

TERMS AND CONDITIONS

These Terms and Conditions (“**Terms**”) comprise the terms and conditions under which SoftwareONE will supply licenses and or Services. You accept these terms on behalf of the entity you represent (“**Company**”) (together with its Affiliates) by either: (i) physically or electronically signing the Terms; or (ii) placing an order with SoftwareONE on behalf of Company. Upon acceptance, the Terms will remain in effect until terminated by either party. Either party may terminate the Terms at any time and for any reason by providing 30 days prior written notice to the other party. Sections 1, 3, 6, 7, 8, 9, 11, 12, 13, 15, 17, 18 and 19 will survive any termination of the Terms.

1 DEFINITIONS AND INTEGRATION

In addition to any definitions contained within the body of these Terms, the following definitions apply:

“**Affiliates**” means any person, corporation or other entity that now or in the future, directly or indirectly controls, is controlled by or is under common control with Company. For purposes of this definition, “control” means with respect to: (a) with respect to a corporation, the ownership, directly or indirectly, of fifty percent (50%) or more of the voting power to elect directors thereof; and (b) with respect to any other entity, the power to direct the management of such entity.

“**Contract**” means an agreement, an Order Confirmation, a statement of work or similar document for the supply of licenses or the provision of Services between SoftwareONE and Company.

“**Licensor**” means the legal entity that is the owner of the intellectual property rights vested in the software with the authority to define the End User License Agreement (“**EULA**”), Product Terms (“**PT**”) or other terms and conditions for the use of the software and licenses.

“**Order Confirmation**” means SoftwareONE’s acceptance of Company’s purchase order in writing. Company’s order or an automatically generated response by SoftwareONE do not represent a binding Order Confirmation.

“**Services**” means any delivery, installation, configuration, consultation or other professional services as specified by the parties in a Contract.

“**SoftwareONE**” means the SoftwareONE entity named in an Order Confirmation or a Contract.

Unless otherwise agreed in writing by SoftwareONE, all licenses and Services are supplied under these Terms to the exclusion of any other terms and conditions set out or referred to in any document or other communication used by Company prior to or in concluding a Contract. These Terms will apply to each Contract. In the event of a conflict between the Terms and a Contract, the Terms will control unless all of the following apply: (i) the Contract clearly identifies the applicable section of the Terms that is to be modified; and (ii) the Contract clearly states that such provision of the Contract supersedes the conflicting or inconsistent provision in the Terms. Any other attempt to alter or amend these Terms will be deemed void and have no effect. Any modifications to these Terms contained within a Contract are effective as to that Contract only and will not modify the Terms for any other purpose whatsoever. These Terms cannot be modified except in a written document signed by all parties.

2 ORDER AND DELIVERY POLICY

Price quotations and purchase orders are not binding upon either party until an Order Confirmation is delivered. The Order Confirmation is subject to availability by Licensor. Company will receive the licenses by electronic transmission, electronic access or download. Company is responsible for the payment of each order it places and all orders by its Affiliates.

3 RETURN POLICY

SoftwareONE will not accept the return of supplied licenses unless such returns are admissible as per the Licensor’s return policies. If the licenses received are not those detailed in the Contract, Company shall inform SoftwareONE no later than 10 business days of delivery.

4 ACADEMIC, NON-PROFIT AND GOVERNMENT LICENSES

Certain products are only available for purchase by qualified institutions, such as educational institutions (“**Academic**” products), qualified non-profit organizations (“**Non-Profit**” products) or government units (“**Government**” products). By identifying itself as a qualified institution, Company represents that it is familiar with all of the Licensor’s requirements with respect to such product and that it complies with all of the Licensor’s requirements for such Academic, Non-Profit or Government product.

5 SERVICES

5.1 SoftwareONE shall perform the Services with due care and in accordance with the Contracts.

5.2 SoftwareONE will not be required to follow any requests or instructions (“**Change Request**”), which change or supplement the substance or scope of the Services described in a Contract. If SoftwareONE provides the Services described in a Change Request, then Company shall pay for such Services pursuant to these Terms and the applicable Contract.

5.3 In the absence of an expressly agreed invoicing schedule, Company shall pay all amounts relating to Services provided by SoftwareONE at the end of every calendar month in arrears.

