

IBM iX Croatia d.o.o. - Standard purchase order terms and conditions

1 Agreement documents

- 1.1 This Purchase Order (hereinafter: "PO"), any attachments made a part of this PO, and any documents or clauses incorporated by reference into this PO, together with the Supplier's offer are the sole and exclusive agreement of IBM iX Croatia d.o.o. (hereinafter: the "Buyer" or "IBM") and Supplier for the products and/or services in this PO (hereinafter: the Agreement).
- 1.2 Terms contained in the Supplier's acknowledgment or acceptance of this PO, if any, that are additional to, or different from, the terms set forth herein (which terms would constitute a counter-offer by Supplier) are specifically rejected by Buyer. Buyer's offer to purchase as provided in this PO may not be modified by Supplier counter-offers. Notwithstanding the foregoing, if this PO is deemed an acceptance by Buyer of a Supplier offer or counter-offer, then such acceptance is expressly made conditional on Supplier's assent to all of the terms of this PO, including those that are additional to, or different from, the terms of Supplier's offer or counter-offer. The terms and conditions of this PO are subject to change without notice.

2 Prices

- 2.1 If the Agreement does not include pricing, the price for the products and/or services provided hereunder will be Supplier's lowest prevailing market price for such products and/or services. The agreed price is considered compensation for all goods and services provided by the Supplier, including assignments of rights, if any.
- 2.2 Supplier is not entitled to reimbursement of expenses incurred in connection with fulfilling of the Agreement, except as otherwise agreed in writing by Buyer.

3 Taxes

- 3.1 Supplier is responsible for and will pay all applicable taxes, charges, fees, levies, or other assessments imposed or collected by any governmental and/or fiscal entity (including local authorities) worldwide on sales of products or services, or sales, use, transfer, goods, and services or value added tax or any other duties or fees related to any payment by Buyer to Supplier for products and/or services provided to Buyer under or pursuant to this PO. If Buyer provides a direct pay certificate, certification of an exemption from tax, or reduced rate of tax imposed by an applicable taxing authority, then Supplier agrees not to invoice, nor pay, any such tax unless and until the applicable taxing authority assesses such tax, at which time Supplier shall invoice and Buyer agrees to pay any such tax that is legally owed. Buyer shall withhold taxes as required under applicable law on payments made to Supplier hereunder and shall be required to remit to Supplier only the net proceeds thereof.

4 Terms of payment

- 4.1 Unless otherwise mandated by local law, the terms of payment are net 30 days after receipt of Supplier's valid invoice or after receipt of the products and/or services, whichever is later. A discount of 2% is agreed if the Buyer makes payment within 14 days. Payment will not be deemed acceptance of products or services.
- 4.2 In addition to the content required by law, all invoices must include the following information as well:
- Invoices sent as email attachments are only accepted in PDF format (PDF/A is also acceptable)
 - Invoices must state the POD number and the Buyer'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, if any, 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 Buyer

If invoices do not meet the Buyer's requirements stated above, the Buyer will be entitled to reject invoices. The Supplier must also complete the questionnaire for suppliers before the first order is placed and give the Buyer its data, particularly its full company name, address, tax number and/or VAT ID number and account details. In the event of changes to the master data, the Supplier shall inform the Buyer immediately.

5 Approval and acceptance

- 5.1 The Supplier must give the Buyer notification of completion of the products and services and make products and services available to the Buyer for inspection. Partial delivery is not permitted, except if otherwise agreed in writing by Buyer. Joint assessment by the Parties of the condition of parts of the Contractual Goods as the project progresses does not constitute acceptance. The Buyer must expressly declare acceptance in writing. Implied acceptance (e.g. through payment) is not possible. Unless differently agreed, obvious defects are deemed to have been notified to the Supplier on time if the Buyer raises a complaint within 14 days of receipt of the product or a service. In the case of hidden defects, the Buyer must raise a complaint with 14 days of discovering the defect.
- 5.2 At Buyer's option, Buyer may reject products and/or services that do not comply with Buyer's acceptance criteria for a refund or require Supplier to repair or replace such products or re-perform such services without charge and in a timely manner. Buyer may return non-conforming products to Supplier at Supplier's expense.

6 Termination

- 6.1 Agreement may be terminated by Buyer with or without cause. Supplier's breach (or Buyer's reasonable belief that Supplier has breached or is likely to breach) of the Section 17. Ethical Dealings constitutes a material breach of this PO and, in such event, Buyer may terminate this Agreement immediately on written notice to Supplier.

