

End Purchase Order Terms (Brazil Law)

The Parties identified and qualified in this document agree to enter into this agreement, in English.

By accepting/signing the its terms and conditions the Parties acknowledge that they have read, understood its content and that they are in agreement with the same, although written in English.

As Partes identificadas e qualificadas no presente concordam em celebrar o presente no idioma inglês.

Mediante a aceitação/assinatura do presente as Partes declaram que leram, entenderam seu conteúdo e que estão de acordo com o mesmo, ainda que escritos no idioma inglês.

All terms used in these Purchase Order Terms beginning with a capital letter are defined in section 24.

1 Application and Term

1.1 The Contract commences on the Commencement Date and will continue in force for the Term, unless terminated earlier

in accordance with the terms of the Contract or extended for a further period on terms to be agreed in writing between the parties.

1.2 Acknowledgement or confirmation by the Supplier of a Purchase Order will be deemed as acceptance of the Contract and the Contract will be binding on the parties as from the date of such acknowledgement or confirmation. Such acknowledgement or

confirmation may be by facsimile, phone or email, by the Supplier supplying the Products and/or Services or by any other method as agreed between the parties.

- 1.3 The supply of Products and/or Services by the Supplier shall be governed by the written supply agreement specified in the Purchase Order (**Supply Agreement**) or these Purchase Order Terms where no Supply Agreement is specified. In the event of any inconsistency between the Supply Agreement and the Contract, the Supply Agreement shall prevail; provided, however, that in the event of such inconsistency, the Supply Agreement shall invalidate only the expressly inconsistent provisions contained herein and shall not affect any other or additional provisions contained in the Contract even though such provisions may not appear in the Supply Agreement. Any other terms of trade of the Supplier are expressly excluded even if the Purchaser has been provided with or made aware of those terms.

2 Products and Services

- 2.1 The Supplier must provide the Products and Services in accordance with the Contract.
- 2.2 The Supplier must: (a) follow all reasonable instructions of the Purchaser (including as may be specified in any policies and procedures made available to the Supplier) in relation to the performance of its obligations under the Contract and, in the absence of any such instructions, act in a manner that it reasonably considers to be in the Purchaser's best interests; (b) promptly notify the Purchaser of any circumstances of which it becomes aware which are likely to impact its ability to perform its obligations under this Contract.

3 Delivery of Products

- 3.1 The Supplier must provide the Products to the Purchaser on or before the Delivery Date.
- 3.2 The Supplier must ensure that: (a) the Products are fit and suitable for the purpose(s) for which Products of that kind are commonly bought or for any purpose expressed in the Contract or reasonably to be inferred from it (including from the description of the Products in the Purchase Order); (b) the Products are of merchantable quality taking into account any purpose(s) for which Products of that kind are commonly bought and any purpose(s) expressed in the Contract or reasonably to be inferred from it (including the description of the Products in the Purchase Order); (c) the Products correspond with any relevant samples provided by the Supplier; (d) the Products strictly conform with any Specifications; (e) where the Supplier is the manufacturer of the Products, all reasonable care and skill has been used in manufacturing the Products; and (f) there is no restriction on or impediment to the passing of full title in the Products to the Purchaser.
- 3.3 The Products must be suitably prepared for shipment in a manner which ensures delivery of the Products undamaged. A delivery note must be clearly displayed on the Products showing the Purchase Order number and relevant item numbers of the Products.
- 3.4 The Products must be delivered to the Delivery Address on or before the Delivery Date. If the Products are incorrectly delivered, the Supplier will be held responsible for any additional expense incurred in delivering them to the correct destination.

4 Provision of Services

- 4.1 The Supplier must commence providing the Services on the Commencement Date and complete the Services by the Completion Date (if any).
- 4.2 The Supplier must: (a) provide the Services with all due care and skill, in a professional and timely manner, and to the best of its knowledge and competence; (b) provide and maintain at all times sufficient and appropriate management, Personnel, equipment and other resources necessary to provide the Services; and (c) ensure that the Personnel engaged in the performance of the Services: (i) are suitably qualified and experienced; and (ii) carry out their duties to the best of their skill and ability and in accordance with industry best practice; (d) comply, ensure that the Services and work conducted by or on its behalf comply, and ensure so far as is reasonably practicable that its personnel comply, with applicable workplace health and safety laws, standards and policies; (e) promptly notify Purchaser of any event or circumstance that has, or is likely to have, any adverse effect on the health or safety of persons to whom Purchaser has a duty under applicable workplace health and safety laws.
- 4.3 If the Supplier is not providing the Services in accordance with, or otherwise complying with, the requirements of the Contract (including the Specifications), then, without limiting any other rights or remedies available to the Purchaser, the Purchaser may direct the Supplier to take such actions as the Purchaser deems reasonably necessary (in its sole discretion) to remedy the failure. The Supplier must promptly (and at least within the reasonable time period specified by Purchaser), and at its own cost, comply with any such direction.
- 4.4 If the failure is due to the act or omission of any Supplier Personnel of the Supplier, the

Purchaser may require the Supplier to replace such Personnel with a person or persons acceptable to the Purchaser (acting reasonably).

