

## Temenos Purchase Order Terms and Conditions

**TERMS AND CONDITIONS** governing the purchase of goods (“**Goods**”) and/or services (“**Services**”) identified on the coversheet of this Purchase Order (“**Order**”) by the Temenos entity identified in the Order (“**Temenos**”) and which issues the Order to the person, firm, company or organisation whose name appears on the coversheet of the Order, or who accepts the Order (“**Supplier**”).

### **1 Basis of Purchase**

- 1.1 The Order shall be deemed to be an offer by Temenos to purchase the Goods and/or the Services subject to these terms and conditions and such offer shall be accepted and form a legally binding contract when Supplier accepts the offer. Supplier shall be deemed to have accepted an Order within five (5) working days of receiving the Order from Temenos or by earlier performance of the Order by the Supplier unless either party cancels the Order in writing to the other party within such five (5) day period. Upon such acceptance Supplier will deliver the Goods and/or perform the Services in accordance with the Order.
- 1.2 These terms and conditions will be incorporated into and be part of the Order and shall apply to the exclusion of any other terms and conditions in any other document or other communication (including, without limitation, any terms and conditions on which any quotation has been given to Temenos or subject to which the Order is accepted or purported to be accepted by Supplier).
- 1.3 No variations to the Order shall be binding unless agreed in writing between Temenos and Supplier.
- 1.4 Temenos enters into the Order on its own behalf and for the benefit of one or more of its subsidiaries, any holding company (from time to time) and/or associated companies which have an interest in receiving the Goods and/or the Services and any associated company or companies may enforce the terms of the Order as a third party beneficiary. Save as expressly stated in the Order and/or this clause 1.4, the Order does not create any right enforceable by any person or entity that is not a party to the Order.

### **2 Delivery and Ownership of the Goods**

Delivery of the Goods shall be made at the delivery address identified on the coversheet of the Order but property in the Goods shall not pass until Temenos has had a reasonable opportunity to inspect the Goods. The Goods shall be at Supplier’s risk until property has passed to Temenos. Temenos may reject any of the Goods delivered which are not in accordance with the Order, and shall not be deemed to have accepted any of the Goods until Temenos has had a reasonable time to inspect the Goods following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent. Temenos shall not be obliged to return to Supplier any packaging or packing materials for the Goods, whether or not the relevant Goods are accepted by Temenos.

### **3 Delays, Surpluses and Shortages**

Without prejudice to Temenos’ other rights, Temenos reserves the right to cancel, without redress by Supplier, either the whole or the unexecuted part of the Order if unexecuted within the time specified in the Order, or schedules issued pursuant to the Order. Supplier shall deliver the Goods and/or supply the Services by the delivery date or dates specified on the coversheet of the Order or, in the absence of a specified date, within a reasonable time. Should Supplier’s failure to deliver on time necessitate deliveries by special transport, all additional transportation charges shall be paid by Supplier. Temenos reserves the right to return to Supplier at Supplier’s cost and risk any of the Goods delivered in excess of the quantities specified in the Order, or in excess of schedules issued pursuant to the Order.

### **4 Quality**

4.1 In addition to Temenos’ statutory and common law rights and without limitation Supplier represents and warrants to Temenos that:

4.1.1 The Goods and any works arising from the provision of the Services shall:

- (a) conform as to quantity, quality and description with the particulars stated in the Order;
- (b) be of sound materials and workmanship and be free from defects;

- (c) be safe and present no risk to persons or property;
- (d) be equal in all respects to the samples, technical requirements or specification provided or given by either Temenos or Supplier;
- (e) be capable of meeting any standard of performance specified in the Order;
- (f) be fit for the purpose for which the Goods are commonly intended and, if the purpose for which the Goods are required is made known to Supplier either expressly or impliedly, also be fit for that purpose; and

4.1.2 The Services shall:

- (a) be performed in accordance with any of the requirements stated in the Order and in accordance with any specification agreed in writing between the parties (and Supplier guarantees that Supplier will achieve all of the results specified in the Order);
- (b) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- (c) be performed safely by the Supplier and the Supplier shall take all necessary precautions to ensure that the Services are performed without risk to persons or property and the Supplier shall provide and bear the cost of all insurances necessary to indemnify and hold harmless Temenos in respect of any negligence or act or omission on the part of Supplier, Supplier's employees, sub-contractors or agents; and

4.2 In performing its obligations under this Order, the Supplier shall comply with all applicable statutory and other regulatory requirements and any Temenos policies and Temenos Code of Conduct provided to the Supplier.

