

DYNATRACE PURCHASE ORDER TERMS

1. Definitions

Buyer means the Dynatrace entity identified in the Purchase Order;

Confidential Information is defined in Section 15

Goods means the items, products, parts, processes and deliverables as part of Services in their respective quantities, all as identified in the Purchase Order;

PO Terms means these Purchase Order Terms and Conditions.

Purchase Order is the document so titled issued by Buyer to Supplier to procure Goods or Services that reference these PO Terms;

Supplier means the supplier, seller or provider of the Goods and/or Services as identified in the Purchase Order;

Services means the services to be provided by the Supplier as identified in the Purchase Order.

2. Acceptance of Terms and Conditions

(a) Unless otherwise provided in these PO Terms, any written acknowledgement of the Purchase Order or commencement of performance pursuant to the Purchase Order constitutes acceptance by the Supplier of the Purchase Order and these PO Terms.

(b) Buyer reserves the right to modify or withdraw the Purchase Order at any time prior to its acceptance by the Supplier.

(c) Any Supplier terms and conditions or other documents varying the terms hereof are of no force or effect, unless accepted in writing by Buyer.

(d) For the avoidance of doubt, where a separate written contract has been executed between Buyer and Supplier in respect of the Goods or Services the terms and conditions of such contract will apply to the exclusion of these PO Terms, solely to the extent of any conflict or inconsistency between such contract and these PO Terms.

(e) These PO Terms are non-exclusive and Buyer is free to engage other sellers, suppliers and provide to purchase from, supply or provide goods and/or services the same as or similar to Supplier's.

3. Prices, taxes and additional charges

(a) Prices stated in the Purchase Order shall exclude all consumption taxes including Value Added Taxes, Goods and Services Tax, Sale Tax and other consumption based taxes as applicable within the jurisdiction of which the Buyer is located, and includes all other taxes and duties, charges, fees, costs and expenses and no additional charges other than those stated in the Purchasing Order shall apply.

(b) Buyer shall have no responsibility to pay or withhold any federal, state or local taxes or fees from any payment due to Supplier under the Purchase Order.

(c) Supplier may not increase the price of ordered Goods and/or Services without Buyer's prior written approval.

(d) Express shipments for which Buyer agrees to pay charges for must not be insured at a valuation in-excess of the local equivalent of US\$50.00 without Buyer's prior approval. Buyer shall have the right to bill Supplier for any extra insurance charges resulting from unauthorised higher valuations.

(e) Supplier agrees to provide to Buyer the Services for the fees described in the Purchase Order, which will be fixed for the duration of the Services specified, unless an hourly/daily rate and time and materials is stated. Any additional expenses need to be agreed in writing with Buyer in advance.

4. Payment terms

(a) Buyer shall pay Supplier the price stipulated on the Purchase Order in consideration for the Goods and/or Services set out in the Purchase Order.

(b) Supplier shall submit accurately dated invoices to the Accounts Payable department of Buyer in accordance with the Purchase Order showing the applicable Purchase Order number, description of Goods and/or Services, quantity, unit prices, extended totals and any other information reasonably requested by Buyer.

(c) Unless otherwise specified in the Purchase Order, all correctly submitted and undisputed invoices will be paid within forty-five (45) days of the receipt of the invoice by Buyer. Payment of any invoice shall not constitute acceptance of any Goods and/or Services. Buyer reserves the right to: make adjustment(s) for errors, shortages, defects in Goods or other failure of Supplier to meet any Purchase Order requirements; and set off any amount owed by the Buyer to the Supplier against any amount owed to Buyer by Supplier.

5. Delivery, Shipping and Packaging

(a) Supplier shall package and ship all Goods in accordance with good commercial practice and deliver as soon as commercially practicable, the quantity of Goods as set out in a Purchase Order, at the address and on the date(s) as set out in the Purchase Order or as otherwise agreed in writing.

(b) All packing slips and lists, shipping containers, delivery tickets, and bills of lading must reference the applicable Purchase Order number.

(c) Time for delivery shall be of the essence. Any deliveries which are made after the designated dates shall be deemed a breach of these PO Terms.

