

## FIREEYE TERMS AND CONDITIONS OF PURCHASE

**1. Acceptance.** These FireEye Terms and Conditions of Purchase, together with the written information contained in this purchase order, all attachments and exhibits attached hereto and all specifications, drawings, notes, instructions and other written materials and information referred to therein, shall apply to the purchase of the products and/or services described in this purchase order and are incorporated herein (collectively referred to herein as "Purchase Order") and are made an integral part of the agreement ("Agreement") between Supplier and FireEye Inc. ("Buyer") for the purchase of the goods and/or services described on the face of this Purchase Order (collectively referred to as "Items") upon Supplier's acceptance, including by acknowledgment or commencement of performance. This Agreement can be accepted only on these terms and conditions, and this Purchase Order shall be controlling over any additional, inconsistent or conflicting terms of any purchase order, confirmation, invoice, acknowledgement, release, acceptance or other written correspondence, even if accepted in writing by both parties. Acceptance of the products or services delivered under this Purchase Order shall not constitute acceptance of Seller's terms and conditions. No change, additional or modified term, or revision to this Agreement will be effective unless in a record that is signed by a duly authorized representative of Buyer.

**2. Proprietary Information.** A. General Buyer's "Proprietary Information" shall include, without limitation, samples, schematics, drawings, specifications, manuals, and other technical, business, trade secret, proprietary and confidential information provided to Supplier by Buyer (including the terms and existence of this Agreement) during the term of, or in connection with the performance of this Agreement. Buyer grants to Supplier the right to use the Proprietary Information solely for the purpose of providing Items to Buyer. Supplier will not disclose, use or use any Proprietary Information for any other purpose including, without limitation: (1) developing, designing, manufacturing, engineering, reverse engineering, refurbishing, selling or offering for sale Items, parts or components of Items, derivatives of or equivalents to Items, or (2) assisting any third party in any manner to perform such activity. Except as expressly and unambiguously allowed herein, Seller will hold in confidence and not use or disclose any Confidential Information without FireEye's prior written consent and shall similarly bind its employees, consultants and subcontractors in writing. Seller shall not disclose any Confidential Information to any person or entity other than those employees, consultants or subcontractors of Seller who have a legitimate need to know. Proprietary Information shall be clearly marked by Supplier as Buyer's property and returned to Buyer promptly upon request. Supplier shall use reasonable care to protect the Proprietary Information, and in no event less than the care Supplier uses to protect its own like information.

B. Equitable Relief Supplier agrees that Buyer would suffer irreparable harm, for which monetary damages are an inadequate remedy, and that equitable relief is appropriate if Supplier were to breach or threaten to breach any obligation regarding Proprietary Information.

C. Further Information On request, and in any event, upon termination of this Agreement, Supplier will provide to Buyer current and complete specifications, designs and drawings for each Item produced for Buyer, and any other information that is based on or incorporates Buyer's Proprietary Information or its patents, copyrights or trade or service marks. All such information shall be the sole property of Buyer.

**3. Warranty.** A. General Supplier warrants that all Items shall be free from defects in design, workmanship, material, and manufacture; shall be of merchantable quality and be fit and suitable for the purpose intended by Buyer; and shall comply with the requirements of this Agreement, including any of Buyer's specifications, drawings or samples. The foregoing warranties are in addition to all other warranties, express or implied, and survive delivery, inspection, acceptance, or payment by Buyer.

B. Infringement Supplier warrants that all Items, the sale of Items by Supplier, and the use or resale of Items by Buyer are and will be free from liability for infringement of, or claim of royalties for, patent rights, copyright, trademark, trade secrets or confidential or proprietary

intellectual property rights, mechanic's liens and other encumbrances of any person (collectively "Rights and Encumbrances").

**4. Inspection.** Items are subject to inspection and test by Buyer at all times and places, including during the period of manufacture, and in any event, at any time prior to final acceptance. Items are not accepted by reason of any preliminary inspection or payment of any invoice. Buyer may reject any portion of all of any shipment of products that does not conform to the applicable specifications or descriptions of the products within sixty (60) days of receipt of such products and may return such rejected products to Seller for, at Buyer's sole option, replacement, refund or credit. Buyer's payment to Seller for products prior to Buyer's timely rejection of such products as non-conforming shall not be deemed as acceptance by Buyer.