4.3 The Supplier shall permit Temenos' authorised representatives at all reasonable times to audit the Supplier's provision of the Services and /or Goods and adherence to the Temenos policies and Temenos Code of Conduct to determine that the provisions of the Order are being faithfully performed. Each party shall bear its own costs associated with such audit except where a breach of the Order is identified, in which case the Supplier shall be liable for the full costs of such audit.

## 5 Liability

5.1 The total aggregate liability of Temenos for all claims arising out of causes of action (whether in contract, tort or otherwise) under or in connection with the Order shall not exceed the fees paid by Temenos under the Order in the twelve months preceding the date upon which the first cause of action arose.

5.2 Neither party shall have any liability in connection with its obligations under this agreement or at common law, whether in tort or in contract and even if it has been advised of the possibility of such damages, for special, indirect, consequential, incidental damages and/ or damages (whether direct or indirect) for loss of goodwill, loss of profits or loss of opportunity.

5.3 Nothing in this agreement and in particular within this limitation of liability clause, shall exclude liability that is not permissible under applicable law.

5.4 In addition to Supplier's statutory and common law obligations and without limitation Supplier shall indemnify and hold harmless Temenos against all claims, costs, losses, damages, demands and expenses whatsoever and whether arising in contract, tort or otherwise from:

5.1.1 any breach of the provisions of the Order; and

5.1.2 any infringement or alleged infringement of any copyright, patent, utility model, trade mark, registered design (and any application for registration of any of those things) or other proprietary right by use or sale of the Goods or the works arising from the Services provided that where such are supplied to a specification or design of Temenos this indemnity shall not apply to the extent that the infringement or alleged infringement arises from adherence to such specification or design.

## 6 Confidentiality and Advertisement

- 6.1 Except as required by law Temenos and Supplier shall procure that all confidential information disclosed by either of them to the other to complete the Order or which may at any time until such completion come into either Temenos' or Supplier's knowledge possession or control shall not be used for any purposes other than those required or permitted by the Order and shall remain confidential and shall not be disclosed to any third party except insofar as this may be required for the proper operation of the Order and then only under appropriate confidentiality provisions approved by the disclosing party. For the purposes of the Order information relating to the business, products, or solutions of Temenos, information relating to Temenos clients, Temenos' business processes and client and supplier lists are hereby deemed to be confidential information. These obligations of confidentiality shall cease to apply to any particular item of confidential information once it becomes public knowledge other than by any act or default of either Temenos or Supplier. Upon termination of the Order, the Supplier shall immediately return to Temenos or delete as requested all disclosed confidential information together with all copies thereof.
- 6.2 Supplier shall not disclose the Order or Supplier's relationship with Temenos to any third party or refer to the Order in any way in any public announcement, press release, advertisement or other form of public statement.

## 7 Force Majeure

If either Temenos or Supplier is prevented from performance of its obligations for a continuous period in excess of thirty (30) days due to an event beyond its reasonable control (which shall include without limitation an event of terrorism, application of sanctions or export controls, social disorder, strike, accident, war, social disturbance, fire or extreme weather conditions) the other may terminate the Order immediately on service of written notice upon the party so prevented in which case neither Temenos nor Supplier shall have any liability to the other except that rights and liabilities which accrued prior to such termination shall continue to subsist.

## 8 Price and Terms of Payment

8.1 The price shall either be:

8.1.1 as stated in the Order and, unless otherwise so stated, shall be: (a) exclusive of any applicable value added tax or other sales tax; and (b) inclusive of all charges for packaging, packing and delivery of the Goods to Temenos and any duties, imposts or levies (other than value added tax or other sales tax); or

8.1.2 as set out on the most recent rate card agreed in writing between Temenos and Supplier.

8.2 No increase in the price may be made (whether on account of increased material, labour or transportation costs, fluctuation in rates of exchange or otherwise) without the prior consent of Temenos in writing.

8.3 Unless otherwise expressly agreed in writing, payment shall be made by Temenos within sixty (60) days (or such other period as Temenos may specify on the coversheet) or if later the date the Goods are accepted or the performance of the Services is completed ("**Payment Due Date**").

