

Fortanix Equipment Terms of Purchase

These terms and conditions (“Terms and Conditions”) are between Fortanix and the purchaser (“Purchaser”) of Fortanix equipment (“Products”). All Quotations including Products shall be deemed to incorporate and be governed by these Terms and Conditions. Fortanix’s acceptance of a purchase order including Products is subject to and conditioned on Purchaser’s acceptance of these Terms and Conditions.

1 Acceptance

Purchaser may use the Products specified in a purchase order accepted by Fortanix, subject to these Terms and Conditions and any Documentation applicable to the Products. No order placed by Purchaser shall be deemed an acceptance unless or until Fortanix issues a written acknowledgement or acceptance of Purchaser’s purchase order or delivers the Products to Purchaser. Once accepted, Purchaser’s purchase order is not cancellable and non-refundable.

2 Prices and Taxes

Prices or license fees shall be as specified in the applicable Quotation and do not include transportation fees, handling fees, customs, customs fees, import duties or insurance costs, which shall be invoiced by Fortanix and paid by Purchaser. Purchaser will pay all applicable taxes and duties, such as sales, value-added or similar taxes and duties imposed by applicable law, except for taxes based on Fortanix’s income.

3 Terms of Payment

Purchaser and Fortanix will enter into a Purchase Order describing the Product, fees, and other details relating to the Product. All Purchase Orders will reference these Terms and Conditions, and upon acceptance by Fortanix, will become part of these Terms and Conditions. Purchaser will pay Fortanix the fees for the Products within thirty (30) days of the date of Fortanix's invoice. If Purchaser fails to pay the price or any other payment due hereunder when due, Fortanix may recover, in addition to the amount due, interest thereon at the rate of one percent (1%) per month or the maximum lawful monthly interest rate, whichever is lower. All payments made by Purchaser are non-refundable. Fortanix may cancel any accepted order and may delay or decline to make any further shipments in the event of:

- a. Bankruptcy or insolvency of Purchaser;
- b. Any non-payment or other default by Purchaser; or
- c. any proceeding brought by or against Purchaser, voluntarily or involuntarily, under any provision of any bankruptcy or other insolvency law of any nation or community of nations and any political subdivision thereof. If Purchaser purchases a Product through a third-party Fortanix channel partner (such as an authorized reseller or distributor), different terms regarding invoicing, payment and taxes may apply.

4 Delivery

Unless otherwise expressly agreed by Fortanix, all deliveries are FCA (Incoterms 2020) Fortanix's designated facility in the United States. Purchaser is responsible for all costs and fees and bears all risks involved in taking the goods from Fortanix's shipping facility/Purchaser's carrier to Purchaser. In the absence of specific instructions, Fortanix will select the carrier and, at its discretion, may ship "collect", prepaid or subject to invoice payment terms, but shall not assume any liability in connection with the shipment. Title and risk of loss passes to the Purchaser when Fortanix delivers the Product to the carrier. Any delivery dates provided by Fortanix are estimates, are subject to change, and are not of the essence. Delivery dates specified in any Purchaser documentation or purchase order shall not be binding on Fortanix. Actual delivery dates may be affected by timely completion and delivery of all information required by Fortanix, if applicable. Fortanix will use reasonable efforts to deliver the Products to the carrier within a reasonable time. To the extent Purchaser purchased a Product through an authorized channel partner, Fortanix will deliver the Products to the Fortanix channel partner's designated carrier and such Fortanix channel partner will be responsible for directing its carrier to transfer the Products to the ship-to address, as agreed between Purchaser and Fortanix's channel partner.

Fortanix will insure the full value of the Products against loss or damage in transit in return for an additional charge as indicated on the Quotation.

5 Restrictions

Purchaser must not resell, lease, abandon (other than disposal in accordance with applicable laws) or give away any Products. Purchaser must not use the Products:

- a. in any way prohibited law, regulation or government order or decree,
- b. to violate the rights of others,
- c. to try to gain unauthorized access to, test the vulnerability of, or disrupt the Product(s) or any other service, device, data, account, or network,
- d. to distribute spam or malware,
- e. in any way that could harm the Product(s) or impair anyone else's use of it,
- f. in any way intended to work around the Product(s)'s limitations,
- g. with any unsupported hardware or software (as described in the applicable Documentation),
- h. to rent access to or use the Product(s) to third parties, except Purchaser's affiliates (unless Purchase is enrolled in a Fortanix partner program that authorizes such use).

6 Software and Firmware License

The Software is licensed and not sold. Purchaser's rights are established by and limited to the terms and conditions specified in the End User License Agreement (EULA) accompanying the Products. No right is granted to Purchaser to obtain source code for any Fortanix provided software. A breach by Purchaser of any provision of the EULA shall also constitute a breach of these Terms and Conditions.

7 Proprietary Rights

Purchaser shall not remove any trademark, confidential, or copyright notice from any Fortanix provided Documentation or Product. Products incorporate proprietary technology and trade secrets of Fortanix. All right, title and interest in and to the Products, other than that expressly granted to purchaser shall remain vested in Fortanix. Purchaser acknowledges that the Products and accompanying documentation provided by Fortanix contain proprietary technical knowledge and techniques embedded in the Products and as between Purchaser and Fortanix, the ownership of all intellectual property rights shall remain with Fortanix.

