

# IBM standard purchase order terms and conditions

January 2022 to current date

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**Agreement documents:** This Purchase Order (PO), any attachments made a part of this PO, and any documents or clauses incorporated by reference into this PO are the sole and exclusive agreement of Buyer and Supplier for the products and/or services in this PO, and no other document, including the Supplier's proposal, quotation or acknowledgment form, clickwrap or shrinkwrap, will be part of this PO, unless specifically agreed to in writing by Buyer. Terms contained in the Supplier's response to, or acknowledgment or acceptance of, this PO, if any, that are additional to, or different from, the terms set forth herein (which terms would constitute a counter-offer by Supplier) are specifically rejected by Buyer. Buyer's offer to purchase as provided in this PO may not be modified by Supplier counter-offers. Notwithstanding the foregoing, if this PO is deemed an acceptance by Buyer of a Supplier offer or counter-offer, then such acceptance is expressly made conditional on Supplier's assent to all of the terms of this PO, including those that are additional to, or different from, the terms of Supplier's offer or counter-offer. The terms and conditions of this PO are subject to change without notice.

**Prices:** If the PO does not include pricing, the price for the products and/or services provided hereunder will be Supplier's lowest prevailing market price for such products and/or services. Supplier is not entitled to reimbursement of expenses incurred in connection with fulfilling this PO, except as otherwise agreed in writing by Buyer; Supplier shall bear all risks related to the occurrence of such expenses and occurrence of any other circumstances affecting the price of goods and/or services, whether foreseeable or not.

**Taxes:** Supplier is responsible for and will pay all applicable taxes, charges, fees, levies, or other assessments imposed or collected by any governmental entity (or political subdivision thereof) worldwide on sales of products or services, or sales, use, transfer, goods, and services or value added tax or any other duties or fees related to any payment by Buyer to Supplier for products and/or services provided to Buyer under or pursuant to this PO. 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. Buyer shall withhold taxes as required under applicable law on payments made to Supplier hereunder and shall be required to remit to Supplier only the net proceeds thereof.

**Terms of payment and acceptance:** Unless otherwise mandated by local law, the terms of payment are net 90 days after receipt of Supplier's valid invoice or after receipt of the products and/or services, whichever is later. Payment will not be deemed acceptance of products or services, and such products or services will be subject to inspection, test, acceptance or rejection.

At Buyer's option, Buyer may reject products and/or services that do not comply with Buyer's acceptance criteria for a refund or require Supplier to repair or replace such products or re-perform such services without charge and in a timely manner. Buyer may return non-conforming products to Supplier at Supplier's expense.

**Termination:** This PO may be terminated by Buyer with or without cause. Supplier's breach (or IBM's reasonable belief that Supplier has breached or is likely to breach) of the Ethical Dealings provision constitutes a material breach of this PO and, in such event, IBM may terminate this PO immediately on written notice to Supplier.

**Imports and exports:** Supplier is the importer and exporter of record, unless Buyer expressly agrees in writing to serve as the importer or exporter. Supplier will comply with all applicable import and export laws, regulations and administrative requirements, including but not limited to the payment of all associated duties, taxes and, maintenance of all required certifications and registrations associated with the import or export of Supplier's products, and satisfaction of all requirements related to product safety, electromagnetic compatibility, telecommunications, product take-back/recycling and environmental safety. Upon Buyer request, Supplier will promptly provide all information necessary to export and import products, including, as applicable, the Export Control Classification Numbers (ECCN) and subheadings or munitions list category number, tariff classifications, certifications and test results relating to the products or services. Supplier will notify Buyer in writing of any changes to the information provided by Supplier to export and import products. Supplier's billing invoice must be consistent with the invoice used by Supplier to clear goods for importation. When Buyer agrees to serve as the importer or exporter, Supplier will provide promptly to Buyer any information, documentation, certification and test results required for Buyer to comply with applicable import and export laws, regulations and administrative requirements. In all instances, Supplier may not undertake any routed export transactions, as defined in the United States Export Administration Regulations {15 CFR, Part 758.3(b)}, for any US export shipment, or undertake a similar arrangement for any export shipments originating outside of the United States, that name Buyer as a party to such shipments. Supplier will comply with all applicable export and import laws, regulations, orders, and policies, including, but not limited to:

- i. 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);
- ii. being knowledgeable with applicable supply chain security recommendations issued by applicable governments and industry standards organizations and making best efforts to comply with such recommendations; and
- iii. agreeing not to transfer to IBM any hardware, software, technical data or services controlled under the U.S. International Traffic in Arms Regulations ("ITAR").

**Packages/transportation:** Supplier will comply with: (i) all applicable country of origin marking requirements and all Buyer instructions for exports to Buyer (ii) all packaging and labeling requirements set out in this PO; and (iii) the transportation routing guidelines in this PO and the [Shipping transportation guidelines](#). Default minimum requirements for (i) and (ii) are found under [Instructions for cross-border shipments to IBM Corporation](#).