8.4 If Temenos fails to pay any amount payable by Temenos in the Order on or before the Payment Due Date, Temenos shall, subject to written demand by Supplier, pay interest on the overdue amount at the rate of either (i) two percent (2%) per annum above Barclays Bank Plc's base rate, as such rate is publicly quoted on the Payment Due Date; or (ii) the applicable statutory interest; whichever is lower. Interest shall accrue on a monthly basis (accruing first on the date thirty (30) days after the Payment Due Date and every thirty (30) days thereafter) until the day of actual payment.

8.5 Temenos shall be entitled to off-set amounts due from Temenos to Supplier, with amounts due from Supplier (and/or Supplier's subsidiaries or holding company or other subsidiaries of the same holding company to Temenos (and/or Temenos' subsidiaries or holding company or other subsidiaries of the same holding company as such expressions are similarly defined).

## 9 Assignment and Sub-Contracting

Supplier shall not assign any of its rights or obligations under this Order nor sub-contract the performance of the Order either wholly or partially without the prior consent in writing of Temenos. Temenos shall be

permitted to assign the benefit of the Order without restriction or Supplier's prior consent.

## 10 Intellectual Property Rights

10.1 In this Clause 10 the term "**Rights**" means all vested contingent and future rights of copyright, design right (registered and unregistered), trade marks (registered and unregistered), patents, utility models, database rights, performer's property rights, rental and lending rights and all accrued rights of action and all other rights of whatever nature.

10.2 The Supplier shall retain all Rights in and to the Goods which pre-existed the Order.

10.3 The Supplier assigns all worldwide Rights to any and all Goods and works arising from the Services which are bespoke to Temenos, commissioned by Temenos or which incorporate or are based on the pre-existing Rights of Temenos unless stated on the coversheet of the Order and whether now known or in the future created to which the Supplier is now or may at any time in the future be entitled by virtue of or pursuant to any of the laws in force in each and every part of the world. The Goods and works shall be deemed to include, without limitation, artwork, drawings, drafts, designs, sketches, images, illustrations, literary works, data, electronic, digitised or computerised information or files, new media, software, object code, source code, on-line elements, patents, inventions, improvements, discoveries, processes, know-how, documents, specifications, printed materials, notes, translations, instructions, other proprietary material and photographs. Supplier warrants in the Order that Supplier has the right to assign the Rights and in the Order gives any consents required for the use contemplated in the Order and shall indemnify and hold harmless Temenos in respect of any loss, damage, claim, demand or expense incurred by Temenos in respect of the use of the Goods and/or Services.

10.4 If the assignment referenced in clause 10.3 is not granted, the Supplier grants a licence to Temenos and its associated companies to use such Rights on a world-wide, non-exclusive, perpetual and royalty free licence basis. Supplier warrants that Supplier is entitled to grant such licence to Temenos and has obtained all necessary licences, consents and approvals from all third party owners or licensors of the Rights in order to make such grant.

10.5 To the extent applicable, the Supplier irrevocably and unconditionally waives all moral rights in respect of the Goods and/or the Services to which Supplier may now or at any time be entitled.

10.6 Temenos shall have the right to exploit the Goods and/or enjoy the benefit of the Services without any additional payment to Supplier at Temenos' sole and complete discretion.

10.7 Temenos retains all Rights in any all materials, software, equipment, tools, drawings, specifications and data supplied by the Temenos to the Supplier ("**Temenos Materials**") and the Supplier has only a limited licence to use such Temenos Materials solely for the provision of the applicable Order. The Supplier shall in safe custody at its own risk, maintain the Temenos Materials in good condition until returned to Temenos, and shall not dispose or use the Temenos Materials other than in accordance with the Temenos' written instructions or authorisation

## 11 Data Protection and Security

11.1 Temenos (as data controller) appoints Supplier as data processor for the personal data processed in connection with the execution of the Order.

