



## IVANTI PURCHASE ORDER TERMS AND CONDITIONS

These Ivanti Purchase Order Terms and Conditions ("Terms") constitute the terms and conditions that apply as between the Ivanti entity identified on the purchase order ("Ivanti") and You ("Supplier") regarding the products and/or services ("Products") that are procured by Ivanti from Supplier under the purchase order ("Order"). Notwithstanding anything to the contrary, these Terms shall not apply to the extent that Ivanti and Supplier have agreed to other terms and conditions that govern Ivanti's purchase and use of the Products ("Supplier Agreement").

1. **ORDER ACCEPTANCE AND CHANGES TO ORDERS.** The Order is an offer to buy Products under the Terms. Ivanti's procurement of Products from Supplier is, except as otherwise outlined herein, expressly conditioned upon Supplier's acceptance of these Terms. Supplier's acceptance of the Order may be in writing, e-mail, fax, EDI or other manifestation of acceptance such as, but not limited to, Supplier's initiation of performance, or through Supplier's provision of any Products covered by the Order, or through Supplier's acceptance of any payment made pursuant to the Order, whichever occurs first. An accepted Order may be modified or cancelled by Supplier only upon prior written consent from Ivanti. Ivanti reserves the right at any time prior to delivery, in its sole discretion and without cause, to wholly cancel the Order or reschedule the delivery or performance of deliverables hereunder (or portion thereof), upon written notice to Supplier, at no cost to Ivanti. Further, Ivanti may issue written directions without prior notice modifying the quantity or type of Products prior to shipment, provided however, that Ivanti and Supplier shall review such requests, and if any such modification results in a material change to the Order, then the parties shall agree to an equitable adjustment in the price and/or other such provisions in the Order as may be affected, and the Order will be modified in writing accordingly. If an adjustment to a modified Order under this clause is requested by Supplier and cannot be agreed, then at Ivanti's sole discretion the original Order may be restored absent the modification, or may be cancelled, at no additional cost to Ivanti.
2. **PRICE, TAXES, INVOICING AND PAYMENT.**
  - a. **Price; Taxes.** The price for the Products will be as set forth in the Order. If price is not stated in the Order, the price will be Supplier's lowest prevailing market price. Supplier is responsible for and will pay all sales, use, excise and similar taxes applicable to the Products provided under the Order or the materials used in connection therewith, excluding taxes on Ivanti's net income ("Tax"). All prices quoted or payable for Products will be exclusive of Tax, and any Tax applicable to the Products will be separately stated on the Order or associated invoice.
  - b. **Invoicing and Payment.** Unless otherwise specified by Ivanti, Supplier shall invoice Ivanti for the Products only after Ivanti has received the Products (including ancillary services, if any). Unless the Order states otherwise, the terms of payment are net forty-five (45) days from the latter receipt of Supplier's valid invoice or receipt and acceptance of the Products by Ivanti. In the event Supplier has not received payment as agreed, Supplier shall notify Ivanti in writing and Ivanti shall make prompt payment of all undisputed amounts, provided however, that Ivanti may withhold payment of any invoiced amounts that Ivanti disputes in good faith upon written notice to Supplier, and the parties shall work in good faith to resolve any such billing disputes. Invoice payment will not be deemed to be final acceptance by Ivanti of associated Products.
3. **DELIVERY, CUSTOMS AND ACCEPTANCE.**
  - a. **Packaging.** Supplier shall be responsible for packaging, loading and shipping the Products in accordance with any packaging requirements set forth in the Order or otherwise communicated in writing by Ivanti. If no such specifications, methods or requirements are specified, Supplier shall be responsible for packaging, loading and shipping the Products: i) in a manner reasonably calculated to prevent damage and loss to the Products during shipment; ii) in compliance with all country of origin marking instructions and applicable regulations; and iii) not using premium transportation unless specifically authorized by Ivanti. Shipments must equal the quantity ordered (no partial shipments), unless otherwise specifically provided for on the Order of otherwise by Ivanti in advance in writing. Supplier shall provide a detailed packing list to Ivanti (which will be securely attached to the outside of each package) for all shipments, referencing the applicable Order number.
