

Fortanix Terms of Purchase

The following terms and conditions (“Terms and Conditions”) constitutes an offer, (the “Offer”) by Fortanix, Inc. to any potential or actual purchaser, (“Purchaser”) of Fortanix provided equipment or software (“Products”). All Quotations shall be deemed to incorporate and be governed by these Terms and Conditions. Fortanix’s acceptance of an order is subject to and conditional on Purchaser’s acceptance of these Terms and Conditions.

1 Acceptance

Unless otherwise mutually agreed upon in writing, the Purchaser may accept a Quotation and this offer by submitting a purchase order for the Products specified in an applicable. This Offer is conditional upon and can only be accepted upon the terms and conditions specified herein in this Offer. These Terms and Conditions may not be altered, supplemented, or amended without the written consent of Fortanix. No order placed by Purchaser shall be deemed an acceptance of this Offer unless or until Fortanix issues a written acknowledgement of Purchaser’s order or delivery of the Products to Purchaser. Once accepted, Purchaser’s order is not cancellable. All Fortanix specified delivery dates or delivery schedules identified in any Fortanix issued acknowledgement shall be binding on Purchaser.

2 Price

Prices or license fees shall be as specified in the applicable Quotation and do not include:

- a. Transportation Fees;
- b. Handling Fees;
- c. Insurance costs; or
- d. Taxes, which shall be invoiced by Fortanix and paid by Purchaser.

3 Terms of Payment

Purchaser agrees to pay the price or fee stated in an applicable Quotation within thirty (30) days of the date of receipt 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 where lawful, otherwise the maximum lawful monthly interest rate, and reasonable legal fees incurred by Fortanix for the collection of such amounts. 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.

4 Delivery

Products will be deemed delivered when Fortanix makes the Products available and ready for shipment from Fortanix's shipping facility (EXW as defined in Incoterms 2010) or in the case of export orders when Fortanix delivers Products to the Purchaser's specified carrier (FCA as defined in Incoterms 2010). Purchaser is responsible for all costs 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.

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

Delivery dates specified in any Purchaser documentation or purchase order shall not be binding on Fortanix. All dates and times for delivery of the Products are estimates only and Fortanix shall not have any liability for delay or for any damages or losses sustained by Purchaser as a result of such dates or times not being met.

5 Taxes

Unless Purchaser provides Fortanix with a proper tax-exemption certificate, Purchaser shall pay all applicable taxes, fees, duties and charges which arise out of or in connection herewith.

6 Software and Firmware License

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

Fortanix warrants that the Product will function as detailed in the respective Product specification. Such warranty is valid on our hardware for a period of twelve (12) months from the date of delivery. In the event that the Product's functionality is materially impaired by virtue of defects in workmanship, Fortanix will repair or replace the affected Product, provided that Fortanix receives written notification of claim under this warranty within the warranty periods described herein. The foregoing warranty is contingent upon Purchaser's payment of the price or fee specified in an applicable Quotation. The foregoing warranty shall also not apply if the Product nonconformity issue is caused by the Product being subjected to unusual physical, electrical, electromagnetic or electronic stress after delivery, fire or other acts of god, rough handling during transportation, Product modification or repairs performed by anyone other than Fortanix or to any associated or complementary equipment or software not furnished by Fortanix, or any Product misuse, or neglect.

9 Limitation of Liability

Under no circumstances shall Fortanix liability arising out of or in connection with the Products, Fortanix's performance or asserted failure to perform, or these Terms and Conditions, exceed the purchase price of the applicable product that gave rise to the claim, regardless of whether such claim or liability arises or alleges in contract, tort (including negligence) or otherwise. In no event shall Fortanix be liable for indirect, special, incidental, consequential, punitive or tort damages or for any damages resulting from loss of use, loss of data, loss of profits, or loss of business arising out of or in connection with the products, services or Fortanix's performance of any of its obligations under these Terms and Conditions, whether or not Fortanix has been advised of the possibility of such damages and whether such damage is of direct or indirect nature.

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 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.

12 Force Majeure

Except for payment of funds, neither Fortanix nor Purchaser shall be liable for any failure or delay in performing its obligations hereunder during any period in which such performance is prevented or delayed by causes beyond its reasonable control, including without limitation; war, flood, embargo, strike or other labor dispute, riot or the intervention of any government authority.