



## **PURCHASE TERMS AND CONDITIONS**

TINTRI BY DDN, INC.'s products and services include hardware equipment ("Hardware") and software in any form ("Software") (each and collectively "Product" or "Products"), and support services ("Support Services"), installation services ("Installation Services") and professional services ("Professional Services") (each and collectively "Service" or "Services").

The use of Products and Services by any person or entity ("Customer") is governed solely by this agreement (this "Agreement") which consists of: (i) the Quote (defined below); (ii) these Purchase Terms and Conditions ("Purchase Terms and Conditions"); (iii) the End User License Agreement (the "EULA"); and (iv) the Support Services Terms and Conditions, all of which are available at <https://tintri.com/company/support/vmstore-support/>. If there is a conflict among any of the foregoing, priority shall be given in order to the: Quote, Purchase Terms and Conditions, the EULA and the Support Services Terms and Conditions. As used in this Agreement, "Tintri" means TINTRI BY DDN, INC., a Delaware corporation.

1. **ORDERING.** Tintri may submit a quote to Customer containing quantity, pricing and other ordering information ("Quote"). Customer will be deemed to have accepted a Quote when Customer either: (i) signs and returns the Quote; (ii) issues a purchase order ("PO") per the Quote; or (iii) sends Tintri an email or other written acceptance referring to the Quote. The foregoing is an "Order." Customer agrees that any terms and conditions inconsistent with or in addition to this Agreement, including without limitation any PO terms and conditions, are rejected and null and of no effect, even if Tintri accepts, acknowledges or ships Products in response to the Order. Each Order is complete when Tintri ships the Products, and for Software provided separately from Hardware when Tintri makes the Software available.

2. **PAYMENT.** Tintri will invoice Customer after the Order is complete, and Customer will pay the invoice and pay or reimburse Tintri for all related taxes, withholdings, duties and assessments, except for taxes based on Tintri's net income. Amounts are due in the currency stated in the Order, as applicable, in full thirty (30) days after the date of invoice, with interest accruing thereafter at the lesser of 1.5% per month or the maximum permitted by law. Payment shall be made free of any currency controls or other restrictions, by check or wire transfer, to the address or bank account designated by Tintri. Tintri may suspend shipments of Products or performance of Services if Customer fails to make payment when due. Tintri reserves and Customer grants to Tintri a purchase money security interest in the Products sold and the proceeds thereof until Customer has paid the invoice.

3. **SHIPMENT.** Shipping terms for orders placed with Tintri are: (i) FCA (Incoterms 2020) origin; (ii) Tintri will pre-pay and invoice freight to Customer per the applicable quote; and (iii) for shipments outside the United States, Customer is responsible for clearing the goods for import and paying all formalities, duties, taxes, and other charges upon import. Title for the hardware and risk of loss will pass to Customer upon delivery to the carrier at the point of origin. All scheduled shipment dates are estimates only and Tintri shall not be obligated to incur any expedited delivery charges, and Tintri is not liable for any loss or damage or penalty resulting from delay.

4. **SOFTWARE.** Software is licensed to Customer, not sold. Terms such as "sell" and "purchase" apply only to the extent the Products consist of Hardware items other than Software. By using any Software, Customer agrees to be bound by and abide by the terms of the EULA. Tintri grants Customer a limited, personal, non-sublicensable, non-transferable, non-exclusive license to use the Software only for Customer's internal use as part of the Product in which it is contained or for which it is provided and only in accordance with Tintri's official documentation. Customer expressly acknowledges and agrees that Customer has no right to and Customer will not sell, transfer, or license any Software to any third party. This Agreement does not give Customer any rights not expressly granted herein.