  - b. **Delivery, Risk of Loss, Title and Customs.** Unless otherwise specifically provided for on the Order of otherwise by Ivanti in advance in writing, Products will be delivered and title and risk of loss shall pass to Ivanti DDP (INCOTERMS 2010), at the place of delivery destination specified on the Order. Passage of title will not impair the right of Ivanti to inspect and reject any Product. Supplier shall bear all risks as to rejected Products after notice of rejection. Supplier will pay shipping costs for new products and for the shipping costs for any defective material returned to the Supplier. If any Products or materials in support thereof are imported into any other country in performance of an Order, Supplier will be responsible for all legal, regulatory and administrative requirements associated with any importation, as well as the payment of all associated duties, taxes and fees.
  - c. **Delayed Delivery, Cancellation and Substitute Product.** Time shall be of the essence for all deliveries. If at any time Supplier reasonably anticipates it will not meet such delivery date or schedule, Supplier shall promptly notify Ivanti in writing of reasons for such anticipated delay, and the estimated duration of the delay. If requested by Ivanti, Supplier shall ship such delayed Products by means to avoid or minimize delay to the maximum extent possible, and any added cost of such express or expedited shipping will be borne by Supplier. In addition to its other remedies, Ivanti reserves the right to cancel, at no cost to Ivanti, all or any part of any Order for Products (including unperformed ancillary services) undelivered by the dates specified in the Order. Further, if Supplier fails to deliver on time, Ivanti may purchase equivalent substitution Products elsewhere, and Supplier will be liable to Ivanti for the difference between: i) the actual and reasonable costs incurred by Ivanti to procure the substitute Products and ii) the Order price Ivanti would have paid to Supplier if Supplier had delivered on time for the equivalent Products.
  - d. **Inspection, Acceptance of Products and Substitute Product.** All Products are subject to final review, inspection and acceptance by Ivanti, notwithstanding any payment or initial inspections. Acceptance of Products will occur when Ivanti has inspected the Products delivered under the Order and determined they meet the requirements specified in the applicable Order. Ivanti shall make such inspection within a reasonable period of time (not to exceed forty-five (45) days) after the applicable Products have been delivered or services completed by Supplier, except for latent defects for which no time restrictions apply. If the Products do not meet requirements, then Ivanti may promptly (and in any event within thirty (30) days) require Supplier to: (i) repair, replace or re-perform the deficient or non-conforming Products; or (ii) return non-conforming Products to Supplier for refund of all fees that may have been paid by Ivanti for the deficient or non-conforming Products and those Products that are dependent on such deficient or non-conforming Products or services. Any corrected Products or services shall be subject to the same inspection and acceptance terms provided for in this Section. Inspection and acceptance of any Products or Services by Ivanti shall not affect Supplier's warranties. Further, if Supplier fails to deliver acceptable conforming Product and as a result the Order is rejected, Ivanti may purchase equivalent substitution Products elsewhere, and Supplier will be liable to Ivanti for the difference between: aa) the actual and reasonable costs incurred by Ivanti to procure the substitute Products and bb) the Order price Ivanti would have paid to Supplier if Supplier had delivered on time for the equivalent Products. The foregoing shall not be construed to limit or exclude any other rights or remedies of Ivanti at law or in equity.
4. **REPRESENTATIONS AND WARRANTIES.**
  - a. **Authority and Compliance with Laws.** Supplier represents and warrants that it is validly existing and in good standing under the laws of the jurisdiction of its organization and has the power and authority to enter into this Agreement. Supplier represents, warrants and covenants that it does, and will for the duration of performance of its obligations under the Order, comply with all applicable laws, rules and regulations that apply to or govern Supplier's performance of the Order or the Products to be provided.



