

Thales eSecurity

Professional Services Terms and Conditions



These Professional Services Terms and Conditions govern the provision of Professional Services by Thales to the Customer. They are supplemental to and form a part of the Agreement. They set forth the legally binding rights and obligations of Customer and Thales with respect to the Professional Services purchased by Customer pursuant to the Agreement. In the event of a conflict between the terms of the General Terms and Conditions and these Professional Services Terms and Conditions, the latter shall prevail with respect to the subject matter contained herein.

Thales shall not be bound by any terms additional to or different from those set forth in these Professional Services Terms and Conditions that may appear in any Customer Order or in any other communication. The Agreement shall be deemed to incorporate in full as if set forth therein these Professional Services Terms and Conditions. Customer agrees to be bound by these Professional Services Terms and Conditions by entering into the Agreement or by otherwise receiving or taking advantage of the Professional Services offered or in any other way expressing agreement to these Professional Services Terms and Conditions.

GENERAL

1. DEFINITIONS

"Agreement" means the legally binding contract between Thales and Customer, which includes as applicable: (i) the General Terms and Conditions; (ii) the Limited Warranty; (iii) the Support and Maintenance Terms and Conditions; (iv) the End User License Agreement (EULA); (v) the Professional Services Terms and Conditions; (vi) the SOW, order acknowledgment or signed Quote and any related terms and conditions incorporated by reference by the mutual agreement of the parties. Together (i) through (v) are located at <https://www.thalesecurity.com/about-us/legal>

"Deliverable" means tangible and intangible deliverables, the Technology and Documentation created by Thales pursuant to a SOW and/or Order Acknowledgment.

"Professional Services" means collectively the training, consulting, development, installation, migration and/or deployment services purchased by Customer directly from Thales or indirectly through an Authorized Partner set forth in the Agreement, including without limitation, deployment, Public Key Infrastructure services, Data Protection Manager replacement, code signing, or developer services.

"SOW" means the applicable statements of work executed by both Thales and Customer that describe the specific Professional Services to be performed by Thales.

"Supplier Materials" means materials, equipment, documents and other property of Thales.

"Work Product" means the Deliverables and any and all work product or works of authorship relating to the Technology and/or the Professional Services, including all original works of authorship conceived, created, performed or produced hereunder.

"Technology" means all tangible items related to, constituting, disclosing or embodying the Deliverables, including: (i) works of authorship, including all written, audio and visual materials and computer programs (whether in source code or in executable code form) and the related architecture and documentation; (ii) inventions (whether or not patentable), discoveries and improvements; (iii) proprietary and confidential information, trade secrets and know how; (iv) databases, data compilations and collections, and customer and technical data; (v) methods and processes; and (vi) devices, prototypes, designs and schematics.

2. PERFORMANCE AND ACCEPTANCE

- a. Thales shall provide the Professional Services to Customer in accordance with the Agreement. In the event that Thales has stated work is to be carried out at the Customer's premises (on-site), and should this not be necessary in whole or in any part, Thales shall have the right, in its sole discretion, to perform certain tasks (such as preparation, documentation development, bespoke software development, and other pre and post engagement activities) off-site. The Customer agrees and acknowledges that such tasks may be performed off-site as an alternative, but shall be payable at the same rates in accordance with the Agreement.
- b. Acceptance shall be as set forth in the SOW or the Quote

- c. Unless otherwise specified in the Agreement, all dates and times for the provision of the Professional Services are estimates only and time shall not be of the essence for the performance of the Professional Services. Thales shall not have any liability for delay or for any damages or losses sustained by Customer as a result of such dates or times not being met.
- d. Training and consulting Professional Services shall be scheduled by Customer and delivered by Thales within one (1) year of the purchase date. If not delivered within this time period, the purchase price for such services shall be forfeited, except in the event that the non-delivery was caused by Thales' fault. For clarification purposes only, the purchase date is the date when the Customer has received the Order Acknowledgement from Thales.

