

Cisco Technology Migration Program

Terms and Conditions

Program Participant and Insight (or "Partner") agree to comply with the requirements set forth in these terms and conditions (the "Terms and Conditions"). These Terms and Conditions are specific to the Program and are in addition to any other contracts executed between Insight and the Program Participant (the "Sales Contracts"). In case of a conflict between the Sales Contracts and these Terms and Conditions, the latter shall prevail with regard to the subject matter herein.

At its discretion, Insight may require the Program Participant to provide a signed hard-copy of any forms to be used in connection with the Program. Insight may reject incomplete or unexecuted forms at its discretion; no order will be processed until all documents are complete and executed.

1. Definitions:

Credits: means the portion of the purchase price that Insight discounts Program Participant in the CAF. Credits benefit the End User, who may only use the Credits for the purchase of New Product. Credits are awarded for the return of the Trade-In Product.

Credit Form (CAF): means the Insight-issued document that identifies the Credits available to the End User. The CAF is compiled by Insight according to the required information provided by the End User. The Program Participant hereby declares and warrants that all information provided to Insight to complete the CAF is complete, accurate and truthful.

End User: means the final purchaser or licensee of New Product that: i) has acquired New Product for its own internal use and not for resale, remarketing or distribution; ii) is identified as such purchaser or licensee by the Program Participant in its Purchase Order for New Product to Insight; and iii) is identified as the End User on the CAF. For the purposes of the Program, each affiliate of a group of companies is considered a different End User. An entity that performs stocking, sparing or warehousing activities for third parties, or procures Products or services for delivery to third parties is not an eligible End User under the Program.

Hardware: means the tangible product made available by Cisco through Insight to Program Participant.

New Product: means the specific new (not refurbished) Cisco Product made available by Insight under the Program and against which applicable Credits will be applied.

Partner: means an authorized participant of the Cisco Channel Partner Program, which includes any Cisco Registered Partner.

Product: means, individually or collectively as appropriate, Hardware, licensed Software, documentation, developed products, supplies, accessories, and other commodities related to of the foregoing.

Program Participant: means an End User or participant in the Program with the direct relationship with Insight, who submits the required Purchase Order, CAF or other required documentation, is responsible for the return of Trade-In Product, and is granted Credits under the Program.

Purchase Order: means an order issued by Program Participant to Insight for the purpose of purchasing New Product.

Registered Partner: means an entity recognized by Cisco as having completed the Partner registration process for the then-current Cisco Channel Partner Program.

Software: is the machine readable (object code) version of computer programs made available by Cisco through Insight for license by Program Participant. Software includes any copies, updates to, or upgrades thereof.

Trade-In Product: means the Product that Program Participant is returning to Cisco in exchange for Credits to be used for the purchase of New Product, as authorized by Insight under the Program.

2. Rules of the Program:

A. The Program is available only to eligible Program Participants in accordance with these Terms and Conditions and the then-current requirements of the Program. The Program allows

eligible Program Participants to return to Cisco Trade-In Product and receive Credit from Insight to be applied to Program Participant's purchase of New Product at the time of purchase, and in anticipation of such return.

- B. Credits are granted by Insight against the purchase amount of the New Product after applying the Program Participant's discount according to the relevant Sales Contract.
- C. Unless otherwise authorized by Insight, Credits may not be combined with any other Cisco programs, promotions or discounts, except as otherwise described or approved in writing by a duly authorized Insight representative.
- D. The Credits will not be retroactively applied to Purchase Orders previously submitted and accepted by Insight.
- E. Only one CAF per Purchase Order of New Product will be accepted. A single CAF may not be used on multiple Purchase Orders of New Products.
- F. The Program Participant hereby represents and warrants that: (i) the Program Participant has full and clear title to the Trade-In Product; ii) Trade-In Product is not leased from, rented, or owned, whether totally or partially by any other person, including any other affiliate of the same group of companies of the Program Participant or the End User, or stolen; and (iii) that the Program Participant has all rights and authorizations required under all applicable laws and regulations to freely return the Trade-In Product and submit it through the Program.

Program Participant agrees that by accepting Credits, (i) Program Participant is transferring all of its rights in the Trade-In Product to Cisco; and (ii) possession will be transferred within the 120 day term referred in Section 2.H below. Program Participant will undertake the transfer of title and possession in accordance with all applicable laws and regulations. All related costs with such transfer, including taxes and fees of any kind, whether arising in connection of the transfer of the Trade-In Product and/or any intermediation services by Program Participant, shall be borne by the Program Participant. Program Participant shall defend, hold harmless and indemnify Insight from any and all liability, loss, damages and claims (including third party claims), whether based upon contract, breach of warranty, negligence or otherwise, and related costs, attorneys' fees, and expenses at any time arising out of or resulting from any misrepresentation under or breach of this Section 2.F.
- G. Program Participant certifies that the specific New Products listed on the Purchase Order will only be delivered to the same End User that is the source of the Trade-In Product, and that said New Products will not be transferred, in any manner, to a different person or entity other than the End User stated on the CAF. Additionally, Program Participant hereby certifies that: i) the Trade-In Product has been in use in the End User network to the issuance of the Purchase Order to Insight for the New Product; ii) that the Trade-In Product is sent to Cisco or a location designated by Insight in the same working condition in which it was removed from End User's network, with all its components and properly packaged to prevent damage in transit; iii) that the Trade-In Product has not been disassembled in any manner; and iv) that all New Products purchased through the Program will be installed in the network of the End User stated on the CAF and that the New Product will not be destined for stocking purposes, or resale or distribution to an End User other than the one stated on the CAF.