5. **SOFTWARE RESTRICTIONS.** Customer will not, nor permit anyone or any third party to, directly or indirectly: (i) copy (other than for back-up purposes), modify, or distribute the Software; (ii) reverse engineer, disassemble, decompile or otherwise attempt to discover the source code or structure of the Software (except to the extent the foregoing restriction is expressly prohibited by applicable local law); (iii) rent, lease, or use the Software for or in timesharing, service bureau purposes or application service provider purposes or otherwise on behalf of any third party; (iv) use, test or analyze the Software for comparison or competitive testing or "benchmarking" (except for



Customer's confidential internal purposes) or publish, disclose or disseminate the results thereof; (v) make available Software in any form to anyone other than Customer's employees or contractors who agree in writing to be bound by terms at least as protective of the Software and Tintri as those in this Agreement; or (vi) sublicense, assign, distribute, make available, pledge, lease, rent, share or otherwise transfer Software to an Affiliate or a third party. Customer will maintain and not remove or obscure any proprietary notices on the Software. As between Customer and Tintri, title, ownership rights, and intellectual property rights in and to the Software, and any copies or portions thereof, shall remain with Tintri and Tintri's suppliers or licensors. The Software is protected by copyright laws and treaties. The Software may be distributed with certain independent code that is licensed under the GNU General Public License ("GPL"), the GNU Library/Lesser General Public License ("LGPL"), the Apache License Version 2.0 ("Apache License") and/or other open-source licenses ("Open-Source Code").

6. SERVICES. Customer is not entitled to Services unless Customer has ordered and paid for Services as provided in the Order. Tintri's obligations with respect to Support Services, Installations Services and Professional Services are described in the Support Services Terms and Conditions which can be found at <https://tintri.com/company/support/vmstore-support/>. Tintri's Support Services levels and contact information is also available at <https://tintri.com/company/support/vmstore-support/>.

7. LIMITED WARRANTIES; WARRANTY DISCLAIMER; AND LIMITATION OF LIABILITY. TINTRI'S LIMITED WARRANTIES, WHICH INCLUDE TINTRI'S WARRANTY DISCLAIMER AND TINTRI'S LIMITATION OF LIABILITY, IF NOT ATTACHED HERETO, MAY BE FOUND AT <HTTPS://TINTRI.COM/COMPANY/SUPPORT/VMSTORE-SUPPORT/>. THE LIMITED WARRANTIES ARE HEREBY INCORPORATED INTO AND MADE AN INTEGRAL PART OF THESE PURCHASE TERMS AND CONDITIONS.

8. INDEMNIFICATION. Tintri will defend or settle any action brought against Customer by a third party to the extent it is based upon a third-party claim that a Product infringes any patent or copyright existing in the United States of America. Tintri will pay any actual costs and damages made in a written settlement negotiated by Tintri or awarded by a court of competent jurisdiction against Customer in final judgment resulting from the claim, provided Customer: (i) gives Tintri prompt written notice of the claim; (ii) grants Tintri sole control of the defense and settlement of the claim; (iii) cooperates in response to Tintri's requests for information, assistance and authority in connection with the foregoing; and (iv) is not in breach of this Agreement. Tintri will not be bound by any settlement Customer enters into without Tintri's prior written consent. Tintri will have no obligation under this Section 8 to the extent any claim is based on negligent acts or willful misconduct by Customer or Customer's employees or subcontractors. If the operation of a Product becomes, or Tintri believes is likely to become, the subject of such a claim, Customer will permit Tintri, at Tintri's option and expense, either to secure the right for Customer to continue using the Product or to replace or modify it so that it becomes non-infringing. However, if neither of the foregoing alternatives is available on terms which are reasonable in Tintri's judgment, Customer will return the Product upon Tintri's written request for a refund of the Product cost and the pre-paid and unused portion of any remaining term of Support Services for the returned Product. Tintri shall have no liability or obligation to the extent that the alleged infringement arises out of or relates to: (i) the use or combination of a Product with third party products or services; (ii) use for a purpose or in a manner for which a Product was not designed or intended; (iii) any modification or alteration to a Product made by any person other than Tintri or its authorized or designated representatives; (iv) any modifications or alterations to a Product made by Tintri pursuant to Customer's specific requests or instructions; (v) any technology owned or licensed by Customer from third parties; or (vi) use of any older version of Software when use of a newer Software Release made available to Customer would have avoided the infringement. THIS SECTION 8 STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND TINTRI'S ENTIRE LIABILITY AND OBLIGATION FOR THIRD PARTY CLAIMS OF INFRINGEMENT BY THE PRODUCTS.