3. INVOICE AND PAYMENT

- a. Professional Services will be invoiced upon the earliest of (i) Thales' acceptance of the applicable Order, or (ii) the delivery of any Deliverables or associated products (if applicable), unless otherwise agreed by Thales in the Agreement.
- b. Invoices shall be deemed accepted by Customer upon receipt, unless Customer advises Thales in writing of a material error within ten (10) days after receipt.
- c. Customer may not offset, defer or deduct any invoiced amounts that Thales determined are not erroneous following such period.
- d. Unless otherwise stated in the Agreement, invoices are payable within the time period stated in the invoice, or if not stated, within thirty (30) days from the date of invoice, in the method and currency identified in the invoice.
- e. All payments made by Customer and any unused Professional Services purchased by Customer are non-refundable. All Professional Services purchased by Customer must be requested and delivered within one (1) year of purchase.
- f. Thales may suspend or terminate any or all Professional Services and refuse additional Orders until overdue amounts are fully paid by Customer. Any late payment will bear interest at a rate of one percent (1%) per month, or such other lesser rate as may be required by applicable law. Thales reserves the right to withdraw any credit advanced at any time.
- g. Unless otherwise agreed by the parties in the Agreement, where the Customer has pre-approved Thales' originally quoted pricing for Thales' travel, living and out of pocket expenses associated with the provision of the Professional Services, Thales shall nonetheless have the right to adjust and increase such travel, living and out of pocket expenses in each of the following instances: (a) in the event that any of the assumptions set out in the Agreement prove to be incorrect and this adversely affects Thales' ability to deliver the Professional Services; and/or (b) in the event of delay due to an act(s) or omission(s) of the Customer.
- h. Where the Parties have agreed that Thales' fees shall be calculated on a time and materials basis: (a) the rates used shall be those set out in the Agreement; (b) 50% of the estimated fees shall be invoiced on the Effective Date of the SOW or Quote, as applicable, with the balance being invoiced upon completion; (b) unless otherwise agreed by the parties in the Agreement, invoices are payable within the time period stated therein, or if not stated, within thirty (30) days from the date of invoice in the method and currency identified by Thales in the invoice. No discount for early payment is authorized. Thales reserves the right to withdraw any credit advanced at any time.

4. CUSTOMER OBLIGATIONS:

Customer shall:

- a. Co-operate with Thales in all matters relating to the provision of the Professional Services;
- b. Provide Thales, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Thales to provide the Professional Services;
- c. Provide Thales with such information and materials as Thales may reasonably require in order to supply the Professional Services, and ensure that such information is complete and accurate in all material respects;
- d. Prepare the Customer's premises for the provision of the Professional Services;
- e. Obtain and maintain all necessary licenses, permissions and consents which may be required for Thales to provide

the Professional Services before the date on which the Professional Services are to start;

- f. Keep all Supplier Materials at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to Thales, and not dispose of or use the Supplier Materials other than in accordance with the written instructions or authorization of Thales; and
- g. Comply with any additional obligations as set out in the Agreement.

5. CUSTOMER'S DEFAULT

If Thales' performance of any of its obligations under the Agreement is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("Customer Default"):

- a. without limiting or affecting any other right or remedy available to it, Thales shall have the right to suspend performance of the Professional Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays Thales' performance of any of its obligations;
- b. Thales shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Thales' failure or delay to perform any of its obligations herein as a result of a Customer Default; and
- c. the Customer shall reimburse Thales on written demand for any costs or losses sustained or incurred by Thales arising directly or indirectly from the Customer Default.

6. WARRANTY

Except as otherwise agreed by Thales under a separate written agreement, the Deliverables and Professional Services are subject to the Limited Warranty located at <https://www.thalesecurity.com/about-us/legal> which is hereby incorporated by reference into these Professional Services Terms and Conditions, as if set forth in full and at length herein.

7. CANCELLATION / RESCHEDULE

a. By Customer:

Requests by Customer to cancel or reschedule a Professional Services engagement must be submitted in writing only via email to the assigned Thales' engagement manager. Requests by phone or voicemail will not be accepted by Thales.

