

# Purchase Order Standard Terms and Conditions

## 1. SCOPE; DEFINITIONS

The following terms and conditions (“Agreement”) govern the purchase and use of the Products and/or Services as set forth in the applicable purchase order incorporating the terms of this Agreement (the “Purchase Order”) provided by the named vendor (“Vendor”) to ForeScout Technologies, Inc. or the particular ForeScout Affiliate identified in such Purchase Order (“ForeScout”). Vendor’s standard terms and conditions of sale on any Sales Quote are for Vendor’s convenience only and any terms set forth therein that are inconsistent with, vary from, or add to the terms and conditions set forth in this Agreement shall not be binding on ForeScout and are hereby rejected. “Sales Quote” means the applicable Purchase Order, sales quote, quotation, proposal, statement of work (“SOW”), order acknowledgement, or other similar documentation. “Products and/or Services” are defined as any hardware, appliances, equipment, software, software as a service, support, maintenance, services, or any other products and specified in the Sales Quote. If Vendor and ForeScout are parties to a separate, valid, written and fully executed agreement that governs the Products and/or Services, such agreement will control with respect to the purchase of the Products and/or Services, and this Agreement shall have no force or effect. “Affiliate” means an entity that controls (i.e. parent), is controlled by (i.e. subsidiary), or under common control with (i.e. sister) ForeScout Technologies, Inc.

## 2. PAYMENT

- 2.1. Payment.** ForeScout will pay Vendor the fee set forth in the Purchase Order and if applicable, in the manner as described in each SOW. Except as otherwise specified herein, all invoices will be paid within thirty (30) days from ForeScout’s receipt thereof, provided that the invoice specifies the Purchase Order number. All invoices issued to ForeScout Technologies Israel Ltd. shall be paid within thirty (30) days from the end of the month in which ForeScout Technologies Israel Ltd. received the invoice. If approved by ForeScout in writing, ForeScout will reimburse Vendor pre-approved, documented, out-of-pocket expenses, except that reimbursement for expenses may be delayed until that time when Vendor furnishes adequate supporting documentation for the authorized expenses as ForeScout may reasonably request. Upon expiration or termination of this Agreement for any reason, Vendor will be paid the fees and reimbursed for expenses that are properly incurred prior to termination of this Agreement.
- 2.2. Taxes.** Unless otherwise specified in the Purchase Order, the prices set forth in the Purchase Order is exclusive of, and ForeScout is responsible for all sales, use, and like taxes, except for taxes on Vendor’s net income. If applicable, ForeScout shall pay for the taxes for which it is responsible for so long as Vendor itemizes such taxes on its invoice to ForeScout.

## 3. SHIPPING; DELIVERY

- 3.1. Shipping.** If applicable, all Products sold by Vendor herein shall be shipped by Vendor to ForeScout by method of FOB Destination.
- 3.2. Delivery.** Time is and shall remain of the essence in the delivery of Products and/or Services ordered by ForeScout. Products and/or Services must be delivered by the date specified in the Purchase Order. Vendor shall notify ForeScout immediately if at any time it appears that the required delivery date may not be met and shall specify the reasons therefor and the steps being taken to correct the problem and the new anticipated delivery schedule. ForeScout may, at its option, either accept the new delivery schedule or terminate the order, or exercise any of its other remedies set forth in Section 5 (Remedies). ForeScout’s acceptance of late delivery shall not constitute a modification of this Agreement or a waiver of its right to reject deliveries as set forth herein or in any Purchase Order.