**Social and environmental management system:** Supplier will comply with the [Social and environmental management system supplier requirements](#).

**Risk of loss; delivery:** Title and risk of loss remain with Supplier until products purchased under this PO have been delivered to Buyer at the location specified in the PO and accepted by Buyer. For Supplier's delivery of products, time is 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;
- ii. it is knowledgeable with, and is and will remain in full compliance with (at its own expense) all laws, rules and regulations that are, or may become, applicable in the provision of products and services hereunder including, without limitation,
  - a. labor and employment laws,
  - b. environmental laws, regulations or ordinances governing product environmental and energy characteristics, product content prohibitions, product end-of-life management/product take-back, and/or product safety related to Buyer's transport, import, export, distribution, sale and/or use of Supplier's products as, or as part of, a Buyer product;
  - c. and regulations regarding data privacy and data protection;
- iii. its execution of this PO will not result in a breach of any other agreements or contracts to which it is a party;
- iv. no claim, lien, or action exists or is threatened against Supplier that would interfere with Buyer's rights under this PO;
- v. products and services do not infringe any privacy, publicity, reputation or intellectual property right of a third party;
- vi. services are in compliance with industry practice and standards, and consistent with and will comply with the warranties, specifications and requirements of this PO;
- vii. products are free from defects in design and free from defects in material and workmanship;
- viii. products are safe for use consistent with and will comply with the warranties, specifications and requirements of this PO;
- ix. products do not contain (and products are not manufactured using) ozone depleting substances known as halons, chlorofluorocarbons, hydro chlorofluorocarbons, methyl chloroform and carbon tetrachloride as defined by the Montreal Protocol and as specified by Buyer in writing;

- x. products are new and do not contain used or reconditioned parts unless Buyer agrees otherwise in writing;
- xi. it will not use, disclose, or transfer across borders any information that may identify an individual ("Personal Data") that is processed for or on behalf of Buyer, except to the extent necessary to perform under this PO;

**Intellectual property:** Supplier grants Buyer all rights and licenses necessary for Buyer and its affiliates to use, transfer, pass-through, and sell the products and/or services and to exercise the rights granted under this PO.

**Ownership of products:** Except for products consisting of software (which is licensed as provided under Intellectual Property above), all work product developed by Supplier and provided to Buyer under this PO are and shall remain the personal property of Buyer.

**Indemnification:** Supplier agrees to defend, hold harmless, and indemnify Buyer and its affiliates from any claim (including without limitation costs, expenses and attorney's fees and/or government fines and penalties) arising from (a) claims that any product infringes any intellectual property rights or (b) the failure of Supplier to comply with its warranties and/or 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 product so it is non-infringing and in compliance with this PO; (iii) replace the product with non-infringing ones that comply with this PO; or (iv) accept the return or cancellation of the infringing product and refund any amount paid.

**Limitation of liability:** To the extent permitted by local law, in no event will Buyer or its affiliates be liable for any lost revenues, lost profits, incidental, indirect, consequential, special or punitive damages. To the extent permitted by local law, in no event shall Buyer's liability to Supplier exceed the total amount of fees actually paid by Buyer to Supplier hereunder.

**Assignment:** Supplier will not assign its rights or subcontract its duties without Buyer'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. If the parties intend to exchange confidential information, such exchanges shall be made under a separate written confidentiality agreement. For any Personal Data relating to Supplier's personnel that Supplier provides to Buyer, Supplier will obtain the informed consent of such personnel to release the information to Buyer and to allow Buyer to use, disclose, and transmit such information on a worldwide basis among Buyer and its affiliates in connection with this PO.

**Ethical dealings:** Supplier will be familiar and will strictly comply with all laws and regulations on bribery, corruption, and prohibited business practices. Supplier and its affiliates have not and will not, for the purpose of influencing or inducing anyone to influence decisions in favor of Buyer or any of its affiliates, offer, promise, or make or agree to make, directly or indirectly, (a) any political contributions of any kind or any payment to or for the benefit of any public official, whether elected or appointed, (b) any payments for gifts, meals, travel, or other value for a

government employee or his/her family members, or (c) any payments or gifts (of money or anything of value) to anyone. Buyer shall not reimburse Supplier for any such political contributions, payments, or gifts.

**Record Keeping and Audit rights:** Supplier will maintain (and subject to applicable law provide to Buyer upon request) relevant business, technical and accounting records i) to support Supplier's invoices; ii) show proof of required permits and professional licenses and iii) to demonstrate compliance with Supplier's performance of its obligations under this PO, for not less than six (6) years following completion or termination of the relevant services. All accounting records will be maintained in accordance with generally accepted accounting principles.

