

## PUBLICATION 1 SPECIFIC CONDITIONS FOR ORANGE INTEGRATION SERVICES

### 1.1 Definitions

All capitalized terms used but not defined in these Specific Conditions will have the meanings set out in the General Conditions or in the applicable Service Description.

**"Documentation"** means user guides, education materials, product descriptions and specifications, technical manuals, and other information relating to the Products as provided by the Vendor.

**"Equipment"** means the computer hardware in respect of which Orange will provide Integration Services, including where applicable (i) Products and (ii) Additional Equipment and Existing Equipment (as defined in the applicable Service Description).

**"Expedite Charge"** means the fee added to an Integration Service Charge when Customer requires performance of that Service sooner than the stated lead times.

**"Hourly Labor Rate"** means the Charges for Integration Services provided by Orange on an hourly basis. Labor Rates are exclusive of the Charges for any materials supplied by Orange. There are separate Hourly Labor Rates for Integration Services provided during Business Days and Integration Services provided outside of Business Days.

**"Integration Services"** means all Services designated by Orange as Integration Services.

**"Installation Date"** means the date on which the installation of the Equipment at the Location is completed.

**"License"** means the authorization required by a Software licensor for Customer's use of the Software.

**"Location"** means the physical location where Orange provides the Integration Services to Customer.

**"Products"** means individually or collectively as appropriate, hardware, software and Documentation provided or to be provided by Orange to Customer, specified in an Order.

**"Vendor"** means the actual manufacturers or suppliers of the Products, including their subcontractors and agents.

### 1.2 Ordering

#### 1.2.1 Order Form for Products and Integration Services

All Order Forms will identify the Products or the Integration Services that Customer desires to obtain from Orange. Where applicable, all Order Forms will reference any price quote provided by Orange.

All Order Forms submitted under the Agreement will specify the following information:

- The Orange Agreement number;
- Type and quantity of the Products or Integration Services ordered, providing model and configuration information when applicable;
- The Charges for the Products or Integration Services;
- Complete shipping instructions, including complete Location address (or drop ship destination if applicable), contact name and local telephone number;
- Name, telephone and email address of a principal and alternate contact at each Location;
- Requested date for commencement or provision of the Integration Services or Products; and
- Any other special information required by the Service Annexes or by the circumstances of the Order.

#### 1.2.2 Products and Integration Services Pricing

1.2.2.1 In the event that third party supplier costs to Orange increase (e.g. shipping costs, warehousing costs, etc.), then Orange may adjust the Charges for the Integration Services accordingly, and Customer agrees to pay such Charges.

1.2.2.2 Charges for all Integration Services are subject to adjustment in the sole discretion of Orange on January 1 of each year to reflect or account for any changes in the applicable pricing index(es); provided however that the total monthly Charges for the Integration Services may not increase by more than 10% from year to year.

#### 1.2.3 Revisions and Cancellation of Orders for Products or Integration Services

The date of cancellation or revision of any Order will be the date on which written notice of such cancellation or revision is received by Orange.

1.2.3.1 **Revisions to Orders.** Customer may revise the type and quantity of Products and/or Integration Services at any time prior to the Orange commencement of the Integration Services or fulfilment of the Product Order and Customer may revise shipment instructions for Products in a previously accepted Order Form at any time prior to shipment from the Vendor, in each case subject to Clause 2.2 (Change Orders) of the General Conditions and to payment by Customer to Orange of all restocking charges from the Vendor, freight charges for returning the Equipment or Products to the Vendor and any increase or decrease in the price will be passed through to Customer, plus a handling charge of 5% to Orange.

If a revision to an Order postpones the delivery date for Products, Orange may require an advance payment of 75% of the Charges for such Products. This prepayment will be due on the delivery date originally indicated on the relevant Order. Furthermore, Customer will reimburse to Orange any additional costs (e.g. warehousing) incurred by Orange due to the postponement of the delivery of any Product by Customer.