**5. Disclaimer and Limitation of Liability for Damages.** IN NO EVENT SHALL BUYER BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR CONTINGENT DAMAGES FOR ANY REASON, WHETHER OR NOT BUYER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**6. License of Inventions.** Supplier, as partial consideration for this Agreement, grants to Buyer an irrevocable, non-exclusive, paid-up, world-wide right and license to make, have made, use, and sell any inventions, derivative works, improvements, enhancements, patents, copyrightable works or other intellectual property conceived, made or reduced to practice by or for Supplier in the performance of this Agreement ("Inventions"). Buyer shall also be entitled to grant licenses to its customers to use such Inventions as related to the operation of Buyer's products.

**7. Responsibility for Goods; Risk of Loss.** Notwithstanding any prior inspections, Supplier bears all risks of loss, damage, or destruction to Items until final acceptance by Buyer at Buyer's delivery destination. Supplier bears all such risks with respect to any Items rejected by Buyer, provided however that Buyer shall be responsible for loss occasioned solely by the gross negligence of Buyer's employees acting within the scope of their employment.

**8. Duty Drawback.** Supplier will provide Buyer with Customs entry data and information and receipts for duties paid, as Buyer determines necessary for Buyer to qualify for duty drawback. At the time of delivery of the Items, but in no event later than fifteen (15) days after each calendar quarter, Supplier will provide said documents accompanied by a completed Certificate of Delivery of Imported Merchandise or Certificate of Manufacture and Delivery of Imported Merchandise.

**9. Cancellation.** A. General Buyer may cancel this Agreement in whole or in part by written or electronic notice, if Supplier: (1) fails to deliver Items in accordance with specified delivery times, Item requirements or other specifications; (2) fails to replace or correct defective Items as Buyer requires; (3) fails to comply strictly with any provision of or repudiates or anticipatorily repudiates this Agreement; (4) becomes insolvent, files a petition for relief under any bankruptcy, insolvency or similar law, makes an assignment for the benefit of its creditors, or takes any action for (or in anticipation of) any of the foregoing or (5) there is a material change in control or ownership of Supplier's business.

B. Upon Cancellation Upon cancellation pursuant to this Section, Supplier shall: (1) supply any portion of the Items for which this Agreement is not cancelled; (2) be liable for additional costs, if any, for the purchase of similar goods and services to cover such default; and (3) at Buyer's request, transfer title and deliver to Buyer: (a) any completed Items, (b) any partially completed Items and (c) all unique materials. Prices for partially completed Items and unique materials shall be negotiated, but in no event shall they exceed the price set forth herein. Buyer's rights and remedies as described herein are in addition to any other rights and remedies provided at law or in equity.

**10. Indemnity by Supplier.** Supplier shall defend, indemnify and hold harmless Buyer (and its officers, directors, agents and representatives) from and against any and all claims, suits, losses, penalties, damages (whether actual, punitive, consequential or otherwise) and associated costs and expenses (including attorney's fees, expert's fees, and costs of investigation) and all liabilities that are caused in whole or in part by: (a) any actual or

alleged infringement of any Rights and Encumbrances; (b) any breach by Supplier of this Agreement; (c) any negligent, grossly negligent or intentional act, error or omission by Supplier, its employees, officers, agents or representatives in the performance of this Agreement whether latent or patent, including, without limitation, improper construction or design; (d) or that are for, in the nature of, or that arise under warranty, strict liability or products liability with respect to or in connection with the Items.

**11. Force Majeure.** A failure by either party to perform due to causes beyond the control of and without the fault or negligence of such party is deemed excusable during the period in which such cause of failure continues. Such causes may include acts of God, acts of Government (in sovereign or contractual capacity), fire, flood, strike, and freight embargo. When Supplier becomes aware of any actual or potential force majeure condition, Supplier shall immediately notify Buyer of the condition.

**12. Delivery.** Time is of the essence. No partial delivery or delivery of added quantities shall be made unless Buyer has given prior written consent. All prices for Items shown in this Agreement shall be deemed to include any taxes (including, without limitation, sales, excise and use), handling, crating, shipping or other related delivery expenses unless otherwise set forth in this Agreement. Unless otherwise expressly provided herein, all products delivered to FireEye shall be F.O.B. Buyer's location as stated in this Purchase Order without charge to FireEye for storage or crating.

**13. Termination for Convenience.** Buyer may terminate this Agreement for its convenience in whole or in part at any time by written or electronic notice. Upon such termination, Supplier shall, to the extent practicable and at the time specified by Buyer, stop work and terminate outstanding orders under the Agreement, protect all property in which Buyer has or may acquire an interest, and transfer title and make delivery to Buyer of all Items, materials or other property held or acquired by Supplier in connection with the terminated portion of this Agreement. Buyer's maximum liability for Items related to such termination shall be a pro-rata amount of the total Agreement price, less advances or other payments, based upon the price for Items delivered or completed prior to termination, and the actual costs (including a reasonable profit) for work in process incurred by Supplier which are allocable to the terminated portion of this Agreement. Buyer shall have no liability at law or in equity for requests for payments under this section unless such requests are made within six months from notice of termination.

