



## TRADE UP PROGRAM General Terms and Conditions

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CAREFULLY READ THE FOLLOWING TERMS AND CONDITIONS BETWEEN FORTINET AND THE AUTHORIZED DISTRIBUTORS PARTICIPATING IN THE PROGRAM. ANY AUTHORIZED DISTRIBUTOR PARTICIPATING IN THE PROGRAM AGREE TO BE BOUND BY AND ACCEPT THESE TERMS AND CONDITIONS. IF THE AUTHORIZED DISTRIBUTOR DO NOT AGREE TO THESE TERMS AND CONDITIONS, FORTINET EXPLICITLY ADVISES THE AUTHORIZED DISTRIBUTOR NOT TO PARTICIPATE IN THE PROGRAM. THE AUTHORIZED DISTRIBUTOR REPRESENTS TO HAVE READ AND UNDERSTOOD THESE TERMS AND CONDITIONS AND HAVE HAD SUFFICIENT OPPORTUNITY TO CONSULT WITH COUNSEL PRIOR TO ACCEPTING THE TERMS SET OUT HEREIN. FORTINET SHALL NOT BE BOUND BY ANY ADDITIONAL, INCONSISTENT, AND/OR CONFLICTING PROVISIONS IN ANY ORDER, RELEASE, ACCEPTANCE OR OTHER CORRESPONDENCE (INCLUDING WITHOUT LIMITATION ANY COMMERCIAL BROCHURE) UNLESS EXPRESSLY AGREED TO IN A WRITING SIGNED BY FORTINET'S GENERAL COUNSEL, AND IN NO EVENT SHALL FORTINET BE DEEMED TO HAVE ACCEPTED ANY TERMS IN YOUR PURPORTED OFFER OR OFFER DOCUMENTS.

### 1. DEFINITIONS

<b>Authorized Distributor</b>	shall mean an independent third party acting in its own name and account that is authorized by Fortinet (and properly registered with Fortinet as a Fortinet distributor) to sell, within their authorized Territory, Fortinet's Products purchased from Fortinet to a Fortinet Authorized Reseller.
<b>End-Customer</b>	shall mean a lawful owner, within the Territory, of an Eligible Product unit properly registered in its own name with Fortinet, excluding Authorized Distributors and Fortinet's Authorized Resellers (including without limitation Eligible Resellers).
<b>Authorized Reseller</b>	shall mean an independent third party acting in its own name and account that is authorized by Fortinet and properly registered with Fortinet as a Fortinet's authorized reseller to resell Fortinet's Products, purchased from a Fortinet Authorized Distributor, to an end-customer within their authorized Territory.
<b>Eligible Product</b>	shall mean a Fortinet's Product not listed on Fortinet's then-current Trade Up Exclusion List.
<b>EULA</b>	shall mean Fortinet's then-current End-User License Agreement which is available at <a href="http://www.fortinet.com/doc/legal/eula.pdf">http://www.fortinet.com/doc/legal/eula.pdf</a> , or at any other website as designated by Fortinet.
<b>Fortinet</b>	shall mean Fortinet, Inc.
<b>Fortinet's Product</b>	shall mean any hardware products identified in the Fortinet's applicable then-current price list.
<b>Fortinet's Trade Up Exclusion List</b>	shall mean the official Trade Up exclusion list of products under this Program provided in section 4(2) below and updated, from time to time, at Fortinet's discretion upon publication at Fortinet Partner Portal.



**Program** shall mean Fortinet's Trade Up Program

**Replacement Product** shall mean a specific Fortinet's Product identified for purely non-binding and informative purpose by its nature, technical specifications per Fortinet then-current product data-sheet, common sense and Fortinet as suitable for trade up purpose with a corresponding Eligible Product. Fortinet reserves the right to identify and qualify Replacement Product at its discretion.

**Territory** shall mean the specific geographic area where the Authorized Distributor(s) are permitted by Fortinet to sell Fortinet's Product to Authorized Resellers. No modification of the Authorized Distributor's Territory is granted or permitted under this Program.

**Terms and Conditions** shall mean the General Terms and Conditions for the Fortinet's Trade Up Program.

## 2. SCOPE

This Program aims at providing incentives for End-Customers to substitute their existing Eligible Products units with the corresponding Replacement Products, by offering discounts on Replacement Products units to Authorized Distributors as established herein.

## 3. APPLICABLE TERMS

- 3.1. Fortinet is the manufacturer of the Fortinet's Products that are sold through a two-tier distribution channel of Authorized Distributors and Authorized Resellers. As such, under this Program or otherwise, Fortinet does not supply Fortinet's Products to the Authorized Reseller and/or End-Customer and no sales relationship shall be established between Fortinet and the Authorized Reseller and/or the End-Customer, unless otherwise agreed to in writing by Fortinet's General Counsel.
- 3.2. The purchase and sale of the Replacement Products by the Authorized Distributor shall be governed by the Authorized Distributor agreement entered into with Fortinet. This agreement shall not be modified in any respect as a result of Authorized Distributor's participation in this Program.

## 4. ELIGIBLE PRODUCTS

- 4.1. The discounts offered to the Authorized Distributor under this Program are exclusively available for End-Customer's trade up of Eligible Products units for the purchase, at a discounted price from an Authorized Reseller, of the corresponding Replacement Products except for the Fortinet's Products identified in Fortinet's then-current Trade Up Exclusion List. At the time of the submission of the trade up application, the Eligible Products must meet the following conditions:
  - (a) The Eligible Product shall not be listed in Fortinet's then-current Trade Up Exclusion List; and
  - (b) A fully paid support service contract validly registered against the Eligible Product unit shall be active at the moment of the claim or have expired within the last 12 month from this date.
- 4.2. Fortinet reserves its exclusive right to add, exclude or withdraw any Fortinet's Products from the Program and to revise the Fortinet's Trade Up Exclusion List from time-to-time at its sole discretion. For avoidance of doubt, find the complete Trade Up Exclusion List [here](#)
- 4.3. An Eligible Product unit may only be traded Up once and for a single Replacement Product unit. Any attempt to use the same Eligible Product unit for more than one trade up application is considered a material breach of these Terms and Conditions.

## 5. REPLACEMENT PRODUCTS

- 5.1. The Replacement Product units are shipped subject to the terms of the EULA, which sets forth both the authorized usage and the manufacturer warranty terms.
- 5.2. The correspondence between a particular Eligible Product and a Replacement Product shall not be construed as a technical recommendation by Fortinet. The End-Customer shall assess the suitability of the Replacement Product on the basis of the official Replacement Product technical specifications (as published in the then current official product datasheet) and of its own network security needs. Fortinet shall not be liable against the End-Customer or any other party resulting from the selection and purchase of the Replacement Product. For non end-of-order Eligible products to benefit of the Program, the Replacement Product shall be chosen among the same product range of the Eligible Product, as agreed by Fortinet.



## **6. TRANSFER OF SERVICES**

If not expired, the End-Customer shall benefit from the transfer of the validly registered and fully paid support service subscriptions from the End Of Order Eligible Product unit to the Replacement Product unit for the remaining term of the support service subscription, subject to the Replacement Product unit being purchased, paid in full, and validly registered with Fortinet and strictly conditional upon the Eligible Product being end-of-order at the moment of the claim as per Fortinet lifecycle policy. For clarity, this is an explicit exception to the general rule, limited to end-of-order Eligible Product only, that support service subscriptions cannot be transferred to another device once registered to a particular device. This transfer shall only apply to end-of-order hardware products.

## **7. DISCOUNTS**

- 7.1 Upon presentation of an Eligible Product that has not been previously traded up, as evidenced by the products registrations number, Fortinet shall offer applicable discounts to its Authorized Distributor purchase that is based on the purchase orders from an Eligible Reseller for the Replacement Products under this Program.
- 7.2 Fortinet does not and cannot interfere in the pricing negotiated between, respectively, an Authorized Distributor and an Eligible Reseller or between an Authorized Reseller and the End-Customer. Any discounts offered on the Replacement Products to the Authorized Reseller and/or End-Customer are manufacturer non-binding discounts recommendations. For the avoidance of doubt, the final quote shall solely be obtained, as the case may be, from an Authorized Distributor of the Authorized Reseller's choice or from an Authorized Reseller of the End-Customer's choice.
- 7.3 Fortinet reserves the right to cancel a trade up application and to refuse to grant the discounts to the Authorized Distributor in the event of a breach of these Terms and Conditions or in absence of payment of the Replacement Product unit by the Authorized Distributor, the Authorized Reseller, and/or the End-Customer.

## **8. LICENSE TERMINATION AND DISPOSAL**

- 8.1. The End-Customer is not required to return the Eligible Product unit to Fortinet, but the trade up of the Eligible Product for the Replacement Product by the End-Customer terminates the license to use the Fortinet proprietary software preinstalled or embedded on the Eligible Product as granted under the EULA, upon the earlier of the transfer of the service to the Replacement Product, or upon expiration of the original service contract. Any Eligible Product traded-up under this Program will not be eligible for RMA services and/or renewal.
- 8.2. Authorized Distributors are required to comply with in full with all the obligations set out in the Waste Electrical and Electronic Equipment Directive and other environmental laws as agreed in the distributor agreement between Fortinet and the Authorized Distributor, including without limitation in relation to the treatment, recycling, recovery and disposal of the Eligible Product units, if requested by the End-Customer.

## **9. LIMITATION OF LIABILITY**

TO THE MAXIMUM EXTENT PERMITTED BY LAW AND NOTWITHSTANDING ANYTHING TO THE CONTRARY, FORTINET SHALL NOT BE LIABLE TO THE AUTHORIZED DISTRIBUTOR OR THE AUTHORIZED RESELLER WITH RESPECT TO ANY SUBJECT MATTER OF THIS PROGRAM OR RELATED TO THIS PROGRAM, UNDER ANY CONTRACT, NEGLIGENCE, INDEMNIFICATION, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR: (I) ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED; OR (II) DAMAGES FOR WORK STOPPAGE, LOST PROFITS OR LOST DATA; OR (III) COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES. IN NO EVENT SHALL FORTINET'S TOTAL LIABILITY UNDER THIS AGREEMENT OR RELATED TO THIS AGREEMENT, UNDER ANY CONTRACT, NEGLIGENCE, INDEMNIFICATION, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE AMOUNT ACTUALLY RECEIVED BY FORTINET AS A RESULT OF ORDERS PLACED FOR REPLACEMENT PRODUCTS DURING THE THREE (3) MONTHS PRECEDING AND ONLY IN CONNECTION WITH THE EVENT WHICH GAVE RISE TO SUCH FORTINET LIABILITY.

## **10. FLOW DOWN AND MODIFICATION**

- 10.1 The Authorized Distributor shall flow down the obligations and responsibility of these Terms and Conditions on a manner relevant to the Authorized Reseller, in particular but not limited to, the termination of the software license of the Eligible Products as stated above and shall be responsible to ensure that the Authorized Reseller has the legal and contractual obligation to flow down these terms to any and all of its End-Customers.
- 10.2 Fortinet reserves its right to modify any aspect of or to withdraw in its entirety from the Program at any given time without prior notice. The Authorized Distributor, End-Customer, or Authorized Reseller shall not be entitled to claim any accrued rights with respect to the Program to the extent that said program has been modified or terminated.