Purchase Order Terms
(The People's Republic of China)

All terms used in these Purchase Order Terms beginning with a capital letter are defined in **clause 22.**

1 Application and Term

1.1 The supply of Products and/or Services by the Supplier shall be governed by either: (i) a Supply Agreement as specified on the Purchase Order, or (ii) these Purchase Order Terms where no Supply Agreement is specified.

1.2 The Purchase Order Terms are deemed accepted by the Supplier in the following events: (i) the Supplier supplies the Products and/or commences the Services specified in the Purchase Order; or (ii) on the date of issue of the Purchase Order unless the Supplier notifies Purchaser within 5 days of issue of the Purchase Order, that it does not accept the Purchase Order Terms, in which case the Purchaser may cancel the Purchase Order.

1.3 The Contract commences on the Commencement Date and will continue in force for the Term, unless terminated earlier in accordance with the terms herein.

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, and (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.

2.3 Any changes to the Products, Services and/or the Price shall be agreed in writing by the Parties via an amendment to the Purchase Order.

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 particular purpose(s) made known by the Purchaser; (b) the Products, unless otherwise agreed in writing by the Purchaser are new and of merchantable quality; (c) the Products correspond with relevant samples provided by the Supplier (if any); (d) the Products strictly conform with any Specifications; (e) where the Supplier is the manufacturer of the Products, are free of defects in design or manufacture and (f) there is no restriction on or impediment to the passing of full title in the Products to the Purchaser.

3.3 Unless otherwise agreed by the Purchaser, 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) 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; and (e) where performing Services on Purchaser's premises, 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's Personnel, the Purchaser may require the Supplier to replace such Personnel with a person or persons acceptable to the Purchaser (acting reasonably).

5 Title, Risk of Loss.

5.1 Title to the 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.

5.2 The Supplier is solely liable for Loss or damage to the Products prior to delivery to the Delivery Address.

6 Inspection and Acceptance

6.1 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.

6.2 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 Loss 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 from 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.

7 Warranties

7.1 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 is 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.

7.2 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).

7.3 All warranties referred to in the Contract will run to the Purchaser, its successors and assigns.

7.4 The requirements of this **clause 7** 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.

8 Indemnities

8.1 The Supplier must indemnify the Purchaser, its Affiliates and its/their Personnel (the "**Indemnified**") against all Losses awarded against or incurred or paid by the Indemnified in relation to: (a) any breach of any warranty given by the Supplier (including any warranties, remedies, rights or guarantees implied or imposed by Local Law); (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 property arising due to any act or omission of Supplier or its Personnel; (e) privacy infringement or breach of confidentiality; or (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.

9 Insurance

9.1 To the extent applicable to the Services and/or Products being delivered to Purchaser, Supplier shall, at its sole cost and expense, and without limitation carry 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: (i) comprehensive general or public liability insurance, (ii) automobile liability insurance, (iii) professional liability insurance, (iv) workers compensation coverage, (v) employers liability insurance, and (vi) crime insurance, with limits consistent with Supplier's industry.

9.2 Purchaser shall be included as a loss payee and/or additional insured were appropriate.

9.3 Supplier shall provide Purchaser with a certificate of insurance that is reasonably acceptable to Purchaser promptly following Purchaser's request.

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 an 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 payment terms specified on the face of the Purchase Order (or 60 days, if not 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 exclusive of Taxes, which if applicable, are payable under this clause and due at the same time as any payment amounts under the Contract are due. It shall be Supplier's obligation to correctly calculate and timely bill Purchaser the applicable Taxes. Supplier shall indemnify and hold Purchaser harmless for any claims related to unpaid Taxes to the extent caused by Supplier's failure to correctly invoice applicable Taxes to Purchaser.

11.2 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.

11.3 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 Confidentiality

12.1 Confidential Information exchanged between the parties under the Contract will be treated as confidential and must only be used for the purpose of fulfilling obligations or exercising rights under the Contract and may only be shared with the Supplier's Personnel on a need to know basis.

12.2 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.

12.3 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.

12.4 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 act or omission giving rise to a breach under this **clause 12**.

12.5 If the Supplier becomes aware of a breach of this **clause 12** 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 in any case no longer than forty-eight (48) hours following its awareness of such breach; and (b) promptly provide the Purchaser with any information or assistance which it may reasonably request.

12.6 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 12.6** no later than 10 Business Days after receiving a request from the Purchaser to do so.

12.7 The return, destruction or deletion of Confidential Information in accordance with **clause 12.6** does not release the Supplier from its obligations under the Contract.