9. U.S. GOVERNMENT RIGHTS. The Software is "commercial computer software" as defined in the U.S. Federal Acquisition Regulations ("FAR") at 2.101. If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation and other technical data subject to the terms of this Agreement as specified in 48 C.F.R. 12.212 (Computer Software) and 12.211 (Technical Data) of the "FAR" and its successors. If acquired by or on behalf of any agency within the Department of Defense ("DOD"), the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R.



227.7202-3 of the DOD FAR Supplement ("DFARS") and its successors. This U.S. Government Rights clause is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses U.S. Government rights in the Software. Any confidential or proprietary information received by the U.S. Government in connection with this Agreement is exempt from release under the Freedom of Information Act and is prohibited from release under the Federal Trade Secrets Act, 18 U.S.C. 1905.

10. **CONFIDENTIAL INFORMATION.** Each of the parties ("Receiving Party") understands that the other ("Disclosing Party") has disclosed or may disclose information relating to the Disclosing Party's business, including, without limitation computer programs, software, technical drawings, algorithms, know-how, trade secrets, formulas, processes, ideas, inventions (whether patentable or not), designs, schematics and other technical, business, financial, customer and product information, data and development plans, of any nature and in any form whatsoever, which to the extent previously, presently or subsequently disclosed to the Receiving Party is "Confidential Information" of the Disclosing Party (provided that such information was or is marked or designated in writing as "confidential," "proprietary," or any other similar term or designation or was or is disclosed in a manner that a reasonable person would have understood or understand that such information is confidential and proprietary). Customer agrees without limitation that Tintri's prices, quotes, discounts and proposals to Customer are Tintri's Confidential Information. The Receiving Party agrees: (i) to hold the Disclosing Party's Confidential Information in confidence and to take reasonable precautions to protect such Confidential Information (including, without limitation, all precautions the Receiving Party employs with respect to its own confidential materials); (ii) not to divulge any such Confidential Information to any third person, except to those of its employees and subcontractors that need to know such Confidential Information for the purpose of performing this Agreement, provided that each such employee and subcontractor is subject to a written agreement that includes binding use and disclosure restrictions that are at least as protective as those set forth herein; (iii) not to make any use whatsoever at any time of such Confidential Information except to perform its obligations under this Agreement; and (iv) not to copy, decrypt, reverse assemble, disassemble, decompile or reverse engineer any such Confidential Information. Without granting any right or license, the Disclosing Party agrees that the foregoing shall not apply with respect to any information after five (5) years following the disclosure thereof or any information that the Receiving Party can document: (i) is or becomes (through no improper action or inaction by the Receiving Party) readily available to the public; (ii) was in its possession or known by it without restriction prior to receipt from the Disclosing Party; (iii) was rightfully disclosed to it by a third party that rightfully received such information without restriction on disclosure or use; or (iv) was independently developed without use of any Confidential Information of the Disclosing Party. The Receiving Party may make disclosures required by law or court order provided the Receiving Party uses reasonable efforts to limit disclosure and to obtain confidential treatment or a protective order and allows the Disclosing Party to participate in the proceeding. To the extent that any of Customer's Confidential Information includes personally identifiable information, then Customer consents to Tintri's use of such personally identifiable information in accordance with Tintri's then-current privacy policy, which may be found at <http://www.tintri.com/website/privacy-policy.php>. Customer acknowledges and agrees that any feedback, suggestions, comments, improvements, modifications and other information (including any ideas, concepts, "know-how" or techniques contained therein) that Customer provides to Tintri about its Products or Services or their performance (collectively, the "Feedback") shall not be deemed as Customer's Confidential Information and may be used, disclosed, disseminated or published by us for any purpose, including developing, manufacturing and marketing products and services incorporating Feedback, without obligation of any kind to Customer, Customer waives any rights whatsoever in or to all Feedback.

