

Vodafone Single International Purchase Order Terms



A. Vodafone Purchase Terms

These terms set out the contractual relationship between Vodafone and the Supplier and come into effect on the date of the Purchase Order. Supplier's own terms and conditions are excluded and do not apply to the Order. Capitalised terms are defined below.

1. Performance and Delivery

1.1 Supplier shall supply the Products and/or perform the Services in accordance with the Order. Risk and title pass on delivery.

1.2 Supplier shall comply with all reasonable instructions provided by Vodafone.

2. Price, Invoicing, Payment and Expenses

2.1 All pricing, invoicing and payments shall be in the currency stated in the Purchase Order.

2.2 The price is exclusive of sales tax (and any similar tax in any jurisdiction) and inclusive of all other duties, levies, costs or expenses of whatever nature, unless otherwise stated on the Purchase Order. Any included expenses will only be paid by Vodafone if they are incurred in accordance with the Purchase Order and the Vodafone Supplier Expense Policy.

2.3 Supplier shall send Vodafone an invoice (meeting all requirements of Vodafone and the relevant tax authorities) to the address indicated on the Purchase Order. Supplier's right to invoice shall not be considered acceptance that the Products and/or Services comply with the Order, and is without prejudice to all other rights Vodafone may have.

2.4 Vodafone shall pay invoices meeting the requirements set out in this clause 2 within the payment period as set out in the Purchase Order unless there has been any breach of the Order by Supplier, in which case Vodafone may withhold payment (in whole or in part and to the extent permitted by Applicable Law) until the breach is rectified.

2.5 Vodafone may set off any sums owed to Vodafone by Supplier against the price.

2.6 If Supplier incorrectly charges sales tax to Vodafone Supplier shall repay to Vodafone any overpaid sales tax (where there has been overpayment) and/or any related interest, penalties and costs within 30 days of the error being identified.

2.7 If Vodafone is required by law to deduct withholding tax from the price, Vodafone shall: (i) pay the price less withholding tax; and (ii) provide evidence to Supplier that it has passed the withholding tax on to the relevant authority.

2.8 Supplier warrants that it is and will be tax resident in its country of incorporation at the time of placement and fulfilment of the Order.

3. Warranties

3.1 Supplier warrants that it shall supply all Products and Services in accordance with the Order and Applicable Law and ensure that all work is undertaken by appropriately qualified, trained and skilled personnel.

3.2 Unless otherwise specified in the Order, Supplier warrants that each Product shall remain free from material defects and errors in design, materials and workmanship under normal use and service (save those caused by normal wear and tear) for 24 months from the date of delivery, except in the case of software, that such software shall perform error free in conformance with the Order for 12 months from the date of delivery.

4. Termination

4.1 Either party may terminate this Order immediately on formal written notice and without liability to the other party if: (i) the other party commits a material breach of the Order and, in the case of a breach capable of remedy, fails to remedy such breach within 14 calendar days after receiving formal written notice to do so; or (ii) if the other party becomes insolvent or otherwise unable to pay its debts as they fall due.

4.2 Additionally, where Supplier is the breaching party, Supplier shall repay within 14 calendar days any part of the price which has been paid and Vodafone may return any Products or part thereof to Supplier (at Supplier's expense).

4.3 Vodafone may terminate the Order at any time for convenience without liability to Supplier. In such circumstances, Vodafone shall pay a reasonable proportion of the price for any Products or Services provided and any committed and substantiated costs reasonably incurred by Supplier prior to termination.

5. Intellectual Property Rights

5.1 Each party retains ownership of its own pre-existing intellectual property rights.

5.2 New IPR shall be owned by Vodafone, and Supplier hereby assigns (by way of present assignment of future rights) all such New IPR to Vodafone.

5.3 Supplier hereby grants (or shall procure the grant) to Vodafone a royalty-free, non-exclusive, worldwide, perpetual, irrevocable, sub-licensable and transferable to any VGC or third party supplier, licence to use Supplier's pre-existing intellectual property rights and/or third party owned intellectual property rights used in its fulfilment of the Order to: (i) use, exploit or licence any Products or Services in the course of Vodafone's business and for any reasonably incidental purpose (including for use by their direct and indirect customers); (ii) use, exploit, licence or enforce any New IPR; and (iii) in relation to software, transfer it to any platform.

5.4 Supplier shall not use any material subject to third party owned intellectual property rights in any Products or Services to the extent such third party material imposes licence obligations on Vodafone and/or its sub-licensees or otherwise varies the licences provided to Vodafone in clause 5.3. If Supplier wishes to do so, it shall: (i) notify Vodafone in advance of any third party material it wishes to use and give details of any licence variations or obligations placed on Vodafone; and (ii) obtain Vodafone's written consent prior to using such third party material in any Products or Services. Upon Vodafone's request, Supplier must provide to Vodafone all details and licensing terms of all third party materials in the Products or Services.

5.5 Vodafone may adapt, reverse engineer, decompile, disassemble or modify software supplied under this Order as permitted by Applicable Law.