## 4. INSPECTION; CANCELLATION

- 4.1. Inspection and Rejection.** All Products and/or Services are subject to testing and/or approval by ForeScout as set forth in the Purchase Order. ForeScout may reject any products which do not conform to the specifications set forth in the Purchase

Order, do not conform to the limited warranty provided in Section 8 (Vendor Warranties), or which are late or with respect to which there is an error or material defect

- 4.2. **or deficiency.** In the case of rejection, the remedies set forth in Section 5 (Remedies) hereof shall be available to ForeScout at its discretion. Exercise of the remedies shall not be exclusive of any other
- 4.3. **Cancellation of Purchase Orders.** ForeScout may at any time terminate a Purchase Order in whole or in part upon written notice to Vendor prior to delivery of Product or completion of the Services. Vendor shall not be entitled to a cancellation or restocking fee in the event of a cancelled Purchase Order unless otherwise agreed to by the parties in writing. Vendor's sole remedy for the cancellation of a Purchase Order shall be payment for all Products and/or Services delivered, accepted, or performed up to the effective date of the cancellation.

## 5. REMEDIES.

In the event of rejection, breach of the Section 8 (Vendor Warranties), non-delivery, partial delivery, or late delivery or other error or material defect or deficiency, ForeScout may at its option (i) cancel the applicable Purchase Order without liability therefor, (ii) require Vendor to replace the Products or re-perform the Services, or (iii) obtain any other remedy or relief provided by law including, but not limited to, the right to a setoff against any amount Vendor is due from ForeScout or its affiliates.

## 6. DISCLOSURE AND ASSIGNMENT OF WORK RESULTING FROM SERVICES.

To the extent that Vendor is providing Services to ForeScout under this Agreement:

- 6.1. **"Innovations" and "ForeScout Innovations" Definitions.** During the term of this Agreement, "Innovations" means all discoveries, designs, developments, improvements, inventions (whether or not protectable under patent laws), works of authorship, information fixed in any tangible medium of expression (whether or not protectable under copyright laws), trade secrets, know-how, ideas (whether or not protectable under trade secret laws), mask works, trademarks, service marks, trade names and trade dress. "ForeScout Innovations" means Innovations that Vendor, solely or jointly with others, creates, derives, conceives, develops, makes or reduces to practice pursuant to this Agreement. For the avoidance of doubt, ForeScout Innovations shall be deemed a "work made for hire" as defined by Section 101 of the U.S. Copyright Act (17 U.S.C. § 101) and as used in Section 201 of the U.S. Copyright Act (17 U.S.C. § 201).
- 6.2. **Disclosure and Assignment of ForeScout Innovations.** Vendor agrees to maintain adequate and current records of all ForeScout Innovations, which records shall be and remain the property of ForeScout. Vendor agrees to promptly disclose and describe to ForeScout all ForeScout Innovations. Vendor hereby does and will irrevocably assign to ForeScout or ForeScout's designee all of Vendor's right, title and interest in and to any and all ForeScout Innovations and all associated records. Vendor shall not be entitled to any additional consideration for the assignment of the ForeScout Innovations, including any royalty payments thereto. To the extent any of the rights, title and interest in and to ForeScout Innovations cannot be assigned by Vendor to ForeScout, Vendor hereby grants to ForeScout an exclusive, royalty-free, transferable, irrevocable, worldwide, fully paid-up license (with rights to sublicense through multiple tiers of sublicensees) to fully use, practice and exploit those non-assignable rights, title and interest, including, but not limited to, the right to make, use, sell, offer for sale, import, have made, and have sold, the ForeScout Innovations. To the extent any of the rights, title and interest in and to the ForeScout Innovations can neither be assigned nor licensed by Vendor to ForeScout, Vendor hereby irrevocably waives and agrees never to assert the non-assignable and non-licensable rights, title and interest against ForeScout, any of ForeScout's successors in interest, or any of ForeScout's customers.
- 6.3. **Assistance.** Vendor agrees to perform, during and after the term of this Agreement, all acts that ForeScout deems necessary or desirable to permit and assist ForeScout, at its expense, in obtaining, perfecting and enforcing the full benefits, enjoyment, rights and title throughout the world in the ForeScout Innovations as provided to ForeScout under this Agreement. If ForeScout is unable for any reason to secure Vendor's signature to any document required to file, prosecute, register or memorialize the assignment of any rights under any ForeScout Innovations as provided under this Agreement, Vendor hereby irrevocably designates and appoints ForeScout and ForeScout's duly authorized officers and agents as Vendor's agents and attorneys-in-fact to act for and on Vendor's behalf and instead of Vendor to take all lawfully permitted acts to further the filing, prosecution, registration, memorialization of assignment, issuance and enforcement of rights in, to and under the ForeScout Innovations, all with the same legal force and effect as if executed by Vendor. The foregoing is deemed a power coupled with an interest and is irrevocable.
- 6.4. **Vendor Out-of-Scope Innovations.** If Vendor incorporates or permits to be incorporated any Innovations relating in any way, at the time of conception, reduction to practice, creation, derivation, development or making of the Innovation, to ForeScout's business or actual or demonstrably anticipated research or development but which were conceived, reduced to practice,

