



COMMERCIAL TERMS OF SALE

These Commercial Terms of Sale (“**Terms of Sale**”) are entered into by and between ADTRAN and you (“**you**” or “**Customer**”), and shall govern the purchase and licenses of ADTRAN Products and Services, unless ADTRAN and Customer enter into or have entered into another written agreement regarding the purchase and license of the specific ADTRAN Products or Services and such agreement is in effect at the time the applicable Purchase Order is received by ADTRAN (“**Existing Agreement**”), in which case the terms and conditions of the Existing Agreement shall govern the purchase and license of those ADTRAN Products or Services. “**ADTRAN**” means ADTRAN, Inc., on behalf of itself and its suppliers and licensors, or the ADTRAN affiliate identified on your order confirmation, invoice, or other form of purchase document entered into by you at the time you purchased the Products or Services. “**Customer**” shall include any of your affiliates that place an ADTRAN order, and “**ADTRAN**” shall include any ADTRAN affiliates with which such an order is placed.

THE SALE OF PRODUCTS AND SERVICES BY ADTRAN ARE SUBJECT TO THESE TERMS OF SALE REGARDLESS OF OTHER OR ADDITIONAL TERMS OR CONDITIONS THAT CONFLICT OR CONTRADICT THESE TERMS OF SALE IN ANY PURCHASE ORDER, DOCUMENT, OR OTHER COMMUNICATION. PREPRINTED TERMS AND CONDITIONS ON ANY CUSTOMER DOCUMENT (FOR EXAMPLE: PURCHASE ORDERS OR CONFIRMATIONS) AND/OR ADTRAN’S FAILURE TO OBJECT TO CONFLICTING OR ADDITIONAL TERMS WILL NOT CHANGE OR ADD TO THESE TERMS OF SALE.

1. DEFINITIONS.

“**Deliverables**” means tangible and intangible materials, including reports, studies, base cases, drawings, findings, manuals, procedures, and recommendations.

“**Documentation**” means user manuals, training materials, Product descriptions and specifications, technical manuals, license agreement, supporting materials, and other information relating to Products or Services offered by ADTRAN, whether distributed in print, electronic, CD-ROM, or video format.

“**Effective Date**” means the date an order is placed by Customer.

“**Hardware**” means the tangible ADTRAN product acquired by Customer from ADTRAN.

“**Price List**” is the price list(s) published by ADTRAN applicable to the relevant ADTRAN entity to which each Purchase Order is issued by Customer.

“**Products**” are, individually or collectively as appropriate, Hardware, Software, and Documentation listed on the then-current Price List.

“**Purchase Order**” is an order issued by Customer to ADTRAN for Products or Services to be purchased, licensed, or provided under these Terms of Sale.

“**Services**” means any and all services performed or to be performed by ADTRAN which includes Deliverables prepared by ADTRAN or its suppliers, licensors, or subcontractors in the course of performing the Services.

“**Software**” means the machine readable (object code) version of the computer programs made available by ADTRAN for license to Customer including firmware, and any copies made, bug fixes for, updates to, or upgrades thereof.

2. PRICES. Prices for Products and Services shall be those specified in ADTRAN’s then current Price List, less any applicable discount at the time of acceptance of the Purchase Order by ADTRAN, or in accordance with an applicable, valid written price quotation, if any, submitted by ADTRAN to Customer for such Products or Services. All prices are exclusive of any freight, handling and shipping insurance charges, taxes, fees and duties or other similar amounts, however designated, including without limitation value added, sales and withholding taxes which are levied or based upon the prices, charges, or upon these Terms of Sale. Customer shall pay any taxes related to Products and Services provided pursuant to these Terms of Sale (except taxes based on ADTRAN’s income) or shall present an exemption certificate acceptable to all relevant taxing authorities. Applicable taxes shall, to the extent practical, be billed as a separate item on the invoice.

3. ORDERS.

A. General. Not your Purchase Order, but each ADTRAN counter-offer, which incorporates these Terms of Sales, accepted by you (either expressly or implicitly by the payment of the corresponding price and costs) will be interpreted as a single agreement, independent of any other counter-offers.