5.6 Where a threat or claim of infringement of intellectual property rights jeopardises Vodafone's ability to fully and freely receive, hold and make use of any Products, Supplier shall (without prejudice to any other rights of Vodafone) either obtain appropriate licences or otherwise supply re-designed Products to enable Vodafone's continued exploitation of such Products.

6. Confidentiality

6.1 Each party shall handle the other party's confidential information received by it in connection with the Order on the following basis: (i) keep it confidential for 3 years after

date of disclosure; (ii) use it solely for the purpose of performing its obligations or exercising its rights in respect of the Order; (iii) not disclose it to any person save to its own directors, officers, employees or professional advisors (or those of its group companies) who need it to perform obligations, exercise rights or conduct audits in connection with the Order, or as required by Applicable Law or by any judicial or regulatory authority of competent jurisdiction (provided that, where permitted, the disclosing party informs the other party prior to any such disclosure); (iv) ensure that such persons keep it confidential; and (v) return or destroy it on termination of the Order save where it is necessary to keep it for regulatory reasons in secure archives.

6.2 These provisions do not apply where the confidential information received: (i) is or becomes public knowledge without breach of the Order; (ii) was already in a party's possession free of obligations of confidentiality; or (iii) is received from a third party free of obligations of confidentiality.

7. Bribery and Corruption

Compliance with Applicable Laws in relation to bribery and corruption is a matter of fundamental importance for Vodafone. Each Party, including its employees, agents, consultants, contractors and subcontractors, shall: (i) act in accordance with all Applicable Laws on bribery and corruption; (ii) not do or omit to do anything likely to cause the other Party to be in breach of any of the referred to in (i); (iii) not give, promise, receive or request any bribes (financial or other advantage), including but not limited to in relation to any public official; (iv) maintain proportionate and effective anti-bribery compliance measures (including for gifts and hospitality), designed to ensure compliance with the law under clause (i), including the monitoring of compliance and detection of violations; and (v) reasonably assist the other Party, on that other Party's reasonable request and expense, to comply with obligations related to bribery and corruption required by the law referred to in (i). The Supplier shall allow Vodafone, whether itself or through an agent, to conduct an audit of records and information held by the Supplier or its sub-contractors or any other relevant person in relation to the performance by the Supplier of its obligations under this Order. The Supplier shall only be paid by Vodafone, for goods delivered or services performed, by wire transfer or other traceable instrument to a bank account in the Supplier's name. The Supplier shall promptly notify Vodafone of any allegation of fraud, bribery or corrupt practices made against the Supplier in court, arbitration or administrative proceedings, or if any investigation is commenced in respect of such allegations; at any time during the term of this Order.

8. Policies

Supplier shall comply with Vodafone global supplier policies, as updated from time to time and available at <http://www.vodafone.com/policies>, or such other site as notified by Vodafone, as amended and/or supplemented by any local Vodafone supplier policies referred to in the Country Terms.

9. Further Provisions

9.1 Supplier shall insure against all foreseeable risks and liabilities which it may face in relation to the Order.

9.2 The Supplier is not permitted to process, or handle in any way, any personal data in conjunction with the Order.

9.3 Supplier shall not assign, novate, subcontract or otherwise transfer any of its rights or obligations under the Order without Vodafone's prior written consent. Vodafone may assign, novate, subcontract or otherwise transfer any of its rights or obligations under the Order to any VGC.

9.4 The Order will be governed by and construed in accordance with the law stated in the relevant Country Terms.

9.5 Any change to the Order and any waiver of rights thereunder may be made only by authorised representatives of the parties in writing (but for the avoidance of doubt not electronic mail).

9.6 Any clauses in the Vodafone Purchase Terms or the Country Terms that are expressly stated, or by implication intended, to apply after termination will continue in full force and effect after such termination.

9.7 In the event of any inconsistency between these Vodafone Purchase Terms, the Country Terms and any other documents issued in connection with the Order, the documents will prevail in the following order of precedence (highest level of precedence first, lowest last): (i) the Country Terms, (ii) these Vodafone Purchase Terms, (iii) the Purchase Order; (iv) any statement of work or work order; and (v) any other document.

10. Definitions

"Applicable Law" means all laws, legislation, regulations, binding codes of practice, or rules or requirements of any relevant government or governmental agency, professional or regulatory authority applicable to the Products and/or Services and their procurement; "Country Terms" means any additional terms applicable to the Purchase Order attached below;

"New IPR" means intellectual property rights arising from the development, creation, modification or customisation of any new materials in the course of the provision of the Services;

"Order" means the Purchase Order, these terms and any associated documentation identified in one of those documents as forming part of the Order (including, without limitation, any statement of work or work order);

"Products" means any goods or other products (including software, documentation, and work products of any Services) purchased by Vodafone from Supplier under the Order;

"Purchase Order" means the purchase order issued by Vodafone;

"Services" means services purchased by Vodafone from Supplier under the Order;

"Supplier" means the entity named as the Supplier on the Purchase Order;

"Vodafone" means the Vodafone entity issuing the Purchase Order; and

"VGC" means Vodafone Group Plc and any entity in respect of which Vodafone Group Plc owns (directly or indirectly) 15% or more of the issued share capital.