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- b. No Conflict and No Actions Pending or Liens. Supplier represents the execution, delivery and performance of the Order does not conflict with any agreement, instrument or understanding, oral or written, to which Supplier is a party or which may bind it. Supplier represents there is no lien, action, suit or proceeding, at law or in equity, pending or, to the best of Supplier's knowledge, threatened against Supplier, wherein an unfavorable decision or result would materially adversely affect the performance by Supplier of its obligations. Supplier represents, warrants and covenants that all deliverables pursuant to the Order will be free and clear of all liens, claims and encumbrances by the date delivered to Ivanti
- c. Product and Performance Warranty.
- i. Supplier warrants that its performance and all Products provided hereunder upon delivery to Ivanti will: (a) strictly conform with the requirements and specifications in the applicable Order; and (b) for Software products provided hereunder, that Supplier has disclosed to Ivanti in writing the existence of any third-party code, including without limitation open source code, that is included in or is provided in connection with the Products.
- ii. Supplier warrants for all hardware Products provided hereunder, beginning upon final acceptance of a delivery by Ivanti and continuing for the longer of any warranty period specified in the Order, any warranty period able to be passed through by Supplier from a third-party, any warranty period offered by Supplier in its usual and customary terms of sale to other commercial buyers, or eighteen (18) months, that such hardware will be: (a) new and not contain used or reconditioned parts unless otherwise agreed in writing by Ivanti; (b) be free from defects in material and workmanship; and (c) perform in accordance with the Products' published specifications.
- iii. Supplier warrants for all software Products provided hereunder, upon final acceptance of delivery to Ivanti, that such software will be: (a) the most current release generally available to third parties at the time of delivery (unless otherwise expressly stated in the Order or otherwise in writing by Ivanti); (b) free of any "back door," "time bomb," "drop dead" device or other software routine designed to disable the software automatically with the passage of time or under the positive control of any person; (c) subjected to reasonable commercial efforts by Supplier, including the use of an updated commercial anti-malware program and anti-virus program, to test and remove from the software prior to its delivery or transmission any Malicious Code (where "Malicious Code" means any code that is designed to harm, or otherwise disrupt in any unauthorized manner, the operation of a recipient's computer programs or computer systems or destroy or damage recipient's data in an unauthorized manner); (d) in compliance with all licensing agreements applicable to any third-party code, including open source, that is included in or is provided in connection with the Products; and (e) continuing for a period of twelve (12) months after final acceptance by Ivanti, will perform in accordance with the Products' published specifications.
- d. Remedy. Supplier shall, without additional cost to Ivanti, within thirty (30) days of receipt of written notification of any non-conformance with the warranties set forth above in this Section, as directed by Ivanti, correct any such non-conformance by promptly: (i) repairing, replacing or re-performing the non-conforming Products; or (ii) refunding to Ivanti all fees paid by Ivanti hereunder for the non-conforming Products and those Products that are dependent on such non-conforming Products. The foregoing shall not be construed to limit or exclude any other rights or remedies of Ivanti at law or in equity. The warranty with respect to any such corrected Products shall be subject to the same terms as the warranty provided for in this Section.