5 Warranties

- 5.1 The Supplier warrants and represents that: (a) the execution and delivery of the Contract has been properly authorised; (b) it has full corporate power to execute, deliver and perform its obligations under the Contract; (c) it has the necessary expertise, skill, knowledge and resources to enable it to comply with its obligations under the Contract; (d) the Contract constitutes a legal, valid and binding obligation upon it and enforceable in accordance with its terms by appropriate legal remedy; (e) there are no actions, claims, proceedings or investigations pending or threatened against it or by it of which it is aware and which may have a material effect on the subject matter of the Contract; (f) it has and will continue to have during the term of the Contract, all licences, authorisations, consents, approvals and permits required by all applicable laws and regulations in order to perform the Services, provide the Products and to otherwise perform its obligations under the Contract; (g) it holds and will continue to hold the insurance policies as required under the Contract; (h) it complies and will continue to comply with all laws, regulations, standards and industry best practice applicable to the Services, the Products and the performance of its obligations under the Contract; (i) the Products and Services (including their provision) comply with: (A) all Local Laws, standards and industry best practice; and (B) the Specifications; (j) the Products and Services do not infringe the Intellectual Property Rights of any party; (k) there is no labor/employment relationship between the Supplier employees and/or other professionals hired by the Supplier and the Purchaser.

- 5.2 The Supplier must deliver any Third Party Warranty to the Purchaser in a form acceptable to the Purchaser on or before the Delivery Date or Completion Date (as applicable).
- 5.3 All warranties referred to in the Contract will run to the Purchaser, its successors and assigns.
- 5.4 The requirements of this **clause 5** are in addition to any other warranties, rights, remedies or guarantees from the Supplier or third parties in respect of the Products and Services set out in the Purchase Order or implied or imposed by Local Law.

6 Title and Risk of Loss

- 6.1 Title to the tangible Products (other than software) or part of the Products belongs to the Purchaser free of encumbrances and all other interests from the earlier of delivery or payment of the value (as reasonably determined by the Purchaser) of the Products or part of the Products.
- 6.2 The Supplier is solely liable for Loss or damage to: (a) the Products (until the Delivery Date); and/or (b) any material, plant and equipment for or to be used in the Supplier's performance of the Services or Contract; arising from any cause (except Loss caused by the negligence, omission or default of the Purchaser, its servants or agents).

7 Indemnities

- 7.1 The Supplier must indemnify and keep indemnified the Purchaser, its Affiliates, officers, directors, and employees (the "**Indemnified**") against all Losses awarded against or incurred or paid by the Indemnified in relation to: (a) any breach of the Contract

(including any breach of any warranty given by the Supplier (including any warranties, remedies, rights or guarantees implied or imposed by Local Law) in relation to the Products and/or Services); (b) any act or omission of the Supplier or its employees, agents or subcontractors in connection with the Products and/or Services or the Supplier's performance of the Contract; (c) bodily/personal injury to or death of any person arising due to any act or omission of Supplier or its Personnel; (d) damage to tangible property arising due to any act or omission of Supplier or its Personnel; (e) privacy infringement or breach of confidentiality; (f) any claim by a third party arising from or incurred by reason of any infringement of Intellectual Property Rights arising from or relating to any Products and/or Services; or (g) any claim brought against the Purchaser by Supplier employees or professionals. Should one of these claims occur, in addition to the indemnification mentioned in this section, Supplier will defend Purchaser at its own cost.

8 Insurance

- 8.1 Supplier shall, throughout the term of this Contract and any extensions thereof, and for a period of at least twenty four (24) months following expiry or termination of the Contract take out and keep in full force and effect (including via Extended Reporting Period as applicable) at its sole cost and expense, the following insurance coverage in connection with the Services and/or Products provided by Supplier, its employees and agents, and anyone working on behalf of the Supplier including subcontractors:
 - a) Comprehensive general liability insurance in the amount of not less than US\$5,000,000 for bodily injury, death, personal injury, and broad form property damages, per occurrence, and a US\$5,000,000 aggregate. Coverage shall also include contractual liability,

