

## Purchase Order Terms and Conditions

"**Avanade**" means Avanade Australia Pty Ltd (ABN 58 093 925 207), having a place of business at Level 3, 48 Pirrama Road, NSW 2009 or an Affiliate, as defined below, as the case may be.

"**Affiliate**" means any Avanade entity, whether incorporated or not, that is controlled by or under common control with Avanade Inc, and its successors; and "control" or variants of it shall mean the ability, whether directly or indirectly to direct the affairs of another by means of ownership, contract, or otherwise.

"**Conditions**" means these Terms and Conditions of Purchase.

"**Deliverables**" means the goods and or services, as the case may be, detailed in the Purchase Order.

"**Intellectual Property Rights**" means all intellectual and industrial property rights anywhere in the world including without limitation, any invention, patent, design or utility model rights, any copyright and trade marks, database rights, topography rights, and any other rights of a like nature whether or not registered, and the right to apply for them.

"**Project Materials**" means works created by the Supplier in the course of provision of the Deliverables.

"**Purchase Order**" means the attached Purchase Order requesting the supply of Deliverables.

"**Specification**" means the specification; description; function; or any other requirements set out in the Purchase Order and attached documents (including drawings or descriptions) and the Supplier's product documentation.

"**Supplier**" means the person or entity which is to provide the Deliverables pursuant to the Purchase Order.

### 1. Purchase Order

1.1 The Purchase Order issued by Avanade will set out the Deliverables required by Avanade, and the Supplier agrees that any Deliverables supplied under the Purchase Order shall be subject to these Conditions, except where Avanade and the Supplier have executed an Avanade issued agreement specific to the supply of the Deliverables, in which case the terms of such an agreement shall govern the supply of the Deliverables and shall supersede these Conditions.

1.2 Subject to Clause 1.1, the parties agree that the Purchase Order together with these Conditions includes all of the terms and conditions relating to the Deliverables specified in the Purchase Order to the exclusion of any other terms and conditions relating to such Deliverables on any other purchase order, confirmation, invoice, payment slip or any other related document, and in particular, those documents issued by the Supplier.

1.3 In the event that the Supplier has to design, develop or manufacture goods specified on the Purchase Order specifically for Avanade, the Supplier shall submit to Avanade a prototype and/or plans for approval. The Supplier must obtain written confirmation from Avanade that the prototype and/or plans have been accepted and full production of the goods can commence before commencing the work. Avanade will not be liable to reimburse any costs incurred by the Supplier prior to receipt of this written confirmation.

### 2. Delivery

2.1 The Deliverables shall be delivered or performed on the date and at the place specified in the Purchase Order.

2.2 Unless expressly agreed otherwise the Deliverables shall be delivered during Avanade's normal business day. Delivery and any other costs associated with the supply of the Deliverables shall be at the Supplier's own expense unless otherwise stated on the Purchase Order.

2.3 Avanade's signature given on any delivery note or other documentation presented for signature in connection with delivery of the Deliverables is evidence only of the number of packages received, and not evidence of actual quantity, quality or condition of Deliverables.

### 3. Specifications and Rejection

3.1 The Deliverables must conform in all respects with the Specifications. All goods in the Deliverables must be of sound materials, workmanship and (where the Supplier is responsible for this) design, and shall be equal in all respects to relevant samples or patterns provided by or accepted by Avanade. All services in the Deliverables shall be performed in a sound manner and shall be free from all defects including (to the extent that the Supplier is responsible for design) defects in design or installation.

3.2 All Deliverables must pass Avanade's acceptance tests. Avanade shall be entitled to reject all Deliverables that do not meet the provisions of Clause 3.1. If by the nature of the Deliverables any defects or any failure to conform with Clause 3.1 does not or would not become apparent (despite the carrying out of any examination) until after use, Avanade may reject the same even after a reasonable period of use.

3.3 Any Deliverables rejected under Clause 3.2 must at Avanade's request be replaced or reperformed as the case may be by the Supplier at the Supplier's expense. Alternatively, Avanade may elect (at Avanade's option) to cancel the Purchase Order pursuant to Clause 9 in respect of the Deliverables in question and the whole of the remainder of the Deliverables (if any) covered by the Purchase Order. All rejected Deliverables will be returned to the Supplier at the Supplier's expense.