created, derived, developed or made by Vendor (solely or jointly) either unrelated to Vendor's work for ForeScout under this Agreement or prior to the Effective Date (collectively, the "Out-of-Scope Innovations") into any of the ForeScout Innovations, then Vendor hereby grants to ForeScout and ForeScout's designees a royalty-free, transferable, irrevocable, worldwide, fully paid-up license (with rights to sublicense through multiple tiers of sublicensees) to fully use, practice and exploit all patent, copyright, moral right, mask work, trade secret and other intellectual property rights relating to the Out-of-Scope Innovations. Notwithstanding the foregoing, Vendor agrees that Vendor shall not incorporate, or permit to be incorporated, any Innovations conceived, reduced to practice, created, derived, developed or made by others or any Out-of-Scope Innovations into any ForeScout Innovations without ForeScout's prior written consent.

**6.5. Assignment by Employees of Vendor.** Vendor covenants, represents and warrants that each of Vendor's employees and/or contractors who perform services under this Agreement has or will have a written agreement with Vendor that provides Vendor with all necessary rights to fulfill its obligations under this Agreement, including but not limited to the obligations of this Section 6 (Disclosure and Assignment of Work Resulting From Services).

## 7. CONFIDENTIALITY

**7.1. Definition of Confidentiality.** "Confidential Information" means (i) any technical and non-technical information related to the ForeScout's business and current, future and proposed products and services of ForeScout, including and without limitation ForeScout's information concerning research, development, design details and specifications, financial information, procurement requirements, engineering and manufacturing information, customer lists, business forecasts, sales information, marketing plans and business plans, in each case whether or not marked as "Confidential" or "Proprietary" and (ii) any information that ForeScout has received from others that may be made known to Vendor and that ForeScout is obligated to treat as confidential or proprietary, whether or not marked as "Confidential" or "Proprietary."

**7.2. Non-Disclosure and Non-Use Obligations.** Except as permitted in this section, Vendor will not (i) use any Confidential Information or (ii) disseminate or in any way disclose the Confidential Information to any person, firm, business or governmental agency or department. Vendor may use the Confidential Information solely to provide the products and/or perform SOW(s) for the benefit of ForeScout. Vendor shall treat all Confidential Information with the same degree of care as Vendor accords to Vendor's own confidential information, but in no case shall Vendor use less than reasonable care. If Vendor is not an individual, Vendor shall disclose Confidential Information only to those of Vendor's employees and/or contractors who have a need to know the information as necessary for Vendor to perform this Agreement or SOW. Vendor certifies that each of its employees and/or contractors will have agreed, either as a condition of employment or in order to obtain the Confidential Information, to be bound by terms and conditions at least as protective as those terms and conditions applicable to Vendor under this Agreement. Vendor shall immediately give notice to ForeScout of any unauthorized use or disclosure of the Confidential Information. Vendor shall assist ForeScout in remedying any unauthorized use or disclosure of the Confidential Information. Vendor agrees not to communicate any information to ForeScout in violation of the proprietary rights of any third party.

