
Open Network Switch Addendum

This offer expressly limits acceptance to the terms and conditions of purchase by you (“you” or “Customer”) expressly set forth below unless you have a separate agreement with Champion ONE. Champion ONE expressly rejects any terms or conditions that may have been discussed or proposed in prior negotiations or communications. You may only accept this offer and enter into a contract by agreeing to the master terms and conditions of purchase contained below (the “Terms”) and Champion ONE’s standard terms and conditions (the “Supplemental Terms”). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the switches covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms and/or the Supplemental Terms.

The accompanying quotation or invoice, the Supplemental Terms and these Terms comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over the Supplemental Terms regardless whether or when you have submitted your purchase order or such received such terms. Fulfillment of your order does not constitute acceptance of any of your terms and conditions and does not serve to modify or amend these Terms.

Definitions. “Champion ONE” means Champion Optical Network Engineering, Inc. unless the order is to be fully performed outside of the United States, in which case “Champion ONE” means Champion Optical Network Engineering.

“Deliverables” means the materials, including reports, studies, base cases, drawings, findings, software, manuals, procedures, and recommendations that Champion ONE delivers to you as part of Services under a statement of work.

“Hardware” means any computer hardware, related devices and other accessories including all embedded components, and including firmware and other embedded software.

“Products” means Champion ONE’s Hardware products or Software products, or both.

“Services” means any and all services, support, maintenance, training, education provided by Champion ONE other than Support provided pursuant to a Support Plan.

“Software” means any computer or program code, provided by Champion ONE, as well as the related media and related user materials, whether printed, online or in other electronic form, including copies of the code and related materials. Software includes, without limitation, firmware and other embedded software, stand-alone software, and software provided in connection with Hardware or Services or as a Deliverable.

“Support” means technical assistance, maintenance and other services provided pursuant to a Support Plan.



“Support Plan” means a subscription to a Champion ONE-defined plan for technical assistance, maintenance and like services in connection with Champion ONE’s Products.

“Third Party Products” means any products, software, or services that are provided or distributed by a third party, are distributed by Champion ONE but under the third party’s brand name, or are distributed by Champion ONE but are provided pursuant to separate legal terms and conditions that are intended to be binding between you and the third party.

If your order includes Third Party Products, Champion ONE is serving as an order and billing conduit for your convenience. Orders for Third Party Products are subject to availability and are cancellable by Champion ONE. Your purchase and use of such Third Party Products shall be subject to the third party’s terms and conditions in addition to the Champion ONE Terms. Champion ONE is not responsible for determining whether any Third Party Product, however used, satisfies the local regulatory requirements of the country in which such Third Party Products are to be delivered or used.

You acknowledge that Champion ONE is not responsible for the security of your network generally, and that Champion ONE does not represent or warrant that its Products, Support Plans, Services, Deliverables or Third Party Products meet your particular security requirements. You agree that you are responsible for evaluating and determining if the Products, Support Plans, Services, Deliverables and Third Party Products meet your security requirements, both generally and in light of any regulatory requirements applicable to your business or network. In addition, unless otherwise agreed, you are responsible for the correct installation and setup of the security features and all related requirements, such as correctly configuring security policies, maintenance, and the interoperability of the Products, Support, Services, and Third Party Products with your other network elements. You agree that Champion ONE has no liability to you whatsoever arising from a security breach.

Champion ONE Software may consist of or include open source software and/or other public software. The applicable licenses, any required notices or attribution, and instructions on how to obtain the source code are included with the electronic media on which the Software is provided or on Champion ONE.

Notwithstanding anything to the contrary in these Champion ONE Terms, neither these Champion ONE Terms, nor any order or other written material provided by Champion ONE is intended to change or restrict the terms of any Public Software license. If there is a conflict between the terms of a Public Software license and the Champion ONE Terms, the Public Software license controls as to the software covered by the Public Software license. The licenses for Public Software do not control as to the use of Champion ONE’s name, logo, or other trademarks. You must contact Champion ONE for permission to use Champion ONE’s trademark(s).



Champion ONE warrants to you that the switches will be free from defects in material and workmanship for the stated time periods below beginning from the date of purchase (each, a “Warranty Period”):

- A) 1G Open Network Switch (HW only) = 3 years
- B) 10G Open Network Switch (HW only) = 3 years
- C) 40G Open Network Switch (HW only) = 3 years
- D) 100G Open Network Switch (HW only) = 3 years
- E) Open Network Switch Software = as defined in the applicable licensing agreement

Except for the warranties expressly stated in these Terms and the Supplemental Terms, the Products, Services, Deliverables, and Third Party Products are provided as is and neither Champion ONE nor its suppliers or licensors makes any other warranty, express or implied. Champion ONE disclaims any implied warranties, such as any warranty of merchantability, fitness for a particular purpose, and non-infringement, and any warranties that may arise from a course of dealing. Specifically, but without limitation, neither Champion ONE nor its suppliers or licensors warrant that the Products, Support Plans, Services, Deliverables and Third Party Products will meet your requirements, will operate in the combination with other technologies or products you select, or that the operation or use will be uninterrupted, error-free, or completely secure. If any warranty cannot be excluded by law, then such warrant is made for a period of 30 days from the order effective date. Third Party Products are not covered by the warranty in these Terms. For the avoidance of doubt, CHAMPION ONE MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

In the event that Champion ONE receives returned Champion ONE switches with defects in material or workmanship, it will, at its option, repair or replace the switches to whatever extent it deems necessary to restore the switches to proper operating condition, or provide a credit or refund of the purchase price or fair market value, whichever is lower. Replacement parts may be refurbished or repaired. All material and labor required for such a restoration will be provided at no charge when a Champion ONE product with material or workmanship defects is properly returned within the applicable warranty period under the procedure described herein. Not covered under the warranties are: failures due to accident, misuse, abuse, neglect, improper installation, product modification, or unauthorized repair or attempted repair, or shipping damage.

