

Terms and Conditions of the Bank for International Settlements for the Purchase of Off-the-Shelf Software

1 Scope and Contractual Ranking

- 1.1 These terms and conditions ("Terms and Conditions") of the Bank for International Settlements ("BIS") shall apply to the entire agreement ("Agreement") between the BIS and the software seller and/or licensor ("Supplier").
- 1.2 These Terms and Conditions shall prevail over any conflicting provisions in the Agreement.
- 1.3 The licence provisions of a copyright holder of the software which is not the Supplier ("Manufacturer") are only valid insofar as they (i) relate to the regulation of rights (incl. rights of use) to the standard software, including the consequences of any violations, (ii) are explicitly mentioned in the Supplier's quote, (iii) are fully attached thereto, and (iv) are not contrary to mandatory provisions of Swiss law, these Terms and Conditions or the other parts of the Agreement. This also applies in particular with regard to the submission to Swiss law and the place of jurisdiction in the Terms and Conditions. The BIS is only obliged to agree to such licensing provisions of the Manufacturer if this is expressly required in the Supplier's quote, and only on condition that these provisions relate exclusively to the aforementioned contractual content and, moreover, to the execution of the contract exclusively in the direct relationship between the Supplier and the BIS in accordance with the commercial and legal terms and conditions agreed between them, without the Manufacturer having any claims against the BIS.
- 1.4 In case the Supplier is not the Manufacturer, the Supplier represents and warrants that (i) the Supplier is an authorised reseller or distributor of the Manufacturer or is otherwise authorised to license or cause to license the software to the BIS; and (ii) the Supplier will promptly pass on or cause to pass on to the Manufacturer the portion of the BIS's payment relating to the software license.

2 Type and Scope of Use of Software

- 2.1 The Supplier grants or causes to grant to the BIS the right to use the standard software. The type and scope of use shall be governed by the individual agreement contained in the licence contract. Unless the parties agree otherwise, the use shall not be restricted in time or space or in any other way and not be tied to any particular hardware.
- 2.2 The BIS may, without additional payments, make the necessary copies of the standard software for backup and archiving purposes in order to use the copies on replacement hardware in the event that the original hardware breaks down.
- 2.3 When hardware breaks down, the BIS is entitled to use the standard software on replacement hardware at no extra charge.
- 2.4 The BIS shall be authorised to parameterise the standard software with regard to its use in accordance with the Agreement and, within the framework of applicable law, to make it interoperable with third-party software.

3 Invoicing and Tax Status of the BIS

- 3.1 All invoices shall indicate the BIS purchase order number. If such a number has not been issued by the BIS, the reference "No PO" and the contact person at the BIS shall be indicated. Invoices without reference to BIS Purchase Order numbers may be processed with delay.
- 3.2 Invoices must clearly state the price of the individual items, the total amount, any surcharges and deductions, and the delivery date or period of performance.
- 3.3 Invoices shall be sent electronically to:
invoice@bis.org (if not indicated otherwise)
Subject: Invoice [PO number]
- 3.4 Unless otherwise agreed, payment shall be due within 30 days after receipt of the complete and correct invoice. Late payment shall

not entitle the Supplier to claim interest or to terminate the Agreement.

- 3.5 The BIS enjoys a special tax status as an international organisation in Switzerland. Accordingly, it is exempt from Swiss VAT. Therefore, invoices shall not include any Swiss VAT and must bear the remark *"von der Steuer befreit"* or *"Befreiung von der MWST nach Art. 144 MWSTV"*. If the wording *"inklusive MWST"*, either with or without indication of the relevant tax rate, is pre-printed on the invoice, then such wording must be struck through on both the original and all copies. Any other taxes or dues incorporated in the price must be clearly disclosed on the invoices, so as to allow the BIS to claim exemption.

4 Documentation

- 4.1 The BIS may copy and internally disseminate any with the standard software-associated documentation provided by the Supplier.

5 Maintenance and Support for Software

- 5.1 Within the framework of the Agreement, the Supplier shall maintain the standard software for the purpose of preserving its usability. Unless otherwise agreed in the Agreement, software maintenance shall encompass corrective (debugging), adaptive (adjustment to changed circumstances) and perfective (expansion of functions) services, as well as the delivery of new releases and patches.
- 5.2 When the standard software develops a fault, the Supplier will take part in efforts to determine the cause of the fault at the BIS's request, even if the fault involves interaction between a number of systems and/or components. If the Supplier can prove that the fault was not caused by the standard software it is responsible for maintaining, this work will be invoiced separately.
- 5.3 Wherever possible, the Supplier will also rectify software faults caused by the BIS or a third party. It does so at the BIS's request and for a fee to be agreed in advance.
- 5.4 The BIS is not obliged to adopt every new software version, but the Supplier is entitled to discontinue maintenance of older software

versions after allowing for a reasonable transition period (12 months, unless otherwise agreed).