1.2.3.2 **Cancellation of Orders.** Customer may cancel any Order for Products prior to the date of shipment from the Vendor, or at least 3 Business Days prior to commencement of the Integration Services subject to Clause 2.3 (Early

Termination of Orders) of the General Conditions and to payment by Customer to Orange of all restocking or cancellation charges, plus a handling charge of 5% to Orange. All cancellations must be made in writing and will only be effective upon acknowledgment by Orange.

- 1.2.3.3 **Cancellation or Revision by a User.** If a User makes any request for cancellation or revision of an Order directly to Orange, Orange will advise the User to contact Customer, and Orange will not be obligated to take any further action on such requests without written authorization by Customer.

### 1.3 Deployment Services

#### 1.3.1 Import/Export of Equipment, Products and Permits

- 1.3.1.1 Subject to Clause 1.3.2 below, when requested by Customer, and permitted by the local laws of the country of destination, Orange may serve as importer of record for, and will pay (on Customer's behalf) all applicable duties on Customer-provided Equipment and/or Products shipped in to a country from another country. All applicable duties paid by Orange for the exportation or importation of any Customer-provided Equipment and/or Products will be invoiced to Customer.

- 1.3.1.2 Where permitted by law, Orange will, as part of the logistic services, secure all permits, licenses, regulatory approvals and authorizations, whether domestic or international (collectively "**Permits**") that Orange needs to ship and deliver the Customer-provided Equipment and/or Products to the Locations, and will take all lawful steps necessary to maintain such Permits during the relevant Service Term or Extended Term. Any costs incurred by Orange, including all fees and taxes associated with obtaining such Permits, will be invoiced to and paid by Customer. Customer will cooperate with Orange in securing such Permits. If Orange is not able to secure the Permits in its own name, Customer will undertake to secure such Permits at the reasonable direction of Orange.

- 1.3.1.3 Customer will be responsible for securing, at its own expense, all permits other than the Permits that Orange is required to secure under Clause 1.3.1.2. Customer will take all lawful steps to maintain such other permits during the relevant Service Term or Extended Term. Orange will provide reasonable assistance to Customer in securing such other permits as may be necessary.

#### 1.3.2 Exceptions to Import and Export Services by Orange

- 1.3.2.1 Orange will not:

- (a) export Customer-provided Equipment and/or Products to a destination which is prohibited under local or U.S. law;
- (b) serve as the importer of record in countries where Orange or its subcontractor does not have a legal presence;
- (c) serve as the importer of record in countries where the Orange charter or the Orange subcontractor's charter prohibits the provision of such Integration Services; and
- (d) serve as importer of record in countries where doing so will create an unreasonable fiscal burden upon Orange.

- 1.3.2.2 Orange will make reasonable endeavors to advise Customer in advance if Orange cannot act as importer of record. In all such cases where Orange cannot act as importer of record, Orange will provide reasonable assistance to Customer in the importation process.

- 1.3.3 **Risk of Loss.** Orange will bear the risk of loss until the Equipment or Products are delivered by the carrier to the Location designated by Customer in its Order. Risk of loss is deemed to have transferred to Customer when the carrier surrenders control of the shipment at such Location. It is Customer's obligation to ensure that appropriate personnel are available to take control of the shipment when it is delivered at that address.

#### 1.3.4 Acceptance of Products and Title

- 1.3.4.1 **Acceptance.** The Products will be deemed accepted by Customer ("**Date of Acceptance**") on the date received at the relevant Location, unless Customer gives Orange written notice within 5 days of the delivery of the Equipment that the Products do not conform to the corresponding Order Form.

- 1.3.4.2 **Title.** Title to the Products will pass to Customer on the date on which the risk of loss is deemed to have transferred to Customer or on the date on which Customer will have paid in full such Products, whichever is later. Customer's right to possession of the Products will cease immediately upon Customer's failure to make payment in full on the due date or in the event that Customer is declared bankrupt or that a receiver or administrator is appointed in respect of Customer. In such cases, without prejudice to any other rights, Orange will be entitled to enter Customer's or the Users' premises for the purpose of recovering the Products.