7 Imports and exports

- 7.1 Supplier is the importer and exporter of record, unless Buyer expressly agrees in writing to serve as the importer or exporter. Supplier will comply with all applicable import and export laws, regulations and administrative requirements, including but not limited to the payment of all associated duties, taxes and, maintenance of all required certifications and registrations associated with the import or export of Supplier's products, and satisfaction of all requirements related to product safety, electromagnetic compatibility, telecommunications, product take-back/recycling and environmental safety. Upon Buyer request, Supplier will promptly provide all information necessary to export and import products, including, as applicable, the Export Control Classification Numbers (ECCN) and subheadings or munitions list category number, tariff classifications, certifications and test results relating to the products or services. Supplier will notify Buyer in writing of any changes to the information provided by Supplier to export and import products. Supplier's billing invoice must be consistent with the invoice used by Supplier to clear goods for importation. When Buyer agrees to serve as the importer or exporter, Supplier will provide promptly to Buyer any information, documentation, certification and test results required for Buyer to comply with applicable import and export laws, regulations and administrative requirements.
- 7.2 In all instances, Supplier may not undertake any routed export transactions, as defined in the United States Export Administration Regulations {15 CFR, Part 758.3(b)}, for any US export shipment, or undertake a similar arrangement for any export shipments originating outside of the United States, that name Buyer as a party to such shipments. Supplier will comply with all applicable export and import laws, regulations, orders, and policies, including, but not limited to:
- i. securing all necessary clearance requirements, export and import licenses and exemptions from, and making all proper filings with appropriate governmental bodies and/or disclosures relating to the release or transfer to non-U.S. nationals of technology and software in the U.S., or outside the U.S., release or transfer of technology and software having U.S. content or derived from U.S.-origin software or technology);
 - ii. being knowledgeable with applicable supply chain security recommendations issued by applicable governments and industry standards organizations and making best efforts to comply with such recommendations; and

iii. agreeing not to transfer to IBM any hardware, software, technical data or services controlled under the U.S. International Traffic in Arms Regulations ("ITAR").

7.3 Supplier will comply with: (i) all applicable country of origin marking requirements and all Buyer instructions for exports to Buyer (ii) all packaging and labeling requirements set out in this PO; and (iii) the transportation routing guidelines in this PO and the [Shipping transportation guidelines](#). Default minimum requirements for (i) and (ii) are found under [Instructions for cross-border shipments to IBM Corporation](#).

7.4 Supplier will comply with the [Social and environmental management system supplier requirements](#).

8 Risk of loss; delivery

8.1 The right of ownership and risk of loss remain with Supplier until products purchased under the Agreement have been delivered to Buyer at the location specified in the Agreement and accepted by Buyer. For Supplier's delivery of products, time is of the essence. If Supplier fails to deliver on time, Buyer may purchase replacements elsewhere, and Supplier will be liable for actual and reasonable costs and damages Buyer incurs. The dates and deadlines laid down in the Agreement for the provision of the Contractual Goods are binding. Supplier will promptly notify Buyer if it is unable to comply with the delivery date specified in this PO.

9 Warranties

9.1 Supplier warrants that:

- it has the right to enter into the Agreement;
- it is knowledgeable with, and is and will remain in full compliance with (at its own expense) all laws, rules and regulations that are, or may become, applicable in the provision of products and services hereunder including, without limitation, labor and employment laws, environmental laws, regulations or ordinances governing product environmental and energy characteristics, product content prohibitions, product end-of-life management/product take-back, and/or product safety related to Buyer's transport, import, export, distribution, sale and/or use of Supplier's products as, or as part of, a Buyer product; and regulations regarding data privacy and data protection;
- its execution of the Agreement will not result in a breach of any other agreements or contracts to which it is a party;
- no claim, lien, or action exists or is threatened against Supplier that would interfere with Buyer's rights under the Agreement;
- products and services do not infringe any privacy, publicity, reputation or intellectual property right of a third party;
- products are free from defects in design and free from defects in material and workmanship;
- products are safe for use consistent with and will comply with the warranties, specifications and requirements of the Agreement;
- products do not contain (and products are not manufactured using) ozone depleting substances known as halons, chlorofluorocarbons, hydro chlorofluorocarbons, methyl chloroform and carbon tetrachloride as defined by the Montreal Protocol and as specified by Buyer in writing;
- products are new and do not contain used or reconditioned parts unless Buyer agrees otherwise in writing;
- it will not use, disclose, or transfer across borders any information that may identify an individual ("Personal Data") that is processed for or on behalf of Buyer, except to the extent necessary to perform under the Agreement;

9.2 The Supplier shall supply the agreed products and services in such a way that they possess the features described in the Agreement and do not contain any defects which could impair or reduce their value or suitability for customary or contractual use. Products and services 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 supplied products and services.