13 Personal Information Protection

13.1 To the extent that Supplier has had or will have access to Personal Data of Purchaser and/or its customers, Supplier agrees to:

(a) comply with applicable Privacy Law in force from time to time in performing the Services;

(b) process, use and maintain the Personal Data for Purchaser and/or its customers only in accordance with Purchaser's instructions and this Contract for the purposes of performing its responsibilities and obligations under this Contract, and make no other use of the Personal Data other than for the provision of the contracted Services to Purchaser. Supplier represents and warrants that it there is no Local Law that would prevent it from fulfilling such obligations;

(c) take appropriate technical and organizational measures to protect the Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access or use, and against all other unlawful forms of processing;

(d) to ensure that only Supplier Personnel who need to have access to the Personal Data are granted access to such Personal Data and only for the purposes of the performance of this Contract and inform all Supplier Personnel of the confidential nature of the Personal Data;

(e) cooperate with and provide reasonable co-operation and assistance to Purchaser and the relevant Government Agency in relation to any complaint or request made in respect of any Personal Data by any data subject or in the event of a litigation or regulatory inquiry concerning the Personal Data and abide by the advice of Purchaser and the relevant Government Agency with regard to the processing of Personal Data;

(f) to ensure that all data communications and storage of data at rest shall be conducted using best-practice encryption standards. The Supplier shall follow current security best practices involving cryptography and compliance requirements, and adjust current use of cyphers and protocols accordingly. The Supplier agrees that encryption shall be implemented using measures no less protective than FIPS-140-2 compliant algorithms and a 2048-bit RSA key and/or and SHA256 based hashing algorithms for all data in transit or data accessed from private or public points of access. All data stored at rest shall be encrypted utilizing at least AES 256 bit encryption;

(g) comply with Purchaser's privacy policies and enter into further agreements as reasonably requested by Purchaser to comply with applicable Privacy Laws;

(h) not to transfer such Personal Data to another country outside of the country of the Purchaser or not to engage any sub-processors in the performance of the Services, unless authorised in writing by Purchaser and subject to a written agreement imposing the same obligations on such sub-processor as set out in this Contract. Where applicable, in the event that the Services provided by Supplier involves a transfer of Purchaser's and/or its customer's Personal Data outside of the European Economic Area, transfer the Personal Data only if at least one of the following conditions are satisfied: (i) the Personal Data is transferred to a country which is recognised by the European Commission as providing an adequate level of protection in relation to the Personal Data that is transferred; or (ii) a processing agreement which incorporates the standard model contractual clauses for data transfers approved by the European Commission is executed between the applicable parties within 90 days following execution of this Contract;

(i) promptly notify Purchaser of (i) any failure to comply with Purchaser's instructions concerning the Personal Data, (ii) any suspected or actual breach of this Section, (iii) any disclosure, except as permitted hereunder, or request for disclosure of Personal Data to a third party and (iv) any inquiry from a third party concerning the Personal Data; and, (v) any change in Local Law that would render Supplier unable to comply with this Section;

(j) on termination of the Agreement, return or permanently delete all copies of such personal data to Purchaser, as directed by Purchaser, and certify compliance with this obligation in writing to Purchaser. Such certification of compliance to be signed by a signing officer of Supplier.

13.2 Breach of this **clause 13** shall be deemed a material breach of this Contract.

14 Termination

14.1 **Termination for convenience.** The Purchaser may also terminate or cancel a Purchase Order for Products or Services at no charge at any time (a) prior to acceptance by Supplier of this Purchase Order; and (b) in the case of Products, after acceptance of this Purchase Order by Supplier up to five (5) business days prior to the scheduled Delivery Date; and (c) in the case of Services, on two (2) business days' written notice to Supplier. Any such termination shall be without liability by Supplier except for completed Products previously delivered, accepted and not yet paid for or for Services previously performed and accepted by Purchaser and not yet paid for.;

14.2 **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 do not conform to the Specifications.

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

14.4 If the Purchaser exercises its rights under **clause 14.1**: (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. All deposits or prepayments made to Supplier shall be deemed to have been held in trust for Purchaser's benefit and will be returned to Purchaser promptly upon request.

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

15 Subcontracting

15.1 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).

15.2 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.

16 Business Continuity

16.1 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.

17 Compliance with Laws

17.1 The Supplier must comply with all applicable Local Laws in connection with its performance of its obligations under a Contract.

17.2 The Supplier will not engage in any deceptive or unethical practices that may be detrimental to Purchaser.

17.3 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.

17.4 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.

17.5 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.

17.6 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 17**.

17.7 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.

18 Audit

18.1 The Supplier must, within 5 Business Days of receipt of a written request from Purchaser: (a) provide 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, invoices, records and information required to be obtained and maintained under the Contract which are relevant to assessing compliance with the Contract (**Audit**). Such Audit shall be conducted during ordinary business hours on a Business Days; and shall not interfere unreasonably with the Supplier's ordinary business.

