

opentext™

The Information Company

2 Products and Services

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

3 Delivery of Products

- 3.1 The Supplier must provide the Products to the Purchaser on or before the Delivery Date Qq0.00000912 0 612 792 reW*nBT/F1 9 Tf1 0 0 1 187.58 346.3P4¶ 0.0000091 0.0

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

disease, US\$1,000,000 each employee by accident, or minimum amount legally required, whichever amount is the greater;

Affiliates directors, officers, employees and agents a1 0 0 1 356.9 650.95 Tm0 g0 G -0.003 Tc[Affiliates)]TE

- g) Employee dishonesty insurance in an amount not less than US\$1,000,000.00 per occurrence and for all claims in the aggregate, covering theft by Supplier or its subcontractors or agents of monies or assets of OT or its customers
- h) All Risk Property Damage upon property of every kind and description owned by Supplier, or in the care, custody or control of Supplier in an amount of not less than the full replacement cost; and
- i) Any other Insurances as may become compulsory or deemed necessary during the course of the Contract.

8.2 Each policy shall be written by insurance companies satisfactory to Purchaser, authorized to do business in the Country, and having an A.M. Best's Rating of not less than "A- VII":

8.3 If Supplier cannot demonstrate to Purchaser's reasonable satisfaction that it has in place all the required insurance policies and/or is otherwise complying with its obligations to maintain insurance under the Contract, Purchaser shall be entitled to put in place equivalent policies and Supplier shall be liable for all external costs and expenses incurred by Purchaser in doing so.

8.4 Upon request, Supplier will provide Purchaser with certificates of insurance evidencing that the above insurance coverage are in full force and effect. Supplier shall endeavour to provide evidence of insurance within 10 days of issue of the Purchaser Order.

8.5 Each insurance policy shall: (a) include a waiver of subrogation clause in favour of Purchaser, its employees and agents and shall state that they are primary and without any right of contribution by Purchaser; (b) contain a cross liability and severability of interests clause; (c) name Purchaser, its

conducting the inspection to the satisfaction of the Purchaser. Inspection does not relieve the Supplier of any of its obligations under the Contract.

any information or assistance which it may reasonably request.

13 Confidentiality

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

- 13.7 Upon request by the Purchaser, the Supplier must: (a) promptly return to the Purchaser, or at the election of Purchaser, destroy all Confidential Information, subject to legally required archival requirements and Supplier's standard data backup procedures; and (b) deliver to the Purchaser a certificate signed by a duly authorised representative certifying compliance with the provisions of this **clause 13.7** no later than 10 Business Days after receiving a request from the Purchaser to do so.
- 13.8 The return, destruction or deletion of Confidential Information in accordance with **clause 13.7** does not release the Supplier from its obligations under the Contract.

14 Personal Information Protection

- 14.1 If, and to the extent that, any of the Confidential Information disclosed to the Supplier contains any Personal Information, the Supplier must: (a) comply at all times with Privacy Law, any privacy policy or code adopted by the Purchaser from time to time

Purchase Order Terms (German

19 Compliance with Laws

- 19.1 The Supplier must comply with all applicable Local Laws in connection with its performance of its obligations under a Contract.
- 19.2 The Supplier will not engage in any deceptive or unethical practices that may be detrimental to Purchaser.
- 19.3 The Supplier must comply with the Foreign Corrupt Practices Act of the U.S., the Bribery Act of the U.K., and any applicable Local Laws or regulations regulating fraudulent or corrupt conduct (collectively, the **Anti-Corruption Laws**) including their prohibitions regarding the direct or indirect payment or giving of anything of value to an official of a foreign government, political party or governmental or non- governmental agency for the purpose of influencing an act or decision in their official capacity or inducing influenceto obtain or retain business involving the Purchaser or any of its Affiliates.
- 19.4 The Supplier must not violate or knowingly let anyone violate the Anti-Corruption Laws with respect to the supply of Products and Services under the Contract.
- 19.5 The Supplier warrants that none of its principals, staff, officers or key employees are government officials, candidates of political parties, or other persons who might assert

21 Dispute resolution

21.1 If a dispute arises in relation to any part of the Contract (**Dispute**), each party must not commence any court proceedings relating to the Dispute unless it has complied with the provisions of this **clause 21**, except to seek urgent interlocutory relief.

21.2 A party claiming that a Dispute has arisen must promptly notify the other party in writing giving details of the Dispute.

21.3 The parties must use reasonable endeavours to resolve any Dispute notified in accordance with **clause 21.2**.

21.4 If the parties fail to resolve the Dispute within 20 Business Days of a party receiving a notice in accordance with **clause 21.2**, each party must refer the Dispute to its respective Managing Director (or a similarly senior person) and ensure that its representative uses reasonable endeavours to resolve the Dispute.