- premises- operations, products, independent contractors and completed operations. Required limits may be attained by use of Commercial Umbrella Liability coverage;
- b) Business automobile liability insurance in the amount of not less than US\$1,000,000 for bodily injury or death of person and property damages, per occurrence, including hired and non-owned liability;
 - c) Professional liability insurance coverage of not less than US\$5,000,000 each claim and annual aggregate for liabilities arising out the Supplier's acts, errors, or omissions while performing or failure to perform of its Products or Services provided under this Contract;
 - d) Privacy and cyber liability of not less US\$5,000,000 including coverage for the following: (i) network security and privacy liability, including coverage for theft, unauthorized disclosure, alteration, corruption, destruction or deletion of information stored or processed on a computer system, the failure to prevent the transmission of malicious code, and remediation expenses; and (ii) libel; slander; defamation; infringement of copyright, trademark, and trade dress; and invasion of privacy;
 - e) Worker's compensation in accordance with statutory limits for all locations in which Services are to be provided, including broad form all states endorsement or an alternative plan of benefits if permitted by Local Law
 - f) Employer's Liability with a limit not less than US\$1,000,000 each employee by disease, US\$1,000,000 each employee by accident, or minimum amount legally required, whichever amount is the greater;
 - g) Employee dishonesty insurance in an amount not less than US\$1,000,000.00
- per occurrence and for all claims in the aggregate, covering theft by Supplier or its subcontractors or agents of monies or assets of OT or its customers
- h) All Risk Property Damage upon property of every kind and description owned by Supplier, or in the care, custody or control of Supplier in an amount of not less than the full replacement cost; and
 - i) Any other Insurances as may become compulsory or deemed necessary during the course of the Contract.
- 8.2 Each policy shall be written by insurance companies satisfactory to Purchaser, authorized to do business in the Country, and having an A.M. Best's Rating of not less than "A- VII";
 - 8.3 If Supplier cannot demonstrate to Purchaser's reasonable satisfaction that it has in place all the required insurance policies and/or is otherwise complying with its obligations to maintain insurance under the Contract, Purchaser shall be entitled to put in place equivalent policies and Supplier shall be liable for all external costs and expenses incurred by Purchaser in doing so.
 - 8.4 Upon request, Supplier will provide Purchaser with certificates of insurance evidencing that the above insurance coverage are in full force and effect. Supplier shall endeavour to provide evidence of insurance within 10 days of issue of the Purchaser Order.
 - 8.5 Each insurance policy shall: (a) include a waiver of subrogation clause in favour of Purchaser, its employees and agents and shall state that they are primary and without any right of contribution by Purchaser; (b) contain a cross liability and severability of interests clause; (c) name Purchaser, its Affiliates directors, officers, employees and agents as additional insured where permitted by policy; and (d) provide that the insurer will give the other party thirty (30) days' advance written notice of cancellation of, nonrenewal of, or reduction in coverage.

- 8.6 Amounts in US\$ are for reference only. The insurance coverage will be in the equivalent amount in local currency
- 8.7 Certificates of insurance should be addressed to: Open Text Corporation, Sourcing and Procurement Department 38 Leek Crescent, Richmond Hill, Ontario L4B 4N8.

negotiating changes in accordance with **clause 9.2** or resolving a Dispute in relation to a Change Request in accordance with **clause 9.3**.

- 9.6 For avoidance of doubt, the Contract will continue to apply to the Products and/or Services as amended by any Change Request.

9 Change Requests

- 9.1 The Purchaser may at any time provide a written request to the Supplier setting out in reasonable detail any changes it requires to be made to the Products and/or Services (**Change Request**).
- 9.2 Unless notified in writing by Supplier promptly, but no later than 2 Business Days after having been provided a Change Request, the Change Request shall be at no additional cost to Purchaser otherwise the parties will negotiate in good faith any changes to the description of the Services, the Products and/or the Price necessitated by the Change Request. Any changes to the description of the Services, Products and/or the Price must be agreed in writing by the parties.
- 9.3 If the parties fail to reach agreement on any proposed changes to the Services, Products and/or the Price within 10 Business Days of the Change Request, the parties must refer the matter to be resolved as a Dispute in accordance with **clause 21 (Dispute Resolution)**.
- 9.4 The Supplier must implement the changes agreed in accordance with **clause 9.2** as soon as practicable, but in any event, within 20 Business Days (or such other period as may be agreed by the parties) of such agreement.
- 9.5 Unless otherwise agreed by the parties, the Supplier must continue to perform the Services and/or provide the Products, during any period in which the parties are

10 Payment and Invoicing

- 10.1 The Price is firm and fixed and not subject to escalation for any reason unless otherwise stated in the Contract. The Purchaser shall pay freight charges only where notified by Supplier in advance and where specified in the Purchase Order, otherwise such charges shall not apply. Supplier is not entitled to claim or be paid by the Purchaser any amount not specified in the Purchase Order.
- 10.2 On the Delivery Date or Completion Date, or if the Purchase Order states that progress payments apply, at intervals of not less than 1 month, the Supplier may submit a valid invoice which specifies, at a minimum, Purchase Order number and the contact name of Purchaser's representative. Where payment amounts under the Contract are in respect of a taxable supply, in jurisdictions where there is a requirement to issue a tax invoice, the parties will agree to issue a tax invoice in respect of the supply of Products and/or Services.
- 10.3 Purchaser must pay all undisputed amounts within the timeframe specified on the face of the Purchase Order (or 75 days, if no time period is so specified), following receipt of a valid invoice. The Purchaser may withhold payment on amounts subject to bona fide dispute until resolved.