18.2 If the results of an Audit show that Supplier is not complying with the Contract, then Supplier must ensure prompt remedy of the non-compliance and comply with the Purchaser's reasonable directions to remedy the non-compliance, including directions as to timing.

18.3 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.

19 Dispute resolution

19.1 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 19**, except to seek urgent interlocutory relief.

19.2 A party claiming that a Dispute has arisen must promptly notify the other party in writing giving details of the Dispute and the parties must use reasonable endeavours to resolve any Dispute notified in accordance with **clause 19.2**.

19.3 If the parties fail to resolve the Dispute within 20 Business Days of a party receiving a notice in accordance with **clause 19.2**, 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.

19.4 If the parties are not able to resolve the Dispute in accordance with **clause 19.3** 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 in accordance with **clause 21.11** and the parties will use reasonable endeavours to resolve the Dispute following the rules specified by the ADR Centre.

19.5 Each party must bear its own costs in relation to complying with this **clause 19**, except for the costs and expenses of the mediation, which will be borne by the parties equally.

20 Notices

20.1 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, 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.

20.2 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 electronic mail, on the day of transmission as evidenced by a an electronic communication transmission record; but if a notice is served by hand, or is received by the recipient by 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.

21 General Provisions

21.1 **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.

21.2 **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.

21.3 **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.

21.4 **Relationship**. Except as otherwise provided in the Contract, nothing the Contract constitutes 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.

21.5 **Survival**. **Clauses 7** (Warranties), **8** (Indemnities), **12** (Confidentiality), **13** (Personal Information Protection), **17.6**, 19 (Dispute resolution), **21.2** (Indirect Loss), **21.5** (Survival), **21.11** (Governing Law) and **22** (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.

21.6 **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.

21.7 **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.

21.8 **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.

21.9 **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 Purchase will gain no ownership rights in any of Supplier's previously existing intellectual property contained in the Work Product.

21.10 **Standard of business conduct.** The Purchaser is committed to conducting its business ethically and in compliance with all applicable laws and it expects the Supplier to maintain the same standard of excellence. The Supplier agrees to comply with the OpenText Supplier Code of Conduct and the Purchaser's policy on Sustainable and Ethical Procurement as published on the Supplier Portal. In the event the Supplier has in place its own code of conduct ("**Vendor Code**"), and a corporate social responsibility policy ("**Vendor CSR Policy**") which are substantially similar to the intent of the OpenText Supplier Code of Conduct and the OpenText Corporate Social Responsibility policy, the Supplier warrants that it will conduct its business in compliance with the Vendor Code and the Vendor CSR Policy and that a breach of the Vendor Code or the Vendor CSR Policy shall be deemed a breach of the OpenText Supplier Code of Conduct or the OpenText Corporate Social Responsibility policy as applicable, giving rise to a right of termination by the Purchaser.

21.11 **Governing Law and Jurisdiction**.Any dispute arising out of or in connection with the Contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the Rules of the China International Economic and Trade Arbitration Commission ("CIETAC") in Shanghai in effect at the time of application, which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be three. The seat, or legal place, of arbitration shall be Shanghai. The language to be used in the arbitration shall be English. The governing law of the Contract shall be the substantive laws of the People's Republic of China excluding (a) its conflicts or choice of law rules, and (b) the United Nations Convention on Contracts for the International Sale of Goods.

21.12 **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.

21.13 **Priority of documents**. 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.

22 Definitions and interpretations.

22.1 **Definitions.** 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.
"**Commencement Date**" means the date specified in the Purchase Order.
"**Completion Date**" means the date specified in the Purchase Order.
"**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), Statement of Work (if applicable) and any other documents referenced therein.
"**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 19**.
"**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 Data**" means all data, 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 Data 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 issued by Purchaser to Supplier for the supply of Products and/or Services and which references 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 or other such similar document setting out the Services to be delivered.
"**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.
"**Supplier Portal**" means the website published at http://www.opentext.com/who-we-are/corporate/opentext-supplier-information.
"**Supply Agreement**" means a separately negotiated agreement executed by the parties (or their affiliates) which governs the supply of Products and/or Services as specified in the Purchase Order and identified by name and contract number (if applicable).
"**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 1.1**).
"**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.

22.2 **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, 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) where a word or phrase is defined, its other grammatical forms have a corresponding meaning; (viii) the terms "including", "for example", "such as" and similar terms do not imply any limitations.
(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.

Version history

Version	Date	Status
v2.0	May 2018	Current
v1.0	May 2016	Superseded