

# Southwest One standard purchase order terms and conditions

*March 22, 2011, to current date*

**Agreement documents:** This Purchase Order (PO) and any attachments are the sole and exclusive agreement of Buyer and Supplier for the products and services in this PO, and no other document, including the Supplier's proposal, quotation or acknowledgement form, will be part of this PO, unless specifically agreed to in writing by Buyer. Terms contained in the Supplier's response to, or acknowledgement 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.

**Prices:** If the PO does not include pricing, the price for the products or services provided hereunder will be Supplier's lowest prevailing market price for such products or services. Supplier is not entitled to reimbursement of expenses incurred in connection with fulfilling this PO, except as otherwise agreed in writing by Buyer.

**Taxes:** Supplier is responsible for and will pay all applicable taxes, charges, fees, levies, or other assessments imposed or collected by any governmental entity (or political subdivision thereof) 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.

**Terms of payment and acceptance:** 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 or services, whichever is later. Payment will not be deemed acceptance of products or services, and such products or services will be subject to inspection, test, acceptance or rejection. At Buyer's option, Buyer may reject products 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.

**Termination:** This PO may be terminated by Buyer with or without cause. If Buyer terminates without cause, Buyer will pay Supplier for Supplier's actual and reasonable expenses for work that has been satisfactorily completed as of the date of termination, but in no event will such payment exceed the agreed upon prices.

Notwithstanding the above concerning termination, either party may terminate this PO, without any cancellation charge, if any of the following events occurs in respect of the other party or the terminating party has reasonable grounds to believe that one is likely to occur, namely that the other party: (i) has a meeting convened for the passing of a resolution for its winding up (other than a voluntary liquidation for the purposes of reconstruction); (ii) enters into a scheme or voluntary arrangement with its creditors; (iii) is the subject of a petition presented for the appointment of an administrator; (iv) has a receiver appointed over any of its property or assets; or (v) is the subject of a petition presented for his bankruptcy. Such termination will be effective upon notice in writing to the other party, liquidator, administrator or receiver.

**Imports and exports:** Supplier is the importer and exporter of record. Supplier will comply with all import and export laws and administrative requirements, including the payment of all associated duties, taxes and fees and all applicable laws, regulations, certifications and registrations associated with the import or export of Supplier's products including but not limited to product safety, electromagnetic compatibility, telecommunications, product take-back/recycling and environmental requirements. 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, certification and or test results relating to the products or services and any other and will notify Buyer in writing of any changes to the information provided by Supplier to export and import products. For products that will be imported by the Buyer, Supplier will provide promptly any requisite information, documentation, certification and/or test results for Buyer to comply with applicable import laws and administrative requirements.

**Packages/transportation:** Supplier will comply with: (i) all country of origin marking instructions 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 pursuant to the [Shipping transportation guidelines](#). Default minimum requirements for (i) and (ii) are found under [Instructions for exports to Southwest One](#).

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

**Supply social chain responsibility:** Supplier will comply with the [Supplier Conduct Principles Letter Agreement](#)

**Risk of loss; delivery:** Title and risk of loss remain with Supplier until products purchased under this PO have been delivered to Buyer at the location specified in the PO 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. Supplier will promptly notify Buyer if it is unable to comply with the delivery date specified in this PO.

**Warranties:** Supplier warrants that:

- i. it has the right to enter into this PO;
- ii. 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,
  - a. labor and employment laws,
  - b. sale and supply of goods and services laws,
  - c. 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;
    - iii. agreeing not to transfer to Southwest One any hardware, software, technical data or services controlled under the U.S. International Traffic in Arms Regulations ("ITAR");
  - d. health and safety and 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;
  - e. anti-corruption and anti-bribery laws; and
  - f. laws and regulations regarding freedom of information, data privacy and data protection (including requirements for notification to or registration with the UK data protection authorities);
- iii. its execution of this PO will not result in a breach of any other agreements or contracts to which it is a party;
- iv. no claim, lien, or action exists or is threatened against Supplier that would interfere with Buyer's rights under this PO;

