

IBM standard purchase order terms and conditions

Agreement documents: Unless this Purchase Order ("PO"), also referred to as a Work Authorization ("WA"), is a written procurement agreement between Supplier and the buying company issuing this PO ("Buyer"), the PO and its attachments are the sole agreement between Buyer and Supplier with respect to the products or services. This IBM Standard Purchase Order Terms and Conditions verbiage is subject to change without notice. The PO, including the Supplier's proposal, quotation, or acknowledgment form, will be part of this PO, unless specified in writing by Buyer. Upon Buyer request, Supplier will invoice Buyer electronically. No right that Buyer has 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 price. Supplier is responsible for and will pay all sales, use, and similar taxes. If Buyer provides a documented certification of an exemption from Tax, or reduced rate of Tax imposed by an applicable taxing authority, Supplier shall not invoice, nor pay, any such Tax unless and until the applicable taxing authority assesses such Tax, at which time Supplier shall invoice and Buyer agrees to pay any such Tax that is legally owed.

Terms of payment and acceptance: Unless this PO states otherwise, the terms of payment are net 90 days from date of Supplier's valid invoice or after receipt of the products or services, whichever is later. In the event Supplier does not receive payment as agreed, Supplier will notify Buyer and Buyer will make prompt payment. Payment of invoices is conditional on acceptance of products or services, but rather such products or services will be subject to inspection, test, and acceptance in accordance with the acceptance or completion criteria as specified in the relevant Statement of Work ("SOW"). Buyer or Buyer's customer may, at its option, either reject products or services that do not comply with the acceptance or completion criteria for a refund, or require Supplier, upon Buyer's written instruction, to repair or replace or perform such services without charge and in a timely manner.

Termination: This PO may be terminated by Buyer with or without cause. In the event Buyer terminates this PO, Buyer will compensate Supplier for the actual and reasonable expenses incurred by Supplier for work in process on 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 import 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 requirements for exports to Buyer; (ii) comply with all packaging and labeling requirements set out in this PO (default minimum requirements (i) and (ii) are found in the documents section under Instructions for exports to IBM); (iii) comply with the transportation guidelines in this PO and pursuant to the Shipping transportation guidelines; (iv) not use premium transportation unless specifically authorized by Buyer; (v) not include more than one daily shipment for one destination on one business day; (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 expenses 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 has the right to enter into this PO, and it will comply at its own expense with all terms of any contract, obligation, law, regulation, or ordinance to which it is or becomes subject (including anti-corruption laws and environmental laws), and (B) with any law, regulation or ordinance (such as the European Union Directive 2002/95/EC) that govern Buyer's distribution of Supplier's products as, or as part of, a system; (ii) no claim, lien, or action exists or is threatened against Supplier that would interfere with Buyer's right to use the products and services specified in this PO do not infringe any privacy, publicity, reputation or intellectual property rights of a third party; (iii) it has 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 subject to all licensing agreements applicable to such third party code; (v) all authors have agreed not to assert any patent or other intellectual property rights against Buyer or its customers.

(personal rights associated with authorship of a work under applicable law) in the Products, to the extent that the Products specified in this PO are free from defects in design except based solely upon written designs provided by Buyer (such designs are based entirely on Supplier's specifications); vii) (A) products and services will conform to the specifications and requirements in this PO, and (B) from the date of shipment, products and services will be free from defects in material and workmanship for the longer of the time period specified in this PO and Supplier's standard warranty period for the Products specified in this PO; viii) products specified in this PO are safe for use consistent with and will comply with the warranties and requirements of this PO; ix) it will not engage in electronic self-help; x) products specified in this PO do not contain any code; xi) products and services which interact in any capacity with monetary data are euro ready such that in accordance with their associated documentation they are capable of correctly processing monetary data in the euro currency and respecting the euro currency formatting conventions (including the euro sign); xii) none of the products or services manufactured using ozone depleting substances known as halons, hydrochlorofluorocarbons, methyl chloroform and carbon tetrachloride as defined by the Montreal Protocol are used; xiii) products are new and do not contain used or reconditioned parts unless Buyer agrees in writing; xiv) all products will process date data correctly (including, without limitation, correctly processing, receiving, and displaying date data within and between the twentieth and twenty-first centuries), and are designed to process date data accurately and correctly with other products (including, without limitation, hardware, code, and firmware) when used with products which are designed to exchange date data accurately and correctly; xv) Supplier will not disclose, or transfer across borders any information that may identify an individual ("Personal Data") that is not necessary to perform under this PO; xvi) it will comply with all applicable data privacy regulations, will implement and maintain appropriate technical and organizational measures and other controls to protect Personal Data (including, without limitation, not loading any Personal Data provided to Supplier on (a) any hard drive or (b) any portable storage media that can be removed from Supplier's premises unless (in case of (b) only) (i) such data is encrypted and (ii) such data is loaded onto portable storage media solely for the purpose of moving such data to another location); xvii) Supplier will immediately report to Buyer any breaches of protection of Personal Data or any compromises thereof and will cooperate fully with Buyer in investigating any such breaches or compromises, will cooperate fully with Buyer's reasonable requests for correction of, and destruction of Personal Data in Supplier's possession, and will comply with all requirements provided or issued by Buyer from time-to-time relating to Personal Data; xviii) it is knowledgeable with applicable export and import laws, regulations, orders, and policies and will remain in full compliance with all applicable export and import laws, regulations, orders, and policies limited to, securing all necessary clearance requirements, export and import licenses and exemptions for the release or transfer to or from the U.S., or outside the U.S., release or transfer of technology and software derived from U.S.-origin software or technology; it is knowledgeable with applicable supply chain security regulations issued by applicable governments and industry standards organizations and will make best efforts to comply with such regulations; and xix) it will not export, directly or indirectly, any technology, software or commodities having U.S. content provided by Buyer or their direct product to any of the countries or to nationals of those countries located, listed in U.S. Export Administration Regulations, as modified from time to time, unless authorized by a valid U.S. government license or regulations.