B. Services. Customer may place Purchase Orders for the various Services offered by ADTRAN. Such Services shall be subject to these Terms of Sale, as well as the additional terms and conditions set forth in ADTRAN’s then-current applicable Services descriptions that describe the Deliverables and other terms applicable to such Services. ADTRAN reserves the right to subcontract Services to a third-party to provide Services to Customer.

C. Software. Customer may place Purchase Orders for Software offered by ADTRAN. Software shall be subject to these Terms of Sale, as well as the additional terms and conditions set forth in an End User License Agreement that Customer will be required to click-and-accept.

4. SHIPPING AND DELIVERY.

A. Shipping. All shipments under these Terms of Sale shall be EXW (‘Ex Works’) ADTRAN’s shipping facility. Title to, and risk of loss or damage to Product shall pass to Customer upon delivery to the carrier at ADTRAN’s shipping facility. ADTRAN may ship all Purchase Orders up to seven (7) days early.

B. No Liability. ADTRAN SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR PENALTY FOR DELAY IN DELIVERY OR FOR FAILURE TO GIVE NOTICE OF ANY DELAY. ADTRAN SHALL NOT HAVE ANY LIABILITY IN CONNECTION WITH SHIPMENT, NOR SHALL THE CARRIER BE DEEMED TO BE AN AGENT OF ADTRAN.

C. All Sales Final. ADTRAN does not accept returns for credit. In the event ADTRAN ships a Product other than as specified in the Purchase Order and such Product is unopened, the Customer may notify ADTRAN of the error within 5 calendar days of the delivery of the Product to Customer and the Product is to be returned in accordance with ADTRAN’s then current RMA policy and procedures. ADTRAN will ensure that any such shipment error so identified will be corrected.

5. PAYMENT. Unless ADTRAN agrees in its sole discretion to establish for or continue to offer to Customer a credit account, payment terms are prepay only and shipments will not be made or Services performed until payment is received in full. Customer shall remit payment no later than 5 business days prior to the scheduled shipment date or Services effective date. Payment of the corresponding price and costs shall be made in the currency identified by ADTRAN in its quote or invoice. In no case shall Customer be entitled to offset, defer, or deduct any invoiced amounts.

6. PROPRIETARY RIGHTS.

A. Hardware, Software, and Services. All right, title, and interest in the intellectual property (including all copyrights, patents, trademarks, trade secrets and trade dress) embodied in the Hardware and Software, as well as the methods by which the Services are performed and the processes that make up the Services, shall belong solely and exclusively to ADTRAN or the applicable suppliers or licensors, and you shall have no rights whatsoever in any of the above, except as expressly granted in these Terms of Sale. The Hardware and Software are protected pursuant to copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. You may not modify, remove, delete, augment, add to, publish, transmit, adapt, translate, participate in the transfer or sale of, create derivative works from, or in any way exploit any of the Hardware or Software, in whole or in part.

B. Deliverables. ADTRAN and its applicable suppliers or licensors will retain exclusive ownership of all Deliverables, and will own all intellectual property rights, title, and interest in any ideas, concepts, know-how, documentation and techniques associated with such Deliverables. Subject to payment in full for the applicable Services, ADTRAN grants you a non-exclusive, non-transferable, royalty-free right to use the Deliverables solely in the country or countries in which you do business, solely for your internal use, and solely as necessary for you to enjoy the benefit of the Services.

7. WARRANTIES.

A. Warranties of Hardware. The warranties for ADTRAN Hardware may be found at www.adtran.com and are incorporated herein by this reference. Notwithstanding any other terms of these Terms of Sale, ADTRAN’s sole and exclusive warranty and obligations for ADTRAN Hardware are set forth in this Section 7.A (Warranties of Hardware).