B. Country Terms New Zealand, Vodafone New Zealand Limited. (Level 1, 20 Viaduct Harbour Avenue, Auckland, 1010, New Zealand)

1. Liability

1.1 To the fullest extent permitted by Applicable Law, Supplier indemnifies Vodafone and each VGC for: (i) any alleged or actual infringement of intellectual property rights (including third-party intellectual property rights) or applicable software licence terms by or relating to the Deliverables or Services; (ii) any alleged or actual infringement by or on behalf of Supplier in relation to bribery and corruption; (iii) any alleged or actual infringement of Applicable Law governing the protection of personal data; (iv) any breach of confidentiality; (v) any alleged or actual infringement of any Applicable Law by Supplier or its personnel; (vi) any actual or alleged infringement of the Vodafone health and safety policy by Supplier or its personnel; (vii) any claims for loss, death or injury to any person or any damage to property caused by Supplier; (viii) any loss arising from Supplier's repudiation or wilful breach of these Vodafone Purchase Terms (ix) any loss arising from any act or omission of fraud or dishonesty; and (x) any withholding tax (including interest and penalty sums) which Vodafone is obliged to deduct under Clause 2.7 of the Vodafone Purchase Terms but which was not deducted by Vodafone from payments made to Supplier. Supplier's liability under this indemnity shall be unlimited.

2. Local Market Supplier Policies

2.1 For the purposes of Clause 8 of the Vodafone Purchase Terms, Supplier shall also comply with Vodafone's local policies that are notified to Supplier from time to time.

3. Health and Safety

3.1 Supplier shall exercise all reasonable care when visiting premises belonging to or in the control of Vodafone and shall follow all reasonable instructions in relation to the use of such premises. Where necessary or as required by Vodafone, Supplier will also comply with the accreditation and other requirements that are specified by Vodafone's health and safety accreditation tool (as amended from time to time).

4. Price and Invoicing

4.1 Notwithstanding anything to the contrary in this Order: (i) the price is exclusive of Goods and Services Tax (GST) imposed under the Goods and Services Tax Act 1985, but inclusive of all other sales tax (and any similar tax in any jurisdiction) and all other duties, levies, costs or expenses of whatever nature; and (ii) invoices shall be raised for the price plus GST, if any.

4.2 Where relevant, the price for the Products, as stated in the Purchase Order, is DDP (Delivered Duty Paid, per Incoterms 2010) to the delivery address indicated on the Purchase Order.

4.3 For the purposes of GST imposed under the Goods and Services Tax Act 1985 and dealing with New Zealand Customs, where Supplier is not registered for New Zealand GST, Vodafone will be the importer of any goods imported into New Zealand in connection with this Order, and Vodafone will pay any GST arising in relation to the importation of such goods. If the goods are to be delivered DDP then Supplier and Vodafone agree that if, Supplier does pay any GST levied by New Zealand Customs on the importation of goods into New Zealand, Supplier will be acting as agent for Vodafone in relation to the payment of GST, and Vodafone will reimburse Supplier for any GST paid on its behalf.

4.4 The parties agree that the price does not include any capitalised interest and is the "lowest price" for the purposes of valuing the subject matter that the price applies to, in accordance with section EW 32 or 34 of the New Zealand Income Tax Act 2007 - the parties will compute their taxable income for the relevant period on the basis that the price includes no capitalised interest and file their tax returns accordingly.

4.5 Vodafone represents that it is: (i) tax resident of New Zealand and is New Zealand GST registered with GST registration number 70-710-455; and (ii) acquiring the Products and/or Services in the course of its taxable activity for GST purposes.

4.6 Supplier must send the invoice to Vodafone on or after delivery of the Products and/or performance of the Services. Supplier shall (unless otherwise requested by Vodafone) issue invoices electronically via Vodafone's chosen invoicing solution. Vodafone shall provide Supplier with the required set up and training to enable Supplier to use Vodafone's eInvoicing solution.

4.7 All invoices must be received by Vodafone within 180 days of delivery of the Products and/or performance of the Services to which such invoice relates, after which time Vodafone will have no liability to Supplier to pay such late invoice.

5. Brand and Announcements

5.1 Supplier must not make any announcement relating to the Order or its subject matter or make any use of the Vodafone brand, in each case without the prior written approval of Vodafone (which may be withheld at Vodafone's sole discretion), except as required by law or regulatory authority.

6. Relationship

6.1 Nothing in an Order will shall create any partnership or joint liabilities between the parties or any authority for one party to enter into a binding commitment on behalf of the other.

7. Record keeping

7.1 Supplier shall keep comprehensive records to evidence compliance with its obligations and preserve these records for at least 10 years from creation (or longer if required by Applicable Law).

8. Law and Jurisdiction

8.1 This Order shall be governed by and construed in accordance with the laws of New Zealand and any dispute arising in relation to this Order shall be subject to the exclusive jurisdiction of the courts of New Zealand.

8.2 If either party provides notice under this Order, it shall do so in writing and in English. Delivery of such notice must be by hand or pre-paid post to the address of the other party as set out in the Order.