- v. products and services do not infringe any privacy, publicity, reputation or intellectual property right of a third party;
- vi. (A) it has disclosed to Buyer in writing the existence of any third party code, including without limitation open source code, that is included in or is provided in connection with the product(s) or services and (B) it and the products and services comply fully with all licensing agreements applicable to such third party or open source code;
- vii. all authors have agreed not to assert their moral rights in the products and services, to the extent permitted by law;
- viii. products are free from defects in design and free from defects in material and workmanship;
- ix. products are safe for use consistent with and will comply with the warranties, specifications and requirements of this PO;
- x. products do not contain harmful code and Supplier will not engage in electronic self-help;
- xi. 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;
- xii. products are new and do not contain used or reconditioned parts unless Buyer agrees otherwise in writing;
- xiii. 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 this PO;
- xiv. it will not offer, promise or make, directly or indirectly any payment (or otherwise provide any financial or other advantage) for the purpose of improperly influencing (or inducing anyone to influence) decisions or actions of any person including but not limited to any official of a government controlled entity or public international organization. This means, for example, any form of facilitation payments (i.e. small bribes to facilitate routine government action) is prohibited.
- xv. (A) it will implement and maintain appropriate technical and organizational measures and other protections for Personal Data (including, without limitation, not loading any Personal Data provided to Supplier on (a) any laptop computers or (b) any portable storage media that can be removed from Supplier's premises unless each case (i) such data has been encrypted and (ii) such data is loaded onto portable storage media solely for the purpose of moving such data to off-site storage), (B) it will report to Buyer any breaches of security of Personal Data immediately after discovery ("Security Incident"), (C) it will cooperate fully with Buyer in investigating any Security Incidents , (D) it will cooperate fully with Buyer's requests for access to, correction of, and destruction of Personal Data in Supplier's possession, and (E) it will comply with all instructions or other requirements provided or issued by Buyer from time to time relating to Personal Data;
- xvi. it will not export, directly or indirectly, any technology, software or commodities of U.S. origin or having U.S. content provided by Buyer or their direct product to any of the countries or to nationals of those countries, wherever located, listed in U.S.

- Export Administration Regulations, as modified from time to time, unless authorized by appropriate government license or regulations;
- xvii. it will not, nor will it authorize or permit Supplier Personnel to, disclose, export or re-export any of Buyer's information, or any process, or product that is produced under this PO, without prior notification and compliance with all applicable laws, regulations and ordinances, including UK and U.S. export control regulations.

**Intellectual property:** Supplier grants Buyer all rights and licenses necessary for Buyer and its affiliates to use, transfer, pass-through, and sell the products and services and to exercise the rights granted under this PO.

**Ownership of products:** Except for products consisting of software (which is licensed as provided under Intellectual Property above), all work product developed by Supplier and provided to Buyer under this PO are and shall remain the personal property of Buyer.

**Indemnification:** Supplier agrees to defend, hold harmless, and indemnify Buyer and its affiliates from any claim (including without limitation costs, expenses and legal fees) arising from (a) claims that any product infringes any intellectual property rights, (b) the failure of Supplier to comply with its warranties and obligations under this PO or (c) a Security Incident. 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 this PO; (ii) modify the product so it is non-infringing and in compliance with this PO; (iii) replace the product with non-infringing ones that comply with this PO; or (iv) accept the return or cancellation of the infringing product and refund any amount paid.

**Limitation of liability:** To the extent permitted by local law, in no event will Buyer or its affiliates be liable for any economic loss (including loss of profits, business, revenue, goodwill or anticipated savings), special, indirect or consequential loss. Additionally, each party will be liable without limit for death or personal injury resulting from the negligence of Buyer Personnel or Supplier Personnel (as the case may be), and Supplier will be liable without limit for any breach of its obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982. In no event shall Buyer's liability to Supplier exceed the total amount of fees actually paid by Buyer to Supplier hereunder.