B. Warranties of Services. ADTRAN warrants to Customer that Services provided hereunder by ADTRAN, or its agents or subcontractors, shall be performed in a workmanlike manner consistent with industry standards and will

conform to applicable specifications upon installation and for 30 calendar days thereafter. Customer's sole and exclusive remedy for breach of this warranty shall be re-performance of the Services. The provision of Services under these Terms of Sale shall not extend the warranties provided with any Hardware purchased or Software licensed by Customer.

C. Warranties of Software. ADTRAN warrants all Software for a period of 90 days subject to the applicable license agreement.

8. CONFIDENTIAL INFORMATION.

ADTRAN may make available to Customer certain oral or written information including, but not limited to, engineering and technical data, test and analysis data, marketing, application and customer information, price lists, product and other specifications (including but not limited to the Products), and new product information ("Confidential Information"). Such information may be deemed Confidential and so marked or identified as such at the time of its transmission to Customer, and neither Customer nor its agents, employees, assigns, or successors in interest shall disclose any such Confidential Information to any third party(ies) without the prior written consent of the ADTRAN. All such Confidential Information shall, at the option of ADTRAN, be immediately returned to ADTRAN or destroyed by Customer upon ADTRAN's written request. ADTRAN may seek interim injunctive relief in any court of appropriate jurisdiction with respect to any alleged breach of Customer's obligations under this Section.

A. Definition. In connection with these Terms of Sale, each party may have access to or be exposed to information of the other party that is not generally known to the public, such as software, product plans, pricing, marketing and sales information, customer lists, "know-how," or trade secrets, which may be designated as confidential or which, under the circumstances surrounding disclosure, ought to be treated as confidential (collectively, "**Confidential Information**").

B. Restrictions. The receiving party ("**Receiving Party**") may use the Confidential Information solely for the purpose of furtherance of the business relationship between the parties, as provided in these Terms of Sale and shall not disclose the Confidential Information to any third party, other than to employees of the Receiving Party who have a need to have access to and knowledge of the Confidential Information, solely for the purpose authorized above. Each party shall take appropriate measures by instruction and agreement prior to disclosure to such employees to assure against unauthorized use or disclosure. Confidential Information disclosed to the Receiving Party by any affiliate or agent of the disclosing party ("**Disclosing Party**") is subject to these Terms of Sale.

C. Exceptions. The Receiving Party shall have no obligation with respect to information that (i) was rightfully in possession of the Receiving Party without any obligation of confidentiality prior to receiving it from the Disclosing Party; (ii) is, or subsequently becomes, legally and publicly available without breach of these Terms of Sale; (iii) is rightfully obtained by the Receiving Party from a source other than the Disclosing Party without any obligation of confidentiality; (iv) is developed by or for the Receiving Party without use of the Confidential Information and such independent development can be shown by documentary evidence; or (v) is disclosed by the Receiving Party pursuant to and in accordance with a valid order issued by a court or government agency, provided that the Receiving Party provides (y) prior written notice to the Disclosing Party of such order and (z) the Disclosing Party prior opportunity to oppose or restrict such disclosure.

D. Right, Title, and Interest in Confidential Information. Each party shall retain all right, title, and interest to such party's Confidential Information. No license to any intellectual property (or application for intellectual property protection) is either granted or implied by the conveying of Confidential Information. The Receiving Party shall not reverse-engineer, decompile, or disassemble any software disclosed to it and shall not remove, overprint, or deface any notice of copyright or confidentiality, trademark, logo, legend, or other notices of ownership from any originals or copies of Confidential Information it obtains from the Disclosing Party or from any copies the Receiving Party is authorized to make.

E. Injunctive Relief. The Receiving Party acknowledges and agrees that, in the event of a breach or threatened breach of any of the foregoing provisions in this Section 8 (Confidential Information), the Disclosing Party will have no adequate remedy in damages and, accordingly, will be entitled to seek injunctive relief against such breach or threatened breach in addition to any other remedies available at law or in equity. The Receiving Party waives the defense that an adequate remedy at law exists for any breach or threatened breach of these Terms of Sale and waives the requirement of a bond for injunctive relief as a remedy to protect against any breach or threatened breach of these Terms of Sale.

