

## IBM GERMANY STANDARD PURCHASE ORDER TERMS & CONDITIONS

### 1. **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. No other document, including the Supplier's proposal, quotation, or acknowledgment form, will be part of this agreement, unless Buyer has specifically referenced this document in this PO. Supplier's general Terms & Conditions will not be applicable even if they are part of such document or reference is made to them in such document. Upon Buyer's request, Supplier will invoice Buyer electronically. No right that Buyer has regarding this agreement may be waived or modified except by Buyer in writing

### 2. **Price / Taxes**

If a 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 direct pay certificate, 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 owed.

### 3. **Terms of Payment**

Unless this PO states otherwise, the terms of payment are net 60 days either after receipt of Supplier's 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.

### 4. **Termination**

Buyer may terminate this Agreement without cause in writing with a notice period of 14 days. The right to terminate with cause remains unaffected. In the event of a termination 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

### 5. **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.

### 6. **Packages / Transportation Supplier will:**

- a) comply with all country of origin marking instructions and all instructions for exports to Buyer;
- b) comply with all packaging and labelling requirements set out in this PO;
- c) comply with the transportation routing guidelines in this PO;
- d) not use premium transportation unless specifically authorized by Buyer;
- e) e. not include more than one daily shipment for one destination on one bill of lading;  
and

- f) not declare a value or purchase additional insurance on all F.O.B. Origin shipments to Buyer.

**7. Late Shipments**

In this PO and in any contract arising there from, 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.

**8. 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:

- a) obtain for Buyer the rights granted under this PO;
- b) modify the products or services so they are non-infringing and in compliance with this PO;
- c) replace the products or services with non-infringing ones that comply with this PO;
- or
- d) 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.

**9. Warranties Supplier warrants that:**

- a) it will at all times comply with all applicable laws, rules and regulations to which it is or becomes subject (including environmental and anti-corruption laws);
- b) the products or services specified in this PO do not infringe any patent, trademark, copyright or other intellectual property right of a third party;
- c) 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;
- d) 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);
- e) products and services specified in this PO do not contain and are not manufactured using ozone depleting substances known as halons, chlorofluorocarbons, hydrochlorofluorocarbons, methylchloroform and carbon tetrachloride as defined by the Montreal Protocol; and
- f) 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.

**10. 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 or consequential damages. The limitation of liability shall not apply for loss or damage caused by a breach of a guarantee assumed in connection with any transaction under this PO, for bodily injuries, or for damages caused intentionally or by gross negligence.

**11. Equipment / Tools**

If IBM provides equipment or tools for work under this PO, Supplier will use them only for that purpose. Supplier will be responsible for its own equipment and tools

**12. Data Privacy**

Supplier is obliged to inform the data subject of his right of objection (art. 28 IV s. 2, 2nd part of sentence of the German Data Protection Act) referring to the use of his data for purposes of advertising or of market or opinion research (e.g. address-trade, list broker, letter shop) that he is carrying out for IBM. Supplier has to make sure that IBM is at any time able to give the relevant information listed in art. 34 I of the German Data Protection Act to the data subject.

For any business personal information (for example address, contact person, etc.) relating to Supplier Personnel that Supplier provides to Buyer, Supplier has established the necessary legal basis to release the information to Buyer and to allow Buyer to process and use such information in connection with this PO. Such processing may include transferring Supplier data to other Buyer affiliates and to certain third parties, such as subcontractors, worldwide and/or its storage in a centralized database. Supplier acknowledges compliance with legal requirements, which render acceptable such processing and usage by Buyer.

**13. Assignment**

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

**14. 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

**15. Applicable Laws**

For this PO German Law will apply. The parties submit to the jurisdiction of the Stuttgart courts.

Last update 07/09/2005