Infinera upon delivery to the destination specified in the related purchase order, and such passing shall not constitute Infinera's acceptance of the Goods. Risk of loss shall be as dictated by the applicable Incoterm. All means of production (including but not limited to tools, models, equipment or raw materials) provided by Infinera to Supplier to be used for manufacturing or testing Deliverables shall remain the sole and exclusive property of Infinera.

**17. Nonexclusive Rights; Forecasts**

This Contract does not grant Supplier an exclusive privilege to sell Deliverables to Infinera nor any commitment to purchase Deliverables. Forecasts provided to Supplier by Infinera are nonbinding estimates only.

**18. Independent Contractor**

Supplier and Infinera are each engaged in an independent business. Each Party shall perform its obligations as an independent contractor and not as the agent, employee or servant of the other Party. Each Party shall be solely responsible for: (a) the employment, direction, supervision, compensation and discharge of its own employees, agents and subcontractors, including compliance with social security, withholding and all other applicable regulations; and (b) its own acts and those acts of its employees, agents and subcontractors.

**19. Environmental Compliance**

Supplier represents and warrants that the Deliverables and Supplier's performance hereunder shall comply with all applicable laws, statutes, regulations, rules, ordinances, directives and codes regarding the packaging, handling, use, storage, processing, transportation, treatment or disposal of Goods that are, or contain, hazardous or toxic wastes, substances or materials ("Hazardous Material"). Supplier shall provide advice or assistance to Infinera or its customers in the use and disposal of Hazardous Material. Supplier shall obtain all licenses, permits and authorizations from all governments or agencies that have, or may assert, jurisdiction over any aspects of Supplier's performance hereunder. Supplier shall notify Infinera or its customers at least thirty (30) days prior to shipment of any Goods containing Hazardous Material. Each self-contained unit or carrier shall be marked to identify the existence of Hazardous Material and its name. Infinera may terminate any order for Hazardous Material within thirty (30) days after such notification from Supplier without any liability to Infinera. Upon request, before shipping Goods or performing Services, Supplier will provide to Infinera a Material Safety Data Sheet pursuant to OSHA Hazardous Communication Standard, 29 CFR 1910.1200 describing any Hazardous Material used or intended to be used to perform a Service; provided that the Infinera entity purchasing the Deliverables is incorporated in the United States. For purposes of the Material Safety Data Sheet, "Hazardous Material" means any item that may be classified under either federal or state law as hazardous. The statement must describe the Hazardous Material in sufficient detail to allow Infinera to properly handle and dispose of the item. Supplier will immediately notify Infinera of any Goods sold that fail to comply with an applicable safety commission or (if the Infinera entity purchasing the Deliverables is incorporated in the United States) the Environmental Protection Agency. Supplier shall defend, indemnify and hold Infinera, its agents, customers and their respective successors and assigns harmless from any losses, fines and/or other penalties incurred, including but not limited to reasonable attorneys' fees, arising from its failure to comply with this Section.

**20. Information**

All specifications, drawings, sketches, schematics, models, samples, tools, computer or other apparatus, programs, technical or business information or data (written, oral or otherwise, and all copies thereof) of Infinera or its customers or any information

developed by Supplier at Infinera's request ("Infinera's Information") shall: (a) be considered confidential and proprietary, and used only by those Supplier employees with a need to know in order to assure Supplier's performance under this Contract; (b) remain Infinera's property; and (c) be returned to Infinera upon request. Information disclosed by Supplier shall not be considered confidential or proprietary, unless disclosed pursuant to a separate, executed Nondisclosure Agreement ("NDA") between the Parties.

#### 21. Force Majeure

Failure by either Party to fulfill its obligations shall not be deemed a breach of this Contract if that failure is due to causes that are outside the reasonable control of a Party and cannot be avoided by the exercise of due care ("Force Majeure"). Notice of Force Majeure shall be made promptly in writing to the other Party. The performance of a Party's obligations under this Contract shall be suspended for as long as Force Majeure exists. Each Party shall take reasonable steps to limit the effect of Force Majeure. If Force Majeure continues for more than six (6) months, then either Party shall have the right to terminate this Contract upon written notice.