Upon Buyer's notice, Buyer may, at no charge to Buyer, audit Supplier's compliance with its obligations under this PO, including verifying compliance with applicable laws and the protection and integrity of Buyer Materials. In connection with an audit, Supplier shall provide Buyer (including its auditors and any regulators) access at reasonable times (or in the case of regulators, at any time designated by such regulators), to any facility at which Supplier or any subcontractor is providing or has provided services or deliverables under this PO and to all systems, data and business, technical and accounting records relating to Supplier's (and any subcontractor's) compliance with its obligations. Supplier shall provide its full cooperation in any such audit, including by designating a focal point to support an audit and, if required by Buyer, promptly securing the rights for Buyer to directly request from any subcontractor, and for the subcontractor to promptly provide to Buyer, access to such systems, data and records relating to the work performed by such subcontractors.

**Insurance:** Supplier shall obtain and maintain all applicable and appropriate insurance, (including, without limitation, Workers' Compensation and Employers Liability, Auto Liability, Professional Liability/Errors and Omissions, Commercial General Liability insurance) in an amount consistent with Supplier's industry practice. Supplier's Commercial General Liability and Auto Liability policies shall name the Buyer as additional insured.

**Business Continuity:** Supplier agrees to have and maintain a business continuity plan and business continuity testing procedures, which include but are not limited to the areas of disaster recovery planning and pandemic planning. Supplier agrees to provide the specific recovery targets of the business continuity plan and to review, update, and test the business continuity plan annually and, upon IBM's request, Supplier will provide a summary of the business continuity plan and test results. IBM may, from time to time, provide feedback regarding the plan and requests that Supplier take IBM's comments into consideration when updating the plan. However, Supplier remains solely responsible for the performance of its responsibilities under the Agreement and the adequacy of the business continuity plan regardless of whether IBM has reviewed or commented on the plan.

**Applicable laws and courts:** This PO is governed by the laws of the country where the Buyer is located, except: (i) in Australia, 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 Albania, Armenia, Bosnia-Herzegovina, Former Yugoslav Republic of Macedonia, Georgia, Kyrgyzstan, Moldova, Montenegro, Tajikistan, Turkmenistan, and

Uzbekistan, this PO will be governed by the laws of Austria; (iv) in Russia, Azerbaijan, Belarus, and Kazakhstan this PO will be governed by the laws of Russia; (v) in Canada, the laws of the Province of Ontario govern this PO; and (vi) in the United States (including if any part of the transaction occurs within the United States), Puerto Rico, and People's Republic of China, the laws of the State of New York applicable to contracts executed in and performed entirely within that State govern this PO, with the exception that where applicable substantive United States federal law shall also apply to matters involving the United States government. The courts of the European Union member state where the Buyer is located (registered) shall have exclusive jurisdiction over disputes arising from or in relation to this PO.

**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.

No modification, amendment, supplement to, or waiver of this PO by Buyer shall be binding upon the parties unless made in writing duly signed by both parties and specifically referencing this PO. Buyer's failure to exercise any right hereunder shall not operate as a waiver thereof. Supplier shall not use the name or trademarks of Buyer or its affiliates or refer to or identify Buyer or its affiliates in any marketing materials (including without limitation testimonials or customer listings) or press releases without the prior written consent of Buyer.

IBM may process and store business contact information of Supplier Personnel in connection with the performance of the Agreement wherever IBM does business.

Neither party will be in default or liable for any delay or failure to comply with the Agreement due to any act beyond the control of the affected party, excluding labor disputes, provided such party immediately notifies the other.

**Supplier and Supplier Personnel:** Supplier is as an independent contractor, and this PO does not create an agency, partnership, or joint venture relationship between Buyer and Supplier or Supplier personnel. Buyer assumes no liability or responsibility for Supplier personnel. Further, this Agreement does not create an employment relationship between Buyer and Supplier Personnel.

**Supplier Access to Buyer Premises:** If Supplier Personnel will have access to Buyer premises, (a) Supplier shall instruct Supplier Personnel as follows: Supplier Personnel on Buyer's premises may not (i) bring weapons of any kind onto such premises; (ii) possess, use or be under the influence of controlled substances or alcoholic beverages; (iii) have in their possession hazardous materials of any kind without Buyer's authorization; and (b) Supplier Personnel on Buyer's premises must (i) obtain a valid identification badge from Buyer or Customer and return identification badges upon completion or termination of assignments; (ii) remain in authorized areas only (limited to work locations, cafeterias, restrooms and parking lots); (iii) access and use for work only the materials, documents, information and data necessary to perform and (iv) immediately report to Supplier any incidents (such as actual or alleged physical alterations, assaults, harassment and/or inappropriate behavior) so that Supplier can promptly notify Buyer and provide Buyer with a copy of any incident report.