(d) Goods shipped to Buyer in advance of schedule or in excess of the quantity stated in the Purchase Order may be returned to Supplier at Supplier's expense, or, at the Buyer's discretion, may be held by the Buyer with payment deferred until after the scheduled date of delivery.

(e) Unless specified otherwise in the Purchase Order, DDP (Incoterms 2010) shall apply.

6. Quality Control

- (a) Goods are subject to inspection by the Buyer at Buyer's premises or agreed place of delivery within a reasonable time after receipt of the Goods. Buyer may reject all or any part of any shipment of Goods which are damaged or upon inspection fails to meet specifications or other requirements set out in the Purchase Order. Buyer may request to have rejected Goods replaced by Supplier as soon as reasonably possible or return the Goods for full credit, at invoice price and Supplier shall bear all handling transportation and packing charges and costs of rejected and of substituted Goods
- (b) Supplier assumes all risk of loss, damage or destruction to any Goods rejected by Buyer, Section 5(a) notwithstanding.
- (c) Supplier shall replace as soon as reasonably possible any personnel performing Services upon request of Buyer if, in the reasonable opinion of Buyer as detailed in writing, the performance of such personnel is unsatisfactory.

7. Representations and Warranty

- (a) Supplier warrants all Goods delivered hereunder to be free from defect of material or workmanship and conform to the specifications and requirements set out in the Purchase Order, drawings, performance criteria or samples specified or furnished, and shall be merchantable and fit for their intended purpose or use.
- (b) If nothing else is agreed in the Purchase Order this warranty shall apply for 12 months (or if longer any statutory warranty period) from receipt or acceptance of the Goods, and shall apply to all defects or any other nonconformity, including hidden defects. Upon failure of warranty, Buyer shall have such rights as provided at law or if applicable in equity.
- (c) Supplier warrants to appoint suitably qualified and experienced staff and perform any Services with all due skill and care and as set out in the Purchase Order. Non-compliant Services shall be re-performed as soon as reasonably possible and any deliverables resubmitted to Buyer for acceptance.

8. Title, Risk

- (a) Clear, exclusive, unrestricted and unencumbered title to and risk in goods shall pass to Buyer upon delivery at the destination nominated by the Buyer. If goods ordered are destroyed prior to the title passing to Buyer, Buyer may, at its option, cancel the Purchase Order for such goods, or require delivery of substitute Goods of equal quantity and quality at no additional cost to the Buyer.
- (b) To the extent permitted by law, Supplier waives all liens (statutory or otherwise) which Supplier now has or may have hereafter as a result of supplying the Goods hereunder.

9. Compliance

- (a) Goods and Services will be provided in compliance with applicable statutory requirements and industry standards including without limitation anti-bribery, data protection laws and local rules as regards to safety at work and employment practises including without limitation all employee entitlements. Goods shall be CE marked and have the necessary approvals and certificates for sale in the country where the Goods are purchased.
- (b) Supplier and the Goods provided to Buyer pursuant to this Purchase Order shall comply with all applicable federal, state, local and international environmental, health and safety laws, requirements and regulations.
- (c) Supplier must cooperate with Buyer in obtaining and maintaining any and all required approvals, licences, notifications, registrations or listing for the Goods in the relevant territory(ies) identified by Buyer, and upon request shall provide Buyer (or governmental authority, if applicable) with information concerning Supplier's operations or the Goods as may be required by law.
- (d) Supplier's personnel must comply with site rules applicable at the site where Services are to be performed and notified to Supplier or personnel.

10. Insurance

- (a) Supplier shall procure and maintain appropriate insurances covering the supply of Goods and Services, and as a minimum adhere to the legal and industry standards in the country where the Supplier is based.
- (b) Supplier shall upon request provide Buyer with copies of insurance certificates.