3.4 The Deliverables shall be in accordance with any applicable Australian or international standards. The Deliverables shall comply at the time of delivery or performance with all relevant requirements of any applicable statute, statutory rule or order or other instrument having the force of law.

3.5 Notwithstanding Avanade's rights under Clauses 3.3, Avanade shall be entitled to return any goods to the Supplier for a full refund within 15 days of delivery without incurring any costs or charges whatsoever.

#### **4. Inspection**

4.1 The Supplier shall permit Avanade access to its premises at any reasonable time in order to inspect the Deliverables in the course of manufacture, provision or storage. If, as a result of such inspection, Avanade is not satisfied that the Deliverables will comply with the Purchase Order, it shall notify the Supplier in writing and the Supplier shall, as soon as possible, take all necessary steps to ensure compliance. An inspection or notification by Avanade shall not relieve the Supplier of its obligations under the Purchase Order.

#### **5. Property and Risk**

5.1 Property and risk in goods shall pass to Avanade when they are delivered in accordance with Clause 3. Such passing of property and risk shall be without prejudice to any right of rejection arising under these Conditions.

#### **6. Prices and Payment**

6.1 Prices and the currency shall be as specified in the Purchase Order. For the avoidance of doubt, prices do not include GST, which shall be applied in addition to the prices where applicable.

6.2 No increase in price shall be made or accepted unless agreed in writing by Avanade.

6.3 The Supplier shall submit an invoice once the Deliverables have been delivered. Invoices shall normally be submitted by e-mail in a non-manipulable format such as .pdf .tif or .jpg to [apssc.rtp.au.inv@accenture.com](mailto:apssc.rtp.au.inv@accenture.com). Exceptionally, where Supplier is unable to submit invoices by such means and in such format, it may deliver invoices to GPO Box 3434 SYDNEY NSW 2001.

6.4 Avanade shall pay the Supplier within 60 days of receipt of a correct and duly submitted invoice. The deemed date of receipt by Avanade of an e-mailed invoice will be the first business day following the date of the e-mail submission. The deemed date of receipt of an invoice submitted by mail shall be the second business day following date of dispatch. In the event that an invoice remains unpaid for a period of 60 days following date of deemed receipt, Supplier shall immediately notify Avanade.

6.5 If Avanade disputes any prices or charges in an invoice, it shall notify Supplier within ten (10) business days of receipt of the relevant invoice, identifying clearly the disputed part of the relevant invoice. Supplier shall cancel the original invoice and reissue an invoice for the undisputed amount within 5 days.

6.6 The parties shall promptly investigate any disputed invoice and will act reasonably to seek to resolve the dispute. Any disputed invoice or part of an invoice agreed by Avanade to be payable following resolution shall be re-invoiced as appropriate. Notwithstanding the foregoing, Supplier shall continue to provide the deliverables as if the dispute did not exist.

6.7 Supplier shall be responsible for ensuring that all information on invoices is complete and accurate, and that specific reference is made to financial charge codes, purchase order numbers or job numbers submitted by Avanade personnel.

## 7. Intellectual Property Rights

7.1 The Supplier warrants that neither the sale nor use of goods nor the performance or provision of the Deliverables will infringe any Australian or foreign copyright, patent or trade mark.

7.2 The Supplier shall indemnify Avanade from all actions, costs, claims, demands, expenses and liabilities whatsoever resulting from any actual or alleged infringement as set out in Clause 7.1 and the Supplier shall defend or (at Avanade's option) assist in the defence of any proceedings which may be brought in that connection.

7.3 In the event of such claim or action, the Supplier shall do all things and take such action (including procuring any required licenses, consents or authorisations or modifying or replacing any infringing item) without charge to Avanade as shall be necessary to prevent or remedy (without detracting from the overall functions or performance) any infringement, provided that Avanade will use reasonable endeavours to mitigate its loss; the Supplier shall at all times act in such a way as to minimise interruption and disruption to the operation of Avanade's business.