5. **CONFIDENTIALITY.** Ivanti may disclose to Supplier information that Ivanti considers confidential in performance of the Order. "**Confidential Information**" means any non-public data, information and other materials regarding the products, software, services, or business provided by Ivanti to Supplier, including but not limited to information relating to the subject matter of the Order, where such information is marked or otherwise communicated as being "proprietary" or "confidential" or the like, or where such information should, by its nature or circumstances of disclosure, be reasonably considered to be confidential and/or proprietary. For the avoidance of doubt, any and all personally identifiable information of a natural person, including name, address, e-mail address, telephone number, any other Ivanti or third party-issued identifier, and/or IP address in any media or format is deemed Confidential Information. Notwithstanding the foregoing, Confidential Information will not include information that: (a) is already known to Supplier without restriction as to disclosure prior to disclosure by Ivanti; (b) becomes publicly available without fault of Supplier; (c) is rightfully obtained by Supplier from a third party without restriction as to disclosure, or is approved for release by written authorization of Ivanti; or (d) is independently developed or created by Supplier without use of Ivanti's Confidential Information as evidenced by contemporaneous written records. Except as otherwise expressly authorized herein, Supplier agrees to: (i) use the Confidential Information of Ivanti only to perform or exercise rights granted to it hereunder; (ii) treat all Confidential Information of Ivanti in the same manner as it treats its own similar proprietary information, but in no case will the degree of care be less than reasonable care; and (iii) disclose Ivanti's Confidential Information only to those employees, contractors and other agents of Supplier who have a need to know such information, provided that any such individuals are subject to obligations of confidentiality with respect to such Confidential Information at least as restrictive as the terms of these Terms, and Supplier shall remain liable for any non-compliance of such employee, contractor or other agent with these Terms. Notwithstanding the provisions of this Section, Supplier may disclose Ivanti's Confidential Information as required by any court or other governmental body or as otherwise required by law, provided, however, that Supplier shall provide written notice to the Ivanti promptly to enable Ivanti to seek a protective order or otherwise prevent disclosure of such Confidential Information. Supplier Acknowledges and agrees that nothing in the Order or the disclosure of Confidential Information hereunder will be construed as granting any property rights, by license or otherwise, to any Confidential Information of Ivanti, or to any invention or any patent, copyright, trademark, or other intellectual property right that has issued or that may issue, based on such Confidential Information.
6. **INDEMNIFICATION.** To the fullest extent permitted by applicable law, Supplier hereby agrees to defend, indemnify, and hold harmless Ivanti and its affiliates (and their respective directors, officers, employees, successors and assigns) (each, an "**Indemnified Party**") from and against any and all damages or losses, including costs of litigation and reasonable attorneys' fees, arising, directly or indirectly, from any claims, demands and proceedings that Supplier's provision or Ivanti's purchase or use of the Products provided under the Order constitutes misappropriation or infringement of any intellectual property rights or breach of a confidential relationship or other proprietary rights of a third party. Notwithstanding the foregoing, Supplier shall have no obligation to indemnify Ivanti as set forth above to the extent any claim would not have arisen but for: (i) a modification or alteration to the applicable Product not made by or on behalf of Supplier; or (ii) any combination or use of the applicable Products with third party equipment, products or systems that was not approved or reasonably contemplated by Supplier. If the Products are held to constitute an infringement or misappropriation and their sale or use is enjoined, Supplier shall, at Supplier's expense and option, exercise the first of the following remedies that is commercially practicable: (a) obtain for Ivanti the rights granted under the Order; (b) modify the Products so they are non-infringing and remain in compliance with the Order; (c) replace the Products with non-infringing ones that conform with the Order; or (d) accept the return of infringing Products and refund any amount paid by Ivanti under for such Products, and for those Products that are dependent thereon. The Indemnified Party shall be entitled, at its own expense, to participate in any such litigation, negotiations and settlements with counsel of its own choosing. Supplier shall not have the right to settle any claim on behalf of Indemnified Party without the prior written consent of the Indemnified Party.
7. **LIMITATION OF LIABILITY AND DISCLAIMER OF CONSEQUENTIAL DAMAGES.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR SECTION 6 (INDEMNIFICATION), OR FOR ANY BREACH OF OR FOR LIABILITY ARISING OUT OF SECTION 5 (CONFIDENTIALITY): A) IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY LOST REVENUES, LOST PROFITS, INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES (UNDER ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STATUTE, TORT OR OTHERWISE), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND B) IN NO EVENT WILL IVANTI'S AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THESE TERMS EXCEED THE FEES RECEIVED BY SUPPLIER FOR THE RELEVANT PRODUCT, WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE. MULTIPLE CLAIMS SHALL NOT EXPAND



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THE LIMITATIONS SET FORTH IN THIS SECTION.

8. **GENERAL.**

- a. **Expiration.** Except as may otherwise be set forth on the Order, if not accepted first by Supplier then the Order will expire ninety (90) days after issuance.
