

# WOI Agreement English

Agreement #

("You") and the undersigned (which may include International Business Machines Corporation ("IBM") or any entities that control, are controlled by, or are under any common control with IBM) ("Buyer") agree that the terms and conditions of this Agreement form the entire agreement regarding Buyer's standard web order invoice Services (as such term is defined below) and that these terms and conditions replace any prior oral or written communications between us regarding these Services.

The "Services" are a web based service that permit the Buyer and You to exchange business data and other binding purchase and sale obligations, which may include purchase orders, invoices, remittance advices, invoice rejections, delivery forecasts, dispatch advices and other electronic data format documents (collectively, "Documents").

The Agreement will remain in effect until terminated. There will be no charges for the Services during the term of this Agreement. Either party may terminate this Agreement without cause upon thirty (30) days prior written notice or immediately with written notice upon the other party's material breach. All Buyer purchase or license activities with You which are conducted using the Services will be governed by the applicable agreements between the parties relating to such purchase and license activities.

## **1.0 E-COMMERCE:**

The parties will conduct transactions using the Services. In order to use the Services, You will receive a User ID and password which will allow You to register for the Services. Either party may use a third party service provider for network services, provided the other party is given sixty (60) days prior written notice of any changes to such services. A Document will be deemed received on the date it is made available on the Services for access by You. The receiving party will promptly notify the originating party if a Document is received in an unintelligible form, provided that the originating party can be identified. In the absence of such notice, the originating party's record of the contents of such Document will prevail. Each party will authenticate Documents using a User ID and password, and will maintain commercially reasonable security procedures to prevent its unauthorized use.

## **2.0 LICENSES AND DATA:**

In the event Buyer provides You with any materials related to the Services ("Materials"), Buyer grants You a non-exclusive license to use, execute, reproduce, display, perform, and distribute, within your enterprise only, copies of such Materials. You agree to reproduce the copyright notice and any other

legend of ownership on any copies made under the license granted in this Section. Either party may freely use any idea, concept, know-how, or technique developed or provided by either of us, or jointly by both of us, in connection with this Agreement, subject to applicable patents and copyrights. Each party is responsible for the management and security of the data stored on or transmitted over their respective networks.

### **3.0 WARRANTY DISCLAIMER:**

Buyer does not warrant uninterrupted or error-free operation of the Services or that it will correct any defects. All Materials and Services provided to You by Buyer under this Agreement are provided WITHOUT WARRANTIES OF ANY KIND. You are responsible for the results obtained from the use of the Services.

### **4.0 LIMITATION OF LIABILITY:**

To the extent permitted by local law, in no event will either party be liable to the other for any lost revenues, lost profits, incidental, indirect, consequential, special or punitive damages. Either party's aggregate liability for any and all claims under this Agreement, regardless of the basis of such claims (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), will not exceed:

1. actual and reasonable damages for bodily injury (including death);
2. actual and reasonable damages to real property and tangible personal property; and
3. the amount of any other actual direct damages up to a maximum of U.S. \$25,000 or a local currency equivalent. The limitations in this section apply to Buyer's parent, subsidiaries, other related legal entities and subcontractors.

### **5.0 GENERAL:**

Neither of us grants the other rights to use its trademarks, trade names, or other designators in any promotion or publication without prior written consent. Each of us grants the other only licenses and rights specified herein. All information exchanged shall be non-confidential. If either of us requires the exchange of confidential information, it will be made under a separate signed confidentiality agreement. For any business personal information relating to Your employees or contractors that You provide to Buyer, You will obtain the informed agreement of such employees and contractors to release the information to Buyer and to allow Buyer to use such information in connection with this Agreement. Neither of us is responsible for failure to fulfill any obligations due to causes beyond our control. You agree not to assign, or otherwise transfer, this Agreement or Your rights under this Agreement; any attempt to do so is void. Both parties agree to comply with all applicable laws, including export and import laws and regulations. This Agreement is governed by the laws of the country where the Buyer is located, except:

1. in Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Former Yugoslav Republic of Macedonia, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Montenegro, Romania, Russia, Serbia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan, this Agreement will be governed by the laws of Austria;
2. in Australia, this Agreement will be governed by the laws of the State or Territory where the Buyer is located;
3. in Canada, this Agreement will be governed by the laws of the Province of Ontario;
4. in Estonia, Latvia, and Lithuania, this Agreement will be governed by the laws of Finland;
5. in the People's Republic of China, Puerto Rico and in the United States (including if any part of the transaction is performed within the United States), this Agreement and any dispute or controversy arising from or relating to this Agreement will be governed by the laws of the State of New York applicable to contracts executed in and performed entirely within that State and;
6. in the United Kingdom, the laws of England govern this Agreement.  
 Any legal or other action related to a breach of this Agreement must be commenced no later than two (2) years from the date on which the cause of action arose, unless otherwise provided by local law without the possibility of contractual waiver or limitation. Any reproduction of this Agreement by reliable means will be considered an original of this Agreement.

The following statement is applicable only if You are located in Canada and translates in English to "The parties have agreed to draft this Agreement in English": "Les parties ont consenti à rédiger ce contrat en langue anglaise."

As an authorized representative of my company, I accept the Web Order Invoice Agreement, as presented above.

**I Accept**

ACCEPTED AND AGREED TO:

ACCEPTED AND AGREED TO:

By:

By:

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Buyer Signature

Date

Supplier Signature

Date

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Printed name

Printed name

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Title & Organization

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Title & Organization

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Buyer Address

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Supplier Address

Form Title: Web Order Invoice Agreement  
Form Owner: Global Procurement

Form Release: 10/01  
Revision: