

1. Scope / Agreement Documents

These Standard Purchase Order Terms & Conditions stipulate the terms of purchase by IBM Research GmbH ("Buyer") with its suppliers ("Supplier"). These Standard Purchase Order Terms & Conditions supplement a purchase agreement ("PA"). A purchase agreement may include a specific agreement document and/or a purchase order ("PO") - also referred to as a work authorization ("WA") - with any specified attachments on products and services. Such documents constitute the sole agreement between Buyer and Supplier. In the event of conflicting terms among the documents, the following order of precedence prevails: PO, WA, specific agreement document, attachment, these Standard Purchase Order Terms & Conditions. No other document, including Supplier's proposal, quotation, or acknowledgment form, will be part of a purchase agreement, unless specifically agreed to in writing by Buyer.

The rights and obligations of Buyer in this agreement may only be waived or modified by Buyer, and this must be in writing.

2. Price / Taxes

If no price is stated in the PA, the price will be Supplier's lowest prevailing market price. Supplier is responsible for and will pay all sales, use, and similar taxes.

Upon Buyer request, Supplier will invoice Buyer electronically. Such an invoice must bear an electronic signature as may be required by the applicable taxing authority.

3. Acceptance

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 work authorization. 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. Terms of Payment

Unless a PA states otherwise, the terms of payment will be net 60 days after the later of the following two dates: after Buyer receives Supplier's invoice or after provision of the deliverables or services. In the event Supplier has not received payment as agreed, Supplier will notify Buyer and Buyer will make prompt payment. In any event, payment of invoices will not be deemed acceptance of deliverables or services. In particular, Buyer does not forfeit the right to inspect the deliverables and/or services and to invoke the remedies of warranty as the case may be.

5. Termination

Unless agreed otherwise in writing, Buyer may terminate this Agreement anytime without cause with a written 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 price.

6. 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.

7. Packages / Transportation

Supplier will, unsolicited:

- a) comply with all regulations pertaining to country of origin declarations and with all export instructions to Buyer; especially the notification of the US export control classification numbering (ECCN) and the declaration of material/services of US embargo countries (see websites "[Instructions for exports to IBM](#)" and "[Bureau of Industry and Security U.S. Department of Commerce](#)").
- b) comply with all packaging, labelling, shipping, and transportation routing requirements set out in a PA, and to comply with all legal guidelines;
- c) not use premium transportation unless specifically authorized by Buyer;
- d) not include more than one daily shipment for one destination on one bill of lading; and
- e) not declare a value or purchase additional insurance on all F.O.B. origin shipments to Buyer.

8. Late Shipments

Generally, delivery dates are expiry dates. If Supplier fails to deliver on time, Buyer is entitled to legal remedies. In particular, Buyer may claim for damages and purchase replacements elsewhere. Supplier will be liable for any 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 a PA.

9. Warranties

Supplier represents and warrants that:

- a) it has the right to enter into the PA and its performance under the PA, and it will comply, at its own expense, with the terms of any contract, or obligation, or any law, regulation or ordinance to which it is or becomes subject; and with any law, regulation or ordinance (such as those that implement European Union Directive 2002/95/EC) that govern Buyer's distribution of Supplier's products as, or as part of, a Buyer product;
- b) no claim, lien, or action exists or is threatened against Supplier that would interfere with Buyer's rights under the PA;
- c) deliverables and services specified in the PA do not infringe any personal rights, data privacy rights, publicity rights, the reputation or intellectual property rights of a third party;
- d) it has disclosed to Buyer in writing the existence of any third party software 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 software code;

- e) 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;
- f) products specified in the PA are free from defects in design except if they are based solely upon written designs provided by Buyer or based on Supplier's designs that have been accepted by Buyer in writing;
- g) as of the date of shipment as specified in the PO/WA, material and workmanship will conform to the warranties, specifications and requirements, including but not limited to quality requirements, specified in the PA;
- h) products specified in the PO/WA/attachment are safe for use consistent with and will comply with the warranties, specifications and requirements of the PA;
- i) deliverables specified in the PA do not contain harmful software code;
- j) 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;
- k) products are new and do not contain used or reconditioned parts unless Buyer agrees otherwise in writing;
- l) 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 the PA; and that it will immediately report to Buyer any breaches of protection of Personal Data or any compromises thereof and will cooperate and comply fully with all instructions of or other requirements provided by Buyer;
- m) 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 it is knowledgeable with applicable supply chain security recommendations issued by applicable governments and industry standard organizations and will make best efforts to comply with such recommendations; and
- n) 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.

10. 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, assign, pass-through, and sell the products or services specified in the PA and to exercise the rights granted under the PA. 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 the PA. 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 the PA;
- b) modify the products or services so they are non-infringing and in compliance with the PA;
- c) replace the products or services with non-infringing ones that comply with the PA or 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.
- d) ensure that all authors waive all their rights to the products and services' integrity and to be associated with them as authors.

11. Limitation of Liability

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

12. Equipment / Tools

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

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 the PA will be considered non-confidential, unless the parties have entered into a separate written confidentiality agreement. For any Personal Data 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 Personal Data to Buyer and to allow Buyer to use, disclose, and transmit such Personal Data in connection with the PA.

15. Applicable Laws

The PA is governed by Swiss law, without regard to conflict of law principles. The United Nations' Convention on International Sales of Goods does not apply. Place of jurisdiction is the Commercial Court of Zurich ("Handelsgericht des Kantons Zuerich").

16. General Terms

Unless otherwise provided by local law without the possibility of contractual waiver or limitation, any legal or other action related to the 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.

Should the hyperlinks embedded in section 7 not operate correctly, then the following web addresses should be used. Supplier can order such information from Buyer in hardcopy, if no online access is possible.

- Instructions for exports to IBM: <http://www-03.ibm.com/procurement/proweb.nsf/ContentDocsByTitle/United+States~Instructions+for+exports+to+IBM?OpenDocument&Parent=IBM+standard+purchase+order+terms+and+conditions>.
- Bureau of Industry and Security U.S. Department of Commerce, Regional Considerations: <http://www.bis.doc.gov/policiesandregulations/regionalconsiderations.htm>.

Rueschlikon, November 1, 2009