**7.3. Exclusions from Non-Disclosure and Non-Use Obligations.** Vendor's obligations under Section 7.2 (Non-Disclosure and Non-Use Obligations) do not apply to any Confidential Information that Vendor can demonstrate (i) was in the public domain at or subsequent to the time the Confidential Information was communicated to Vendor by ForeScout through no fault of Vendor; (ii) was rightfully in Vendor's possession free of any obligation of confidence at or subsequent to the time the Confidential Information was communicated to Vendor by ForeScout; or (iii) was independently developed by Vendor, or employees of Vendor, without use of, or reference to, any Confidential Information communicated to Vendor by ForeScout. Disclosure of any Confidential Information by Vendor (x) in response to a valid order by a court or other governmental body or (y) as otherwise required by law will not be considered to be a breach of this Agreement or a waiver of confidentiality for other purposes; provided, however, that Vendor provides prompt prior written notice thereof to ForeScout to enable ForeScout to seek a protective order or otherwise prevent the disclosure.

**7.4. Ownership and Return of Confidential Information.** All Confidential Information and any materials and items (including, without limitation, software, equipment, tools, artwork, documents, drawings, papers, diskettes, tapes, models, apparatus, sketches, designs and lists) that ForeScout furnishes to Vendor by ForeScout, whether delivered to Vendor by ForeScout or made by Vendor in the performance of this Agreement or SOW and whether or not they contain or disclose Confidential Information (collectively, the "ForeScout Property"), are the sole and exclusive property of ForeScout or ForeScout's suppliers or customers. Vendor agrees to keep all ForeScout Property at Vendor's premises unless otherwise permitted in writing by ForeScout. Within five (5) days after any request by ForeScout, Vendor shall destroy or deliver to ForeScout, at ForeScout's option, (a) all ForeScout Property and (b) all materials and items in Vendor's possession or control that contain or disclose any Confidential Information. Vendor will provide ForeScout a written certification of Vendor's compliance with Vendor's obligations under this section.

## 8. VENDOR WARRANTIES.

- 8.1. Warranties.** Vendor agrees to pass on all manufacturer warranties for the Products and/or Services to Forescout and to assist Forescout with resolving any warranty claim that Forescout may have with the manufacturer. Vendor further warrants that (i) it has full right, power, and authority to sell the Products and/or Services to Forescout, (ii) that the Products and/or Services are free and clear of all liens and similar encumbrances of any kind, and (iii) the Products and/or Services to be delivered by Vendor will conform to the specifications set forth in the Purchase Order. To the extent that Vendor is providing Services, Vendor represents and warrants that it will provide the Services in a timely, professional, and workmanlike manner. These warranties shall survive acceptance and payment, and shall run to Forescout, its successors and assigns.
- 8.2. Refund.** To the extent Forescout is entitled to any refund amount attributed to the Products and/or Services from the original equipment manufacturer, supplier, manufacturer, or other provider from which the Products and/or Services originate, Vendor is obligated to refund Forescout such amount.

## 9. INDEMNIFICATION.

Vendor shall indemnify, defend, and hold harmless any third-party claim brought against Forescout (i) alleging that the Products and/or Services provided herein, or portion thereof, infringes any third party intellectual property right, and (ii) arising out of Vendor's, or its employees or agents, grossly negligent acts or willful misconduct; provided that Forescout notifies Vendor promptly in writing of the claim and grants Vendor sole control of the defense and of all negotiations for settlement or compromise thereof.