- (i) **Onsite Professional Services.** If Customer cancels or reschedules an onsite engagement within five (5) business days of the scheduled engagement start date, Thales reserves the right to charge Customer a Cancellation Fee plus any related unrecoverable travel expenses incurred by Thales. If Customer cancels or reschedules an onsite engagement six (6) or more business days prior to the scheduled engagement start date, Customer shall reimburse Thales for any related unrecoverable travel expenses incurred. New engagements dates shall be established by mutual agreement. No more than two rescheduling requests will be approved for any one given purchase. If the Customer wishes to reschedule more than two times, at that point, they will be charged the Cancellation Fee.
- (ii) **Remote service cancellation/rescheduling.** If Customer cancels or reschedules a remote engagement within three (3) business days of the scheduled engagement start date, Thales reserves the right to charge Customer a Cancellation Fee. New engagement date requests shall be established by mutual agreement only up to a maximum of two (2) rescheduling dates for one (1) given Professional Services engagement. Subsequent requests shall be subject to a Cancellation Fee per request.
- (iii) **Cancellation Fee.** In the event a Cancellation Fee is payable by Customer pursuant to either subparts (i) or (ii) above of this section 7a, the Cancellation Fee payable by Customer shall be calculated as follows: (a) for time and materials engagements, the Cancellation Fee shall be equal to the price for one (1) day of Thales' Professional Services under the applicable Order; (b) for fixed fee engagements, the Cancellation Fee shall be equal to the prevailing standard Thales' price book rate for one day of Professional Services at the time of the cancellation or rescheduling.

b. By Thales:

In the event of a Professional Services engagement cancellation by Thales:

- (i) Customer shall receive full credit towards alternative engagement dates. Thales reserves the right to cancel any Authorized Partner and/or open-seating instructor-led classroom training due to insufficient enrollment (three (3) registrants or less) by providing notice to the registered customers/ Authorized Partner at least seven (7) business days prior to the scheduled commencement date.
- (ii) In no event will Thales be responsible for any non-refundable transportation, lodging, or other costs related to a cancelled class. In the event an engagement is cancelled or postponed by Thales, Thales will offer registrants the opportunity to choose another date and extend the applicability of the prepaid training or service as needed within a maximum period of time of one (1) year from the original engagement date.

8. INTELLECTUAL PROPERTY AND PROPRIETARY RIGHTS

- a. Thales shall be deemed to be the sole owner of any and all Work Product conceived, created, performed or produced in the performance of the Professional Services by Thales or arising out of this Agreement. The Work Product, which includes the Deliverables is licensed to Customer and not sold. The source code of the Deliverables is a confidential trade secret of Thales.
- b. Subject to Customer's compliance with these Professional Services Terms and Conditions, Thales hereby grants to Customer a, non-exclusive, non-transferable, non-sublicensable license to use the Deliverables created by Thales in the performance of the Professional Services solely for Customer's own internal use. Thales and its licensors reserve all other rights. Thales, or its licensors, own all intellectual property rights, including patent, copyright, trade secret, trademark and other proprietary rights in and to the Deliverables.
- c. Customer may not, nor make any attempt to: (i) modify, adapt, decompile, disassemble, copy or reverse engineer the Deliverables, or in any other manner attempt to derive the source code of any component of the Deliverable for any purpose, including any components thereof; (ii) create derivative works based on the Deliverables; (iii) make unauthorized copies of the Deliverables; (iv) allow any resale, disclosure, distribution, lease, loan, rental, sublicense or relocation or unauthorized third party use or access to the Deliverables; (v) use the Deliverables for the benefit of, or to support or provide services to any unauthorized third party; (vi) disclose to any third party the results of any Deliverable performance benchmarks or any specific detailed comparisons between the deliverables and any Customer or third-party product; or (vii) to the fullest extent permitted by law, use any functionality of the Deliverables or any output generated by such functionality to augment or replace functionality in a third party product or as an add-in to any third party product without Thales' prior written consent. In the event Customer breaches its payment obligations under these Professional Services Terms and Conditions, or breaches any of its obligations under this Section 8 c, Customer shall: (i) return to Thales all documents and tangible materials (and any copies) containing, reflecting, evidencing, embodying, incorporating or based upon the Deliverables and the Work Product, (ii) permanently remove and erase all of the Work Product and Deliverables from its computer systems and (iii) certify in writing to Thales that it has complied with the requirements of this clause.