10 Intellectual property

- 10.1 Supplier grants Buyer all rights and licenses necessary for Buyer and its affiliates to use, transfer, pass-through, and sell the products and/or services and to exercise the rights granted under the Agreement.
- 10.2 Unless differently agreed in writing by the Buyer, the Buyer is granted a right of use over the products and/or services which is exclusive, compensated, irrevocable, unrestricted in terms of time, territory and object, and transferable and for which sublicences 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 Buyer'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. Unless differently agreed in writing by the Buyer, the products and/or services in the case of software programming also include the provision of the source code, as well as the aforementioned rights.
- 10.3 Open Source Software ("OSS") can only be used in products and/or services if the Buyer has given its explicit written consent to this. The Suppliers shall ensure (i) that if the Buyer's consent has not been obtained, the products and/or services do not contain any OSS and (ii) that if OSS has been used with the Buyer's consent, this does not result in what is known as a copyleft effect for works produced by the Supplier or the Buyer which are provided or amended within the context of provided products and/or services.
- 10.4 The Supplier waives its right to be named as the creator of provided products and/or services. The Buyer is permitted to use the Supplier's products and/or services together with its own products and/or services for the purpose of advertising. The Supplier also confirms that all authors have agreed to not assert any moral rights in relation to the provided products and/or services, to the extent permitted by the applicable law.
- 10.5 If innovations such as inventions, for example, are created while providing the provided goods and/or services, solely the Buyer is entitled to apply for intellectual property rights over these.

11 Ownership of products

- 11.1 Except for products consisting of software (which is licensed as provided under the Section 10. Intellectual property), all products and services provided to Buyer under the Agreement are and shall remain the personal property of Buyer.

12 Indemnification

- 12.1 Supplier agrees to defend, hold harmless, and indemnify Buyer and its affiliates from any claim (including without limitation costs, expenses and attorney's fees and/or government fines and penalties) arising from (a) claims that any product infringes any intellectual property rights or (b) the failure of Supplier to comply with its warranties and/or obligations under the Agreement. If a claim of infringement is made, Supplier will, at its own expense, exercise the first of the following remedies that is practicable: (i) obtain for Buyer the rights granted under the Agreement; (ii) modify the product so it is non-infringing and in compliance with the Agreement; (iii) replace the product with non-infringing ones that comply with the Agreement; or (iv) accept the return or cancellation of the infringing product and refund any amount paid.

13 Limitation of liability

- 13.1 To the extent permitted by the applicable law, in no event will Buyer or its affiliates be liable for any lost revenues, lost profits, incidental, indirect, consequential, special or punitive damages. In no event shall Buyer's liability to Supplier exceed the total amount of fees actually paid by Buyer to Supplier hereunder. These limitations do not apply to damages caused intentionally or with gross negligence, and other situations where liability for damages cannot be excluded or limited by the laws of the Republic of Croatia.

14 Assignment

14.1 Supplier will not assign its rights or subcontract its duties without Buyer's written consent. Any unauthorized assignment is void. Assignment of the Agreement or any of Buyer's rights or obligations under the Agreement to any of its affiliates or in conjunction with the sale of the portion of Buyer's business that includes a product or service is not restricted.

15 Exchange of information

15.1 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 Buyer, 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.

15.2 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.

15.3 '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.

15.4 For the purpose of this Agreement, third parties include companies affiliated with the Buyer. Disclosure in order to comply with legal or official obligations is also only permitted after informing the Buyer first, unless prohibited by the law or the order of the appropriate authority, and otherwise only with the Buyer's written consent.

15.5 Without the Buyer's written consent, the Supplier is prohibited from producing copies of any documents or information for purposes other than providing the products and/or services. The Supplier shall oblige its own employees, agents and contractors, if any, in writing to maintain confidentiality and provide this confirmation to the Buyer at its request.

15.6 This confidentiality obligation will remain in force in its entirety even after the expiration or termination of this Agreement.

16 Data protection

16.1 If and insofar as the Supplier processes personal data on the Buyer's behalf and the European General Data Protection Regulation (EU/2016/679, GDPR) applies for the processing of personal data within the context of the Contract, any data processing agreement entered into by the Parties and the Buyer'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 Buyer, 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.

17 Ethical dealings

17.1 Supplier will be familiar and will strictly comply with all laws and regulations on bribery, corruption, and prohibited business practices. Supplier and its affiliates have not and will not, for the purpose of influencing or inducing anyone to influence decisions in favor of Buyer or any of its affiliates, offer, promise, or make or agree to make, directly or indirectly, (a) any political contributions of any kind or any payment to or for the benefit of any public official, whether elected or appointed, (b) any payments for gifts, meals, travel, or other value for a government employee or his/her family members, or (c) any payments or gifts (of money or anything of value) to anyone. Buyer shall not reimburse Supplier for any such political contributions, payments, or gifts.