- 1.3.5 **Software Licensing.** If Customer procures Products containing Software, the following provisions will apply:

- 1.3.5.1 **Procurement of Licenses.** Customer authorizes Orange to act on its behalf for the limited purpose of obtaining in Customer's name, from the Software licensors, the required number of personal, non-transferable, and non-exclusive Licenses to use, in object code form, all Software and related Documentation furnished to Customer under the Agreement. These Licenses will be limited to use of the Software with the hardware for which the Software was obtained or, on a temporary basis, on back-up hardware when the original hardware is inoperable. Use of Software on multiple processors is prohibited unless otherwise agreed to in writing by the Software licensor.

- 1.3.5.2 **Compliance with License Terms.** All Licenses will be subject to the terms and conditions of the Software license (the "**Master License**"), which will be delivered to Customer at the time of installation of the hardware for which the Software was obtained. Customer acknowledges that it is bound by the terms and provisions of the Master License. The duties and obligations of Customer under the Agreement, the Master License and in all Licenses will remain in full force and effect for so long as Customer continues to control, possess, or use the Software in a manner

consistent with the terms and conditions set out in the Master License. Customer acknowledges that the Software is copyrighted by the Software licensors and Customer agrees that it will fully respect the Orange pass-through rights under all relevant copyright laws. Customer agrees to refrain from taking any steps, such as reverse assembly or reverse compilation, to derive a source code equivalent of the Software. Customer may make a single archive copy of the Software, which must contain the same copyright notice and proprietary markings as are on the original Software. Use of the Software on any hardware other than that for which it was obtained, or any other material breach by Customer will automatically terminate the License. If the terms of the Agreement as it relates to the Software, differ from the terms of any Master License, the terms of the Master License will govern.

**1.3.5.3 License Documentation.** Customer agrees to execute all documents, instruments and agreements, including, the Licenses, which may be required by the Software licensor. If Customer fails or refuses to execute such documents upon delivery, the Software will be promptly returned to Orange in its original condition for a refund as reasonably determined by Orange.

**1.3.5.4 Software Warranty Disclaimer.** Orange will not be responsible for Software defects or failures resulting from misuse, neglect, accident or abuse or improperly installation, unauthorized modification or alteration, or resulting from improper handling, failure to follow the licensor's operating and maintenance instructions or failure to maintain environmental conditions as recommended by licensor. Furthermore, Customer may provide proprietary operations and application software, which may be, from time to time, altered and upgraded, and additional software may be installed by Customer or Orange. It is further understood that such proprietary Software may create instabilities in the operation of the hardware included in the Products, and Orange will not warrant the operability of either the Software or such hardware with respect to the proprietary software. Orange will not be responsible to maintain or repair any malfunction caused by the operation of the proprietary software, and will have no liability whatsoever regarding Customer's use of the Products.

**1.3.6 Installation.** Orange will not be responsible for any failure to complete an installation by the target Installation Date set out in any Order if such failure is due to any cause beyond the control of Orange, including the inability of Orange to gain access to the Location as scheduled, failure by the TO to complete installation of data circuits, or Customer's or User's failure to prepare the Location as required.

## **1.4 Termination**

Except as permitted in the applicable SLA or pursuant to Clause 1.2.3.2 of these Specific Conditions, the Service Term for each Order Form for Integration Services is non-cancellable.

## **1.5 Invoicing and Payments**

**1.5.1 Local Invoicing.** All invoices will be issued in the currency set out in the General Conditions or elsewhere in this Agreement by the local Orange Affiliate providing the Integration Services, and will be addressed to Customer at the address set forth on the relevant Order. Except as otherwise indicated, all Charges will be paid by Customer to Orange at the address and in the currency specified in each invoice.