11. **TERMINATION. BREACH.** Each party may terminate this Agreement if the other party breaches any material term of this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice thereof. Upon termination of this Agreement: (i) Customer will promptly return to Tintri all Confidential Information; and (ii) Customer will, within thirty (30) days after receipt of Tintri's invoice, pay all accrued and unpaid fees and expenses. The rights and obligations of the parties contained in Section 5 and Sections 7 through 15 (inclusive) will survive the termination of this Agreement.

12. **EXPORT COMPLIANCE.** Customer will comply with all export laws and regulations of the Applicable Law (as defined in Section 14, below), including without limitation of the U.S. Department of Commerce, the U.S.



Department of Treasury Office of Foreign Assets Control, or other U.S. or foreign agency or authority, and Customer will not export, or allow the export or re-export of any Product in violation of any such laws or regulations. By installing or using any Product, Customer agrees to the foregoing and represents and warrants that Customer is not located in, under the control of, or a national or resident of any restricted country.

13. RESELLER ORDERS. If Customer orders from a Tintri authorized reseller, Customer's order is governed by Customer's agreement with the reseller, and this Agreement does not apply to Customer except: (i) Customer's use of Software is subject to the EULA; (ii) Tintri's obligations and liabilities are subject to the terms, conditions and limitations in Sections 9 through 15 (inclusive); and (iii) if Customer agreed with the reseller to purchase Tintri Limited Warranties and designated Tintri Services, and the reseller so purchased and resold to Customer, then the Tintri Limited Warranties and designated Tintri Services are described in the attachments referenced in Section 6 and Section 7, and Customer and the reseller agree to comply with (and which shall be a condition to Tintri's obligations) Tintri's terms and conditions including without limitation receipt by Tintri of payment in full.

14. CHOICE OF LAW/VENUE. This Agreement is governed by and construed in accordance with the laws of the State of California, United States, as if performed wholly within such state and without giving effect to the principals of conflict of law ("Applicable Law"). The U.N. Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act shall not apply. In the event of a dispute concerning this Agreement, Customer consents to the sole and exclusive personal jurisdiction of the courts of competency in the location where Tintri's principal executive offices are located.

15. GENERAL. Customer may not assign or transfer any rights or delegate any duties under this Agreement and any attempt to do so is void and without effect. This Agreement and its attachments (and any terms and documents incorporated herein by reference) is the parties' entire agreement relating to the subject matter hereof and supersedes all prior or contemporaneous oral or written communications, proposals, representations and warranties and prevails over any conflicting or additional terms of any communication between the parties relating to its subject matter. No modification to this Agreement will be binding unless in writing and signed by an authorized representative of each party. Any express waiver or failure to exercise promptly any right under this Agreement will not create a continuing waiver or any expectation of non-enforcement. If any provision of this Agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make it enforceable. To the extent that any and all provisions of this Agreement (including its attachments) shall exclude or limit any statutory liability which, according to mandatory provisions of Applicable Law cannot be contractually excluded or limited by mutual agreement of the parties, then such provision shall be given only such effect, if any, as is permitted by the Applicable Law. Neither party will be responsible for any failure or delay in its performance under this Agreement, excluding Customer's payment obligations, due to causes beyond its reasonable control, including, but not limited to, any force majeure event, such as strikes, riots, insurrection, terrorism, fires, natural disasters, earthquakes, acts of God, war, governmental action, or any other cause which is beyond the reasonable control of such party.

ATTACHMENTS: If not attached, the following may be found at <https://tintri.com/company/support/vmstore-support/>:

- End User License Agreement (EULA)
- Support Services Terms and Conditions
- Limited Warranties

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