7.4 All Intellectual Property Rights in any of the Supplier's pre-existing materials used in the provision of the Deliverables to Avanade shall be owned by the Supplier. Notwithstanding the above, the Supplier hereby grants Avanade an irrevocable royalty free license to use, copy or modify such pre-existing materials for its internal business purposes.

7.5 The Intellectual Property Rights in the Project Materials shall vest upon creation in Avanade. In the event that the Supplier requests and Avanade grants written consent such that the Intellectual Property Rights for specific Project Materials are not assigned to Avanade, the Supplier hereby grants to Avanade and its Affiliates an irrevocable royalty free licence to use, copy or modify the Project Materials with a right to sublicense those Project Materials to third parties for any purposes intended by Avanade and notified to the Supplier from time to time.

## 8. Liability

8.1 Nothing in this Purchase Order shall operate so as to exclude, restrict or modify the application of the Trade Practices Act 1974 (Cth) or any equivalent State or Territory legislation, the exercise of a right conferred by such a provision, or any liability of either party to this Agreement for a breach of a condition or warranty implied by such a provision, where this legislation would render it void to do so.

## 9. Cancellation

9.1 If a party is delayed or prevented from performing its obligations under the Purchase Order by circumstances beyond its reasonable control (including acts of God, war, riot etc.), such performance shall be suspended and if it cannot be completed within a reasonable time after the due date as specified in the Purchase Order, the Purchase Order may be cancelled by the other party.

9.2 Subject to Clause 9.1, Avanade reserves the right to cancel the whole or any part of the Purchase Order or any consignment on account thereof if the same is not completed in all respects in accordance with the instructions and Specifications specified in the Purchase Order and with the foregoing conditions, in particular with Clauses 2.1, 3.1, and 3.4, compliance with which by the Supplier is of the essence and a fundamental condition of these Conditions. If Avanade cancels the whole or any part of a Purchase Order or consignment it shall only be obliged to pay the Supplier in relation to such items of the Purchase Order or consignment that have been expressly accepted by it. In the event of Avanade cancelling the Purchase Order as to all or any of the Deliverables covered thereby, Avanade shall be entitled to purchase from a third party a like quantity of Deliverables of similar description and quality and in that event the Supplier shall be liable to reimburse to Avanade on demand all additional expenditure incurred by Avanade in connection with Avanade's said cancellation including any increase in price over that stated on the Purchase Order.

## 10. General

10.1 The Supplier agrees:

- (a) that it shall comply, and warrant that it has complied, with the Data Privacy Act (Cth)19988 and any other applicable data protection laws and regulations (together, the "Data Protection Laws") and Avanade's data privacy policy; and
- (b) that it shall not, by any act or omission, put Avanade in breach of any of the Data Protection Laws, in connection with the Purchase Order.

10.2 The Supplier maintain in effect throughout the time required for Supplier to perform its obligations pursuant to these Conditions and for a period of one year thereafter, the following types of insurance at the following minimum amounts:

- a. Public Liability insurance with limits of not less than \$10,000,000 per occurrence and in the aggregate and including the following: products and completed operations coverage; coverage for claims and lawsuits brought anywhere in the world. Such policy shall respond as primary and non-contributory to any other insurance.
- b. Workers Compensation in compliance with local law.
- c. where applicable, Automobile Liability covering Suppliers's owned, non-owned, and hired automobiles with a minimum combined single limit of \$2,000,000 per occurrence for bodily injury and property damage liability.

Supplier's insurance carrier must have an A.M. Best rating of A-VII or above. Supplier shall name Avanade and its officers, directors, employees, agents, affiliates and subsidiaries as additional insured under the required Public Liability insurance. Supplier shall furnish certificates of insurance compliant with these requirements before providing products or services, at policy renewal and upon Avanade's request. If any of the foregoing insurance policies are cancelled or changed by Supplier or its insurer so as to affect the coverage required by these Conditions, Supplier shall notify Avanade in writing no less than thirty (30) days prior to such cancellation or change. Supplier shall cause its authorised subcontractors, agents, or assignees to maintain the same or substantially similar insurance coverage.