8 Warranties

8.1 Warranty. Fortanix warrants that, during the applicable warranty period, the Product will perform substantially according to the respective Product specification, provided that:

(i) the Product has been installed properly and used at all times in accordance with the applicable Documentation, and
(ii) has not been modified other than by Fortanix or Fortanix's authorized representatives. Such warranty is valid on the Product for a period of twelve (12) months from the date of delivery. In the event Purchaser notifies Fortanix of a warranty claim during the warranty period, Fortanix either remedy the non-compliance or replace the affected Product (with new or refurbished parts) at Fortanix's discretion. If instructed by Fortanix, Purchaser must return the applicable defective Product. If Purchaser receives a replacement Product but does not return the defective Product, Purchaser will be deemed to have purchased the defective Product.

8.2 Disclaimer. OTHER THAN THE LIMITED WARRANTY SET FORTH IN SECTION 8.1 ABOVE, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, FORTANIX, FOR ITSELF AND ITS SUPPLIERS, DISCLAIMS ALL WARRANTIES RELATING TO THE PRODUCT(S) OR TO ANY MATERIALS OR SERVICES PROVIDED TO PURCHASER UNDER THESE TERMS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. FORTANIX AND ITS SUPPLIERS DO NOT WARRANT THAT PRODUCTS (S) WILL OPERATE UNINTERRUPTED OR WILL BE FREE FROM DEFECTS OR ERRORS, OR THAT ANY PRODUCTS(S) WILL MEET (OR ARE DESIGNED TO MEET) YOUR BUSINESS REQUIREMENTS.

9 Limitation of Liability

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL FORTANIX OR FORTANIX'S SUPPLIERS BE LIABLE FOR ANY LOST PROFITS OR BUSINESS OPPORTUNITIES, LOSS OF USE, LOSS OF DATA, LOSS OF REVENUE, LOSS OF GOODWILL, BUSINESS INTERRUPTION, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, PRODUCT LIABILITY, OR OTHERWISE. THIS LIMITATION WILL APPLY REGARDLESS OF WHETHER ANY PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE FOREGOING LIMITATION MAY NOT APPLY. FORTANIX'S LIABILITY FOR ANY CLAIM UNDER THESE TERMS AND CONDITIONS WILL NOT EXCEED THE FEES PAID BY PURCHASER FOR THE PRODUCTS GIVING RISE TO THE CLAIM. THE LIMITATIONS OF LIABILITY WILL NOT APPLY TO ANY LIABILITY WHICH MAY NOT BE EXCLUDED BY APPLICABLE LAW.

10 Import and Export

Fortanix products are subject to the export control laws and regulations of the United States and other countries and may not be exported or re-exported to certain countries or to persons or entities prohibited from receiving export restricted items. Purchaser acknowledges that the Products are subject to U.S. Export Administration Regulations, as well as other U.S. economic sanctions laws and regulations and may be subject to the export control laws of the applicable territory, and that diversion contrary to applicable export controls laws is prohibited. Purchaser agrees to comply with all applicable export control regulations and laws and Purchaser shall not export any Product or any encryption technology information provided by Fortanix to any destination directly or indirectly to a prohibited country which is subject to any applicable export control regulation or restriction.

11 Governing Law and Dispute Resolution

Offers and any resulting contract with Fortanix, Inc., shall be governed by the laws of the State of Delaware, U.S.A. The Parties expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act.

12 Miscellaneous

The Parties are independent contractors, and nothing in these Terms and Conditions is intended to, or should be construed to, create a partnership, agency, joint venture or employment relationship. Purchaser may not assign, sublicense, or otherwise transfer these Terms and Conditions, by merger or operation of law or otherwise, without the prior written consent of Fortanix, not to be unreasonably withheld. If any provision of these Terms and Conditions is held illegal, invalid or unenforceable, in whole or in part, such provision will be modified to the minimum extent necessary to make it legal, valid and enforceable, and the remaining provisions of these Terms and Conditions will not be affected thereby. All notices permitted or required under these Terms and Conditions will be in writing and will be deemed given upon personal delivery or rejection. The failure or delay of any of the Parties to enforce any right, power or remedy under these Terms and Conditions will not constitute a waiver of such right, power or remedy. Except for the payment of funds, neither Party is liable if its failure to perform any obligation under these Terms and Conditions caused solely by supervening conditions beyond that Party's reasonable control, including acts of God, civil commotion, war, strikes, labor disputes, Internet service interruptions or slowdowns, vandalism or "hacker" attacks, epidemics or pandemics, acts of terrorism or governmental demands or requirements. These Terms and Conditions, together with any documents incorporated herein by reference, completely and exclusively state the agreement of the Parties regarding the subject matter hereof, and supersedes all prior and contemporaneous proposals, representations, agreements, or other communications between the Parties, oral or written, regarding such subject matter. These Terms and Conditions will only be modified by a subsequently dated written document signed by each Party's authorized representatives.