11. Termination, Cancellation or Change of Purchase Orders

- (a) Buyer reserves the right to cancel any Purchase Order at any time prior to delivery of the Goods and/or Services, without any liability or penalty whatsoever.
- (b) After this time, Buyer may terminate any Purchase Order at its discretion upon thirty (30) days written notice to Supplier. Supplier shall cease to provide Goods and/or Services under the applicable Purchase Order on the date of termination specified in such notice
- (c) Buyer may request, and Supplier shall not unreasonably withhold its consent to, changes to the Purchase Order subject to an equitable adjustment in the price, delivery schedule, or both, where appropriate.
- (d) Buyer may terminate any Purchase Order upon written notice to Supplier at any time if Supplier: (i) fails to perform or otherwise materially breaches any term of the Purchase Order and, where capable of remedy, such failure or breach is not remedied within seven (7) calendar days of Buyer's notice to do so; (ii) files a petition in bankruptcy, becomes insolvent, or dissolves; or (iii) assigns or attempts to assign the Purchase Order to a third party without written consent of Buyer.
- (e) Upon the cancellation or termination of the Purchase Order for any reason, Supplier will promptly deliver at the expense of Supplier and in accordance with Buyer's instructions to Buyer all work product (whether in process or completed) and all Goods that are paid for by the Buyer.
- (f) The cancellation or termination of the Purchase Order shall not affect any obligation of the parties incurred before the termination date.

12. Limitation of Liability

- (a) In no event shall Buyer be liable to Supplier for anticipated or actual lost profits, loss of business, loss of savings, loss of data or for any indirect, special, incidental or consequential loss or damage however arising (in contract tort or otherwise), even if Buyer has been advised of the possibility of such damage.
- (b) Buyer's liability in contract, tort (including negligence) or otherwise arising under this Purchase Order shall not exceed the amount equal to the fees paid for the Goods and/or Services that give rise to the claim.
- (c) Nothing in the Agreement shall exclude the parties' liability for death or personal injury caused by their negligence or for fraud or fraudulent misrepresentation.

13. Buyer's Property

- (a) Supplier acknowledges that all materials, including tools furnished or procured on behalf of the Buyer (a) will be and remain the property of Buyer, (b) will be subject to removal at any time without additional cost upon demand by Buyer, (c) will be used only in fulfilling the Purchase Order for Buyer, (d) will be kept separate from other materials or tools, and (e) will be clearly identified as the property of Buyer.
- (b) Supplier assumes all liability for loss, or damage to Buyer's property, with the exception of normal wear and tear.

14. Infringement of Intellectual Property Rights

- (a) Supplier warrants that the Goods and Services do not infringe or violate any third party intellectual property rights.
- (b) Supplier agrees to protect, indemnify and hold harmless Buyer, its successors, assignees, subsidiaries, affiliates, employees, representatives, customers, and users of the Goods and Services from all loss, expenses, costs (including reasonable attorneys' fees and court costs), royalties and other damages which may be incurred on account of any such actual or alleged third party intellectual property infringement or violation.
- (c) If an injunction is obtained against Buyer, its affiliates or customers against the sale or use of any Goods or Services, by reason of infringement, Supplier at its option and expense, will either procure for Buyer the right to continue selling and using such Goods or Services, or replace or modify such Goods or Services so that they become non-infringing and remain suitable for the Buyer's intended use.
- (d) The provisions of this Section will not apply with respect to infringement for Goods developed or Services performed when the infringement is the direct result of specific detailed development requirements imposed, in writing, on Supplier by Buyer.

15. Confidential Information

- (a) Both parties agree not to disclose to any person outside of their employ, nor to use for any purpose other than this Purchase Order, any Confidential Information, which is received from the other relating to this Purchase Order. "**Confidential Information**" shall mean (i) customer lists, existing agreements with vendors and business partners; (ii) pricing proposals, financial and other business information, data and plans; (iii) methods, know-how, processes, designs, products, computer software; (iv) research and development information; and (v) any other information identified in writing as confidential or information that the receiving party knew or reasonably should have considered to be confidential.
- (b) Confidential Information shall not include any information that the receiving party can establish: (i) is or subsequently becomes publicly available through no act or omission of the receiving party; (ii) was in the receiving party's lawful possession prior to disclosure of such information; (iii) is subsequently disclosed to receiving party by a third party who is not in breach of an obligation of confidentiality; or (iv) is independently developed by the receiving party without the use or benefit of the Confidential Information. Either party may disclose Confidential Information pursuant to court order or a valid subpoena or as required under any federal, state or local law, provided that the receiving party promptly notifies the disclosing party and provides the disclosing party an opportunity to seek an appropriate protective order.
- (c) Upon completion or termination of this Purchase Order, all Confidential Information shall be returned to the other party upon request.