10.3 All Purchase Orders and any information disclosed to the Supplier by Avanade in relation to the same is confidential and the Supplier will not divulge or disclose it to any third party without prior express consent in writing from Avanade.

10.4 The Purchase Order shall not be assigned, charged, transferred or otherwise encumbered in whole or in part by the Supplier without the prior written consent of Avanade.

10.5 The Supplier shall not be relieved of any of the Supplier's obligations under these Conditions by the appointment of a subcontractor. The Supplier shall remain primarily liable for the acts or omissions of any subcontractors it appoints.

10.6 No delay or failure by either party to exercise any of its powers, rights or remedies under these Conditions shall operate as a waiver of them.

10.7 If any part of these Conditions are found by a court of competent jurisdiction or other competent authority to be invalid, unlawful or unenforceable then such part will be severed from the remainder of these Conditions which will continue to be valid and enforceable to the fullest extent permitted by law.

10.8 Subject to Clause 1.1, the Purchase Order contains the entire agreement between the parties and supersedes all negotiations, representations and proposals (written and oral) relating to its subject matter.

10.9 These Conditions or document made a part hereof or agreed to in connection herewith may not be amended, modified or waived in any respect whatsoever except in writing signed by the parties.

10.10 The parties hereby agree that the provisions of Clauses 7, 8, 10.1, and 10.3 shall survive any termination of these Conditions.

10.11 The Supplier acknowledges that it is engaged as an independent contractor, and nothing in these Conditions or any Purchase Order shall be deemed or construed to create a joint venture, partnership, or employee/employer relationship between Supplier and Avanade.

10.12 These Conditions and any Purchase Order shall not be an exclusive agreement between the parties. Nothing shall prevent Avanade from procuring services which are the same as or similar to the Deliverables from any third party.

10.13 Each party agrees that it has not been induced to agree to these Conditions by any representation other than that expressly set out herein or in any Purchase Order.

10.14 Compliance with Laws. Supplier warrants that it is in compliance with all applicable local and international laws, regulations and standards, including but not limited to, those relating to the design, manufacture, testing, labelling, sale and transportation of the Deliverables. Supplier will comply at all times with all applicable laws and regulations of any jurisdiction in which Supplier acts, including without limitation the U.S. Foreign Corrupt Practices Act ("FCPA") and all other anti-bribery laws. A summary of the requirements of the FCPA and Avanade's anti-bribery policy is attached in the Schedule appended to these Conditions.

10.15 Avanade is committed to conducting its business free from unlawful, unethical or fraudulent activity. Suppliers are expected to act in a manner consistent with the highest ethical and professional standards of conduct.

10.17 Unless otherwise specified, these Conditions will be governed and construed in accordance with the law of the State of New South Wales and the parties submit to the exclusive jurisdiction of the courts of the State of New South Wales.

10.18 Supplier warrants that it has in effect a Business Continuity Plan ("BCP") as described in its response to the request for proposal in connection with this Agreement, if any, and that Supplier shall maintain such BCP in effect for the term of this Agreement. Supplier shall test its BCP a minimum of once each calendar year and inform Avanade in writing that such testing has been completed and (a) list any deficiencies revealed, or (b) confirm that no deficiencies were found. Supplier shall notify Avanade with at least sixty (60) days prior written notice of any intention to substantially modify or terminate such BCP. In the event that Supplier (a) does not have a BCP in effect on the Effective Date of this Agreement, (b) did not respond to a request for proposal or (c) did not include a BCP in its response to a request for proposal in connection with this Agreement, Supplier shall establish a detailed BCP and provide it to Avanade no later than thirty (30) days following the Effective Date of this Agreement and such BCP shall be subject to Avanade's written approval. Upon approval, such BCP shall be considered the BCP referred to in this section and shall be subject to the foregoing terms. In addition, upon request by Avanade, but not more than once in every calendar quarter, Supplier shall provide assurance of its financial health by submitting to Avanade such financial reports or documentation normally maintained by Supplier in the course of its business as may be reasonably requested by Avanade.