## 10. TERM & TERMINATION.

This Agreement shall commence as of the effective date set forth in the Purchase Order (the "Effective Date") and shall continue in full force and effect thereafter unless and until terminated in accordance with the provisions of this Agreement or until delivery of the Products and/or completion of the Services. Either party may terminate this Agreement for the other party's material breach that is not cured within thirty (30) days of the date of notice of the breach. In the event of any termination of this Agreement, Forescout agrees to pay Vendor for all Products and/or Services delivered, accepted, or performed up to the effective date of termination. Sections 5 (Remedies), 6 (Disclosure and Assignment from Work Resulting From Services) 7 (Confidentiality), 8.2 (Refund), 9 (Indemnification), 10 (Term and Termination), 11 (Limitation of Liability), and 12 (General) shall survive any termination of this Agreement.

## 11. LIMITATION OF LIABILITY.

FORESCOUT SHALL HAVE NO LIABILITY TO VENDOR WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, EVEN IF VENDOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL FORESCOUT'S LIABILITY FOR ANY REASON AND FOR ANY CAUSE OF ACTION WHATSOEVER EXCEED THE AMOUNTS PAID BY FORESCOUT TO VENDOR UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE ACT OR OMISSION GIVING RISE TO SUCH CAUSE OF ACTION. THE LIMITATIONS OF LIABILITY AND THE DISCLAIMERS OF WARRANTIES SET FORTH IN THIS AGREEMENT FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.

## 12. COMPLIANCE WITH LAWS.

Each party will comply fully with all international and national laws and regulations that apply to the Products and/or Services, and each party's use thereof.

## 13. GENERAL.

Neither party shall be liable for delay in performance hereunder due to causes beyond its control, including but not limited to acts of God, fires, strikes, acts of war, or intervention by governmental authority. Either party may assign this Agreement in its entirety to (i) any entity under the common control with, controlling or controlled by that party; or (ii) any successor in interest to such party by way of merger or consolidation; or (iii) a purchaser of all or substantially all of the assets of such party, provided that the assignee agrees in writing to be bound by all of the terms and conditions of this Agreement. Vendor may not subcontract the Services herein without the prior written consent of Forescout. Vendor's relationship with Forescout is that of an independent contractor, and nothing in this Agreement is intended to, or shall be construed to, create a partnership, agency, joint venture, employment or similar relationship. Any notices or communication under this Agreement shall be in writing and shall be hand delivered or sent by registered mail return receipt requested at the address set forth in the Purchase Order, or such other address as either party may in the future specify to the other party. Except as otherwise specified herein, this Agreement will be governed by the laws of the State of California in the United States of America without giving effect to any choice of law principles that would require the application of the laws of a different jurisdiction, and any action or proceeding arising from or relating to this Agreement must be brought in the courts in Santa Clara County, California. If the Purchase Order issued by Forescout Technologies Israel Ltd., this

Agreement will be governed by and construed under the laws of the State of Israel without giving effect to any choice of law principles that would require the application of the laws of a different jurisdiction, and any action or proceeding arising from or relating to this Agreement must be brought in the courts in the Tel Aviv Jaffa District. This Agreement is not governed by the United Nations Convention of Contracts for the International Sale of Goods or the Uniform Computer Information Transactions Act, the application of each of which is hereby expressly excluded. The parties agree that this Agreement is written and construed in the English language. A failure of either party to exercise any right provided for herein, shall not be deemed to be a waiver of any right hereunder. This Agreement and the Purchase Order set forth the entire understanding of the parties as to the subject matter herein and therein. No waiver, amendment or modification of any provision of this Agreement shall be enforceable against Fore Scout unless it is in writing and signed by Fore Scout. Notwithstanding the foregoing, Fore Scout may amend the terms and conditions of this Agreement or any other documents and policies referenced herein at any time, including without limitation by posting such revised terms on its website ([www.Fore Scout.com](http://www.Fore Scout.com)) or the location of such other document or policy. Such amended terms and conditions shall be binding on Vendor on the effective date of such change and shall supersede any prior version (including this Agreement). Unless the terms of a Purchase Order explicitly modify or amend the terms of this Agreement, the terms of this Agreement shall control.

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