Intellectual property and other indemnifications: Supplier grants Buyer all rights and licenses necessary for Buyer to use, transfer, pass-through, and sell the Products 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 of infringement of Supplier to comply with its warranties and obligations under this PO. If a claim of infringement is asserted against Buyer at its own expense, exercise the first of the following remedies that is practicable: (i) obtain for Buyer the right to use the Products specified in this PO; (ii) modify the products or services so they are non-infringing and in compliance with this PO; (iii) provide Buyer with non-infringing ones that comply with this PO; or (iv) accept the return of infringing products or services and refund any amount paid. Buyer may return non-conforming products or services to Supplier at Supplier's expense. Payment will not constitute an acceptance of the products or services nor impair Buyer's ability to return products or services or invoke any of its remedies. All authors have waived all their rights to the products and to be associated with them as authors.

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 damages.

Assignment: Supplier will not assign its rights nor subcontract its duties without IBM's written consent. Assignment is void.

Exchange of information: All exchanges of information between the parties pursuant to this PO will be confidential, unless the parties have entered into a separate written confidentiality agreement. For any Person or Supplier's employees or other legal entities that Supplier provides to Buyer, Supplier will obtain the informed consent of those employees and other legal entities to release the information to Buyer and to allow Buyer to use, disclose, and disseminate the information in connection with this PO.

Applicable laws: This PO is governed by the laws of the country where the Buyer is located, except: (i) if the Buyer is located in the United States, this PO will be governed by the laws of the State or Territory in which the transaction occurs; (ii) in the United Kingdom, this PO will be governed by the laws of England; (iii) in Bulgaria, Croatia, Czech Republic, Hungary, Poland, Romania, Slovakia, and Slovenia (collectively, "Central Europe"), this PO will be governed by the laws of Austria; (iv) in Estonia, Latvia, and Lithuania, the laws of the country where the transaction occurs will apply; (v) in Canada, the laws of the Province of Ontario govern this PO; and (vi) in the United States (including any part of the transaction occurs within the United States) and Puerto Rico, and People's Republic of China, the laws of the State or Territory where the transaction occurs will apply. The laws of the State or Territory where the transaction occurs will apply to contracts executed in and performed entirely within that State or Territory.

General: Any reproduction of this PO by reliable means will be considered an original of this PO. The United Nations Convention on Contracts for the International Sale of Goods does not apply. The parties expressly waive any limitation on damages regarding disputes related to this PO. Unless otherwise provided by local law without the possibility of derogation, any legal or other action related to this PO must be commenced no later than two (2) years from the date the cause of action arose. The following statement is translated in English to "The parties have agreed to draft this contract in English" and is applicable only if Supplier is located in Canada: Les parties ont consenti à rédiger ce contrat en anglais.

Federal and public sector: For work performed under specific U.S. government procurement contracts the following provisions apply: 48 C.F.R. 52.222-26, Equal Opportunity (Apr. 1984); 48 C.F.R. 52.222-35, Affirmative Action for Small Business (Apr. 1984); 48 C.F.R. 52.222-36, Affirmative Action for Vietnam Era Veterans (Apr. 1984) (If for \$10,000 or more); 48 C.F.R. 52.222-37, Affirmative Action for Minority Business Enterprises (Apr. 1984) (if in excess of \$2,500); and 48 C.F.R. 52.222-37, Employment Reports on Special Incentives for Vietnam Era (Jan. 1988) (If \$10,000 or more). These provisions have the same force and effect as if they were included in full text.

Export of technical data: Supplier will not, nor will Supplier authorize or permit Supplier Personnel to disclose, export, or re-export any of Buyer's information, or any process, Deliverable, or Service that is produced under this PO, in violation of the 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. In addition, Supplier agrees not to export, or re-export, any of Buyer's information, or any process, Deliverable, or Service that is produced under this PO, if Supplier is listed in the Denied Parties List published by the Department of Commerce, or if Supplier's information, or any process, Deliverable, or Service is otherwise denied, suspended, or revoked in whole or in part.

