



## **General Terms and Conditions of Purchase ("T&C") of IBM iX Austria GmbH ("IBM iX Com- pany")**

### **1 Contract documents**

- 1.1 An order, including these T&C and all annexes for products and services covered by this order, constitutes a primary agreement between the IBM iX Company concluding the contract (hereinafter the "Customer") and the Supplier. The Supplier's offer forms part of this order, provided that the Customer has declared its agreement to this in writing (whereby text form is also permitted). The Customer's order and the Supplier's offer, together with these T&C, are hereinafter collectively referred to as the "Contract".
- 1.2 The Customer explicitly disclaims any subsequently amended conditions which are declared in addition to the conditions laid down herein in a response given by the Supplier to a order (i.e. those which constitute a counter-offer). The Customer's order cannot be amended by means of counter-offers by the Supplier.
- 1.3 If this order does not accurately reflect the result of the agreements reached by the Customer and the Supplier as regards the object of the order, the Supplier must raise an objection to the order with the Customer, stating the POD or PO number (whereby email is sufficient).

### **2 Prices**

- 2.1 The Supplier's remuneration for its services is laid down in the relevant Contract. The agreed remuneration is considered compensation for all the services to be rendered by the Supplier, including the assignment of rights and any extra costs.
- 2.2 Unless otherwise agreed with the Customer in writing, the Supplier will not be reimbursed for costs which it incurs in connection with the fulfilment of this order. The euro is used as the currency for pricing.

### **3 Taxes**

The Supplier is responsible for and must pay all applicable taxes, costs, fees, duties or other levies which are imposed or charged by governmental or fiscal authorities (including local authorities) worldwide in connection with the sale of products or services, other applicable taxes, and sales tax and other duties or fees in connection with payments by the Customer to the Supplier for products and/or services which are supplied to the Customer in connection with this order. In accordance with the applicable law, the Customer shall deduct taxes from payments to the Supplier and it must only pay the Supplier the net proceeds. If the Customer presents a certificate for the direct payment of a tax, a certificate for a tax exemption or for a reduced tax rate from a competent authority, the Supplier agrees not to charge or pay any tax until such a time that the competent authority levies such a tax.

### **4 Terms of payment**

- 4.1 Unless otherwise regulated by law, payments by the Customer must be made within 30 days of receipt of a

valid invoice or receipt of products or services from the Supplier, whichever occurs last. A discount of 2% is agreed in the event that the Customer makes payment within 14 days.

- 4.2 So that they can be processed, invoices must include the following information in addition to the content required by law. If invoices do not meet the Customer's requirements as follows, the Customer will be entitled to reject invoices:

- Invoices sent as email attachments are only accepted in PDF format, whereby PDF/A is also acceptable
- The invoice must state the POD number and the Customer's contact person
- Proof of performance must be enclosed with invoices
- Each invoice must relate to one order only
- The value and unit price of an invoice item must not exceed the value/unit price of the relevant order item (in the event of price differences, please contact the responsible purchasing agent before issuing the invoice)
- Invoices and credit notes must be issued separately
- The invoice must be issued in the same currency as the order
- Each invoice item must include a reference to the corresponding order item
- Invoices must be sent to the email address provided by the Customer

- 4.3 Please note that our payment terms relate to the date of receipt of acceptable invoices.

- 4.4 The Supplier must also complete the questionnaire for suppliers before the first order is placed and give the Customer its master data, particularly its full company name, address, VAT ID number and account details. In the event of changes to the master data, the Supplier shall inform the Customer immediately.

### **5 Provision of goods**

- 5.1 The Supplier is obliged to supply the agreed products and services ("Contractual Goods") in such a way that they possess the features described in the Contract and do not contain any defects which could impair or reduce their value or suitability for customary or contractual use. The Contractual Goods must be provided in line with the current state of the art at the time of provision. The applicable legal and official regulations must be observed in respect of the provision of the Contractual Goods.



5.2 The dates and deadlines laid down in the Contract for the provision of the Contractual Goods are binding. If these are not met, this will result in default without any further reminder. The Supplier shall immediately inform the Customer if it is unable to meet a delivery date or deadline. In the event of delayed delivery, the Customer is always entitled to obtain a replacement and to claim reimbursement of the extra costs from the Supplier, in addition to its statutory rights.