**14. Change Orders.** By written notice, Buyer may suspend performance under this Agreement, change the quantities of Items, extend or shorten delivery requirements or make other changes within the general scope of this Agreement, including without limitation: (a) applicable specifications, drawings, and other documents; (b) method of shipment or packing; and (c) place or date of delivery, inspection or acceptance. If such a change causes an increase in the cost of or time required for Supplier's performance, an equitable adjustment shall be made in the price or other terms of this Agreement if requested by Supplier prior to change implementation. Supplier shall continue with performance of this Agreement in accordance with the notice of change or amendment. A change by Buyer pursuant to this Section shall not constitute a breach or default by Buyer.

**15. Invoices; Payment Terms. A.** Invoices shall contain purchase order number, a description of Items, quantities, unit prices, extended totals, applicable taxes and any other information specified by Buyer. Payment of an invoice shall not constitute acceptance of Items and shall be subject to adjustment for errors, shortages, defects, or other causes. Buyer may set off any amount owed by Buyer against any amount owed by Supplier or any of its affiliated companies to Buyer. Payment in connection with any discount term will be calculated from: (a) scheduled delivery date, (b) actual delivery date, or (c) the date an acceptable invoice is received, whichever is latest; payment under a discount term is deemed

made on the date of mailing of Buyer's check. If payment is made electronically, payment shall be deemed made when the Supplier's depository institution receives or has control of the payment.

**16. Miscellaneous. A. Assignments** No right or obligation under this Agreement may be assigned by Supplier without the prior written consent of Buyer. Buyer may assign the rights or obligations or both of this Agreement in whole or part at any time.

**B. Waiver** If Buyer fails to insist on performance of any term or condition, or fails to exercise any right or privilege hereunder, such failure shall not constitute a waiver of such term, condition, right or privilege.

**C. Survival of Obligations; Severability** The obligations of the following sections shall survive the cancellation, termination or expiration of this Agreement: 2, 3, 5, 6, 8, 10, 15 & 16. Any provision of this Agreement that is held unenforceable or invalid for any reason shall be severed, and the remainder of the Agreement shall continue in effect.

**D. Compliance with Laws** Supplier warrants and represents that no law, rule, regulation, order or ordinance of the United States, any state, any governmental agency or authority of any country has been violated in supplying the Items ordered herein.

**E. Applicable Law, Jurisdiction, Venue** This Agreement shall be governed by and construed under the laws of the State of California and the United States, excluding its conflicts of law rules or the United Nations Convention on Contracts for the International Sale of Goods. Any suit arising out of this Agreement, at law or in equity, shall be brought in the courts of Santa Clara County of California. Each party consents to personal jurisdiction in the above courts. Supplier further consents to such venue as Buyer selects in any of such courts.

**17. Privacy.** If Supplier is a data processor under this Agreement, and in accordance with applicable data protection laws, including but not limited to the EU General Data Protection Regulation (GDPR), Supplier agrees that it will:

- only deal with and process personal data controlled by FireEye in compliance with, and subject to, the instructions received from FireEye and in compliance with this Agreement and will not use or process the personal data for purposes other than those permitted by the FireEye.
- adopt and maintain appropriate (including organizational and technical) security measures in processing FireEye's data including personal data in order to protect against unauthorized or accidental access, loss, alteration, disclosure or destruction of such data, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing; and
- take all reasonable steps to ensure that (i) persons employed by it, and (ii) other persons engaged at its place of work, are aware of and comply with applicable GDPR and data privacy laws and regulations. Upon reasonable prior notice, FireEye will have the right, exercisable not more than once every twelve (12) months, to audit Supplier for compliance.
- Supplier may process or otherwise transfer any personal information in or to any country outside of the country of origination, including such countries with less restrictive data protection laws, to the extent necessary for the provision of the Offerings. If required and where applicable, Supplier will enter into mutually agreed-upon country-specific data transfer mechanisms to help ensure an adequate level of data protection for the personal data that will be processed or transferred. Where the Personal Data originates in the EU, transfers can only occur either to a country with adequate data protection laws or pursuant to the EU Standard Contractual Clauses, to which the parties agree and are published at <https://www.fireeye.com/content/dam/fireeye-www/company/pdfs/standard-contractual-clauses-vendors.pdf>, Binding Corporate Rules or another country-specific data transfer mechanism.