G. Return of Confidential Information. Upon written demand by the Disclosing Party, the Receiving Party shall: (i) cease using the Confidential Information, (ii) return the Confidential Information and all copies, notes, or

extracts thereof to the Disclosing Party within 7 calendar days of receipt of demand, and (iii) upon request of the Disclosing Party, certify in writing that the Receiving Party has complied with the obligations set forth in this Section 8.G (Return of Confidential Information).

9. TERM; SURVIVAL.

A. Term. These Terms of Sale shall commence on the Effective Date and continue thereafter until all Services and Software licenses and applicable Product warranties have expired or been terminated.

B. Survival. The terms of these Terms of Sale that would, by their nature, survive termination or expiration, including, without limitation, the terms of Section 1 (Definitions), Section 5 (Payment), Section 6 (Proprietary Rights), Section 7 (Warranties), Section 8 (Confidential Information), this Section 9.B (Survival), Section 10 (Limitation and Exclusion of Liability), and Section 11 (General), will survive any termination or expiration of these Terms of Sale.

10. LIMITATION AND EXCLUSION OF LIABILITY.

A. No Limits or Exclusions of Liability. NOTHING IN THESE TERMS OF SALE LIMITS OR EXCLUDES THE LIABILITY OF CUSTOMER TO ADTRAN ARISING OUT OF: (i) CUSTOMER'S BREACH OF SECTION 6 (PROPRIETARY RIGHTS); (ii) CUSTOMER'S BREACH OF SECTION 8 (CONFIDENTIAL INFORMATION); OR (iii) ANY AMOUNTS DUE TO ADTRAN UNDER THESE TERMS OF SALE.

B. Total Aggregate Liability. SUBJECT TO SECTION 10.A (NO LIMITS OR EXCLUSIONS OF LIABILITY) ABOVE AND SECTION 10.C (EXCLUSIONS) BELOW, EACH PARTY'S TOTAL AGGREGATE LIABILITY IS LIMITED TO THE MONEY PAID TO ADTRAN UNDER THESE TERMS OF SALE DURING THE 12 MONTH PERIOD PRIOR TO THE EVENT THAT FIRST GAVE RISE TO SUCH LIABILITY.

C. Exclusions. SUBJECT TO SECTION 10.A (NO LIMITS OR EXCLUSIONS OF LIABILITY), AND NOTWITHSTANDING ANYTHING ELSE IN THESE TERMS OF SALE TO THE CONTRARY, NEITHER PARTY WILL BE LIABLE FOR ANY: (i) SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES; (ii) LOSS OF ANY OF THE FOLLOWING: PROFITS, REVENUE, BUSINESS, ANTICIPATED SAVINGS, USE OF ANY PRODUCT OR SERVICE, OPPORTUNITY, GOODWILL OR REPUTATION; OR (iii) LOST OR DAMAGED DATA.

11. GENERAL.

A. Export Control.

(i) Customer hereby acknowledges that the products, services, and technical data, and the technology or direct products thereof supplied by ADTRAN under these Terms of Sale ("**Products and Technology**") are subject to export controls under the laws and regulations of the United States of America ("**U.S.**"), including the Export Administration Regulations ("**EAR**"). Customer shall comply with such laws and regulations governing use, export, re-export, and transfer of ADTRAN Products and Technology and, without limiting the generality of this Section 11.A (Export Control), agree to obtain all licenses, permits or approvals required by any government. ADTRAN and Customer each agree to provide the other such information and assistance as may reasonably be required by the other in connection with securing such authorizations, licenses, approvals, and permits, and to take timely action to obtain all required import and export documents.

(ii) Customer will not use, distribute, transfer, or transmit any product, software, or technical information provided under these Terms of Sale (even if incorporated into other products) except in compliance with U.S. Export Laws and U.S. Customs Regulations ("**Export Laws**"). Customer will not, directly or indirectly, export or re-export items covered under these Terms of Sale to any country which is in the current list of prohibited countries, or to any prohibited "Specially Designated National" or "Blocked Persons" specified in the applicable Export Laws. Information regarding such regulations may be found at the following website: <http://www.bis.doc.gov/index.php/regulations>.