5.3 The use of subcontractors by the Supplier requires the Customer's explicit consent, at least in text form.

## **6 Approval and acceptance**

6.1 The Supplier must give the Customer notification of completion of the Contractual Goods and make the Contractual Goods available to the Customer for inspection. Partial delivery and

6.2 acceptance is only permitted if expressly agreed in the Contract. Joint assessment by the Parties of the condition of parts of the Contractual Goods as the project progresses does not otherwise constitute acceptance in a legal sense.

6.3 Acceptance is given within four weeks of the notice of completion being received and the Contractual Goods being supplied, unless another deadline has been agreed. The Customer must expressly declare acceptance in writing. Implied acceptance (e.g. through payment, productive use or handover to customers) is precluded.

6.4 In the event that Contractual Goods do not meet the approval and acceptance criteria, the Customer can either return them and have any payments refunded, or request that the Supplier immediately repair and replace the Contractual Goods concerned free of charge or supply the Contractual Goods again.

## **7 Cancellation**

The Customer can cancel this order within 14 calendar days without providing the reasons for this. If the Customer cancels the order without providing a reason, the Customer shall pay the Supplier for any costs actually and reasonably incurred for work which has been carried out prior to the date of cancellation in a way that the Customer deems to be satisfactory and usable by it, whereby the agreed remuneration applies as the maximum.

## **8 Import and export**

The Supplier is the competent and responsible importer and exporter in relation to this order. It is obliged to comply with all import and export laws and administrative requirements, including but at no point limited to those requiring the payment of all levies, taxes and fees, as well as all applicable laws, regulations, certifications and registrations associated with the import or export of the Supplier's products, including requirements related to product safety, electromagnetic compatibility, telecommunications, product take-back and recycling, and environmental protection. At the Customer's request, the Supplier shall immediately provide all the

information required for the export and import of products, including the Export Control Classification Numbers (ECCN) and subtitles or certificates and/or test results related to the products or services, and it shall notify the Customer in writing of changes to the information provided by the Supplier related to export and import of products.

## **9 Assumption of risk/supply**

The right of ownership and assumption of risk lie with the Supplier until the Contractual Goods purchased under this Contract are delivered to the address stated in the order and accepted by the Customer.

## **10 Inspection and notification of non-conformity**

In the case of a commercial transaction (Section 377 of the Austrian Commercial Code (Unternehmensgesetzbuch, UGB)), obvious defects are deemed to have been notified to the Supplier on time if the Customer raises a complaint within 14 days of receipt of the product. In the case of hidden defects, the Customer must raise a complaint with 14 days of discovering the defect. This deadline is deemed to have been met if the Customer raises the complaint on time.

## **11 Warranties**

The Supplier provides a warranty as follows: i. The Supplier itself and its agent have the necessary knowledge of all the laws, regulations and provisions which apply in respect of the provision of the Contractual Goods, and they will comply with these (at their own cost); ii. The Contractual Goods do not infringe any privacy rights, publicity rights, or the reputation or intellectual property rights of any third parties; iii. The Contractual Goods are free from any defects in terms of design, material and workmanship; iv. The Contractual Goods are suitable and safe for use in connection with the warranties, specifications and requirements as stated in the offer, and they correspond to the same; v. The Supplier will not use, disclose or transmit across international borders any information which is being processed for the Customer and could be used to identify an individual ("Personal Data"), unless it is necessary to do so in order to fulfil this order; vi. The Supplier will only disclose, export or re-export information pertaining to the Customer or processes or products manufactured within the context of this order, or authorise its agents to do the same, with prior notice and in accordance with all applicable national, regional and municipal laws, regulations and decrees.

## **12 Intellectual property and rights of use**

12.1 The Supplier grants the Customer ownership of all rights and licences to all results and interim results ("Work Results") developed within the context of the Contractual Goods for the Customer, particularly those which are required in order for the Customer and the companies affiliated with it in accordance with Sections 189a of the Austrian Commercial Code (Unternehmensgesetzbuch, UGB), as well as the Customer's own customers and their affiliated companies, to transfer, share and distribute the Contractual Goods and to exercise the rights granted under this Contract.