9. INTELLECTUAL PROPERTY INDEMNIFICATION

- a. Subject to Section 10 "Limitation of Liability", Thales will: (a) defend at its own expense, or at its option, settle any action brought by a third party against Customer to the extent that it is based upon a claim that any Deliverable(s) provided by Thales infringe a valid Canada, United States, European Union, Hong Kong or United Kingdom patent or copyright or misappropriates a third party's trade secret ("IP Claim"); and (b) pay direct costs and direct monetary damages finally awarded against Customer in any action arising from such IP Claim, which are directly and solely attributable to such IP claim (the "IP Indemnity").
- b. The IP Indemnity is subject to and limited by: (i) Customer providing prompt notification in writing to Thales of any such IP Claim; (ii) Thales having sole control of the defense and all negotiations for settlement of the IP Claim; (iii) Customer providing all available information, reasonable assistance and authority to enable Thales to defend, negotiate and settle the IP Claim; and (iv) Customer not making any admission or taking any other action that could prejudice the defense or settlement of the IP Claim. Thales shall have no liability hereunder for any costs incurred or settlement entered into without its prior written consent.
- c. Sole and exclusive remedy. Should such Deliverable(s) become, or in Thales' opinion, be likely to become the subject

of an IP Claim or the use thereof become restricted by a court awarded injunction, Customer shall permit Thales, at Thales' sole option and expense, the right to either: (i) procure for Customer the right to continue using such Deliverable(s) by license or release from claim of violation, infringement or misappropriation; (ii) modify such Deliverable(s) so that they are functionally equivalent but are no longer subject to an IP Claim; (iii) replace the Deliverable(s) with equally suitable substitute Deliverable(s) free from an IP Claim; or (iv) refund to Customer the purchase price for the impacted Deliverable(s) based on a five (5) year straight line depreciation schedule.

- d. Exceptions to Thales' indemnity. Thales shall have no liability to the Customer under this IP Indemnity with respect to any IP Claim which arises from: (i) Thales' compliance with any design, technical information, instructions or specifications furnished by the Customer; (ii) the combination or utilization of the Deliverable(s) with other products or services not provided by Thales, if the Deliverable(s) would not have infringed in the absence of such combination; (iii) the modification of the Deliverable(s) furnished hereunder other than by Thales or its agents, servants or subcontractors; or (iv) the use of the Deliverable(s) contrary to the Documentation, (iv) the use of the Deliverables after the termination of the license (If applicable); or (v) the infringement or alleged infringement of third parties patent or other proprietary rights arising from the execution of the Order and of the Deliverables in accordance with Customer's designs plans or specifications and the Customer shall indemnify Thales against all losses damages expenses costs or other liability arising from such claims.
- e. THE FOREGOING STATES THE SOLE AND EXCLUSIVE LIABILITY OF THALES AND ITS LICENSORS AND THE SOLE AND EXCLUSIVE REMEDY OF CUSTOMER WITH RESPECT TO ANY CLAIM OF PATENT, COPYRIGHT, TRADEMARK, TRADE SECRET OR OTHER PROPRIETARY RIGHTS INFRINGEMENT BY THE DELIVERABLES, THE PROFESSIONAL SERVICES, ANY PART THEREOF OR THE USE THEREOF, AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED OR ARISING BY CUSTOM OR TRADE USAGE, AND INDEMNITIES WITH RESPECT THERETO. NOTWITHSTANDING THE FOREGOING, ALL OPEN SOURCE SOFTWARE OR FREWARE INCLUDED WITH THE DELIVERABLES IS PROVIDED WITHOUT ANY RIGHTS TO INDEMNIFICATION. IN NO EVENT SHALL THALES BE LIABLE FOR ANY CONSEQUENTIAL DAMAGES OR LOST PROFITS UNDER THIS SECTION 9, REGARDLESS OF THE LEGAL THEORY UNDER WHICH SUCH DAMAGES ARE SOUGHT, AND EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10. LIMITATION OF LIABILITY