**1.5.2 Charges for Maintenance Services.** Customer will be invoiced for Maintenance Services on a per unit basis, commencing as of the Installation Date for Equipment other than Existing Equipment and Additional Equipment and for Existing Equipment and Additional Equipment, on the date mutually agreed to by Orange and Customer, subject to the provisions of the applicable Service Description.

### **1.5.3 Terms of Delivery for Products and Charges for Deployment Services**

**1.5.3.1** Unless otherwise stated in the Charges Schedule or on any Order, the delivery terms are INCOTERMS 'Delivered at Place (DAP)'. Customer will be responsible for paying all duties, taxes, and custom clearance costs.

**1.5.3.2** Orange will invoice Customer for all Products on the date that Products upon shipment to Customer of such Products unless an advance payment, progress payment or other form of security is required by Orange. In all circumstances, Orange will invoice Customer no later than 30 days after the Products have been shipped from the Vendor. Customer's obligation to remit payment for Products is not contingent upon acceptance of the Products by Customer.

**1.5.3.3** Freight charges will be invoiced either separately or together with the Charges for the Products. Installation charges will be invoiced upon shipment of the Products or upon the Orange completion of the Product installation.

**1.5.4 Charges for Deployment Services other than International Procurement and IMAC/MAC Services.** Customer will be invoiced for Deployment and IMAC/MAC Services on an on-going basis as performed by Orange.

**1.5.5 Currency Protection.** All invoices which are rendered by Orange in Euro, for work performed outside of the European Monetary Union will be subject to currency fluctuation protection. The currency rates stated in the Charges Schedule, or if not in the Charges Schedule then as otherwise provided by Orange, are the Base Currency Rates ("BCR"). The currency rate stated in the last edition of the London Financial Times published in the month of payment will become the Adjusted Currency Rate ("ACR"). Every calendar quarter, the exchange differences between the BCR and the ACR valuation (for each currency) of the Orange invoices paid by Customer during the quarter will be totaled. When the sum of the exchange differences is less than three (3%) percent of the value of the Orange invoices paid in the quarter there will be no further payment required from or to Customer for these invoices. Where such difference is greater than three (3%) percent there will be an additional payment; from Customer where the ACR based valuation is lower than the BCR valuation, to Customer where the BCR based valuation is lower than the ACR valuation. However, no adjustment will be made if the exchange differences between the BCR and the ACR are less than 100.00 Euro.

**1.6 Warranties**

1.6.1 **Exercise of Warranty Rights Against the Vendor.** When Products are purchased from Orange without Orange Maintenance Services, and Customer wishes to execute its warranty rights against the Vendor, Customer will request a Return Materials Authorization (RMA) number from Orange if one is required from the Vendor. In all such cases, Customer needs to provide the correct Product information, such as serial numbers, purchase date and physical address, which may be required by the Vendor as part of the RMA process. All charges incurred by Orange in connection with this process will be invoiced to Customer.

1.6.2 **Limitation of Warranties.** The following supplements the limitation of warranties terms set out in the General Conditions:

The Products are supplied "**AS-IS**" and that Customer will have only such warranties, express or implied, if any, as provided by the Vendor, or third party Software Licensor of such Equipment and Products. Orange will not have any responsibility or liability in connection with the entry or use, including output, of Customer's data. Orange does not warrant, guarantee, or make any representations concerning the use, the results of use of the Equipment and Products, or the correctness, accuracy, reliability, capacity or limitations related to the Equipment and Products. Orange does not warrant that the functions contained in the Equipment and Products will meet Customer's requirements or expectation or that the operation of the Equipment and Products will be uninterrupted or error free. Customer understands that such limitations may restrict or limit the capabilities or performance characteristics of the Equipment and Products. Customer acknowledges that it has selected the Equipment and Products on the basis of its own judgment and expressly disclaims any reliance upon any statements made by Orange.

**END OF SPECIFIC CONDITIONS FOR ORANGE INTEGRATION SERVICES**