- 5.5 Within the framework of the Agreement, the Supplier shall provide support by advising and assisting the BIS with respect to the use of the standard software to be maintained.
- 5.6 The Supplier shall maintain an efficient organisation for maintenance and support.
- 5.7 In the event of new releases, the Supplier shall, at the request of the BIS, provide initial instruction, to be determined according to the scope and target audience.
- 5.8 The Supplier shall regularly inform the BIS of further developments of the standard software. It shall draw the BIS's attention to any impact of the use of new releases on the hardware concerned and on any external interfaces.
- 5.9 At the request of the BIS, the Supplier shall participate in the search for the cause of malfunctions caused by third parties and the remediation thereof, even if one or more malfunctions may have been caused by the interaction of several systems or components.
- 5.10 In the event of malfunctions that significantly impair or make it impossible for the BIS to use the standard software as intended, the Supplier shall begin rectifying the malfunction within [24] hours of receiving the malfunction report. In all other cases, the Supplier will begin the rectification within [72] hours.

6 BIS Data

- 6.1 The Supplier shall not use any data that is provided to the Supplier by or on behalf of the BIS in the performance of the Agreement ("BIS Data") for any purpose other than the performance of the Agreement.
- 6.2 If the Supplier stores confidential or strictly confidential BIS Data, as determined by the BIS, the BIS Data shall (i) not be physically stored outside jurisdictions in which the BIS

enjoys privileges and immunities¹; (ii) be segregated from third party data; and (iii) be identifiable as BIS Data. The BIS shall retain at any time full control over all BIS Data, regardless of where the data is physically stored. The Supplier must further ensure that it has no ongoing access over an extended period of time (standing access) to such confidential or strictly confidential BIS Data from outside of jurisdictions where the BIS enjoys privileges and immunities.

- 6.3 If the Supplier processes BIS Data, the Supplier shall (i) take all economically reasonable, and technically and organisationally feasible precautions to ensure that the BIS Data is effectively protected against unauthorised access by third parties; (ii) upon the BIS's request grant the BIS the right to access and rectify the BIS Data, and, after completion or termination of the Agreement; (iii) return the BIS Data; and (iv) irrevocably delete or destroy the BIS Data on any media (including test or backup media) in accordance with the recognised current best practices and; (v) upon request, confirm such deletion or destruction to the BIS in writing.
- 6.4 The return, deletion or destruction of the BIS Data must take place within 30 days after completion or termination of this Agreement. If the data on backup media cannot be deleted, the backups must be protected in accordance with the recognised current best practices and must be deleted or destroyed within one year at the latest. If the Supplier is subject to a legal obligation to retain the BIS Data, the return, deletion, or destruction of the data subject to this retention obligation must take place within 30 days after the end of the retention period.
- 6.5 Upon the occurrence of any bankruptcy or similar proceedings, all BIS Data must be returned to the BIS in a format that is easily accessible and importable into BIS applications or systems, or as otherwise specified by the BIS. In addition, any form of retention right whatsoever is, to the extent permitted by law, herewith excluded and BIS Data may under no

circumstances be used in bankruptcy or similar proceedings.

- 6.6 The Supplier shall notify the BIS of BIS Data breaches not later than 24 hours after having become aware of it and provide a more detailed follow-up within 72 hours.
- 6.7 The provisions of this section shall continue to apply notwithstanding the completion, termination or expiry of this Agreement for any reason.

7 Personal Data

- 7.1 The BIS shall, in the performance of the Agreement, process personal data in accordance with the requirements of its personal data protection framework. The BIS privacy notice is available online under <https://www.bis.org/privacy.htm>.
- 7.2 The Supplier shall (i) comply with all applicable privacy and data protection legislation in the processing of the BIS's personal data ("Personal Data"); (ii) process Personal Data solely for the purposes of the performance of its obligations under the Agreement and only to the extent to which the processing is necessary for the relevant purpose; (iii) guarantee the confidentiality of the Personal Data; (iv) not disclose any Personal Data to any person other than those that need access to such Personal Data in support of the performance of obligations under the Agreement; (v) ensure the persons authorised to process personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality and receive the appropriate personal data protection training; (vi) take into consideration, in terms of its tools, products, applications or services, the principles of data protection by design and by default; (vii) keep Personal Data correct and up to date (viii) keep Personal Data only as long as necessary for the achievement of the purpose it was transferred to or collected by the Supplier as agreed with the BIS; and (ix) maintain appropriate

¹ Switzerland, Mexico, Hong Kong SAR, Singapore, United Kingdom, Sweden, Germany, France, Canada

technical and organisational measures for protection of the security, confidentiality and integrity of the Personal Data, taking into account the sensitivity of the information in question.