6 PRICING

6.1 SoftwareONE will provide the price of the licenses and the Services. All prices are subject to applicable sales or value added taxes. All prices and availability are subject to change unless agreed upon through a binding Order Confirmation or a Contract signed by both parties.

6.2 If Services, including subscription Services, for Company are performed by a party other than SoftwareONE, the fee for such a Service will be determined by the entity performing the Service. Such fees are not always fixed and may be subject to the usage of the Services by Company. Company shall accept the billing model and will pay the fee in accordance with the deadline specified by the third party. Company is solely responsible to ensure that it understands the billing model offered by the third party.

7 TAXES

Company shall timely calculate and pay any withholding taxes, import taxes, levies and duties based on cross-border transactions, including those resulting from transactions where SoftwareONE and Company are tax residents of different countries. **If Company is required by law to deduct or withhold any taxes from any amount payable on a cross-border transaction, the amount payable will be increased so that after making all required deductions and withholdings, SoftwareONE receives an amount equal to the amount it would have received had no such deductions and withholdings been made.**

8 WARRANTIES FOR LICENSES

Company acknowledges that SoftwareONE only delivers licenses to software from third party Licensors. Such third party licenses will be distributed by SoftwareONE subject to the applicable EULA and PT of the software Licensor, which may contain a limited warranty from Licensor. Warranty terms and periods vary by Licensor and product. All of Company's rights and remedies with respect to an Order Confirmation, purchase, possession, use of the products, and all maintenance, update, warranty, liability, and any other obligations related to the products will be governed by the applicable policies and procedures of the Licensor stated in the EULA, PT or other documentation provided by Licensor. Company acknowledges that it will be required to enter into a EULA, PT or similar end user agreement with the Licensor as a condition precedent to using Licensor's software. **The EULA/PT or similar agreement will outline all warranties and representations offered by the Licensor to Company with respect to the licenses purchased. SoftwareONE does not make any representations or warranties relating to any software.**

9 NO WARRANTIES FOR THIRD PARTY SERVICES

All third party services distributed by SoftwareONE are delivered with the service provider's limited warranty. **The warranties for third party services that are not performed by SoftwareONE will be governed by the applicable policies and procedures of the service provider. SoftwareONE does not make any express or implied warranties for third party services.**

10 WARRANTIES FOR SOFTWAREONE SERVICES

Any Warranties for all Services performed by SoftwareONE will be stated in the applicable Contract and will apply only to the Contract in which they are contained.

11 ORGANIZATION AND AUTHORITY

Each party represents that: (i) they are a valid legal entity in good standing under the laws of the jurisdiction in which they are organized; (ii) they have full power and authority to enter into these Terms and any Contract, which will create a binding agreement between the parties; and (iii) the performance by the parties hereunder will not violate any obligation or duty owed to a third party.

12 DISCLAIMER OF WARRANTIES AND DAMAGES; LIMITATION OF LIABILITY

12.1 **Except as stated herein, SoftwareONE hereby disclaims all warranties of any kind, express or implied, including any implied warranties of merchantability, fitness for a particular purpose and non-infringement. In no event shall SoftwareONE, its shareholders, directors, officers, employees or other representatives be liable for general, indirect, consequential, or punitive damages related to any product sold.**

12.2 **SoftwareONE's liability for any damages relating to licenses or Services available through SoftwareONE are limited to the value of the amounts paid by Company under the Contract for such licenses or Services over the last twelve calendar months preceding the incident giving rise to the damage. In no event will SoftwareONE be liable for any incidental, consequential, special, punitive or indirect damages of any kind, including damages resulting from delay, loss of profits, lost business opportunity, loss of content, interruption of business or loss of goodwill, which may arise in connection with or pertaining to these Terms or any Contract, even if such party has been notified of the possibility or likelihood of such damages occurring under any theory of law (including tort or other theory).**

12.3 **Company agrees that any Contract or other document relating to the purchase of licenses or Services submitted to SoftwareONE that includes any warranty to Company or that includes language that may create a liability for SoftwareONE, or conflicts with these Terms, is void and of no effect, unless it complies with the integration requirements stated in Section 1.**

13 INTELLECTUAL PROPERTY RIGHTS

13.1 Nothing in these Terms provides Company any right, title or interest in or to any intellectual property comprised in the licenses or the Services, which will at all times remain the property of SoftwareONE or of the Licensors, as applicable.