EXCEPT FOR CLAIMS INVOLVING BREACH OF CONFIDENTIALITY, AND CLAIMS FOR PERSONAL INJURY OR DEATH TO THE EXTENT CAUSED BY THALES' GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, FOR FRAUD OR FRAUDULENT MISREPRESENTATION, OR FOR ANY OTHER LIABILITY WHICH MAY NOT BE EXCLUDED BY LAW, THALES' AGGREGATE LIABILITY IN CONNECTION WITH ANY CLAIMS ARISING OUT OF OR RELATING TO THESE PROFESSIONAL SERVICES TERMS AND CONDITIONS, OR THE USE OF THE PROFESSIONAL SERVICES AND DELIVERABLES SHALL NOT EXCEED THE LESSER OF: (i) CUSTOMER'S ACTUAL DAMAGES OR (ii) THE AMOUNT PAID BY CUSTOMER UNDER THE SOW OR QUOTE FOR THE PROFESSIONAL SERVICES THAT ARE THE SUBJECT OF THE CLAIM. THIS LIMIT, WHICH INCLUDES ALL COSTS AND FEES ARISING OUT OF ANY SUCH CLAIM, SHALL APPLY TO ANY AND ALL CLAIMS REGARDLESS OF THE LEGAL THEORY ON WHICH THEY ARE BASED.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL THALES OR ITS AFFILIATES BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND OR TYPE, INCLUDING, BUT NOT LIMITED TO LOSS OF PROFITS OR REVENUE, LOSS OF DATA, LOSS OF BUSINESS, LOSS OF OPPORTUNITIES, LOSS OF USE OF THE PRODUCT(S) OR SERVICE(S) OR ANY ASSOCIATED PRODUCT(S) OR SERVICE(S), INCLUDING LOSS OF TIME OR PROFIT ATTRIBUTABLE THERETO, INTERNAL COSTS INCURRED AS A RESULT OF DEFENDING A THIRD PARTY CLAIM OR COST OF SUBSTITUTED DELIVERABLES OR PROFESSIONAL SERVICES WHICH ARISE OUT THALES' PERFORMANCE, NON-PERFORMANCE OR FAILURE TO PERFORM ANY OBLIGATION CONTAINED WITHIN THESE PROFESSIONAL SERVICES TERMS AND CONDITIONS, OR WITH USE, OR INABILITY TO USE THE SERVICES, REGARDLESS OF THE LEGAL THEORY ON WHICH THEY ARE BASED, EVEN IF THALES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

THE FOREGOING LIMITATIONS OF LIABILITY ARE INDEPENDENT OF ANY EXCLUSIVE REMEDIES FOR BREACH OF THE LIMITED WARRANTY INCORPORATED BY REFERENCE AND WILL APPLY EVEN IF SUCH WARRANTY FAILS OF ITS ESSENTIAL PURPOSE. IN ADDITION, THALES WILL HAVE NO LIABILITY TO CUSTOMER IF CUSTOMER NEGLECTS TO INSTALL WITHIN A REASONABLE TIME PERIOD ANY FAILURE CORRECTION SOFTWARE DELIVERED TO CUSTOMER, OR ANY UPDATE OR RELEASE OF THE SOFTWARE MADE GENERALLY AVAILABLE AFTER THE EFFECTIVE DATE THAT WOULD HAVE AVOIDED OR MITIGATED THE CLAIM.