18 Record Keeping and Audit rights

18.1 Supplier will maintain (and subject to applicable law provide to Buyer upon request) relevant business, technical and accounting records i) to support Supplier's invoices; ii) show proof of required permits and professional licenses and iii) to demonstrate compliance with Supplier's performance of its obligations under the Agreement,

for not less than six (6) years following completion or termination of the relevant services. All accounting records will be maintained in accordance with generally accepted accounting principles.

- 18.2 Upon Buyer's notice, Buyer may, at no charge to Buyer, audit Supplier's compliance with its obligations under the Agreement, including verifying compliance with applicable laws and the protection and integrity of Buyer Materials. In connection with an audit, Supplier shall provide Buyer (including its auditors and any regulators) access at reasonable times (or in the case of regulators, at any time designated by such regulators), to any facility at which Supplier or any subcontractor is providing or has provided services or deliverables under the Agreement and to all systems, data and business, technical and accounting records relating to Supplier's (and any subcontractor's) compliance with its obligations. Supplier shall provide its full cooperation in any such audit, including by designating a focal point to support an audit and, if required by Buyer, promptly securing the rights for Buyer to directly request from any subcontractor, and for the subcontractor to promptly provide to Buyer, access to such systems, data and records relating to the work performed by such subcontractors.

19 Business Continuity

- 19.1 Supplier agrees to have and maintain a business continuity plan and business continuity testing procedures, which include but are not limited to the areas of disaster recovery planning and pandemic planning. Supplier agrees to provide the specific recovery targets of the business continuity plan and to review, update, and test the business continuity plan annually and, upon IBM's request, Supplier will provide a summary of the business continuity plan and test results. IBM may, from time to time, provide feedback regarding the plan and requests that Supplier take IBM's comments into consideration when updating the plan. However, Supplier remains solely responsible for the performance of its responsibilities under the Agreement and the adequacy of the business continuity plan regardless of whether IBM has reviewed or commented on the plan.

20 Applicable laws

- 20.1 The Agreement is governed by the laws of the Republic of Croatia. The United Nations Convention on Contracts for the International Sale of Goods does not apply.
- 20.2 Parties agree that the competent courts in the place of the Buyer's registered seat shall have exclusive jurisdiction for all disputes arising from the Agreement or in relation to the Agreement.

21 General

- 21.1 Any reproduction of the Agreement by reliable means will be considered an original of the Agreement. No modification, amendment, supplement to, or waiver of the Agreement by Buyer shall be binding upon the parties unless made in writing duly signed by both parties and specifically referencing the Agreement. Buyer's failure to exercise any right hereunder shall not operate as a waiver thereof.
- 21.2 Supplier shall not use the name or trademarks of Buyer or its affiliates or refer to or identify Buyer or its affiliates in any marketing materials (including without limitation customer listings) or press releases without the prior written consent of Buyer. Buyer may process and store business contact information of Supplier Personnel in connection with the performance of the Agreement wherever Buyer does business. Neither party will be in default or liable for any delay or failure to comply with the Agreement due to any act beyond the control of the affected party, excluding labor disputes, provided such party immediately notifies the other.

22 Supplier and Supplier Personnel

- 22.1 Supplier is as an independent contractor, and the Agreement does not create an agency, partnership, or joint venture relationship between Buyer and Supplier or Supplier personnel. Buyer assumes no liability or responsibility for Supplier personnel. Further, this Agreement does not create an employment relationship between Buyer and Supplier Personnel.
- 22.2 If Supplier Personnel will have access to Buyer premises, (a) Supplier shall instruct Supplier Personnel as follows: Supplier Personnel on Buyer's premises may not (i) bring weapons of any kind onto such premises; (ii) possess, use or be under the influence of controlled substances or alcoholic beverages; (iii) have in their possession

hazardous materials of any kind without Buyer's authorization; and (b) Supplier Personnel on Buyer's premises must (i) obtain a valid identification badge from Buyer or a customer and return identification badges upon completion or termination of assignments; (ii) remain in authorized areas only (limited to work locations, cafeterias, restrooms and parking lots); (iii) access and use for work only the materials, documents, information and data necessary to perform and (iv) immediately report to Supplier any incidents (such as actual or alleged physical alterations, assaults, harassment and/or inappropriate behavior) so that Supplier can promptly notify Buyer and provide Buyer with a copy of any incident report.