**Assignment:** Supplier will not assign its rights or subcontract its duties without Buyer's written consent. Any unauthorized assignment is void.

**Exchange of information:** All exchanges of information between the parties pursuant to this PO will be considered non-confidential. If the parties intend to exchange confidential information, such exchanges shall be made under a separate written confidentiality agreement. For any Personal Data relating to Supplier's personnel that Supplier provides to Buyer, Supplier will comply with all legal requirements relating to such exchange of

information, including but not limited to obtaining the informed consent of such personnel to release the information to Buyer and to allow Buyer to use, disclose, and transmit such information on a worldwide basis among Buyer and its affiliates in connection with this PO.

**Right to audit:** Buyer may, on reasonable notice to Supplier, audit Supplier's books, ledgers, supporting records/documentation and related procedures and controls, relating to any charges paid by Buyer in connection with this PO.

**Insurance:** Supplier shall obtain and maintain all applicable and appropriate insurance, (including, without limitation, business, workers' compensation, auto, errors and omissions, professional and commercial general and liability insurance) in an amount consistent with Supplier's industry practice. Each policy shall name Buyer as a loss payee or additional insured, as appropriate.

**Applicable laws:** This PO shall be construed in accordance with and governed by the laws of England and Wales and the parties agree to submit to the exclusive jurisdiction of the courts of England and Wales.

**General:** Any reproduction of this PO by reliable means will be considered an original of this PO. The United Nations Convention on Contracts for the International Sale of Goods does not apply. The parties expressly waive any right to a jury trial regarding disputes related to this PO. Unless otherwise provided by local law without the possibility of contractual waiver or limitation, any legal or other action related to this PO must be commenced no later than two (2) years from the date on which the cause of action arose.

No modification, amendment, supplement to, or waiver of this PO by Buyer shall be binding upon the parties unless made in writing duly signed by both parties and specifically referencing this PO. Buyer's failure to exercise any right hereunder shall not operate as a waiver thereof.

Both shrinkwrap and clickwrap licenses accompanying any product consisting of software and online Terms of Use or Terms of Service relating to services provided online are null and void, and the terms and conditions of this PO prevail.

Any services performed by Supplier shall be performed as an independent contractor, and Supplier is solely liable for applicable payroll or income taxes.

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 testimonials or customer listings) or press releases without the prior written consent of Buyer.

**Compliance with laws:** Supplier will comply with all UK public procurement laws and regulations applicable to it in connection to this PO, including but not limited to ensuring

that Supplier fulfils all regulatory approvals and conditions required by UK Public procurement laws and regulations in order to enter into and fulfil this PO.

**Conflicts of interest:** In the performance of this PO, it is Supplier's responsibility to avoid: (1) any actual or apparent conflict between Supplier's duties or obligations to other parties, including the UK Government, and such duties and obligations assumed under this PO and (2) disclosure of information which would, or would appear to, violate such duties and obligations to third parties. In the performance of this PO, Supplier shall not make or participate in any marketing calls or contacts with the UK Government or others which might create the possibility or appearance of a conflict of interest or an actual conflict of interest. Supplier also agrees that, if subsequent to the issuance of this PO, Supplier finds that a conflict, or what may appear to be a conflict, develops because of a relationship created or intended to be created between Supplier or Supplier's agents, or employees and any third party or with an agency or other representative of the UK Government or any other Government, Supplier shall immediately notify Buyer, and Buyer shall have the right, at its sole discretion, to terminate this PO on notice. Upon exercise of such right of termination, Buyer's only obligation to Supplier shall be to reimburse Supplier for proper services satisfactorily completed as of the date of termination.

**Third Party Rights:** Neither party intends any third party to have the right to receive the benefit of any provision of this Agreement and the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.