- b. **Assignment.** Supplier will not assign its rights nor subcontract its duties without Ivanti's prior written consent. Any unauthorized assignment is null and void. These Terms will bind each party and its permitted successors and assigns. Ivanti may assign any of its rights or obligations under these Terms without the consent of Supplier.
- c. **Applicable Law.** If the Ivanti entity purchasing the Products is Ivanti, Inc. or Ivanti Comércio de Software Brasil Ltda, the Terms will be governed by the laws of the State of Utah without regard to conflict of laws principles and in any dispute arising out of or in connection with the Terms the parties consent to the exclusive jurisdiction and venue in the State and Federal courts within Salt Lake County, Utah. If the Ivanti entity purchasing the Products Ivanti U.K. Ltd. or Ivanti International Limited, the Terms will be governed by the laws of England and Wales without regard to conflict of laws principles and any dispute arising out of or in connection with this Agreement the parties consent to the exclusive jurisdiction and venue in the courts within London, United Kingdom. If the Ivanti entity purchasing the Products Ivanti Software K.K., the Terms will be governed by the laws of Japan without regard to conflict of laws principles and any dispute arising out of or in connection with the Agreement the parties consent to the exclusive jurisdiction and venue in the courts within Tokyo, Japan. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement and to transactions processed under this Agreement. Notwithstanding anything to the contrary herein, to the extent permitted under the applicable law, Ivanti may bring an action in any jurisdiction for the purpose of (a) enforcing a judgment; or (b) protecting Ivanti's intellectual property rights. The parties acknowledge and agree that this Agreement expressly excludes the provisions of the Contracts (Rights of Third Parties) Act 1999 and any amendment thereto.
- d. **No Waiver.** The failure of either party at any time to require performance by the other party of any provision hereof will not affect, in any way, the full rights to require such performance at any time thereafter, nor will the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself.
- e. **No Export of Technical Data.** Supplier will not, nor will Supplier authorize or permit Supplier personnel to disclose, export or re-export any of Ivanti's information, any process, or deliverable that is produced under the Order, without prior notification and compliance with all applicable Federal, State and local laws, regulations and ordinances, including the regulation of the US Department of Commerce and/or the US Department of State.
- f. **Independent Contractors.** Supplier is, and shall be deemed to be, an independent contractor and not an agent or employee of Ivanti.
- g. **Publicity.** Neither party shall publicly use the name or logo of the other party in promotion of its business, nor disclose any of the terms and conditions of these Terms or any Order hereunder, without the prior written consent of the other, except to (a) its attorneys, accountants, and other professional advisors under a duty of confidentiality, (b) as required by law, or (c) in connection with a proposed merger, financing, or sale of such party's business provided that any third party to whom these Terms are to be disclosed is under a duty of confidentiality.
- h. **Code of Conduct.** Supplier agrees that Supplier complies with Ivanti's Vendor Code of Business Conduct found at <https://www.ivanti.com/company/legal>.
- i. **Data Privacy and Security.** Supplier agrees that to the extent Supplier processes personal information on behalf of Ivanti it agrees to the Ivanti Data Processing Agreement found at <https://www.ivanti.com/company/legal>. Supplier agrees that Supplier complies with the applicable Ivanti Security Requirements found at <https://www.ivanti.com/company/legal>.
- j. **No Third-Party Beneficiaries.** There are no third-party beneficiaries to these Terms, and these Terms do not provide a third party with any remedy, claim, liability, reimbursement, cause of action or other right or privilege.
- k. **Entire Agreement; Modification.** In the absence of a Supplier Agreement, the Order and these Terms constitute the entire agreement of the parties with regard to the subject matter and supersedes all other prior or contemporaneous written or oral representations, agreements and understandings between Ivanti and Supplier and any different or additional terms and conditions. Except as expressly provided herein, only a writing signed by both parties may modify these Terms. If any provision of these Terms is, for any reason, held to be invalid or unenforceable, the other provisions of these Terms will be unimpaired and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.