11 Taxes

11.1 All amounts due to Supplier under the Contract are inclusive of Taxes, which if applicable, are payable under this clause are due at the same time as any payment amounts under the Contract are due. If any payment amount under the Contract is a reimbursement or indemnification by one party of an expense, loss or liability incurred or to be incurred by the other party, the amount of any input tax credit or any other credit for taxes and duties the other party is entitled to claim is deducted from that payment. Where payment amounts under the Contract are in respect of a taxable supply, in jurisdictions where there is a requirement to issue a tax invoice, the parties will agree to issue a tax invoice in respect of the supply

Should Purchaser or Supplier be obligated by Local Law to deduct and withhold any amounts (**Withholding Tax**) from any payment or payments otherwise due and payable to the other party to the Contract and remit such Withholding Tax to any Government Agency, such remitting party may do so and shall be deemed to have paid to the other party to the Contract, for all purposes associated with the Contract, each such payment made or remitted to such Government Agency. Each remitting party shall provide sufficient documentation to the other party to demonstrate proof of payment of such Withholding Tax

12 Inspection

12.1 The Purchaser may inspect the Products and/or Services at any time and upon request, the Supplier must at its own cost facilitate inspection and give the Purchaser any access required for the purpose of conducting the inspection to the satisfaction of the Purchaser. Inspection does not relieve the Supplier of any of its obligations under the Contract.

13 Confidentiality

- 13.1 Confidential Information exchanged between the parties under the Contract will be treated as confidential and must not be used or disclosed by any person.
- 13.2 Confidential information may only be used for the purpose of fulfilling obligations or exercising rights under the Contract and may only be shared with the Supplier's employees, agents, or contractors with a need to know such information.
- 13.3 Confidential Information will be protected using a reasonable degree of care to prevent unauthorized use or disclosure during the period the information remains confidential or a trade secret.
- 13.4 The Supplier may disclose Confidential Information: (a) when required to do so by Local Law or any Government Agency; and (b) to its Personnel where disclosure is necessary to perform the obligations under the Contract provided that each person has agreed to keep the information confidential on terms consistent with all the terms of the Contract.
- 13.5 The Supplier is responsible for any unauthorized disclosure by its Personnel and must give the Purchaser all assistance that it requires to take any action or bring any proceedings in relation to any actor omission giving rise to a breach under this **clause 13**.
- 13.6 If the Supplier becomes aware of a breach of this **clause 13** including a breach of duty of its Personnel with respect to any Confidential Information, it must: (a) notify the Purchaser as soon as it becomes aware of the breach; and (b) promptly provide the Purchaser with any information or assistance which it may reasonably request.
- 13.7 Upon request by the Purchaser, the Supplier must: (a) promptly return to the Purchaser, or at the election of Purchaser, destroy all Confidential Information, subject to legally

required archival requirements and Supplier's standard data backup procedures; and (b) deliver to the Purchaser a certificate signed by a duly authorised representative certifying compliance with the provisions of this **clause 13.7** no later than 10 Business Days after receiving a request from the Purchaser to do so.

- 13.8 The return, destruction or deletion of Confidential Information in accordance with **clause 13.7** does not release the Supplier from its obligations under the Contract.

14 Personal Information Protection

- 14.1 If, and to the extent that, any of the Confidential Information disclosed to the Supplier contains any Personal Information, the Supplier must: (a) comply at all times with Privacy Law, any privacy policy or code adopted by the Purchaser from time to time and any reasonable directions of the Purchaser notified to Supplier in connection with the disclosure or handling of any Personal Information; (b) only use Personal Information for the purpose of fulfilling its obligations under the Contract; (c) immediately notify the Purchaser if it becomes aware of any misuse, loss, unauthorised access or disclosure of the Personal Information, or of any complaint or investigation under, or relating to, any of the laws referred to in **14.1(a)**; (d) co-operate with the Purchaser in the resolution of any such complaint or investigation; and (e) take appropriate technical and organizational measures against the unauthorized or unlawful processing of Personal Information.
- 14.2 Where the Supplier is a legal person of a country of the European Union, it shall not transfer the personal information outside the European Economic Area or any third country deemed to ensure adequate protection by the European Commission pursuant to Directive 95/46/EC without the prior written consent of

the Purchaser. In all other cases, the Supplier must not transfer or disclose any Personal Information outside the Country, or allow any person outside that Country to access, view or receive any Personal Information, without the prior written approval of the Purchaser.

15 Acceptance

- 15.1 The Purchaser is entitled at any time before or after delivery, and without prejudice to any other rights, to reject any of the Products and/or any Services which (in its reasonable discretion) do not fully comply with the Contract. The Purchaser is not liable to pay for any Products and/or Services which are rejected fully or for any costs, loss or damages arising from a rejection. Products and/or Services rejected must be rectified or replaced by the Supplier (as elected by Purchaser) at Supplier's own cost. Products rejected after delivery must be promptly removed by the Supplier. In the event that Products and/or Services are rejected, the Purchaser may purchase alternative supplies or hire another service provider, as near as practicable to the Products or Services as circumstances permit, without prejudice to any other right which the Purchaser may have against the Supplier. Any amount paid by the Purchaser in respect of Products and/or Services which are rejected, is a debt due by the Supplier to the Purchaser.