(iii) Customer understands and agrees that ADTRAN has no control over, and shall not be responsible for, the time taken by the governmental agencies to process the licenses required to export and/or re-export Products ordered or requested by Customer. ADTRAN agrees to promptly notify Customer, and Customer agrees to promptly notify ADTRAN, in writing of any written authorization issued by the Treasury Department, U.S. Department of Commerce Office of Export Licensing to export or re-export any such items referenced in these Terms of Sale. The obligations stated in this Section 11.A (Export Control) will survive the expiration, cancellation, or termination of these Terms of Sale or any other related agreement.

B. Anti-Corruption. If Customer is an authorized ADTRAN reseller or distributor, Customer acknowledges that it has been made aware of and

understands that ADTRAN is subject to anti-corruption and anti-bribery laws including but not limited to the United States Foreign Corrupt Practices Act, and hereby agrees to comply with all applicable anti-bribery and anti-corruption laws. Without limiting the foregoing, Customer and its employees and agents shall not directly or indirectly make any offer, payment, or promise to pay; authorize payment of; nor offer a gift, promise to give, or authorize the giving of; anything of value for the purpose of influencing any act or decision of any official of any foreign government, the United States Government or any political party or any other person or entity that is contrary to the provisions of anti-corruption laws (including a decision not to act) or inducing such a person to use his or her influence to affect any such government act or decision in order to assist ADTRAN or Customer in obtaining, retaining, or directing any such business. Customer agrees to (i) submit to ADTRAN, when requested, a certification provided by ADTRAN certifying that Customer has not engaged in any act prohibited by anti-corruption laws, (ii) submit sufficient documentation to substantiate the compensation due Customer, including records that may reasonably be requested by ADTRAN from time to time, (iii) permit ADTRAN to inspect Customer's books and records related to performance of these Terms of Sale upon reasonable notice, and (iv) notify ADTRAN immediately of any extortive solicitation, demand or other request for anything of value, by or on behalf of any foreign official or employee of a foreign government, relating to the parties' activities in relation to these Terms of Sale.

C. Compliance with Laws. In its performance of these Terms of Sale, and any use, manufacture, transfer, or sale of Products related to these Terms of Sale, Customer and its affiliates, and their directors, officers, and employees shall comply with all applicable laws, directives, or regulations (collectively "Applicable Law") including, but not limited to, those set forth herein, and shall obtain all applicable licenses, permits, and approvals required by any governmental authority. Customer shall defend, indemnify, and hold harmless ADTRAN and ADTRAN's affiliates, and their directors, officers, employees, agents, representatives, intended beneficiaries, corporate shareholders, attorneys, subcontractors, assigns, and successors-in-interest, with respect to any claim relating to or alleging violation of any Applicable Law by Customer or its affiliates, or their directors, officers, or employees. This indemnity obligation shall include reasonable attorneys' fees incurred by the indemnitees relating to any such claim, and survive termination of these Terms of Sale.

D. Choice of Law. The validity, interpretation, and performance of these Terms of Sale shall be controlled by and construed under the laws of the State of Alabama, United States of America, as if performed wholly within the state and without giving effect to the principles of conflicts of law, and the state and federal courts of Alabama shall have exclusive jurisdiction over any claim arising thereunder. The parties specifically disclaim the application of the UN Convention on Contracts for the International Sale of Goods. Notwithstanding the foregoing, either party may seek interim injunctive relief in any court of appropriate jurisdiction with respect to any alleged breach of such party's intellectual property or proprietary rights.

E. Limitation Period. NEITHER PARTY SHALL BE LIABLE FOR ANY CLAIM BROUGHT MORE THAN 2 YEARS AFTER THE CAUSE OF ACTION FOR SUCH CLAIM FIRST AROSE.