- 12.2 In particular, at the point of development of such Work Results but at the point of handover at the latest, the Customer is granted a right of use over the Work Results which is exclusive, compensated, irrevocable, unrestricted in terms of time, territory and object, and transferable and for which sub-licences can be granted. This right of use includes all types of use, particularly storing, loading, executing and processing data, processing by third parties, including a permanent connection with the Contracting Party's services, the right of reproduction and distribution, the right of performance and presentation, including in public, the right of remarketing and the right to carry out changes, rearrangements, translations, additions and developments, including without identifying the author.
- 12.3 Unless otherwise agreed, the Contractual Goods in the case of software programming also include the provision of the source code, as well as the aforementioned rights over Work Results.
- 12.4 If the Supplier uses existing works for the Contractual Goods, rights in accordance with subparagraph 12.2 will be granted upon handover subject to the condition that they are simple, non-exclusive rights of use.
- 12.5 If the object of the Contractual Goods is standard software, the provisions laid down in the licence terms for the standard software apply in respect of the rights of use. However, the Supplier shall ensure that the rights of use over the standard software always (i) permit the transfer of rights of use to the Customer's own customers and those of companies affiliated with the Customer and (ii) permit use by the Customer and the companies affiliated with it.
- 12.6 Open Source Software ("OSS") can only be used in the Contractual Goods if the Customer has given its explicit written consent to this.
- The Suppliers shall ensure (i) that if the Customer's consent has not been obtained, the Contractual Goods do not contain any OSS and (ii) that if OSS has been used with the Customer's consent, this does not result in what is known as a copyleft effect for works produced by the Supplier or the Customer which are provided or amended within the context of the Contractual Goods.
- 12.7 The Supplier waives its right to be named as the creator of the Work Results. The Customer is permitted to use the Supplier's Work Results together with its own Work Results for the purpose of advertising. The Supplier also confirms that all authors have agreed to not assert any moral rights in relation to the Contractual Goods, insofar as this is permitted by law.
- 12.8 If innovations such as inventions, for example, are created while providing the Contractual Goods, solely the Customer is entitled to apply for intellectual property rights over these.

### **13 Ownership of products**

With the exception of Contractual Goods which are licensed in accordance with the provisions under 'Intellectual property', all Work Results which are developed by the Supplier under the Contract are and will become the property of the Customer upon supply.

### **14 Indemnity**

14.1 The Supplier shall defend, hold harmless and indemnify the Customer and companies affiliated with it against claims (including general costs, expenses and legal fees) which (a) are asserted on the grounds that Contractual Goods infringe intellectual property rights, (b) are based on non-compliance with a warranty, guarantee or other obligation laid down in this order, or (c) result from a security breach.

14.2 If a claim is made on the grounds of the infringement of intellectual property rights, the Supplier is obliged to take the first applicable remedial measure out of the following at its own cost: (i) to obtain for the Customer the rights granted under this order; (ii) to alter the product so that it does not infringe any rights and complies with the provisions of this order at the same time; (iii) to replace the product with one which does not infringe any rights and corresponds to the provisions of this order; or (iv) to accept the return and discontinuation of the infringing product as well as the reimbursement of the amount already paid for the product concerned.

### **15 Limitation of liability**

If admissible, the Customer and the companies affiliated with it will not accept liability for loss of sales, loss of profit, incidental damages, indirect damages, consequential damages, special damages or punitive

damages. The Customer's liability toward the Supplier is limited to the total amount of the remuneration payable by the Customer to the Supplier under the order. These limitations of liability do not apply for losses or damage which are caused by the infringement of a warranty provided in connection with a business transaction under this order, for damage due to failure to comply with fundamental contractual obligations, for personal injury, or for damage caused by intent or gross negligence or in connection with the German Product Liability Act (Produkthaftungsgesetz, ProdHaftG). The Supplier's liability is subject to the provisions of the law.

### **16 Assignment**

16.1 The Supplier is not entitled to assign its rights without the Customer's written consent. Any unauthorised assignment will be ineffective.

16.2 Without prejudice to any provisions to the contrary laid down in these T&C, the Customer can assign the Contract or individual claims arising from it to all new legal entities which are spun off from the Customer or a company affiliated with the Customer or which are otherwise founded from or by the Customer or a company affiliated with it and which apply or use all or some of the



Contractual Goods agreed in this Contract prior to their foundation.

## **17 Confidentiality**

- 17.1 The Supplier is obliged to keep strictly confidential all the information it acquires during the collaboration regarding the business affairs and other affairs of the Customer, its affiliated companies and its customers, particularly all information and trade secrets which it obtains while handling the order, and to protect these against access by third parties.
- 17.2 This obligation does not apply for information which is or becomes general knowledge without the confidentiality obligation being breached, which can be proven to have been developed independently or obtained from a third party lawfully without being obligated to maintain confidentiality, or which was already in the Supplier's possession at the time of disclosure.
- 17.3 'Keep confidential' means that the Supplier must not share, reveal, disclose or transmit the information, content or data with or to third parties in either technical or non-technical terms, unless they are to be made available to certain third parties in accordance with contractual provisions.
- 17.4 Within the context of this agreement, third parties include companies affiliated with the Customer. Disclosure in order to comply with legal or official obligations is also only permitted after informing the Customer first, and otherwise only with the Customer's written consent.
- 17.5 Without the Customer's written consent, the Supplier is prohibited from producing copies of any documents or information for purposes other than providing the Contractual Goods. The Supplier shall obligate its own employees in writing to maintain confidentiality and provide this declaration of obligation to the Customer on request.
- 17.6 This confidentiality obligation will remain in force in its entirety after the Contract has expired.

