



General Terms and Conditions for Purchasing by the Deutsche Telekom Group (GTC Purchasing)

Part B: Specific terms for Canada

If Customer and Contractor have entered into a frame agreement applicable to this Order, the terms and conditions of that frame agreement shall govern this Order. In the event no such frame agreement exists between the parties, then the terms and conditions of this GTC Purchasing shall apply.

1. Quality Management, Environmental Protection

Contractor shall adhere to Customer's requirements for quality management and environmental protection. If stipulated in the specification, Contractor shall document the application of a quality management system in accordance with DIN EN ISO 9001:2000 or TL 9000 and shall provide data with respect to the metrics described in the TL 9000 Quality Management System Measurements Handbook.

2. Product Liability

- (1) Insofar as Contractor is accountable for a damage on the basis of product liability, Contractor undertakes to indemnify Customer against any claims for damages by third parties upon first written request.
- (2) In addition, Customer shall be entitled to reimbursement of all costs and expenses incurred in this context, in particular those incurred by product recalls. Customer shall notify Contractor of the type and scope of recall actions, if this is possible and can be reasonably expected.
- (3) Customer shall promptly inform Contractor of the assertion of claims based on product liability and shall not make any payments or recognize any claims without consultation with Contractor.

3. Goods and Materials - Delivery and Title

- (1) **Delivery.** Contractor shall deliver all goods and materials, including without limitation all equipment and/or materials (collectively "Materials") specified in the Order to the location designated by Customer, on the delivery date specified. Unless otherwise specified, all Materials will be delivered to Customer with risk of loss passing to Customer upon acceptance. Payment for the Materials delivered under this Order shall not be acceptance of such Materials. Materials shall only be deemed accepted when they have actually been counted, inspected, and tested by Customer and found to be in conformance with this Order. However, failure to inspect or test by Customer shall not relieve the Contractor of any duties or obligations hereunder. Any moneys due Customer from Contractor may be off set

by any moneys due Contractor from Customer, whether under this Order or pursuant to any other contractual arrangement between Customer and Contractor. Unless otherwise specified, Contractor will, at its sole expense, make all arrangements for, and bear all costs of, transportation and insurance.

- (2) **Inspection.** All purchases by Customer are subject to inspection and rejection notwithstanding any prior payment. Customer shall have the right to reject any and all Materials that are defective or non-conforming, as determined in Customer's sole discretion. Rejected Materials and Materials shipped in excess of quantities specified in the Order may be returned at Contractor's expense for unpacking, examining, re-packing, and transportation. No Materials returned as defective shall be replaced without the prior written permission of an authorized representative of Customer. If Customer receives Materials with a defect or nonconformity that is not apparent on initial examination, Customer reserves the right to require replacement and/or payment for damages upon discovery of such defect or nonconformity.
- (3) **Title, Liens, Other Interests.** Contractor represents and warrants that Contractor has the right to convey full title to the Materials and all warranties associated therewith, free from any liens, security interests, and/or other encumbrances or restrictions, and that, subject to receipt of payment from Customer, all title, all warranties, and all other interests are hereby transferred to Customer.

4. Services.

Customer shall provide the Services specified in the Order on the dates specified, and in accordance with all directions or specifications provided by Customer. Contractor will designate a sufficient number of employees (each a "Key Employee") who are qualified to provide, and who will be responsible for, Contractor's obligations under this Order. If at any time Customer notifies Contractor that a Key Employee is performing the Services inappropriately, or that such person is not performing the Services as requested by Customer, then Contractor shall promptly take all action necessary to improve such person's performance, or at Customer's request and at no cost to Customer, Contractor will promptly replace such Key Employee. If this Order includes work to be performed on Customer's premises, Contractor shall observe the highest safety standards, comply with all applicable laws and regulations including

without limitation, the Occupational Safety and Health Act. Contractor shall maintain adequate commercial general liability and worker's compensation insurance and furnish evidence of the same at Customer's request.

5. Liability for Defects

(1) Contractor shall be liable for defects during the periods prescribed by statute, commencing on the date of transfer of risk or, if acceptance has been provided for, upon acceptance by Customer, and guaranteeing the contractual and defect-free condition and defect-free functioning of the products or services for which Contractor is responsible. The period of liability is extended by the time the products or services can not be used correctly.

(2) **Errors and Defects.** Customer will notify Contractor of errors or defects in the Materials or Services, and upon receipt of such notice Contractor, at its own expense, shall correct such errors or defects promptly. If contractor fails to correct such error or defect within ten (10) business days after Contractor receives notice of the error or defect, then Customer may, in its sole discretion, exercise any or all of the following remedies. Customer may: (a) withhold payment of any amount due hereunder until the error or defect is cured; (b) reject the Materials and/or Services or any part thereof and obtain a full refund of all monies paid to Contractor for the rejected portion; and/or (c) exercise any other remedy available at law, in equity, by statute, or otherwise.

(3) Warranties.

- a. **Materials.** Contractor represents and warrants that, when delivered, Materials and all portions or components thereof shall: (1) be in good working order; (2) be free from defects or malfunctions; (3) be fit and safe for their intended use; (4) be of the quality and specifications designated in this Order, and if not so specified, of the highest quality available in the industry; and (5) comply with all applicable federal, state and local laws and regulations. Contractor shall extend all warranties it receives from its vendors to Customer. The warranties herein are in addition to all warranties contained under applicable law. If Materials fail to conform with the foregoing warranties, Contractor shall, at Contractor's expense, promptly rectify all defects to bring the Materials into compliance with these warranties.
- b. **Services.** Contractor shall provide all Services in a timely, competent, professional, and workmanlike manner, and Services will be free of defects. Also,

Services will be performed in accordance with any services specifications attached hereto.

