COMANDO DE LA FUERZA AÉREA
CENTRO FINANCIERO Nº 4
Jefatura

Ñu Guazú, 04 de agosto de 2022

SEÑOR:
DIRECTOR NACIONAL DE CONTRATACIONES PÚBLICAS
ABOG. PABLO FERNANDO SEITZ ORTIZ
E. S. D.

Tengo el agrado de dirigirme al Señor Director Nacional, y por su intermedio donde corresponda, en referencia a la Contratación Directa Nº 01/2022 para la Adquisición de activos intangibles (ANTIVIRUS), con ID 404.139, a fin de comunicar la rescisión por mutuo acuerdo del Contrato N° 07 de fecha 25 de febrero.

El mismo no puede ser ejecutado por motivos de fuerza mayor, debido a que el software (Antivirus) no fue correctamente registrado al momento de su adquisición, debiendo el mismo ser adquirido con una licencia especial de exportación para ser registrado a nombre de una dependencia del Ministerio de Defensa Nacional, el cual es una exigencia del Departamento de Defensa de los Estados Unidos de América, respecto a la venta de equipos de seguridad a entes de gobierno.

Se adjunta documento.

Sin otro particular, hago propicia la ocasión para saludarle atentamente, al tiempo de suscribirme a sus órdenes.

COMANDO EN JEFE DE LA FF.AA. DE LA REPUBLICA DEL PARAGUAY
COMANDO DE LA FUERZA AÉREA
UOC Nº 4

Richard David Chamorro Hermosa
Cap AvL– Jefe UOC Nº 4

Asunción; 26 de abril de 2022

Señores
Comando de la Fuerza Aerea Uoc 4 - Ministerio de Defensa Nacional
Unidad Operativa de Contrataciones

Presente

Por medio de la presente, en representación de la empresa OLAM SRL con RUC N° 80013217-3, en el marco del llamado **CD N° 01/22 - ADQ. DE ACTIVOS INTANGIBLES (ANTIVIRUS) - AD REFERÉNDUM ID Nº 404139** con **Contrato N° 07/2022.** ----------

En respuesta a la **Orden de Compra N°002/310** de fecha **20/ abril/ 2022, informamos tal como habíamos informado previamente vía mail** al correo uocfap@gmail.com en fecha 17/03/2022 que el fabricante Fortinet, nos había notificado que detectaron que el hardware Fortigate 100E con **serial N°FG100E4Q16000603** del **Comando de la Fuerza Aérea** no fue correctamente registrado al momento de su adquisición ya que la misma debió **ser procesada con una licencia especial de exportación para** ser registrado a nombre de una dependencia del **Ministerio de Defensa**, esto debido a que existen regulaciones que exige el **Departamento de Defensa de USA** para la venta de equipos de seguridad a entes de Gobierno.----------

Hemos recibido notificación del Fabricante la cual adjuntamos, en donde nos informan y ratifican que todos los canales están obligados a transmitir a los usuarios finales la garantía estándar, los términos de la licencia de software y los procedimientos de soporte técnico de Fortinet; y deben observar y cumplir con todas las leyes y reglamentos aplicables (incluidos, entre otros, los reglamentos de exportación y comercio). ----------

Que, según los registros del fabricante, el dispositivo Fortinet FortiGate 100E con número de serie FG100E4Q16000603 (la "Unidad") adquirido por el usuario final, Fuerzas Armadas del Paraguay, del distribuidor autorizado SISCOTEC SRL, que, en este caso el distribuidor de su equipo no ha establecido el pleno cumplimiento de las leyes de exportación, motivo por el cual; Fortinet, ha bloqueado el servicio a la Unidad. ----------

Dada la situación de fuerza mayor, completamente ajenas a nuestra empresa OLAM SRL, resulta imposible proveer la licencia adjudicada al equipo FG**100E4Q16000603 debido a** que el equipo no está en funcionamiento o se encuentra con los servicios bloqueados. ----------

Esta situación se encuentra enmarcada en lo establecido en el Pliego de Bases y Condiciones y en la Ley 2051 de Contrataciones Públicas como "Causas de Fuerza Mayor" por lo cual solicitamos la rescisión o anulación del Contrato N° **07/2.022**. Por mutuo acuerdo. ----------
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Quedamos a disposición para apoyar a la institución, en la búsqueda de la mejor opción para resolver la situación de su equipo y servicios relacionados. ----------

Sin otro particular, esperando retorno, le saluda atentamente;

Carlos Herrera M.
Dpto. Licitaciones

FORTINET

April 26, 2022

OLAM SRL
Mr. Manfredo Deligdisch
Address: Aviadores del Chaco 2462, Asuncion, Paraguay

Re: SN. FG100E4Q16000603 (registered for use of Fuerzas Armadas del Paraguay).