F. Force Majeure. Except for the obligation to pay monies due and owing, neither party shall be liable for any delay or failure in performance due to events outside the defaulting party's reasonable control, including, without limitation, acts of God, earthquakes, labor disputes, industry-wide shortages of supplies, actions of governmental entities, riots, war, terrorism, fire, epidemics, or delays of common carriers or other circumstances beyond its reasonable control. The obligations and rights of the defaulting party shall be extended for a period equal to the period during which such event prevented such party's performance.

G. No Waiver. The waiver by either party of any right provided under these Terms of Sale shall not constitute a subsequent or continuing waiver of such right or of any other right under these Terms of Sale.

H. Assignment. Neither these Terms of Sale nor any rights or obligations under these Terms of Sale shall be assigned by a party without the other's prior written consent, which will not be unreasonably withheld or delayed. Any attempted assignment shall be void and of no effect. Notwithstanding the foregoing, the parties may assign these Terms of Sale and any right or obligation under it without the other's approval, to any affiliate. Notwithstanding any assignment by Customer, Customer shall remain liable for the payment of all amounts due under these Terms of Sale.

I. Severability. In the event that part of or one or more terms of these Terms of Sale become or are declared to be illegal or otherwise unenforceable by any court of competent jurisdiction, each such part or term shall be null and void and shall be deemed deleted from these Terms of Sale. All remaining terms of these Terms of Sale shall remain in full force and effect. Notwithstanding the foregoing, if this Section 11.I (Severability) is invoked and, as a result, the value of these Terms of Sale is materially impaired for either party, as determined by

such party in its sole discretion, then the affected party may terminate these Terms of Sale by written notice with immediate effect to the other.

J. Attorneys' Fees. In any suit or proceeding relating to these Terms of Sale the prevailing party will have the right to recover from the other its costs and reasonable fees and expenses of attorneys, accountants, and other professionals incurred in connection with the suit or proceeding, including costs, fees and expenses upon appeal, separately from and in addition to any other amount included in such judgment. This provision is intended to be severable from the other provisions of these Terms of Sale, and shall survive expiration or termination and shall not be merged into any such judgment.

K. No Agency. These Terms of Sale do not create any agency, partnership, joint venture, or franchise relationship. No employee of either party shall be or become, or shall be deemed to be or become, an employee of the other party by virtue of the existence or implementation of these Terms of Sale. Each party hereto is an independent contractor. Neither party shall assume or create any obligation of any nature whatsoever on behalf of the other party or bind the other party in any respect whatsoever.

L. Entire Agreement. These Terms of Sale constitute the entire agreement between the parties concerning the subject matter of these Terms of Sale and replace any prior oral or written communications between the parties, all of which are excluded. There are no conditions, understandings, agreements, representations or warranties, expressed or implied, that are not specified herein. These Terms of Sale may be modified only by a written document executed by the parties hereto.

N. Notices. All notices required or permitted under these Terms of Sale will be in writing and will be deemed given 1 calendar day after deposit with a commercial express courier specifying next day delivery (or 2 calendar days for international courier packages specifying 2-day delivery), with written verification of receipt. All communications to ADTRAN will be sent to the following address: ADTRAN, Inc., 901 Explorer Boulevard, Huntsville, Alabama, 35806 (Attn: Legal Affairs and Contracts Department). All communication to Customer will be sent to the address to which the last invoice under these Terms of Sale was sent before notice is served. Notwithstanding the foregoing, notices regarding changes in pricing, Software license terms, policies or programs may be by posting on ADTRAN.com or by e-mail or fax.

O. Headings. Headings of sections have been added solely for convenience of reference and shall not be deemed part of these Terms of Sale.

P. Engineering Changes. ADTRAN reserves the right to make progress and design changes in Products ordered hereunder without prior approval or notification to you and without incurring any obligations or liability to make the same changes in Products previously sold to you.

Q. Updates. ADTRAN reserves the right to update these Terms of Sale at any time, effective upon posting an updated version at www.adtran.com; however, your rights and obligations shall be as provided in the version of these Terms of Sale available to you at the time of your purchase of Products or Services.

R. English Language. These Terms of Sale have been written in the English language, and the parties agree that the English version will govern.