21.5 If the parties are not able to resolve the Dispute in accordance with **clause 21.4** within 20 Business Days, either party may immediately refer the Dispute to the alternative dispute resolution centre nearest **ADR Centre** for mediation first and only then, if not successful, for arbitration and the parties will use reasonable endeavours to resolve the Dispute following the rules specified by the ADR Centre.

21.6 Each party must bear its own costs in relation to complying with this **clause 21**, except for the costs and expenses of the mediation, which will be borne by the parties equally.

performance of its obligations under the Contract; (b) during the course of the Contract, it will not engage in any activity likely to compromise its ability to perform its obligations under the Contract fairly and independently. The Supplier must immediately disclose to the Purchaser any activity which constitutes or may constitute a conflict of interest; and that its Personnel will not engage in any activity or obtain any interest likely to conflict with or restrict the Supplier in performing its obligations under the Contract fairly and independently. The Supplier must immediately disclose to the Purchaser any such activity or interest.

- 23.4 **Relationship.** Except as otherwise provided in the Contract, nothing 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.
- 23.5 **Survival. Clauses 5 (Warranties), 7 (Indemnities), 13 (Confidentiality), 14 (Personal Information Protection), 16.4, 19.6, 21 (Dispute resolution), 23.2 (Indirect Loss), 23.5 (Survival), 23.10 (Governing Law) and 24 (Definitions and Interpretation)** of these Purchase Order Terms, and any obligations which by their nature should survive the termination or expiration of a Contract will survive termination or expiry of a Contract.
- 23.6 **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.
- 23.7 **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.

- 23.8 **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.
- 23.9 **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 Purchaser will gain no ownership rights in any of Supplier's previously existing intellectual property contained in the Work Product.
- 23.10 **Governing Law.** The Contract shall be governed by laws of the Federal Republic of Germany excluding (a) its conflicts or choice of law rules, and (b) the United Nations Convention on Contracts for the International Sale of Goods the parties irrevocably submit to the exclusive jurisdiction of the district court Munich I resolution of any dispute and waive any claim or objection based on absence of jurisdiction or inconvenient forum.
- 23.11 **Governing Language.** The Contract is in the English language only, which shall be controlling in all respects. In the event this all or any part of the Contract is translated into the language of the court having jurisdiction over the Contract, the English version of the Contract shall prevail over such translation with respect to any and all interpretations of Contract and with respect to any

interpretation by such court of the intent of the parties.

24 Definitions and interpretations

24.1 In the Contract:

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

"Business Continuity Plan" and **"BCP"**

proposed methodology to ensure continuance of the Contract in the event of any emergency, civil disorder, natural disaster or any other form of disaster.

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

"Change Request" has the meaning given it in clause 8.6 (Change Requests).

"Confidential Information" means: (a) all information relating to or used by the Purchaser or any other member of its Group, including know-how, trade secrets, ideas, marketing strategies and operational information; (b) all information concerning the business affairs (including products, services, customers and suppliers) or property of the Purchaser or any other member of its Group, including any business, property or transaction in which the Purchaser or any other member of its Group may be or may have been concerned or interested; and (c) any other information disclosed by or on behalf of the Purchaser or any other member of its Group, including any such information made available to the

Purchaser or any other member of its Group by any third party, but excluding any information: (i) which is publicly known; (ii) which is disclosed to the Supplier without restriction by a third party and without any breach of confidentiality by the third party; or (iii) which is developed independently by the Supplier without reliance on any of the Purchaser's Confidential Information.

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

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

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

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

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

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

Dispute has the meaning given in clause 21.

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

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

"Insolvency Event" in relation to a party (insolvent party) means: (a) the insolvent party ceases or takes steps to cease to conduct its business in the normal manner; (b) the insolvent party enters into or resolves to enter into any arrangement, composition or compromise with or assignment for the benefit of its creditors or any class of them;

(c) the insolvent party is unable to pay its debts when they are due or is deemed under Local Law to be insolvent; (d) a liquidator or provisional liquidator is appointed to the insolvent party or a receiver, receiver and manager, administrator, trustee or similar official is appointed over any of the assets or undertakings of the insolvent party; or (e) an application or order is made or a resolution is passed for the winding up of the insolvent party.

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

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

U S O S

About OpenText

OpenText enables the digital world, creating a better way for organizations to work with information, on-premises or in the cloud. For more information about OpenText (NASDAQ/TSX: OTEX), visit [opentext.com](https://www.opentext.com).

Connect with us:

[Twitter](#) |