16. Independent Contractor Services

- (a) The parties agree that Supplier is an independent contractor for all purposes, without express or implied authority to bind Buyer by contract or otherwise.
- (b) Supplier is responsible for all costs and expenses (including any employee wages and other statutory entitlements) incident to performing its obligations under any Purchase Order and shall provide its own employees, supplies and equipment.
- (c) Supplier's employees and contractors are not employees or contractors of Buyer or any of its subsidiaries or affiliates and Supplier will be solely responsible for payment of all compensation owed to Supplier's employees and contractors, as well as for payment of employment related taxes and worker's compensation insurance.
- (d) Supplier agrees to fully indemnify Buyer and its subsidiaries or affiliates against any and all claims, costs and expenses arising in connection with the Purchase Order, or by virtue of any act or omission of Supplier, which may be made by Supplier's personnel by virtue of the local laws implemented under any local employment, labour, or other industrial laws.

17. Advertising

- (a) Supplier must not without Buyer's prior written consent in any manner advertise or publish the fact that Supplier has furnished or contracted to furnish to Buyer the Goods and/or Services, or that Buyer endorses Supplier or its products and services.

18. Assignment and Subcontracting

- (a) Supplier shall not assign or transfer its accounts receivable, or assign or subcontract the Purchase Order or any right or obligation hereunder, without Buyer's prior written consent. Any purported assignment without Buyer's consent shall be void and unenforceable against Buyer.

(b) Supplier must remain fully responsible for the performance of any permitted subcontractor, and these PO Terms shall apply to any subcontractor and its personnel where appropriate.

19. Entire Agreement

(a) The Purchase Order, these PO Terms, the documents referenced herein and Supplier's acceptance (as limited by Section 1) constitute the entire agreement regarding this transaction, and can only be modified by amendment or a change order duly executed by both parties.

20. Governing Law and jurisdiction

(a) This Purchase Order is governed and interpreted under the law of the state and country in which the entity of Buyer identified in the Purchase Order has its registered address, and the courts competent for such state and county will have the exclusive jurisdiction over any legal action arising in connection with the Purchase Order or these PO Terms.

21. Force Majeure

(a) Either party will be excused for up to 30 days from its obligations hereunder whilst it is unable to perform by reason of an occurrence beyond its reasonable control, including but not limited to, fires, floods, accidents, civil unrest, war, governmental embargoes, strikes, unanticipated market shortages of labour, materials, or supplies, or total shutdown of the place of business where the Goods are either manufactured or are to be delivered or used.

(b) This Section 21 will only apply if the party affected by such circumstance or event gives the other party prompt written notice of such circumstance or event promptly after its occurrence.

22. Local variations

The following will apply in the countries as indicated:

Country	Relates to	Text of variation clause
Australia	Warranty and Consumer Guarantees	<u>Competition and Consumer Act 2010 (Cth) limits.</u> Provisions of the Competition and Consumer Act 2010 (Cth) and Australian Consumer Law and other statutes in some cases either cannot be excluded, restricted or modified; or can only be restricted or modified to a limited extent. Nothing in these PO Terms, limits, restricts, or otherwise removes such liability on the Supplier in respect of the Goods and Services Provided.
United States	Compliance with equal opportunity clauses	The provisions of the Equal Opportunity Clauses pursuant to Section 202 of Executive Order 11246, as amended, and 41 CFR Section 60-1.4; as well as 29 C.F.R. Part 471, Appendix A to Subpart A, are herein incorporated by reference. Further, sellers who (1) are not otherwise exempt as provided by 41 CFR 60-1.5, (2) have 50 or more employees and, (3) have a contract, subcontract or purchase order for \$50,000 or more that is necessary to the completion of a covered federal contract or subcontract are hereby notified of their obligations to file EEO Standard Form 100 and to prepare an affirmative action plan(s) for females, minorities and disabled individuals. Contractors and subcontractors holding a contract, subcontract or purchase order for \$150,000 or more that is necessary to the performance of a covered contract must also file Form 4212 and prepare an affirmative action plan for protected veterans. This contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.