11.2 The Supplier shall:

11.2.1 have in place appropriate and sufficient technical and organisational measures to ensure an appropriate level of security and to ensure the protection of the rights of the data subject, taking account of the state of the art, implementation costs, the nature, scope, context and purposes of the processing and the risks presented by the processing. These measures shall be no less stringent than those outlined in the Temenos Information Security and Data Protection policies;

11.2.2 conduct a data protection impact assessment when using new technologies to process the data or where the processing otherwise presents a high risk to the privacy of data subjects;

11.2.3 not engage another processor without the prior authorization of Temenos;

11.2.4 not transfer personal data outside of the European Economic Area or Switzerland without the prior

authorization of Temenos. Where such authorization is provided, Supplier shall ensure that there is a valid data transfer mechanism in place to protect the personal data, in accordance with the Data Protection Laws and to the reasonable satisfaction of Temenos;

- 11.2.5 ensure that personnel of the Supplier processing the personal data are under obligations of confidentiality;
  - 11.2.6 assist Temenos to comply with requests from data subjects exercising their data subject rights under the relevant Data Protection Laws;
  - 11.2.7 notify Temenos without undue delay and in any case no later than 24 hours after becoming aware of a personal data breach, such notifications shall contain the appropriate details setting out the nature of the breach and details of the categories and number of data subject and records concerned, data processor contact details, likely consequences of the breach, and the steps taken to mitigate the adverse effects of the breach. If requested by Temenos, Supplier shall assist Temenos in notifying data subjects of a personal data breach caused by the Supplier or any processor acting under Supplier's direction, at not cost to Temenos;
  - 11.2.8 provide Temenos with all information that, in the reasonable opinion of Temenos, is necessary to demonstrate compliance with this clause 11 and permit Temenos or its duly authorised representatives, on reasonable prior notice, to inspect and audit Supplier's data processing activities to monitor Supplier's compliance with this clause 11;
  - 11.2.9 at the choice of Temenos, delete or return all personal data to Temenos upon completion of the Order and the Supplier shall not retain any existing copies unless required by local Data Protection laws.
- 11.3 Supplier shall be liable for and shall indemnify Temenos and hold Temenos harmless against any and all claims, actions, liabilities, losses, damages and expenses (including legal expenses) incurred by Temenos which arise directly or indirectly out of or in connection with Supplier 's data processing activities in connection with the Order, including without limitation those arising out of any third party demand, claim or action, or any breach of contract, negligence, fraud, wilful misconduct, breach of statutory duty or non-compliance with any part of the Data Protection Laws by Supplier or Supplier's personnel.
- 11.4 In this clause 11, "Data Protection Laws" means any relevant data protection legislation (including the General Data Protection Regulation (EU 2016/679)) ; and the terms "**personal data**", "**personal data breach**", "**processing**", "**data processor**" and "**data controller**" shall have the meanings ascribed to them in the General Data Protection Regulation (EU 2016/679); and "**personnel**" shall mean employees, officers, agents, contractors, sub-contractors, consultants and any other temporary staff that provide services from time to time.

## 12 Approvals and Authority

- 12.1 For the purposes of the Order, "**Written Approval**" shall mean approval by e-mail, fax or letter. Supplier shall not be responsible for any delay in the performance of the Order resulting from the unavailability of Temenos to provide approval.
- 12.2 To the extent that Supplier is required to provide the Goods and/or the Services which comprise design work (including, without limitation, copy, layouts, graphics and artwork), Supplier shall, after obtaining Temenos' general Written Approval of Supplier's design plans for the design work, submit to Temenos for Temenos' specific Written Approval (unless otherwise agreed in the coversheet of the Order) of:
- 12.2.1 copy, layouts, artwork, graphics, designs;
  - 12.2.2 estimates or quotations of the cost of the various items, Goods and/or Services together with the terms of payment; and/or
  - 12.2.3 schedules for the development of any such design work.
- 12.3 Temenos' Written Approval of copy, layouts, graphics or artwork will be Supplier's authority to purchase production materials and prepare proofs. Temenos' Written Approval of proofs will be Supplier's authority to publish or print the final design work.

12.4 Supplier will advise Temenos immediately of any changes in the estimated cost of items or any changes in design plans, schedules or work in progress previously approved in writing by Temenos.

### **13 Termination**

13.1 Temenos reserves the right to terminate the Order without penalty and with immediate effect by giving written notice to Supplier, such notice to become effective on the date of receipt. Temenos shall then only be liable for payment for: (a) all of the Goods manufactured and / or delivered or in the process of manufacture, or at the option of Temenos, reasonable compensation in respect of the cost of materials and labour involved in the manufacturing of such of the Goods up to the time of the termination of the Order; and (b) all of the Services already performed.

