



## PURCHASE ORDER TERMS AND CONDITIONS

Unless otherwise agreed in writing by the parties, these terms and conditions will apply with regard to the supply by Fidelis Security ("Fidelis") of Fidelis Products to a party issuing a purchase order to Fidelis (a "PO") for Fidelis Products. As used herein, the term "Products" refers to all Fidelis-provided products or services ordered under a PO, and "Purchaser" refers to the party issuing a PO. Any offer, acceptance, or confirmation is expressly conditioned to acceptance of these terms and conditions, and notification of objection to any different or additional terms in any offer or response to this offer from the Purchaser is hereby given.

**1. Acceptance.** All POs are subject to acceptance by Fidelis, and Fidelis reserves the right to reject it in its sole discretion. A PO shall be deemed to be accepted by Fidelis, however, unless Fidelis notifies Purchaser of Fidelis' rejection within five (5) business days of Fidelis' receipt of the PO. Upon acceptance, Fidelis will issue an estimated shipment schedule and will use commercially reasonable efforts to meet such schedule.

**2. Payment Terms.** Fidelis will issue an invoice against a PO after shipment. All amounts invoiced shall be due and payable net thirty (30) days from the date of invoice. All payments shall be made to Fidelis in US dollars via wire transfer or in such other manner as Fidelis shall reasonably designate. Based on its assessment of Purchaser's financial situation and/or payment history, Fidelis may refuse to extend credit terms to Purchaser, in which case Fidelis may reject a PO or require advance payment or other indication of security as a condition of acceptance and order fulfillment. In the event any payment to be made hereunder is overdue, such payment shall accrue interest at the rate of one and one-half percent (1.5%) per month or, if it is lower than this, the maximum percentage permitted by law, and in addition, if Fidelis incurs any legal or collection fees cost in connection with enforcing payment obligations hereunder, Purchaser shall reimburse Fidelis for all such costs reasonably incurred.

**3. Taxes.** Prices stated on a PO do not include any taxes or other governmental charges, including, without limitation, import or export duties, value-added, sales, use or privileges taxes, or excise or similar taxes levied by any government, now or hereafter enacted. In Fidelis' discretion, such taxes and governmental charges may be added to the applicable price or may be billed separately. Purchaser shall, in any event, pay all such taxes and governmental charges, on or before their due dates. In the event Fidelis is required at any time to pay any such tax or governmental charge, Purchaser shall reimburse Fidelis therefor promptly on demand. Nothing in this paragraph is applicable with respect to taxes on Fidelis' net income.

**4. Rescheduling and Cancellation.** PO's are non-cancelable. Purchaser may reschedule shipments under a PO, without charge, by written notice to Fidelis at least fifteen (15) days prior to shipment date. Such reschedule may delay the shipment date up to thirty (30) days. A PO may not be rescheduled more than once.

**5. Shipping and Risk of Loss.** All Products will be shipped Ex Works from Fidelis' location per current Incoterms to the Ship To address indicated on the PO. Unless otherwise specified on the PO, Fidelis will select the mode of shipment and the carrier, and Fidelis will not normally purchase insurance for goods in transit above the standard insurance offered by the carrier. Purchaser is responsible and will pay for freight, shipping, handling, insurance and other transportation charges. Title to Products and all risk of loss of or damage to Products will pass to Purchaser upon the earliest of delivery by Fidelis to the carrier, freight forwarder, or Purchaser. All sales are final following transfer of title.

**6. Product Alterations.** Purchaser shall not remove, alter or obscure any copyright, trademark, patent or other proprietary notice, label, warning, disclaimer or other marking or documentation on or in the Products.

**7. Hardware and Software Use.** Purchaser understands that (i) Fidelis will ship the Products containing a license agreement applicable by its terms to use of Fidelis Software ("EULA") either embedded within or packaged with the Products, (ii) use of the Products (including the Fidelis Software) will be subject to the EULA, and (iii) that the Products may also include third party software, which software will itself contain or be associated with an applicable end-user license agreement provided by the software vendor. Fidelis and its licensors shall retain sole and exclusive ownership of the Fidelis Software (and all whole or partial copies thereof), including all intellectual property rights therein. Purchaser acknowledges that it has and shall acquire no rights in any Fidelis Product, including Fidelis Software, other than the limited rights expressly granted in this document and the applicable EULA. As used herein, "Fidelis Software" shall mean the software developed by or for Fidelis and included in the Products by Fidelis or separately provided by Fidelis in connection with the operation of the Products, but excluding any third-party software included in the Products by Fidelis.