Returns.

1. Customer is entitled to a 30 day evaluation period for all switch purposes. Demo copies of selected software will also be made available during this period, after which a full software license is required.
2. Once evaluated, bare metal switches (no software license) purchased in a quantity of less than 10 may be returned for a refund, less a 40% restocking fee.



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3. Purchases of 10 or more bare metal switches are NOT returnable. If during the course of evaluation a switch is determined to be defective, Champion ONE's standard RMA process applies, as described on the following page.
 4. Software licenses are NOT returnable/refundable under ANY circumstances.
 5. If the switch is physically altered in any way (e.g., the switch chassis is opened), the switch is NOT returnable.

RMA Process. Champion ONE must approve all returns for any reason. Call customer service at 800.860.7466 to obtain a Return Material Authorization (RMA) number. All switches may be returned within thirty (30) days of shipment, unless otherwise stated on the Quote Sheet, Packing Slip or Invoice.

In the case of all approved returns, Customer must ship the switch(es) at Customer's risk and expense to Champion ONE in the original packaging, prepaid and insured, with the RMA number clearly marked on the packaging to:

Champion Optical Network Engineering
Attn: RMA Dept. - RMA No.
23645 Mercantile Rd.
Beachwood, OH 44122

On warranty claims on switches that Champion ONE determines are as result of a defect in materials or workmanship, replacement parts will be shipped at Champion ONE's expense, subject to availability; via a common air delivery service after the RMA number is obtained. DATED PROOF OF PURCHASE MUST BE PROVIDED WITH THE RETURNED EQUIPMENT. Replacement parts may be refurbished or repaired. When Champion ONE rejects a warranty claim, Champion ONE will notify the Customer and reserves the right to charge Customer for parts and labor at then current rates. Champion ONE may charge a restocking fee of up to 100% of the value of the goods for unauthorized returns. Any product(s) returned to Champion ONE shall become Champion ONE's property.

THE REMEDIES SET FORTH IN THE PARAGRAPH DIRECTLY ABOVE SHALL BE YOUR SOLE AND EXCLUSIVE REMEDY AND CHAMPION ONE'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTIES SET FORTH IN THESE TERMS.

In no event will Champion ONE will be liable for any consequential, incidental, indirect, special or punitive damages of any kind. In addition, in no event will Champion ONE be liable for loss of profits or revenue, income, profits, or savings; lost business; lost goodwill; lost or corrupt data or software; loss of use of a system or network or the recovery of such; loss of business opportunity; business interruption or downtime; the Products, Services or Third Party Products not being available for use; or the procurement of substitute Products, Services or Third Party Products arising out of or related to an order or the Champion ONE Terms, however caused or on any theory of liability. Champion ONE's entire liability arising out of or related to an order or the Champion ONE Terms is limited to the amounts paid under the order for the switches sold hereunder. The foregoing limitations shall not apply to the extent that the limitations are not enforceable under applicable law. These limitations, exclusions, and disclaimers apply to all claims for damages, whether based in contract, warranty, strict



liability, negligence, tort, or otherwise. These limitations of liability are agreed allocations of risk constituting in part the consideration for Champion ONE's sale of Products, Services or Third Party Products to you, and will apply notwithstanding the failure of essential purpose of any limited remedy and even if a party has been advised of the possibility of such liabilities.

Except as otherwise provide by these Champion ONE Terms, the parties will attempt to resolve any dispute through negotiation or by utilizing a mediator agreed to by the parties, rather than through litigation. Negotiations and mediations will be treated as confidential. If the parties are unable to reach a resolution within 30 days of notice of the dispute to the other party, the parties may pursue all other courses of action available at law or in equity.

Damage; Loss. Champion ONE shall not be liable for failure of the delivery service to make one time delivery. Customer assumes all risk of loss or damage to switches following delivery. Title to merchandise does not transfer until payment in full is received by Champion ONE. Prior to that time, Customer shall not remove, sell, pledge or mortgage the merchandise without the prior written consent of Champion ONE.

Export. Customer must comply with all export laws and restrictions and regulations (i) of the United States Department of Commerce (see www.bis.doc.gov/licensing/exportingbasics.htm), the United States Department of Treasury Office of Foreign Assets Control, or other United States or agencies or authorities, and (ii) of the country or countries in which Customer resides, is doing business in, is exporting to or alike. Furthermore, Customer will not export, or allow the export or re-export of the Hardware in violation of any such restrictions, laws or regulations. Additionally, Customer agrees to comply with the above and represents and warrants that it is not located in, under the control of, nor a resident of any restricted country. Customer assumes all responsibility for shipments of goods requiring any government import clearance.

Attorneys' Fees. In any suit or action brought to enforce any term, condition, or covenant herein, or to recover damages arising from any breach of these Terms, the losing party shall pay to the prevailing party reasonable attorneys' fees and all other costs and expenses which may be incurred by the prevailing party in any such suit or action and in any reviews thereof and appeals therefrom.