Notification of debarment/suspension: By acceptance of this PO either in writing or by performance, Supplier agrees to notify Buyer of the date of award of this PO neither Supplier, nor any of Supplier's principals, is debarred, suspended, or under debarment by the Federal Government or any State Government. Further, Supplier shall provide immediate notice to Buyer in the event that during the performance of this PO Supplier or any of Supplier's principals is debarred, suspended, or proposed for debarment by the Federal Government or any State Government.

Compliance with laws unique to Government contracts: Supplier agrees that it and its employees who work under this PO will comply, and assist Buyer in complying with, the laws unique to performing on government contract including, but not limited to, the following statutes and regulations: 31 U.S.C. 1352, relating to the limitation on the use of influence certain Federal contracts; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 423, Procurement Integrity; and 48 C.F.R. Subpart 9.5, relating to conflicts of interest. Supplier represents and warrants that any information provided to Buyer does not violate any law, regulation or ordinance of any U.S. Federal, state or local governmental authority. Supplier also agrees not to offer or disclose any of Buyer's information, or any process, Deliverable, or Service to third parties, including without limitation, U.S. government employees and officials. Supplier further agrees to assist Buyer in complying with IBM's Business Conduct Guidelines and Public Sector Guidelines (Guidelines). Supplier's employees who work under this PO will both review the Guidelines and agree to assist IBM in complying with the Guidelines.

Conflicts of interest: In performing the required services under this PO, it is Supplier's responsibility to avoid an apparent conflict between Supplier's duties or obligations to other parties, including the Federal Government and obligations assumed under this PO and (2) disclosure of information which would, or would appear to, create a conflict and obligations to third parties. In the performance of this PO, Supplier shall not make or participate in any contacts with the Federal Government or other which might create the possibility or appearance of a conflict or actual conflict of interest. It is understood that you are not now employed by the Federal or any other Government and further are not consulting with any agency or other representative of the Federal Government, or with any other person on matters which conflict or appear to conflict with the subject matter of this PO. It is agreed that, if subsequent to this PO, Supplier finds that a conflict, or what may appear to be a conflict, develops because of a relationship to be created between Supplier or Supplier's agents, or employees and any third party or with an agency or other representative of the Federal or any other Government, Supplier shall immediately notify Buyer which shall have the discretion, to terminate this PO on Supplier notice. Upon exercise of such right of termination, Buyer shall be responsible to reimburse Supplier for proper services rendered to the date of termination.

Additional warranties: Supplier warrants that no individual who is a former officer or employee of the United States Government shall be employed or compensated for services rendered under this PO within one year after conveying a benefit totaling more than \$10 million within the meaning of the Procurement Integrity Act, 41 USC, 423, and is implementing regulations implementing that Act. Supplier warrants that it shall pay no compensation hereunder to any covered U.S. Department of Defense official within the meaning of section 847 of the National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181, unless that official has obtained a written ethics opinion from the appropriate DoD ethics counselor. Supplier shall immediately, at its sole discretion, remove any specified employee(s), subcontractor(s) and/or agent(s) of Suppliers from Buyer premises. Buyer agrees that they will not be reassigned to any Buyer premises under this PO.

Supplier represents and warrants that neither Supplier, nor any of Supplier's employees or others whom Supplier is authorized by Buyer), will make any communication with any employee of a Federal Agency, a Member of Congress, or any other employee of with the intent to influence or attempt to influence the award of contracts to Buyer. Supplier further warrants that it will not engage in lobbying for Buyer within the meaning of the Lobbying Disclosure Act of 1995, 28 USC et seq. Supplier represents and warrants that any information disclosed by Supplier to Buyer does not include any classified regulations or otherwise jeopardize the integrity of the procurement process, and has not been obtained from any classified documents or other classified information sources by Buyer or anyone acting on Buyer's behalf and warrants that it, and all of its employees or others engaged by Supplier are authorized by Buyer to perform the services under this PO, are familiar with, and agree to comply with and assist Buyer in complying with, the following, (including any obligations Buyer or Supplier may have relating to):

1. The Procurement Integrity Act, 41 U.S.C. 423 and Government implementing regulations (41 CFR 101-11.6, 101-11.7, Regulations/FAR 3.104 et. Seq.);
2. Government regulations implementing organizational and consultant conflicts of interest, section 847 of the Department of Defense Appropriation Act, Public law 100-463 (1988) and Conflict of Interest Policy for Government Consultants (FAR Subpart 9.5);
3. Limitations on the use of appropriated funds to influence certain federal contracting and financial transactions (Public Law Amendment), 31 U.S.C. 1352 and Government implementing regulations (FAR Subpart 3.8) ;
4. The policies and procedures restricting contingent fee arrangements for soliciting or obtaining Government contracts (see 48 C.F.R. Subpart 3.4; and
5. The revolving-door restrictions set out in 18 U.S.C. Section 207 and its implementing regulations.

Further, you will specifically assure that each individual working for you hereunder obtains a copy of IBM Business Ethics Guidelines and Public Sector Guidelines for the United States (Guidelines). You will further assure that each employee for you working hereunder, will review the Guidelines and assist IBM in complying with these Guidelines.