



PURCHASE ORDER TERMS AND CONDITIONS INDIA

These terms and conditions apply if there is not a negotiated agreement between the two parties. If there is an agreement, the terms of the agreement override these terms.

BMC Software India Pvt. Limited is hereinafter referred as "BMC". The Person, Firm or Company supplying goods or services is herein termed "The Supplier".

The Purchase Order, including the terms and conditions in it and herein contains the complete and final agreement. Any reference to Suppliers' bids or proposals shall not in any manner affect the terms, conditions and instructions unless specially agreed in contrary herein.

BMC shall not be bound by this order until Supplier executes and returns to BMC the acknowledgment copy of this order. Supplier shall be bound by this order and its terms and conditions when it executes and returns the acknowledgment copy, when it otherwise indicates its acceptance of this order or when it supplies Goods ordered and/or renders for BMC any of the services ordered herein.

Purchase Order along with these terms and conditions shall be between BMC and the Supplier on principal to principal basis

Time of delivery is deemed to be the essence of the Purchase Order and delivery must be completed not later than date mentioned in the Purchase Order.

Delay in delivery may prompt BMC to reject the goods and terminate the Purchase Order. BMC may opt to purchase goods from elsewhere, in such an event, Supplier shall pay to BMC, on demand, any loss that BMC may suffer thereby including the difference between cost of purchasing goods from elsewhere. Decision of BMC in such events shall be final and binding.

Without prejudice to above, BMC may accept late delivery, subject to deduction in payment of 1% of Purchase Order value for every week or part thereof of the delay, towards liquidated damages, subject to 10% of the order value.

Acceptance and Completion Criteria. Acceptance Criteria – Supplier will deliver all requirements confirming to the specifications contained in the purchase order. In absence of specifications or sample, the goods must be best of their respective kinds. In all cases, the goods shall be of good material and workmanship free of any defect. The BMC representative at its sole discretion will either accept or reject Supplier's delivery of goods and/or services upon delivery and subsequent inspection. BMC will not reimburse Supplier, or be liable for rejected Goods and/or Services. As deemed fit, BMC may decide to ask for replacement of rejected Goods or terminate the Purchase Order. Replacement, if any, shall be provided without any additional cost to BMC. Unless the rejected goods are replaced, The Supplier shall be liable to refund the price in case of goods already paid for.

Completion Criteria – The Supplier's obligations under this purchase order will be completed when any one of the following first occurs: Supplier satisfies the above Acceptance Criteria and completes the requirements of this purchase order or the purchase order is terminated.

Pricing – Price in the Purchase Order is firm and no change will be permissible during the execution of this Purchase Order.

Invoicing - BMC cannot process invoices that are not compliant to instructions contained herein, such invoices will be returned to Supplier.

Invoice should be raised in the name of "BMC Software India Pvt. Ltd." mentioning PO no. & addressed to "India Accounts Payable."

All invoices should carry state wise GSTIN as applicable along with complete name & address of BMC.

BMC Software India Pvt Ltd,

PAN Number: AABC6110E

Maharashtra GSTIN: 27AABC6110E1Z9,

Karnataka GSTIN: 29AABC6110E1Z5.

The Supplier is required to provide invoice in proper form and manner as prescribed under the GST rules and regulations as may be applicable from time to time; Supplier is required to comply with all the provisions under CGST, IGST and SGST Acts and allied rules, including but not limited to ensuring that the GST credit of the tax charged by the Supplier is not denied to BMC due to any non-compliance at the Supplier's end. Any failure to comply with this condition would result in breach of the agreement. Supplier would have thirty (30) days to rectify this breach. If such breach is not rectified, BMC shall be free to initiate any action as deemed fit including but not limited to suspending future order or terminating the agreement without penalty.

Payments. BMC will be invoiced upon delivery and acceptance for fees and reimbursable expenses, if any, payable hereunder. Invoiced amounts will be due and payable within ninety (90) days after receipt of a correct and undisputed invoice unless agreed otherwise in Purchase Order. Invoices received without a valid PO will be returned. All invoices submitted for payment must include a detailed description of goods and/or services and a valid BMC Purchase Order number.

Termination. At the sole discretion of BMC, this purchase order or portions of this purchase order may be cancelled at any time by providing written notice to Supplier. In the event of such cancellation, and as requested by BMC, all work will immediately cease and payment for goods and/or services rendered through the termination date will be paid in full.

Representations and Warranties. Supplier represents and warrants that it owns or has properly licensed all intellectual property that is used to supply goods and perform the services herein.

All tangible deliverables will be considered "works made for hire" and ownership of such intellectual property will belong to BMC. All deliverables, including those prepared prior to the signing of this purchase order are owned by BMC.

Indemnity – The Supplier shall indemnify BMC, its employees, officers, agents and representatives from and against all claims for royalties, damages, or other losses due to the use of patented equipment, devices or processes embodied in the goods or used in the delivery of service.

Insurance. Supplier shall obtain and keep in force during the term of this Agreement all insurance reasonably required by BMC, including, without limitation, the insurance set forth as follows: a) Workers' Compensation as prescribed by the Employees Compensation Act, 2010. b) Comprehensive or commercial general liability insurance providing coverage of not less than the equivalent of one million dollars (US \$1,000,000) per occurrence and the equivalent of two million dollars (US\$2,000,000) general aggregate, including coverage for (i) contractual liability, (ii) use of contractors or subcontractors, (iii) products liability and completed operations effective all warranty periods or two years thereafter, and (iii) broad form property coverage (electronic data processing equipment and media); c) Comprehensive motor vehicle insurance, including third party liability coverage for the minimum



statutory requirement, for owned, hired, leased, rented and non-owned vehicles; d) Professional Liability/Errors and Omissions insurance covering the errors and omissions in the performance of professional duties in the amount of the equivalent of five million dollars (US\$5,000,000) for each occurrence and in the aggregate and e) Cyber Liability coverage, including liability for network security, introduction of corrupting or harmful software code, unauthorized access, loss of data and/or Personally Identifiable Information, in the amount of the equivalent of five million dollars (US\$5,000,000) for each occurrence. All such insurance shall be primary and written with an insurance provider/underwriter with at least an A rating (as defined by A.M. Best or equivalent) and authorized to do business in the state, county and city in which goods are supplied and/or the services are to be performed. Supplier shall deliver a certificate evidencing each insurance policy to BMC naming BMC as an additional insured for items (b) and (c) above within 10 days after the receipt of this purchase order by Supplier. Each insurance policy shall contain a covenant by the issuing company that at least 30 days' advance written notice be provided to BMC prior to cancellation, non-renewal, or material modification to limits or coverage and for items (b) and (c) contain a waiver of subrogation in favor of BMC, BMC's agents, employees and customers.

Confidential Information. Each party will keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to that party or its agents and any other confidential information concerning the disclosing party's business or its products which the receiving party may obtain and the receiving party will restrict disclosure of such confidential material to such of its employees, agents or subcontractors as need to know the same for the purpose of discharging the receiving party's obligations to the disclosing party and will ensure that such employees, agents or subcontractors are subject to like obligations of confidentiality as bind the receiving party. No personal data shall be provided to the Supplier under this purchase order.

Assignment. The Supplier will not be entitled to assign this purchase order or any part of it without the prior written consent of the BMC.

No on premises work with the issuance of security badges or system access can be granted under this purchase order.

Compliance with Laws. Supplier represents and warrants that it complies with all laws of the respective jurisdiction.