16 Termination and Suspension

- 16.1 **Termination for convenience.** The Purchaser may terminate a Contract, in whole or in part, by notice in writing at any time for its convenience by giving no less than 30 days' written notice to the Supplier;
- 16.2 **Termination for cause.** Either party may terminate a Contract immediately by giving

written notice to other party if: (a) the other party commits a breach of the Contract which is capable of remedy, and fails to remedy that breach within 10 Business Days from the date the first party notifies the other party of the breach; (b) the other party commits a material breach of any of its obligations under the Contract, which is not capable of remedy; or (c) an Insolvency Event occurs in relation to the other party; or (d) in the case of Purchaser, the Products and/or Services delivered to not conform to the Specifications.

16.3 **Suspension.** Without limiting the Purchaser's rights under clause 16.1 and 16.2, if the Supplier: (a) fails to complete the Products and/or Services by the Delivery Date or Completion Date; (b) indicates it is unwilling or unable to deliver the Products and/or complete Services; (c) neglects or fails to carry out promptly any direction of the Purchaser; or (d) is in breach of the Contract which is not rectified, the Purchaser may, at its discretion, suspend all payments under the Contract and may give the Supplier written notice that it is in breach of the Contract. If the Supplier fails to remedy the breach within 7 days of receiving the notice, the Purchaser may by a further notice in writing to the Supplier terminate the Contract or take the performance of the Contract wholly or partially out of the control of the Supplier and the Purchaser may then obtain the Products and/or Services by any method.

16.4 Upon termination or expiry of this Contract, the Supplier must: (a) deliver to the Purchaser all deliverables (including partially developed deliverables) delivered up to Purchaser subject to the payment of any outstanding fees directly relating to those deliverables; (b) at the Purchaser's option, immediately return or destroy any Confidential Information and any materials owned or provided by Purchaser to the Supplier under the Contract, which is in the possession or control of the Supplier; (c) refund to the Purchaser all amounts paid in advance in relation to any: (i) period during which Services will not be provided to the

Purchaser; and (ii) Products that are not or will not be delivered to the Purchaser.

16.5 Termination or expiration of the Contract does not affect any right, claim or remedy of the Purchaser that accrued prior to termination or expiration.

16.6 If the Purchaser exercises its rights under clause 16: (a) any cost, loss, damage or expense incurred by the Purchaser as a result becomes a debt due and owing from the Supplier to the Purchaser; (b) the Supplier must immediately upon demand assign to the Purchaser any rights, titles, agreements and commitments relating to the supplies which the Supplier has acquired; (c) the Supplier must immediately make available for collection, or if required by the Purchaser must at its own cost deliver to the Purchaser, all Products, materials, equipment, documentation or other information in the care, custody or control of the Supplier in connection with the Products and Services.

16.7 The Purchaser is entitled to set off claims of its Affiliates against the Supplier's claims or receivables.

17 Subcontracting

17.1 The Supplier may only subcontract the provision of the Products and/or Services to a third party with the prior written approval of the Purchaser (which may be withheld at its sole discretion).

17.2 The Supplier acknowledges and agrees that if it subcontracts the provision of the Products and/or Services or any part of the provision of the Products and/or Services: (a) it will remain liable to the Purchaser for the performance of its obligations under the Contract; and (b) it will be liable for the acts, omissions or neglect of the subcontractor as fully as if such acts, omissions or neglect were the conduct of the Supplier or any of its Personnel.

18 Business Continuity

- 18.1 To the extent applicable to the Contract, the Supplier shall: (a) maintain plans to ensure it can continue to perform all of its obligations under the Contract in the event of any emergency, civil disorder, natural disaster or any other form of disaster; (b) use its best efforts to prepare a robust Business Continuity Plan that ensures the continuation of the Contract; (c) upon request, to disclose to Purchaser the contents of its Business Continuity Plan (including any revisions made to it from time to time); (d) allow Purchaser, at its discretion from time to time to monitor the Supplier's business continuity arrangements; (e) notify Purchaser if an incident occurs which activates the Supplier's Business Continuity Plan (such notification to be given prior to the issue of any notification to the press, customers or other media); and (f) provide Purchaser with details of how the Supplier managed any incident which resulted in the activation of the Supplier's Business Continuity Plan and any consequential amendments made to the Supplier's processes and/or procedures thereafter.

19 Compliance with Laws

- 19.1 The Supplier must comply with all applicable Local Laws in connection with its performance of its obligations under a Contract.
- 19.2 The Supplier will not engage in any deceptive or unethical practices that may be detrimental to Purchaser.
- 19.3 The Supplier must comply with the Foreign Corrupt Practices Act of the U.S., the Bribery Act of the U.K., and any applicable Local Laws or regulations regulating fraudulent or corrupt conduct (collectively, the **Anti-Corruption Laws**) including their prohibitions

regarding the direct or indirect payment or giving of anything of value to an official of a foreign government, political party or governmental or non-governmental agency for the purpose of influencing an act or decision in their official capacity or inducing the official to use their or their organization's influence to obtain or retain business involving the Purchaser or any of its Affiliates.