13.2 Without prejudice to any other right Temenos may have, Temenos shall be at liberty to terminate the Order immediately and without redress if Supplier:

13.2.1 breaches any of the terms and conditions of the Order; or

1.1.1 (a) Supplier becomes insolvent; (b) Supplier ceases or threatens to cease to carry on the whole or a substantial part of its business; (c) Supplier compounds or makes any voluntary arrangement with its creditors; (d) a resolution is passed (otherwise than for the purpose of solvent amalgamation or reconstruction) or an order is made for the winding up of Supplier; (e) Supplier is the subject of a notice of intention to appoint an administrator or liquidator, is the subject of a notice of appointment of an administrator, is the subject of an administration application, becomes subject to an administration order or has an administrator appointed over it; (f) a receiver or administrative receiver is appointed over all or any of Supplier's assets or undertaking; (g) an encumbrancer takes possession of any of Supplier's property; (h) Supplier suffers any similar action due to debt, including any distraint over any of Supplier's assets; (i) Supplier is dissolved, or if the equivalent of any of the events described in this Clause 12.6.2 occurs in relation to Supplier under the laws of any jurisdiction or (j) Supplier is or becomes subject to any trade embargoes or sanctions or is more than 50% owned, or is controlled, directly or indirectly, by any entity or person which is subject to a Sanction.

13.3 Upon termination of the Order or upon Supplier's insolvency Temenos shall be entitled to the immediate return of Temenos Material and/or Temenos Content held by Supplier pursuant to Clause 10.

### **14 Temenos Remedies**

14.1 If the Supplier fails to deliver the Goods and/or supply the Services by the delivery date or dates specified on the coversheet of the Order, Temenos shall, without limiting its other rights or remedies, have one or more of the following rights:

14.1.1 to terminate the Order with immediate effect by giving written notice to the Supplier;

14.1.2 to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;

14.1.3 to recover from the Supplier any costs incurred by Temenos in obtaining substitute goods and/or services from a third party;

14.1.4 where Temenos has paid in advance for Goods and/or Services that have not been provided by the Supplier, to have such sums refunded by the Supplier; or

14.1.5 to claim damages for any additional costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to meet such dates.

14.1.6 These terms and conditions shall extend to any substituted or remedial services provided by the Supplier.

14.1.7 These rights under Order are in addition to its rights and remedies implied by statute and common law.

### **15 Miscellaneous Provisions**

15.1 The Supplier shall comply with all laws and regulations relating to anti-bribery and anti-corruption including but not limited the UK Bribery Act 2010 and the USA Foreign Corrupt Practices Act 1977, and shall ensure it has in place its own policies and procedures to comply with such laws and regulations. The Supplier shall promptly report to Temenos any request or demand for any undue financial or other advantage of any

kind received by the Supplier in connection with the performance of this Order.

- 15.2 Any notice to be given under the Order shall be in writing and signed and may be served by leaving it at or sending it to either Temenos' or Supplier's address as appropriate on the coversheet of the Order.
- 15.3 No forbearance or delay by either Temenos or Supplier in enforcing its respective rights will prejudice or restrict such rights, and no waiver of any such rights or of any breach of the Order will be deemed to be a waiver of any other right or of any later breach.
- 15.4 Subject to the specific limitations set out in the Order, no remedy conferred by any provision of the Order is intended to be exclusive of any other remedy except as expressly provided for in the Order and each and every remedy shall be cumulative and shall be in addition to every other remedy given under the Order or existing at law or in equity by statute or otherwise.
- 15.5 If any of the provisions of the Order are judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of the provisions will not be prejudiced unless the substantive purpose of the Order is then frustrated, in which case either Temenos or Supplier may terminate the Order immediately on written notice.
- 15.6 Temenos and Supplier shall do or procure to be done all such further acts and things and execute or procure the execution of all such other documents as the other may from time to time reasonably require for the purpose of giving the other the full benefit of the provisions of the Order.
- 15.7 Temenos and Supplier are independent contractors and neither is agent for the other, nor has any authority to make any contract, whether expressly or by implication, in the name of the other.
- 15.8 Where there is a written agreement signed by the Parties relating to the Goods and/or Services (including without limitation a Supplier Master Agreement), such signed written agreements shall prevail over the terms and conditions of the Order to the extent of a conflict only.
- 15.9 The Order shall be governed and construed in accordance with the laws of Switzerland without regard to its choice of law principles and the parties each submit to the exclusive jurisdiction of the Geneva courts.