Equipment for Managed or Provisioned Services: Program Participant must specifically identify in the Purchase Order or CAF, whichever the case may be, if a Trade-In Product has been utilized by a Partner to provide Managed Services. For the

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purposes of these terms, "Equipment for Managed Services" means Products used by a Partner to provide services to a dedicated End User where title to such Products is not transferred by the Partner to such End User, including Products located at an End User site (customer premise equipment). In the case of Trade-In Products that have been used in the provision of Managed Services, and in addition to the representations set forth in the first paragraph of this Section 2.G, Program Participant certifies that the New Product will be deployed for the provision of Managed Services to the same End User that received service through the Trade-In Product prior to the issuance of the Purchase Order to Insight for the New Product.

- H. **Trade-In Product Return. All Trade-In Products must be returned to Cisco, within 120 days after shipment of the New Product to Program Participant.** Failure by the Program Participant to return the Trade-In Product within 120 days of shipment of New Product will entitle Insight to pursue any of the rights and remedies set forth in Section 2.K below.

Program Participant will return only Trade-In Product, as defined by the terms of the Program and as included on the CAF or Purchase Order, as the case may be. Further, Program Participant will not return any Trade-In Product that is or may be suspected of being contaminated with chemicals, biological agents or other substances that are not original to the manufacturing process of the Trade-In Product. Insight is not liable for the care, control, custody or return of any product that is not specifically stipulated by the Program. At Insight's sole discretion Insight may charge the Program Participant for any and all costs associated with the handling and disposal of ineligible product, including, but not limited to, shipping the ineligible product back to Program Participant. Program Participant assumes all responsibility for the erasure of any proprietary or confidential information from Trade-In Product. Insight assumes no responsibility for protection of such information.

- I. The New Product listed in the Purchase Order issued by the Program Participant to Insight must match the New Products listed on the CAF or quote issued by Insight.
- J. Program Participant will provide Insight with the complete name and address of the End User in all the forms to be used in the Program, including, but not limited to: (i) the applicable Purchase Order for New Product issued to Insight, and (ii) the CAF. Program Participant shall provide this information within five (5) calendar days of the date of any request from Insight.
- K. At Insight's discretion and without prejudice to any additional rights and remedies that Insight may have under applicable law, the parties expressly agreed that any violation of these Terms and Conditions may result in:
- i. An invoice for the full amount of Credits assigned to any unreturned Trade-In Products, or an invoice for the full price of the New Products at the time when the Purchase Order was submitted by Program Participant to Insight;
 - ii. Immediate suspension of Program Participant from participation in the Program; and/or
 - iii. Immediate removal of the Program Participant from the Program.

In addition to its other rights and remedies, Insight reserves the right to terminate Program Participant from the Program and indefinitely hold back any Credits pending under the following circumstances: (a) submission of false, misleading or incomplete information; or (b) the fraud or abuse of this Program.

Program Participant acknowledges that Insight may have preexisting termination rights under its existing contracts with the Program Participant, including Sales Contracts, that it may choose to exercise in the event of a material breach of these Terms and Conditions by the Program Participant.

3. **Limitation of Liability:** Insight will not be will be liable for any indirect, special, incidental or consequential damages arising under the Program or the Terms and Conditions regardless of the form of action or theory of relief, even if advised of the possibility of such damages. Any liability of Insight for claims arising under the Program or these Terms and Conditions will be limited to the Credits received by the End User from Insight under the Program during the six (6) months prior to the event or circumstances giving rise to such liability. This limitation of liability is cumulative and not per incident.
4. **Miscellaneous:**
 - A. **Audit.** Without prejudice of any other provision contained in the Sales Contracts, Program Participant will keep full, true, and accurate records and accounts, in accordance with Generally Accepted Accounting Principles, of each Trade-In Product submitted and New Product purchased under the Program, including serial numbers, software usage, and transfer and export records. Insight may, at any time, conduct an audit of such records to verify Program Participant's compliance with the Program. Program Participant shall make these records available for audit by Insight, or its independent accountants, upon seven (7) calendar days prior written notice. Such audit shall occur during regular business hours and at those locations where Program Participant maintains relevant records. Program Participant shall bear all costs of any audit in which Program Participant's violation of the Program is evidenced, as well as all costs and fees incurred by Insight in collecting this amount. Program Participant agrees to be invoiced for these amounts and to submit payment within seven (7) calendar days of the date of such invoice.
 - B. **Cisco Reservation of Rights.** Program Participant acknowledges that Cisco may partially or totally add to, modify or discontinue the Program, without notice. All New Products are subject to availability, and all prices are subject to change without notice prior to acceptance of quote. This Program is void where prohibited by law or Cisco policies.
 - C. **Third Party Claims.** Program Participant shall indemnify and hold harmless Insight for any third party claim that Insight suffers in connection with Program Participant's participation in this Program and Program Participant's performance of, or failure to perform, all obligations imposed by any applicable law or these Terms and Conditions.
 - D. **Assignment.** Neither these Terms and Conditions nor any rights under these Terms and Conditions shall be assigned or otherwise transferred by Program Participant (by operation of law or otherwise) without Insight's prior written consent. Insight shall have the right to assign all or part of these Terms and Conditions to any of its affiliates without Program Participant's approval, provided they are an authorized Cisco Partner. These Terms and Conditions shall bind and inure to the benefit of the successors and permitted assigns of the parties.