- 19.4 The Supplier must not violate or knowingly let anyone violate the Anti-Corruption Laws with respect to the supply of Products and Services under the Contract.
- 19.5 The Supplier warrants that none of its principals, staff, officers or key employees are government officials, candidates of political parties, or other persons who might assert illegal influence on the Purchaser's behalf.
- 19.6 The Supplier shall indemnify the Purchaser and its Affiliates against and from any Loss awarded against or incurred or paid by the Purchaser arising from or in connection with any breach by the Supplier of its obligations under this **clause 19**.
- 19.7 The Supplier agrees to maintain an effective program to comply with the Anti-Corruption Laws during the Term. The Supplier agrees to certify or recertify compliance within thirty days of the date the Purchaser requests in writing such action.

20 Audit

- 20.1 On the Purchaser's reasonable request and subject to **clause 20.2**, the Supplier must: (a) provide the Purchaser with reasonable access to its Personnel, premises, facilities; (b) authorise the Purchaser to view and make copies of any materials including any licenses, permits, records and information required to be obtained and maintained under the Contract which are relevant to assessing compliance with the Contract (**Audit**).

- 20.2 The Supplier's obligations under **clause 20.1** are subject to the Purchaser: (a) providing at least 5 Business Days' prior written notice to the Supplier; (b) conducting the Audit during ordinary business hours on a Business Days; and (c) not interfering unreasonably with the Supplier's ordinary business.
- 20.3 If the results of an Audit show that Supplier is not complying with the Contract, then Supplier must ensure that it and any relevant Supplier Personnel: (a) promptly remedy the non-compliance; and (b) comply with the Purchaser's reasonable directions to remedy the non-compliance, including directions as to timing.
- 20.4 Each party will bear its own costs associated with Audits, unless an Audit reveals that the Supplier has: (a) overcharged the Purchaser by 5% or more of the amount specified in the Purchaser Order in any month; or (b) breached the Contract in any way other than in a minor or inconsequential way; the Supplier must pay the Purchaser within 30 days of written demand, the Purchaser's costs of the Audit and such amount overcharged.

21 Dispute resolution

- 21.1 If a dispute arises in relation to any part of the Contract (**Dispute**), each party must not commence any court proceedings relating to the Dispute unless it has complied with the provisions of this **clause 21**, except to seek urgent interlocutory relief.
- 21.2 A party claiming that a Dispute has arisen must promptly notify the other party in writing giving details of the Dispute.
- 21.3 The parties must use reasonable endeavours to resolve any Dispute notified in accordance with **clause 21.2**.

- 21.4 If the parties fail to resolve the Dispute within 20 Business Days of a party receiving a notice in accordance with **clause 21.2**, each party must refer the Dispute to its respective Managing Director (or a similarly senior person) and ensure that its representative uses reasonable endeavours to resolve the Dispute.
- 21.5 If the parties are not able to resolve the Dispute in accordance with **clause 21.4** within 20 Business Days, either party may immediately refer the Dispute to the alternative dispute resolution centre nearest to the Purchaser's location ("**ADR Centre**") for mediation first and only then, if not successful, for arbitration and the parties will use reasonable endeavours to resolve the Dispute following the rules specified by the ADR Centre.
- 21.6 Each party must bear its own costs in relation to complying with this **clause 21**, except for the costs and expenses of the mediation, which will be borne by the parties equally.

22 Notices

- 22.1 Any notice, approval or consent required to be given under this agreement must be in writing (in English) and must be delivered by hand, prepaid post, facsimile or electronic mail, to the address of the party set out in the Purchase Order or an alternate address as may be advised by the other party from time to time.
- 22.2 Notice will be considered to have been received: (a) if sent by hand, when left at the address of the recipient; (b) if sent by prepaid post, 3 Business Days (if posted to an address in the same Country) or 10 Business Days (if posted from one Country to another) after the date of posting; or (c) if sent by facsimile or electronic mail, on the day of transmission as evidenced by a facsimile or electronic communication transmission record; but if a notice is served by hand, or is received by the recipient by facsimile or

electronic mail, on a day that is not a Business Day, or after 5:00 pm (recipient's local time) on a Business Day, the notice will be considered to have been received by the recipient at 9.00 am (recipient's local time) on the next Business Day.

23 General Provisions

- 23.1 **Assignment.** The Purchaser may assign or transfer its rights or obligations under the Contract without the prior written consent of the Supplier. The Supplier may not assign or transfer its rights or obligations under the Contract without the prior written consent of the Purchaser.
- 23.2 **Indirect Loss. To the extent permitted by applicable Local Law, the Purchaser is not liable to Supplier or to any other party for: (a) any indirect, incidental, special, consequential, aggravated, exemplary, or punitive damages; (b) any lost sales, lost revenue, lost profits; or (c) any loss not arising naturally and not arising according to the usual course of things, from the relevant breach or acts or omissions.**
- 23.3 **Conflict of Interest.** The Purchaser undertakes and warrants that: (a) no conflict of interest exists or is likely to arise in the performance of its obligations under the Contract; (b) during the course of the Contract, it will not engage in any activity likely to compromise its ability to perform its obligations under the Contract fairly and independently. The Supplier must immediately disclose to the Purchaser any activity which constitutes or may constitute a conflict of interest; and that its Personnel will not engage in any activity or obtain any interest likely to conflict with or restrict the Supplier in performing its obligations under the Contract fairly and independently. The Supplier must immediately disclose to the Purchaser any such activity or interest.
- 23.4 **Relationship.** Except as otherwise provided in the Contract, nothing in the Contract

constitutes an exclusive relationship, a joint venture, partnership or relationship of principal and agent or employer and employee, between the parties and the Contract is not to be construed as creating any such relationship. Neither party has the right or authority to bind the other by any representation, declaration or admission, or to make any contract or commitment on the other's behalf, or to pledge the other's credit.

