

STANDARD PURCHASE ORDER TERMS & CONDITIONS

AGREEMENT DOCUMENTS: Unless this Purchase Order ("PO"), also referred to as a Work Authorization ("WA"), is issued under a written procurement agreement between Supplier and the issuer of this PO ("Buyer"), this PO and any attachments are the sole agreement between Buyer and Supplier with respect to the products or services specified in this PO. No other document, including the Supplier's proposal, quotation, or acknowledgment form, will be part of this agreement, unless specifically agreed to in writing by Buyer. Upon Buyer request, Supplier will invoice Buyer electronically. No right that Buyer has regarding this agreement may be waived or modified except by Buyer in writing.

PRICE/TAXES: If price is not stated in this PO or a procurement agreement, the price will be Supplier's lowest prevailing market price. Supplier is responsible for and will pay all sales, use, and similar taxes.

TERMS OF PAYMENT: Unless this PO states otherwise, the terms of payment will be 60 days after Buyer receives Supplier's valid invoice. In the event Supplier has not received payment as agreed, Supplier will notify Buyer and Buyer will make prompt payment

TERMINATION: This PO may be terminated by Buyer with or without cause. In the event Buyer terminates without cause, Buyer will compensate Supplier for the actual and reasonable expenses incurred by Supplier for work in process up to and including the date of termination, provided such expenses do not exceed the agreed upon prices.

IMPORTS: If any of the products are imported into any other country, Supplier will be responsible for all legal, regulatory and administrative requirements associated with any importation and the payment of all associated duties, taxes and fees.

PACKAGES/TRANSPORTATION: Supplier will: (i) comply with all country of origin marking instructions and all instructions for exports to IBM (refer to <http://www-1.ibm.com/procurement/>); (ii) comply with all packaging and labeling requirements set out in this PO; (iii) comply with the transportation routing guidelines in this PO; (iv) not use premium transportation unless specifically authorized by Buyer; (v) not include more than one daily shipment for one destination on one bill of lading; and (vi) not declare a value or purchase additional insurance on all F.O.B. Origin shipments to Buyer.

LATE SHIPMENTS: In this PO and in any contract arising therefrom, time shall be of the essence. If Supplier fails to deliver on time, Buyer may purchase replacements elsewhere and Supplier will be liable for actual and reasonable costs and damages Buyer incurs. Supplier will promptly notify Buyer if it is unable to comply with the delivery date specified in this PO.

WARRANTIES: Supplier warrants that: (i) it will at all times comply with all applicable laws, rules and regulations to which it is or becomes subject; (ii) the products or services specified in this PO do not infringe any patent, trademark, copyright or other intellectual property right of a third party; (iii) products and services specified in this PO which interact in any capacity with date data are Year 2000 ready such that when used in accordance with their associated documentation they are capable of correctly processing, providing, receiving and displaying date data, as well as exchanging accurate date data with all products which the products or services are intended to be used within and between the twentieth and twenty-first centuries; (iv) products and services specified in this PO which interact in any capacity with monetary data are Euro ready such that when used in accordance with their associated documentation they are capable of correctly processing monetary data in the Euro denomination and respecting the Euro currency formatting conventions (including the Euro sign); (v) products and services specified in this PO do not contain and are not manufactured using ozone depleting substances known as halons, chlorofluorocarbons, hydrochlorofluorocarbons, methyl chloroform and carbon tetrachloride as defined by the

Montreal Protocol; and (vi) products and services specified in this PO are provided to Buyer new and do not contain anything used or reconditioned, unless Buyer agrees otherwise in writing ;(vii) it has been disclosed to Buyer 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 product(s) and that Supplier and the product(s) are in compliance with all licensing agreements applicable to such third party code.

INTELLECTUAL PROPERTY AND OTHER INDEMNIFICATIONS: Supplier grants Buyer all rights and licenses necessary for Buyer (including Buyer's parent, subsidiaries, or other related legal entities), to use and sell the products or services specified in the PO and to exercise the rights granted under this PO. Supplier agrees to defend, hold harmless, and indemnify Buyer from any claim that Supplier's product or service infringes any intellectual property rights or any claim arising from the failure of Supplier to comply with its warranties and obligations under this PO. If a claim of infringement is made, Supplier will, at its own expense, exercise the first of the following remedies that is practicable: (i) obtain for Buyer the rights granted under this PO; (ii) modify the products or services so they are non-infringing and in compliance with this PO; (iii) replace the products or services with non-infringing ones that comply with this PO; or (iv) accept the return of infringing products and the cancellation of infringing services and refund any amount paid. Buyer may return non-conforming goods to Supplier at Supplier's expense. Payment will not constitute an acceptance of the products or services nor impair IBM's right to inspect the products or services or invoke any of its remedies. All authors have waived all their rights to the products and services' integrity and to be associated with them as authors.

SUPPLIER'S PERSONNEL: Supplier undertakes not to employ, for the tasks conferred upon it by the Buyer, employees of IBM (e.g.: pre-retired or inactive personnel). If, however, constraints with respect to the performance of the contract lead him to make use of IBM personnel, the Supplier shall notify the Buyer as soon as possible.

LIMITATION OF LIABILITY: To the extent permitted by local law in no event will Buyer (including Buyer's parent, subsidiaries or other related legal entities) be liable for any lost revenues, lost profits, incidental, indirect, consequential, special or punitive damages.

ASSIGNMENT: Supplier will not assign its rights nor subcontract its duties without IBM's written consent. Any unauthorized assignment is void.

EXCHANGE OF INFORMATION: All exchanges of information between the parties pursuant to this PO will be considered non confidential, unless the parties have entered into a separate written confidentiality agreement. For any business personal information relating to Supplier's employees or other legal entities that Supplier provides to Buyer, Supplier will obtain the informed agreement of such employees and other legal entities to release the information to Buyer and to allow Buyer to use such information in connection with this Agreement.

APPLICABLE LAWS: This agreement is governed by the laws of the country where the Buyer is located, except: (i) in the United States (including if any part of the transaction is performed within the United States) Puerto Rico, or the People's Republic of China, the laws of the State of New York govern this agreement; (ii) in Australia, the laws of the State or Territory where the Buyer is located govern this agreement; (iii) in Central Europe, the laws of Austria govern this agreement; (iv) in Estonia, Latvia, and Lithuania the laws of Finland govern this agreement; (v) in Canada, the laws of the Province of Ontario govern this agreement. The United Nations Convention on Contracts for the International Sale of Goods does not apply. Unless otherwise provided by local law without the possibility of contractual waiver or limitation, any legal or other action related to this agreement must be commenced no later than two (2) years from the date on which the cause of action arose.

Any reproduction of this agreement by reliable means will be considered an original of this agreement.