- 7.3 The Supplier may engage third-party sub-processors ("Sub-processors") in connection with the provision of services under the Agreement provided that the Supplier has entered into a written agreement with each Sub-processor containing, in substance, data protection obligations no less protective than those in this Agreement with respect to the protection of personal data. Upon request, the Supplier shall provide a list of its current Sub-processors. The Supplier shall be liable for the acts and omissions of its Sub-processors to the same extent the Supplier would be liable if performing the services of each Sub-Processors directly under the terms of this Agreement.
- 7.4 If for the performance of this Agreement, the Supplier is required to transfer Personal Data outside of its country of origin, the Supplier shall ensure that safeguards are in place to protect Personal Data in the relevant third country in accordance with all applicable privacy and data protection legislation.
- 7.5 The BIS is an international organisation, and accordingly, any transfer of personal data from the BIS to the Supplier shall not constitute a restricted transfer of personal data limited by the applicable privacy and data protection legislation requiring any further safeguards to be adopted beyond those set out in the Agreement. Processing of personal data by the Supplier will be subject to the applicable privacy and data protection legislation, and any transfer of personal data from the Supplier to the BIS may constitute a restricted transfer of personal data under such applicable privacy and data protection legislation. However, the parties agree that neither shall be in breach of the Agreement for any failure to adopt standard contractual clauses with respect to the transfer of such personal data to the BIS.
- 7.6 The Supplier shall assist the BIS, insofar as this is reasonable, for the fulfilment of its obligation to respond to requests for exercising data subjects' rights.
- 7.7 The provisions of this section shall continue to apply notwithstanding the completion,

termination or expiry of this Agreement for any reason.

8 Confidentiality

- 8.1 The Supplier shall treat as confidential all information (whether in oral, written, electronic or other form) received or acquired in the performance of the Agreement, even if such information is not marked or specified as confidential ("Confidential Information"), and shall take at least the same degree of care to avoid disclosure, publication or dissemination of the provided information as it uses for its own confidential information.
- 8.2 The Supplier shall not use, permit the use of, or make available the Confidential Information other than to its own employees, officers, contracted staff, or other persons assisting or advising the Supplier, on a need-to-know basis, for the performance of this Agreement.
- 8.3 The Supplier must inform the BIS immediately if it knows or has reason to believe that Confidential Information has been subject to unauthorised access, has been passed on to unauthorised third parties, has been lost or damaged, or has been (or may have been) otherwise processed illegally or in violation of the Agreement. In addition, the Supplier must immediately take the necessary emergency measures to secure the Confidential Information and to prevent or minimise any possible adverse consequences.
- 8.4 The provisions of this section shall continue to apply notwithstanding the completion, termination or expiry of this Agreement for any reason.

9 Use of the BIS Name, Acronym, Logo, or Trademarks

- 9.1 The Supplier may use the name, acronym, logo, or trademarks of the BIS only as required for internal purposes for the performance of the Agreement.
- 9.2 The Supplier may not use the name, acronym, logo, or trademarks of the BIS in any internal or external marketing material, advertising, publicity releases, presentations, or any other publicly available information.

- 9.3 The Supplier may not mention the business relationship with the BIS, and the existence, nature, and terms of this Agreement, to any third party without the BIS' prior written consent.
- 9.4 The provisions of this section shall continue to apply notwithstanding the completion, termination or expiry of this Agreement for any reason.

10 Conflict of interest

- 10.1 The Supplier ensures that its contractual performance for the BIS does not give rise to any actual or potential conflict with the Supplier's obligations towards third parties.
- 10.2 The Supplier will immediately inform the BIS of a potential conflict of interest. If it is not possible to avoid a conflict or to solve it in another manner, the BIS may terminate the Agreement with immediate effect.

11 Liability

- 11.1 The parties are liable for all damages they cause to the other party in connection with the Agreement.
- 11.2 The parties shall be liable for the conduct of their employees, other auxiliaries and third parties called upon for the purpose of contract performance (such as suppliers, subcontractors, substitutes) in the same way as for their own conduct.

12 Warranties

- 12.1 The Supplier warrants and represents that the standard software has all the agreed and assured characteristics required for the intended use, as well as the characteristics that the BIS may in good faith expect based on current industry standards, and that the standard software complies with the relevant legal requirements.
- 12.2 The Supplier warrants that it is in possession of all the rights to supply its standard software in accordance with the Agreement. In particular, it is entitled to grant the BIS the rights to use the standard software according to the contractually agreed scope.