- 23.5 **Intellectual Property Rights and Ownership** Each party will retain all ownership rights to its previously existing intellectual property. Purchaser will own any work product created in connection with the Services rendered under the Contract, including software, documentation, training or educational materials, inventions, innovations and developments ("Work Product"), except that Purchaser will gain no ownership rights in any of Supplier's previously existing intellectual property contained in the Work Product.
- 23.6 **Survival. Clauses 5 (Warranties), 7 (Indemnities), 13 (Confidentiality), 14 (Personal Information Protection), 16.4, 19.6, 21 (Dispute resolution), 23.2 (Indirect Loss), 23.5 (Survival), 23.10 (Governing Law) and 24 (Definitions and Interpretation)** of these Purchase Order Terms, and any obligations which by their nature should survive the termination or expiration of a Contract will survive termination or expiry of a Contract.
- 23.7 **Waiver.** The failure of the Purchaser to enforce or exercise at any time or for any period of time any term of or any right pursuant to the Contract, does not constitute, and will not be construed as a waiver of such term or right and shall in no way affect the Purchaser's right to later enforce or to exercise it.

- 23.8 **Entire Agreement.** The Contract represents the entire understanding of the parties and supersedes all prior agreements, arrangements, representations or understandings (if any) of the parties in respect of matters dealt with by the Contract.
- 23.9 **Severance.** If any provision contained in a Contract is found to be illegal, invalid or unenforceable under any applicable Local Law, that provision will firstly, be read down to give it efficacy and, if that is not possible then, secondly the provision will, insofar as it is severable from the remaining terms, be deemed omitted (as the case may be) and will in no way affect the legality, validity or enforceability of the remaining terms.
- 23.10 **Governing Law. The Contract shall be governed by laws of the Federal Republic of Brazil excluding (a) its conflicts or choice of law rules, and (b) the United Nations Convention on Contracts for the International Sale of Goods the parties irrevocably submit to the exclusive jurisdiction of the courts of City of São Paulo, State of São Paulo for resolution of any dispute and waive any claim or objection based on absence of jurisdiction or inconvenient forum.**
- 23.11 **Governing Language.** The Contract is in the English language only, which shall be controlling in all respects. In the event this all or any part of the Contract is translated into the language of the court having jurisdiction over the Contract, the English version of the Contract shall prevail over such translation with respect to any and all interpretations of Contract and with respect to any interpretation by such court of the intent of the parties.

24 Definitions and interpretations

24.1 In the Contract:

"Affiliate" means any entity controlled by, controlling, or under common control with the Purchaser or Supplier. Control exists through ownership, directly or indirectly, of a majority of the outstanding equity capital and of the voting interests of the subject entity. If an entity ceases to meet these criteria, it will cease to be an Affiliate under this Contract;

"Business Continuity Plan" and "BCP" means the plan setting out the Vendor's proposed methodology to ensure continuance of the Contract in the event of any emergency, civil disorder, natural disaster or any other form of disaster.

"Business Day" means a day that is not a Saturday, Sunday, a public holiday or a bank holiday in the location of the Delivery Address.

"Change Request" has the meaning given it in **clause 8.7 (Change Requests)**.

"Confidential Information" means: (a) all information relating to or used by the Purchaser or any other member of its Group, including know-how, trade secrets, ideas, marketing strategies and operational information; (b) all information concerning the business affairs (including products, services, customers and suppliers) or property of the Purchaser or any other member of its Group, including any business, property or transaction in which the Purchaser or any other member of its Group may be or may have been concerned or interested; and (c) any other information disclosed by or on behalf of the Purchaser or any other member of its Group, including any such information made available to the Purchaser or any other member of its Group by any third party, but excluding any information: (i) which is publicly known; (ii) which is disclosed to the Supplier without

restriction by a third party and without any breach of confidentiality by the third party; or (iii) which is developed independently by the Supplier without reliance on any of the Purchaser's Confidential Information.

"Contract" means these Purchase Order Terms, the Purchase Order (including any Special Conditions specified in the Purchase Order) and any other documents referred in these Purchase Order Terms or Purchase Order.

"Commencement Date" means the date specified in the Purchase Order.

"Completion Date" means the date specified in the Purchase Order.

"Country" means the country of corporate registration of the Purchaser.

"Delivery Address" has the address specified in the Purchase Order.

"Delivery Date" means the date specified in the Purchase Order.

"Dispute" has the meaning given in clause 21.

"Government Agency" means any government or any governmental, semi governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

"Group" means, in relation to a body corporate, that body corporate and all its Affiliates.