- c. **Non-infringement.** Contractor warrants that the Services and/or Materials provided hereunder shall not violate or in any way infringe upon the proprietary rights of third parties.

(4) Indemnification

- a. **General.** Contractor hereby agrees to defend, indemnify and hold harmless Customer, Customer's affiliates, and Customer's officers, directors, agents, and representatives from and against any and all damages, losses, liabilities, costs, and expenses of any kind, including reasonable attorneys' fees, incurred by Customer as a result of: (1) any claims arising out of death or bodily injury or damage to property that occurs in connection with the Materials or with the performance by Contractor of its obligations under this Order, to the extent that such injury or damage is caused in whole or in part by the acts, errors, omissions, or negligence of Contractor or its employees or agents; and/or (2) any third-party claim for actual or alleged infringement of any patent, trademark, copyright, or similar property right based in whole or in part upon any portion of the Materials or the Services.
- b. **IP Indemnification.** If any Material or Service violates any proprietary right of a third party, Contractor shall, at its sole expense, within ten (10) business days of Customer's request, either: (1) procure for Customer the right to continue using the affected Materials or Services free of any liability, or (2) replace or modify the infringing Services or Materials with equivalent, non-infringing Materials/Services satisfactory to Customer.
- c. In no event shall Customer be liable for anticipated profits or incidental or consequential damages incurred by Contractor. Customer shall not be liable for penalties of any description. Customer's liability on any claim of any kind of any loss or damage arising out of or in connection with or resulting from this Order or from the performance or breach thereof shall in no case exceed the price allocable to the goods or services or unit hereof which gives rise to the claim. Any action resulting from any breach on the part of Customer as to the Materials or

Services delivered under this Order commenced after one (1) year from the date the cause of action accrued shall be forever barred.

6. Work permit/residence permit

- (1) Where employees, vicarious agents or subcontractors without Canadian citizenship are deployed, Contractor hereby assures that all necessary official approvals have been obtained. Under no circumstances may employees, vicarious agents or subcontractors who are not in possession of a valid work permit and a valid residence permit be deployed. Contractor shall indemnify Customer from any legal consequences resulting from failure to comply with these requirements.
- (2) As an independent contractor, Contractor shall undertake to properly submit any applicable sales or value-added tax received to the tax authority and to independently and properly pay tax on any remuneration received from Customer.

7. Invoices, Terms of Payment, Taxes

- (1) Customer shall pay Contractor for Materials and/or Services within sixty (60) calendar days after receipt of a written invoice from Contractor, less any applicable cash or early payment discounts. In the event Customer pays Contractor within thirty (30) days after receipt of the written invoice, a 3% discount shall be applied to such invoice. Contractor shall send Customer written notice of any overdue invoices before such overdue invoices may be considered a payment default under this Order.
- (2) If a credit note procedure has been agreed to, then Contractor shall add any credits to Customer's account within one (1) week from the time any credit amount is agreed upon.
- (3) The liability for local sales or use tax shall pass to Customer if Contractor is not required to be registered for sales tax purposes in the applicable jurisdiction and the services or sales performed under a contract for work and materials by Contractor are taxable in the Canadian province or local jurisdiction. If Contractor brings items from a third country to Canada in order to provide the aforementioned services or work and if in this connection turnover taxes on imports are levied, these taxes shall be borne by Contractor.

8. Termination

Customer may terminate this Order at any time, for any reason, or for no reason upon notice to Contractor. In such event, Contractor shall immediately stop all services and deliveries and observe any instructions from Customer as to the services or deliveries in process. Contractor shall be paid an equitable adjustment for

services already performed. Customer may also terminate this Order for cause due to default by Contractor or proceedings in bankruptcy or insolvency by or against Contractor. In such event, Customer shall not be liable to Contractor for any costs or charges. Contractor shall be liable for and shall hold Customer harmless from, any damages occasioned by Contractor's default under this Order. If it should be determined that Customer improperly terminated this Order, such termination shall be deemed for Customer's convenience and Customer shall have no liability arising from such termination.

9. Assignment

Contractor's claims against Customer may only be assigned with the express written consent of Customer's procurement unit. Customer may assign its rights under this agreement, and this Order will inure to the benefit of, and be enforceable by, any successor or assign of Customer.

10. Final Provisions

This Order is governed by the laws of the Province of New Brunswick, excluding the choice of law provisions thereof, and the exclusive venue shall be in the courts located in New Brunswick, Canada. If any provision of this Order is held to be unenforceable, the enforceability of the remaining provisions will in no way be affected or impaired. These GTC Purchasing may not be modified, amended, or in any way altered, except by a written agreement signed by authorized representatives of both parties. Customer will be able to terminate this Order at any time if Contractor breaches any of the terms and conditions herein. The parties are and intend to be independent contractors with respect to all the Services. This Order and the GTC Purchasing will constitute the entire agreement between the parties. Contractor will comply with all applicable laws. Contractor will treat all matters relating to this Order as confidential information at all times. Customer reserves all contractual remedies available regardless of final payment of this Order.