Dear Mr. Deligdisch,

Fortinet, Inc. ("Fortinet") is a U.S. multinational company, headquartered at 899 Kifer Road Sunnyvale, California 94086, United States, focused on the design and manufacture of network security components and devices. For more details about the company, please visit: http://www.fortinet.com

Fortinet distributes its products and related services through a two-tier channel of independent authorized distributors and resellers (that are not agents or representatives of the Manufacturer) and there is no direct sales relationship established between Fortinet and end-users. Authorized resellers conduct business in their own name and account; are not agents of Fortinet; are not authorized to bind Fortinet in any way; they are required to pass through to the end-users Fortinet's standard warranty, software license terms and technical support procedures; and, they must observe and comply with all applicable laws and regulations (including, but not limited, to export and trade regulations).

Provided an authorized reseller purchases applicable support services from Fortinet, and the applicable support services have been effectively registered and contracted with Fortinet, Fortinet provides support to the end-users for the applicable Fortinet products according to the terms of the support agreement, available at https://support.fortinet.com.

I am writing with respect to the Fortinet appliance **FortiGate 100E** with serial number **FG100E4Q16000603** (the "Unit") purchased by the end-user, Fuerzas Armadas del Paraguay, from the authorized reseller SISCOTEC SRL .

In order for Fortinet to provide support and service for any unit, the authorized distributor exporting the unit is required to obtain a U.S. export license prior to its export. Our records reflect the Unit was sold as a stocking order to our distributor, Dacas Corporation, and a re-export license should have been obtained by Dacas Corporation (or by the reseller, SISCOTEC SRL), from the U.S. Government prior to its shipping to Fuerza Armadas del Paraguay as a "government end-user".

For your information, the definition of "government end-user" for encryption purposes under U.S. Export Administration Regulations ("EAR") Part 772 is: "ANY foreign central, regional or local government department, agency or other entity performing governmental functions; including governmental research institutions, governmental corporations or their separate business units..."

Please refer to the EAR (15 CFR Part 730 et seq.) in its section 742.15, which establishes that certain hardware with encryption is classified under Export Classification Control Number ("ECCN")

OLAM
Carlos Herrera M.
Dpto. Licitaciones

5A002 under the Commerce Control List ("CCL") requires a license for export (ELA) for several Governments that are end-customers. Fortinet products classified by the U.S. Government under License Exception ENC, License Designation Restricted, ECCN 5A002.a.1, are licensable.

We have requested a copy of the re-export license. However, to-date, the authorized distributor has provided no such export license. As a result, since the authorized distributor has not established full compliance with export laws, we regret to advise you that Fortinet has blocked service to the Unit. Furthermore, under export control regulations service updates are prohibited unless Fortinet can be provided with a copy of a re-export license. We recommend that you contact the distributor, Dacas Corporation, and/or the authorized reseller selected by you, SISCOTEC SRL, to submit a replacement hardware purchase order so that it can be shipped against a valid export license, and, consequently, the corresponding service order can be fulfilled.

Yours sincerely,

Gonzalo Ruiz
Vice President, Legal & Compliance, Americas
Fortinet, Inc.

OLAM
Carlos Herrera M.
Dpto. Licitaciones

Please note, notwithstanding anything to the contrary: (1) Fortinet obligations related to product specifications, licenses, support, subscriptions, certifications, warranties and any other assurances are: (a) invalid for products that have been tampered with or modified by third parties and (b) subject in all respects to Fortinet's standard processes, policies and terms, which Fortinet may change at any time in its sole and absolute discretion, (2) Fortinet reserves the right to modify technical and roadmap plans and release dates at any time in Fortinet's sole and absolute discretion, (3) Fortinet disclaims responsibility for typing, translation, or printing errors, (4) this document is for informational purposes and is not intended to, and does not, create any contractual obligation by Fortinet or right to promissory estoppel or right to rely on the statements herein, (5) statements herein about product performance and features may be contextual, for example based on testing in a particular environment such as in a laboratory environment, and may not be accurate in all contexts such as in a live environment, (6) the signer of this document is basing any statements herein on their knowledge at the time of signing without any obligation whatsoever to investigate the statements, and may be relying in full on the review by, and input from, others, (7) products and services are not offered for free and rights are only granted subject to payment in full to Fortinet and its distributors and resellers, all sales are final, and Fortinet policies and terms and conditions, such as Fortinet's standard EULA and support terms, apply, some of which are located at https://www.fortinet.com/corporate/about-us/legal.html, and (8) Fortinet has no obligation whatsoever to update, and does not intend to update, statements herein, even if, for example, the signer learns the statements are in fact untrue or plans change.

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