"Insolvency Event" in relation to a party (insolvent party) means: (a) the insolvent party ceases or takes steps to cease to conduct its business in the normal manner; (b) the insolvent party enters into or resolves to enter into any arrangement, composition or compromise with or assignment for the benefit of its creditors or any class of them; (c) the insolvent party is unable to pay its debts when they are due or is deemed under Local Law to be insolvent; (d) a liquidator or provisional liquidator is appointed

to the insolvent party or a receiver, receiver and manager, administrator, trustee or similar official is appointed over any of the assets or undertakings of the insolvent party; or (e) an application or order is made or a resolution is passed for the winding up of the insolvent party.

"Intellectual Property Rights" means all rights in or to any patent, copyright, database rights, registered design or other design right, utility model, trade mark (whether registered or not and including any rights in get up or trade dress), brand name, service mark, trade name, eligible layout right, chip topography right and any other rights of a proprietary nature in or to the results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, whether registrable or not and wherever existing in the world, including all renewals, extensions and revivals of, and all rights to apply for, any of the foregoing rights.

"Local Law" means the laws of state, territory or country (read in that order of precedence) of: (i) the Country; and (ii) the countries in which the Products and Services are supplied;

"Loss" means all losses, liabilities, fines, penalties, damages, claims and interest, and all related costs and expenses (including any and all legal costs (on a full indemnity basis), and costs of investigation, litigation, settlement, judgment, appeal, interest and penalties) and including those which are prospective or contingent and those the amount of which for the time being is not ascertained or ascertainable.

"Personal Information" means information or an opinion about an individual whose identity is apparent or reasonably ascertainable from that information or opinion.

"Personnel" means the employees, directors, contractors or agents of a party.

"Privacy Law" any law, regulation or other statutory instrument or proclamation in the

Country, which relates to the privacy or confidentiality of Personal Information about individuals and with which the Purchaser and Supplier must comply;

"Price" is in United States Dollars (USD) unless a different currency is stated in the Purchase Order, is the total value of the Purchase Order as set out in the Purchase Order and includes all applicable Taxes and freight charges set out in the Purchase Order.

"Products" means the Products described in the Purchase Order.

"Purchase Order" means the Purchase Order attached to these Purchase Order Terms.

"Purchaser" means the entity issuing the Purchase Order.

"Services" means the Services described in the Purchase Order and on any accompanying Statement of Work.

"Specifications" means the functional, non-functional and technical requirements for the applicable Products and/or Services as specified in the Purchase Order including but not limited to (a) the requirements agreed between the parties and set out in the Purchase Order; (b) the Purchaser's business or user requirements, including functional and non-functional (including performance) requirements, which are described from a business perspective and in a non-technical manner and communicated to Supplier; and (b) the functional and technical specifications set out or referred to in Supplier's or relevant manufacturer's (as the case may be) published technical and operating documentation.

"Statement of Work" and **"SOW"** means a document referencing these Purchase Order Terms or applicable Service Agreement and executed by the parties, containing the Specifications for the procurement of Services;

"Supplier" means the Supplier described in the Purchase Order and any accompanying Statement of Work.

"Taxes" means the sales, use, consumption, goods and services, and value-added taxes imposed by the appropriate Government Agency arising out of the supply of Products or delivery of Services under the Contract, except taxes imposed on the income of Supplier;

"Term" has the meaning given it in the Purchase Order (or is such shorter or extended term as permitted under **clause 0** of these Purchase Order Terms).

"Third Party Warranty" means the executed warranty from a third party in respect of the Products and/or Services as set out in the Purchase Order, or any warranty provided by a third party to the Supplier in respect of the Products and/or Services.

24.2 Interpretation. Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise:

- a) A reference to: (i) the singular includes the plural and vice versa; (ii) a document (including the Contract) is a reference to that document as amended, consolidated, supplemented, novated or replaced; (iii) an agreement includes any undertaking, representation, deed, agreement or legally enforceable arrangement or understanding whether written or not; (iv) a party means a party to the Contract; (v) a law includes any legislation, judgment, rule of common law or equity or rule of any applicable stock exchange, and is a reference to that law as amended, consolidated, supplemented or replaced and includes a reference to any regulation, by-law or other subordinate legislation; (vi) proceedings includes litigation, arbitration and investigation; (vii) a judgment includes an order, injunction, decree, determination or award of any

court or tribunal; (viii) where a word or phrase is defined, its other grammatical forms have a corresponding meaning; (ix) the terms "including", "for example", "such as" and similar terms do not imply any limitations; (x) headings are for convenience only and do not affect interpretation of the Contract.

- b) No provision of the Contract will be construed adversely to a party solely on the ground that the party was responsible for the preparation of that provision.
- c) If there is any conflict between the terms specific of a Purchase Order, these Purchase Order Terms and any other documents referenced herein, the terms of the documents will prevail to the extent of the inconsistency, in the

following order of precedence: (1) the Purchase Order; (2) the Purchase Order Terms; and (3) any other documents referred to in these Purchase Order Terms or the Purchase Order.

Version History

Version	Date	Status
v3.0	Mar 2022	Current
v2.0	Apr 2020	Superseded
v1.0	May 2016	Superseded

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