- 12.3 If the standard software contains open-source software, the Supplier shall make explicit reference to this in the quote and also in the event of any subsequent change to the standard software, stating the licensing conditions under which the open-source software is provided to the BIS.

13 Indemnity

- 13.1 The Supplier warrants that its standard software does not infringe any third party's rights. The Supplier shall indemnify and hold the BIS harmless against any and all losses, damages, liabilities, claims and expenses, (including attorney's fees and other costs of defending any infringement action) which result from, arise in connection with or are related in any way to an alleged breach of this warranty.
- 13.2 The BIS shall have no further contractual obligation to indemnify the Supplier than as stated under section 13.1 of these Terms and Conditions.

14 Import and Export Control

- 14.1 The parties acknowledge that software that originates from outside Switzerland may be subject to export regulatory requirements for high technology goods.
- 14.2 The BIS has informed the Supplier of its status as an international organisation, of the preferential customs treatment it enjoys in Switzerland and of the fact that its importation of software and related technical data of all kinds is not subject to any restrictions.
- 14.3 The Supplier ensures compliance with any export restrictions and import regulations from the place of origin to the place of delivery in accordance with the Agreement. The Supplier informs the BIS in writing about any export restrictions in the country of origin.
- 14.4 A customs declaration form (form number 14.60) can be provided by the BIS upon request of the Supplier. It is recommended that the customs clearance be carried out in Basel.

15 Termination for Good Cause

- 15.1 The parties shall have the right to terminate the Agreement without notice for good cause at all times. Good cause includes the following in particular: the occurrence of (i) events or circumstances that make the continuation of the contractual relationship unreasonable for the terminating party, especially the persistent or repeated breach of essential contractual obligations; and (ii) bankruptcy or similar proceedings.

16 Consequences of Ending the Contractual Relationship

- 16.1 If the Agreement is terminated on any grounds whatsoever, the Supplier shall assist the BIS, if necessary and for appropriate remuneration, in the instruction of any new supplier, in the return or transfer, to the BIS or to a new supplier, of the BIS Data (in the agreed format or in a common format that is reusable for the BIS), as well as in the return or transfer of the software that the Supplier operated for the BIS, including the surrender of current, electronically editable versions of documentation prepared in connection therewith by the Supplier under the Agreement.

17 Audit

- 17.1 The Supplier may request access to books, computers, records, or other information that relate to the BIS's use of the standard software ("Records") at most once a year, during the term of the Agreement and up to one year thereafter, to verify the BIS's compliance with the use of the standard software.
- 17.2 The Supplier must inform BIS in advance of the scope, content and procedure of the audit and seek the BIS's prior written consent to the audit, such consent is not to be unreasonably withheld.
- 17.3 Upon written request from the Supplier and subject to at least [20] working days prior notification, the BIS shall provide access to an independent, internationally recognised audit firm to review the Records. The audit firm and any individuals carrying out the audit ("Auditors") must sign a non-disclosure agreement with the BIS before the commencement of the

audit. The Supplier will ensure that the audit firm will inform the Auditors of the BIS Code of Conduct for Contractors, as may be updated from time to time (available at <https://www.bis.org/suppliers/cocfc.pdf>), and that the audit firm warrants that its auditors will comply with the BIS Code of Conduct for Contractors. The Auditors will be required to pass a background check prior to the commencement of the audit.

- 17.4 The audit must be carried out (i) within [one] business day during the regular business hours of the BIS, (ii) in a manner that minimises disruption to the BIS's business operations, (iii) in compliance with the rules, regulations, guidelines, security, confidentiality, safety and other policies of the BIS, which the BIS will provide in advance upon request, (iv) while on the BIS's premises in supervision by the BIS's personnel, and (v) without installing any tools or applications on the BIS's systems and without remote access to the BIS's systems.
- 17.5 All costs associated with such audit shall be borne by the Supplier. In the event of under-licensing at the time of the audit, the BIS shall pay to the Supplier the amount that would have been due to the Supplier if the licence had been concluded at the beginning of the Agreement in accordance with BIS's actual use. In no event shall BIS be liable for any penalty.

18 Amendments

- 18.1 No party shall have the right to unilaterally change any part of the Agreement.

19 Applicable law and Jurisdiction

- 19.1 **This Agreement shall be construed in accordance with and governed by the substantive laws of Switzerland**, without regard to its conflict of law provisions. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980 is excluded.
- 19.2 The **courts of Basel, Switzerland, shall have exclusive jurisdiction** for disputes arising out of or in connection with this Agreement.