#### 22. Limitation of Liability

INFINERA SHALL NOT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE, INDIRECT OR SPECIAL DAMAGES OR LIABILITIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO BUSINESS INTERRUPTION, LOST PROFITS, LOSS OF USE OR LOSS OF DATA, UNDER ANY THEORY OF LIABILITY AND EVEN IF INFINERA WAS ADVISED OF THE LIKELIHOOD OF SUCH DAMAGES OR LIABILITIES. IN NO EVENT SHALL INFINERA'S LIABILITY EXCEED THE NET PURCHASE PRICE PAID FOR THE PERTINENT DELIVERABLE UNDER THE CONTRACT.

#### 23. License

Supplier grants Infinera a royalty-free, fully paid, worldwide, irrevocable, perpetual, unrestricted license to use, modify, sell (directly and indirectly), sublicense, import, support and service any software or documentation portion of the Deliverables. Supplier grants Infinera the right to market and distribute, under Infinera's applicable labels and trademarks, the Goods, either alone or in combination with other equipment or material, unless otherwise agreed to by the Parties.

#### 24. C-TPAT Compliance

The Customs and Trade Partnership Against Terrorism (C-TPAT) program is administered by the U.S. Customs and Border Protection ("CBP") agency. CBP has partnered with the Trade community to strengthen international supply chains from the introduction of drugs, contraband, illegal human trafficking, even weapon of mass destruction (explosives, biological, nuclear or chemical agents). Therefore, Infinera requires Supplier to have reasonable security measures, as below.

- a) Supplier shall inform Infinera of Supplier's C-TPAT program membership status. If Supplier is not a C-TPAT participant, then Supplier shall take such reasonable measures as to ensure the physical integrity and security of all shipments to or on behalf of Infinera against the unauthorized introduction of harmful or dangerous materials, drugs, contraband, weapons, weapons of mass destruction, or unauthorized personnel in transportation conveyances or containers. Suppliers security measures must include, but are not limited to: (a) physical security of manufacturing, packing and shipping areas, and restrictions on access of unauthorized personnel to such areas; (b) personnel screening; and (c) development, implementation and maintenance of written procedures to protect the security and integrity of all shipments.
- b) Supplier shall use certified and validated C-TPAT transportation companies for off-shore shipments to the U.S. , unless otherwise approved by Infinera, or, in the case of non-U.S. transportation providers, such transportation providers must be participating in a trade security program sponsored by the government of the country of shipment.
- c) Where a Supplier outsources or contracts elements of their supply chain, the Supplier must work with their subcontractors to ensure that pertinent and reasonable security measures are in place and adhered to throughout their supply chain.
- d) Supplier acknowledges that it has reviewed its supply chain security procedures and certifies that its security procedures and their implementation are either in accordance with the general supply chain security recommendations at: <https://www.cbp.gov/border-security/ports-entry/cargo-security/ctpat> or the highest standards within the industry for similar Deliverables. Within ten (10) days of Infinera's written request, Supplier shall provide documentation, evidencing compliance with the security requirements described herein. Upon prior written notification to Supplier, Infinera, or its designee, may make reasonable inspection of Supplier's and its subcontractor's premises, in order to verify compliance with these terms.

#### 25. General

Remedies listed herein shall not prejudice Infinera's right to pursue any other rights or remedies at law or in equity. Waiver of a breach under this Contract shall not constitute a waiver of any other breach. If any provision of this Contract is invalid or unenforceable, then the remainder of the Contract shall not be affected. Supplier shall not publish or use any advertising, sales promotion, press releases or publicity matters relating to this Contract without Infinera's prior written approval. Section headings in this Contract are for convenience only and shall not affect the interpretation thereof. Words importing the singular also include the plural and vice versa. This Contract shall be governed by the laws of the following (excluding their conflict of laws provisions): (a) California, if the Infinera entity purchasing Deliverables is incorporated in the United States; or (b) Germany, in all other

instances. Neither the United Nations Convention on Contracts for the International Sale of Goods nor the Uniform Computer Information Transaction Act shall apply.

**26. Survival**

Sections 7, 9, 11, 19, 20, 22, 23 and any provision of this Agreement that, given its purpose, interpretation or context, logically should survive the expiration or termination of this Contract shall so survive.