## **18 Ethical conduct**

- 18.1 The Contractor must be familiar with and strictly comply with all laws and regulations relating to bribery, corruption and unfair business practices. The Supplier and the companies affiliated with it are obliged not to make, either directly or indirectly, (a) political donations of any kind or payments to or for the benefit of any elected or appointed public official, or (b) payments for gifts, meals, travel or other items of value for any public service employee or their family members, or (c) payments or gifts (money or items of value) to influence, or cause any person to influence, any third-party decisions for the benefit of the Customer or the companies affiliated with it. The Customer is prohibited from reimbursing the Contractor for these political donations, payments or gifts.

- 18.2 Any breach of the provisions of this 'Ethical conduct' section by the Supplier (or the justified belief on the Customer's part that the Supplier has breached the provisions or is likely to breach them) constitutes a fundamental breach of the Contract. In this case, the Customer can terminate the Contract without notice by giving written notification to the Supplier, without the Customer assuming any liability in this regard.

## **19 Applicable law**

This order is subject to the law of the Republic of Austria. The international sales law of the 'United Nations Convention on Contracts for the International Sale of Goods' is excluded. The place of jurisdiction is the location of the Customer's registered office.

## **20 General**

- 20.1 Unless provided for as mandatory in the applicable law, legal action or other action in connection with this order must be initiated within two (2) years of the occurrence of the cause of such action at the latest.
- 20.2 Modifications, amendments and additions or waivers in connection with the Contract must be in written or electronic form and duly signed by both Parties with reference to the order. If the Customer does not exercise its rights in this regard, this does not constitute a waiver of these rights.
- 20.3 Without the Customer's prior written consent, the Supplier is not entitled to use the names or brand names of the Customer, its affiliated companies or its own customers or to mention or identify the Customer, its affiliated companies or its own customers in its marketing materials (including recommendations or customers lists) or press releases.

## **21 Data protection**

- 21.1 The Supplier is obliged to immediately inform the Customer if the Supplier obtains access to personal data concerning the Customer or the Customer's own customers or processes such personal data.
- 21.2 If the transfer of personal data from one controller to another is part of the services purchased, the following applies: The Supplier confirms that it meets all the legal prerequisites for transferring data subjects' personal data to the Customer lawfully, particularly where it is necessary to have obtained the data subjects' consent to transfer it to the Customer for the relevant purpose, and that it has provided the data subjects with all the information needed to fulfil the transparency requirements in accordance with the applicable data protection laws.
- 21.3 If and insofar as the Supplier processes personal data on the Customer's behalf and the European General Data Protection Regulation (EU/2016/679, GDPR) or the Swiss Federal Act on Data Protection (Bundesgesetz über den Datenschutz, DSG) applies for the processing of personal data within the context of the Contract, any data processing agreement entered into by the Parties and the Customer's Privacy and Security Terms



(link: <https://www.ibm.com/procurement/privacy-and-security-terms.html>) will take precedence if the Parties have not reached a separate agreement. If the Supplier carries out marketing or market and public opinion research for the Customer, the Supplier is obliged to inform the data subjects of their right to object to the use of their data for the purpose of marketing and market or public opinion research.

- 21.4 The Customer and the companies affiliated with it, as well as the relevant contractors and subcontractors, can store and otherwise process the business-related contact details of the Supplier, its employees and authorised users (e.g. name, business address and telephone number, email address and user ID) within the context of the business relationship between the Customer and the Supplier in all countries in which they operate. If it is necessary to notify the data subjects or obtain their consent for this processing, the Supplier shall arrange this.
- 21.5 The employees of the Supplier who are involved in the processing of personal data are placed under obligation in accordance with the applicable legal provisions on maintaining data secrecy and, if necessary, the telecommunications secrecy or other confidentiality obligations (e.g. banking secrecy according to Section 38 of the Austrian Banking Act (Bankwesengesetz)). These obligations also remain in force after the expiry date of the Contract.

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