

IBM standard purchase order terms and conditions

February 15, 2005, to Current Date

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 buying company issuing 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. This IBM Standard Purchase Order Terms and Conditions verbiage is subject to change without notice. No other document, including the Supplier's proposal, quotation, or acknowledgment form, will be part of this PO, unless specifically agreed to in writing by Buyer. Upon Buyer request, Supplier will invoice Buyer electronically. No right that Buyer has regarding this PO 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. If Buyer provides a certification of an exemption from Tax, or reduced rate of Tax imposed by an applicable taxing authority, then Supplier agrees not to 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 owned.

TERMS OF PAYMENT AND ACCEPTANCE: Unless this PO states otherwise, the terms of payment are net 60 days, either after receipt of Supplier's valid invoice or after receipt of the Deliverables or Services, whichever is later. In the event Supplier has not received payment as agreed, Supplier will notify Buyer and Buyer will make prompt payment. Payment of invoices will not be deemed acceptance of Deliverables or Services, but rather such Deliverables or Services will be subject to inspection, test, acceptance or rejection in accordance with the acceptance or completion criteria as specified in the relevant Statement of Work ("SOW") and/or WA. Buyer or Buyer's customer may, at its option, either reject Deliverables 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 such Deliverables or re-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 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 Buyer; (ii) comply with all packaging and labeling requirements set out in this PO (default minimum requirements for (i) and (ii) are found in the documents section under [Instructions for exports to IBM](#); (iii) comply with the transportation routing 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 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 has the right to enter into this PO and its performance under this PO, and will comply, at its own expense, with the terms of any contract, or obligation, including any between Supplier and its end-users; or any law, regulation or ordinance to which it is or becomes subject (including environmental and anti-corruption laws); (ii) no claim, lien, or action exists or is threatened against Supplier that would interfere with Buyer's rights under this PO; (iii) Deliverables and Services specified in this PO do not infringe any privacy, publicity, reputation or intellectual property right of a third party; (iv) all authors have agreed not to assert their moral rights (personal rights associated with authorship of a work under applicable law) in the Products, to the extent permitted by law; (v) Products specified in this PO are free from defects in design except based solely upon written designs provided by Buyer unless such designs are based entirely on Supplier's specifications; (vi) material and workmanship will conform to the warranties, specifications and requirements, including but not limited to quality requirements, in this PO for the time period from the date of shipment as specified in this PO; (vii) Products specified in this PO are safe for use consistent with and will comply with the warranties, specifications and requirements of this PO; (viii) it will not engage in electronic self-help; (ix) Deliverables specified in this PO do not contain harmful code; (x) Products and Services 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); (xi) none of the Products contain nor are any of the Products manufactured using ozone depleting substances known as halons, chlorofluorocarbons, hydrochlorofluorocarbons, methyl chloroform and carbon tetrachloride as defined by the Montreal Protocol and as also specified by Buyer in writing; (xii) Products are new and do not contain used or reconditioned parts unless Buyer agrees otherwise in writing; (xiii) all Products will process date data correctly (including, without limitation, correctly processing, providing, receiving, and displaying date data within and between the twentieth and twenty-first centuries), and are designed to exchange date data accurately and correctly with other products (including, without limitation, hardware, code, other software, and firmware) when used with products which are designed to exchange date data accurately and correctly; (xiv) it will not use, disclose, or transfer across borders any information that is processed for Buyer that may identify an individual (Personal Data), except to the extent necessary to perform under this PO; (xv) it will comply with all applicable data privacy laws and regulations, will implement and maintain appropriate technical and other protections for the Personal Data, and will cooperate fully with Buyer's requests for access to, correction of, and destruction of Personal Data in Supplier's possession; (xvi) it is knowledgeable with, and is and will remain in full compliance with all applicable export and import laws, regulations, orders, and policies (including, but not limited to, securing all necessary clearance requirements, export and import licenses and exemptions from, and making all proper filings with appropriate governmental bodies and/or disclosures relating to the release or transfer to non U.S. nationals of technology and software in the U.S., or outside the U.S., release or transfer of technology and software having U.S. content or derived from U.S.-origin software or technology); and (xvii) it will not export, directly or indirectly, any technology, software or commodities of U.S. origin or having U.S. content provided by Buyer or their direct product to any of the countries or to nationals of those countries, wherever located, listed in U.S. Export Administration Regulations, as modified from time to time, unless authorized by appropriate government license or regulations.

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, transfer, pass-through,

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.

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 PO.

APPLICABLE LAWS: This PO is governed by the laws of the country where the Buyer is located. For the Netherlands this PO shall be governed by the Dutch laws and any dispute arising out of or in connection with this PO shall be submitted to the competent court of Amsterdam.

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 right to a jury trial regarding disputes related to this PO. Unless otherwise provided by local law without the possibility of contractual waiver or limitation, any legal or other action related to this PO must be commenced no later than two (2) years from the date on which the cause of action arose. The following statement is translated in English to "The parties have agreed to draft this Agreement in English" and is applicable only if Supplier is located in Canada: Les parties ont consenti à rédiger ce contrat en langue anglaise.

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 Special Disabled and Vietnam ERA Veterans (Apr. 1984) (If for \$10,000 or more); 48 C.F.R. 52.222-36, Affirmative Actions for Handicapped Workers (Apr. 1984) (if in excess of \$2,500); and 48 C.F.R 52.222-37, Employment Reports on Special Disabled Veterans of the Vietnam Era (Jan. 1988) (If \$10,000 or more). These provisions have the same force and effect as if they were stated in their full text.

For further information, please contact Josh Tennant at

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