**8. Maintenance and Support.** If a PO includes an order for maintenance and support services for a Product, such services will be performed in accordance with and subject to the "Maintenance and Support Agreement" in effect as of the date of the PO. The current version of the "Maintenance and Support Agreement" is available online

at

[http://www.fidelissecurity.com/contracts/maintenance\\_and\\_support\\_agreement.html](http://www.fidelissecurity.com/contracts/maintenance_and_support_agreement.html).

**9. Compliance with Laws; Export.** Purchaser shall comply with all laws (including but not limited to those relating to payments to officials and to the control of imports and exports) that may be applicable to Purchaser's import, use, transfer, resale, export or re-export of the Products and shall obtain all licenses, approvals and permits required under applicable laws to import, export, or use the Products and make the payment of fees under the PO. Without limiting the generality of the foregoing, Purchaser hereby acknowledges that the Products are subject to export controls under the laws and regulations of the United States. Purchaser specifically represents and warrants that it is not formed, located, or domiciled in Iran, Cuba, Syria, North Korea, or Sudan and that it shall not engage in any export or re-export of any Products to any party that is prohibited, nor to any national of an embargoed country nor to any other restricted destinations or persons. Purchaser further represents that the Products shall not be used, directly or indirectly, in nuclear explosive activities, safeguarded or un-safeguarded nuclear activities, or in the design, development, production, stockpiling, or use of missiles, nuclear, chemical, or biological weapons, and that Purchaser shall not transfer, export or re-export any Products to any party that is. Fidelis may request as a condition of fulfillment of any order that Purchaser execute and deliver one or more additional certifications or other documentation that Fidelis deems necessary or appropriate.

**10. Force Majeure.** Fidelis is not liable for its failure or delay in performing its obligations under a PO due to strikes, wars, revolutions, acts of terrorism, fires, floods, severe weather, explosions, earthquakes, parts or labor shortages, government regulations, or other causes beyond its reasonable control.

**11. Confidentiality.** Prices offered by Fidelis, as well as any other terms set forth in a PO are the confidential information of Fidelis, and Purchaser will not disclose the same to any third party without prior written consent of Fidelis for a period of two years after the date of the PO. This section 11 does not apply to information that is in the public domain without the improper action of Purchaser.

**12. LIMITATION OF LIABILITY.** *Except for a party's breach of Sections 7, 8, 10 or 12: (a) in no event shall Purchaser be liable to Fidelis nor shall Fidelis be liable to Purchaser for any special, indirect, incidental, consequential or punitive damages (including, but not limited to any damages resulting from loss of use, loss of data, loss of profits or loss of business) arising out of or*

*in connection with a PO, the Products, Fidelis Software or any other products, materials or services furnished in connection herewith, even if Purchaser or Fidelis, as applicable, has been advised of the possibility of such damages, and (b) without limiting Purchaser's payment obligations under a PO, in no event shall either party have any liability arising out of or in connection with a PO in an amount exceeding the total purchase price indicated in the PO or five hundred thousand U.S. Dollars (U.S. \$500,000) whichever is less. The limitations stated in this Section 13 shall apply regardless of the form of action, whether the asserted liability or damages are based on contract (including, but not limited to, breach of warranty), tort (including, but not limited to negligence), statute, or any other legal or equitable grounds.*

**13. General.** Any waiver, amendment or modification of any right, remedy or other term set forth in these terms and conditions will not be effective unless in writing and signed by an authorized person of the party against whom enforcement is sought. Any modifications of these terms and conditions must make specific reference to the provision(s) hereof to be so modified, and must be in writing and signed by both parties. The relationship of Fidelis and Purchaser is that of independent contractors. There is no relationship of agency, partnership, joint venture, employment or franchise between the parties. The validity, interpretation, and performance of a PO and these terms and conditions shall be controlled by and construed under the law of the State of Delaware. The parties expressly exclude the application of the Convention on Contracts for the International Sale of Goods to POs. The original of these terms and conditions has been written in English, and English is the governing language of this document. Purchaser waives any right it may have under the laws of its country of domicile to have this document written in any other language. If any provision of these terms and conditions is held to be invalid or unenforceable, the remaining provisions will remain in full force and effect and the invalid or unenforceable provision will be reformed to make these terms as a whole enforceable while maintaining to the greatest extent possible the original intent of the parties. Either party's failure to enforce any provision of these terms and conditions will not be deemed a waiver of that provision or of the right to enforce it in the future. Each PO together with these terms and conditions constitutes the entire agreement between the parties as to the subject matter hereof and supersedes any and all written or oral agreements previously existing between the parties with respect to such subject matter. Nothing herein is intended, however, to limit the effectiveness of any EULA.