13.2 Company acknowledges that the EULA/PT or similar agreement will outline all usage rights offered by the Licensor to Company with respect to the licenses purchased.

13.3 Company represents and warrants that it is buying the licenses for its own internal use and not for resale.

13.4 In the event of conflict between these Terms and the EULA/PT or similar agreement regarding the scope of the intellectual property rights, the warranties and representations conferred to Company, the EULA/PT will prevail.

14 SUPPORT

SoftwareONE will not provide any technical support, unless expressly provided in a Contract.

15 NET 30 DAYS PAYMENT TERMS

15.1 If payment terms are not indicated in an Order Confirmation, invoices are automatically due 30 calendar days following the invoice date.

15.2 If Company does not pay the amounts owed in a timely manner, then Company shall pay interest charges and late payment fees on the outstanding amount, without any written demand or notice of default being necessary. All past due amounts will bear interest at the lesser of 1½% per month or the highest rate allowed by law, until the invoice is paid in full.

15.3 Company shall pay all charges incurred by authorized users of its account, by credit card, by wire transfer or other similar payment mechanisms in effect. To the extent permitted by applicable law, SoftwareONE may require Company to pay transaction charges levied by credit card issuers relating to purchases. Company shall reimburse SoftwareONE for all bank fees relating to checks, credit card or bankcard sales drafts returned by the Company's bank or card issuer. Company shall pay all attorney fees, court costs, collection agency fees, or any other costs incurred by SoftwareONE in collecting any overdue amount owed.

16 FORCE MAJEURE

SoftwareONE shall not be liable to Company for any loss or damages which may be suffered by Company as a direct or indirect result of the supply of licenses and Services by SoftwareONE being prevented, hindered, delayed or rendered uneconomic by reason of circumstances or events beyond SoftwareONE's reasonable control including but not limited to acts of God, war, riot, strike, lock-out, fire, flood, and storm.

17 CONFIDENTIALITY

Subject to applicable law or regulation, the parties shall maintain the confidentiality of any Confidential Information and shall not, without the prior written consent of the disclosing party ("**Discloser**"), disclose such confidential information to any third party (excluding affiliates). "**Confidential Information**" means any information that is designated as "Confidential" by the Discloser or that the receiving party ("**Recipient**") should reasonably believe to be confidential given the circumstances. Confidential information excludes any information that: (i) is known by the Recipient prior to disclosure; (ii) becomes publicly available through no fault of the Recipient; (iii) is disclosed to Recipient by a third party with the legal right to make such disclosure; or (iv) is independently developed by Recipient without use or reference to the Discloser's Confidential Information.

18 JURISDICTION AND GOVERNING LAW

In case of any controversy or dispute, SoftwareONE, Company and/or the Affiliates shall discuss the matter in controversy or dispute and make a diligent effort to find an amicable solution. If the dispute is not resolved by finding an amicable solution, all disputes arising out of or in connection with these Terms or their validity will be finally resolved by the courts of the state/country in which the offices of the SoftwareONE Affiliate entering into the Contract are located. The United Nations Convention on the International Sales of Goods will not apply to these Terms or any Contract.

19 GENERAL

- 19.1 The invalidity or unenforceability of any provision of these Terms will not adversely affect the validity or enforceability of the remaining provisions.
- 19.2 All notices and other communications required or permitted to be served or given shall be in writing.
- 19.3 The failure of SoftwareONE to enforce the terms of these Terms does not constitute a waiver of it and will in no way affect the right to later enforce such terms.
- 19.4 Any heading, caption, or paragraph title contained in these Terms is inserted only as a matter of convenience and in no way defines or explains any paragraph or provision hereof.
- 19.5 These Terms may be executed in any number of counterparts, which taken together will represent a single document. Digital, facsimile, and other electronic signatures will be deemed to be originals and will be enforceable between the parties.
- 19.6 These Terms together with the Contracts, represent the entire agreement between the parties regarding the subject matter hereof, and supersede all other agreements and understandings.