

## PUBLICATION 1 TRADE CONTROLS, SUPPLIES, AND CUSTOMS FORMALITIES

### 1.1 Definitions

Solely with respect to these Trade Controls, Supplies, and Customs Formalities Clauses ("**Trade Control Clauses**"), the following capitalized words and phrases will have the meaning given below in this Clause 1.1 "Definitions". Capitalized terms used but not defined herein will have the meanings set forth in the Agreement. In the event of any conflict between the definitions set forth below and any other capitalized terms used herein, the definitions set forth below shall control for purposes of these Trade Control Clauses.

**"Agreement"** means Customer's agreement with Orange.

**"Affiliate"** means any entity controlling, controlled by or under common control with a Party, where "control" means an entity's (a) ownership, directly or indirectly, of equity securities entitling it to exercise in the aggregate at least 50% of the voting power of the entity in question; or (b) possession directly or indirectly, of the power to direct or cause the direction of the management and policies of or with respect to the entity in question, whether through ownership of securities, by contract or otherwise.

**"CPE"** means any equipment (including hardware, cables, connectors, and related software) that is supplied by Orange to Customer as part of a Service, and managed by Orange for use with such Service at the corresponding Delivery Location. For the avoidance of doubt, CPE is never owned by Customer.

**"Customer Equipment"** means any equipment (including hardware, cables, connectors, and related software) that is supplied and sold by Orange to Customer, and that may be managed by Orange for use with a Service at the corresponding Delivery Location. For the avoidance of doubt, Customer Equipment is always owned by Customer.

**"Delivery Location"** means any Customer's and/or End User's place or site where an Orange Deliverable and/or Service is supplied by Orange to Customer.

**"End User"** means the ultimate recipient and end user of an Orange Deliverable and/or Service, being either Customer or any other entity as designated by Customer.

**"Equipment"** means any CPE or Customer Equipment.

**"Importer of Record"** or **"IOR"** means the customs term for the entity named as importer on an import customs declaration and responsible for (i) ensuring the imported Customer Equipment complies with local laws and regulations, (ii) filing a completed duty entry and associated documents, and, (iii) paying the assessed import duties and other taxes on such Customer Equipment.

**"Incoterms"** means the rules for the use of domestic and international trade terms version 2020 "Incoterms® 2020" as published by the International Chamber of Commerce (ICC) on January 1, 2020.

**"Orange"** means the Orange entity, along with its applicable providing Affiliates, that is a party to the Agreement with Customer.

**"Orange Deliverable"** means, individually or collectively, as appropriate, any Equipment, hardware, software, corresponding documentation, technology and data that Orange supplies to Customer (or in the case of software, transfers a license right to use such software) under the Agreement.

**"Permit"** means any declaration, approval, certification, authorization and/or license required prior to the export, import, supply, use, re-export and/or transfer of an Orange Deliverable and/or Service.

**"Trade Control Rule"** means any customs, export, import, re-export and/or transfer formality, control, restriction, prohibition, and/or Permit requirement under applicable laws and regulations. Trade Control Rules may include in particular, but not limited to:

- provisions of the European Union regulations with regard to the control of export, transfer, brokering and transit of dual-use items (Council Regulation (EC) n° 428/2009 of 5 May 2009) and the European Union common rules governing control of exports of military technology and equipment;
- provisions of the United States Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR);
- the economic, financial, trade sanctions programs and/or embargos against targeted foreign countries, regimes, named individuals and/or entities in accordance with the resolutions of the United Nations Security Council (UNSC) and/or under the laws and regulations of the European Union and its member states, the United States, and/or of any others relevant countries or authorities;
- provisions of other applicable local laws and regulations including customs laws and regulations, export and import controls, approvals, certifications, authorizations and/or licenses (e.g. export and import licenses, cryptographic authorizations, homologations, certificates of conformity with technical standards and marking, etc.).

### 1.2 Trade Controls

The Parties acknowledge and agree that export, import, supply, use, re-export and/or transfer of Orange Deliverables and/or Services are or may be subject to Trade Control Rules and in particular to prior Permits from the relevant authorities.

Each Party agrees to comply with all applicable Trade Control Rules.

Customer will provide Orange with the information and documentation related to the end use, countries of destination and End Users of Orange Deliverables and/or Services required for conformity with applicable Trade Control Rules.

Customer will also ensure that End Users provide Orange with required information, certificates, reports, and/or undertakings. Customer warrants that all information provided to Orange is true and correct.

When Customer is responsible for obtaining a Permit from the relevant authorities (in particular, as the case may be, for import, use, re-export and/or transfer of an Orange Deliverable and/or Service), Customer will obtain and maintain such Permit in its own name and at its own expense.

The provision and maintenance of all required Permits from the relevant authorities is a condition precedent to the supply by Orange of the corresponding Orange Deliverables and/or Services.

Customer will ensure to use and dispose of Orange Deliverables and Services in accordance with the conditions set out in the applicable End User statements and with the conditions under applicable Permits and Trade Controls Rules.

Customer agrees not to export, import, re-export and/or transfer (in-country), directly or indirectly, any Orange Deliverable or Service to any country or third party to which such export, import, re-export, and/or transfer is controlled, restricted or prohibited without first obtaining, from the relevant authorities, the Permits required by applicable Trade Control Rules. Customer agrees also to comply with any applicable reporting requirements to the relevant authorities.

Customer agrees neither to use Orange Deliverables and Services in relation to weapons or military purposes nor to sell or supply Orange Deliverables and Services to a military end user or to a party who is known or suspected to be involved in the manufacture of weapons or military items or in the supply to military end users or to a party manufacturing military weapons or items. In fulfilment of this obligation, Customer agrees in particular (but not limited to) to comply with the restrictions and/or prohibitions on exports, re-exports, and transfers (in-country) pursuant to Part 744 of the EAR (i.e. in relation to nuclear, rocket systems and unmanned aerial vehicles, chemical or biological weapons and/or in relation to military end use and military end users).

Orange may suspend or terminate the supply of any Orange Deliverable and/or Service, upon reasonable notice and without liability to Customer, if, in Orange's reasonable judgment, Customer's and/or End User's use, re-export, and/or transfer of such Orange Deliverable and/or Service violates any applicable Trade Control Rules and/or the terms and conditions of the present Clause 1.2 "Trade Controls".

The obligations of the present Clause 1.2 "Trade Controls" shall survive the expiration or termination of the term of the Agreement.

### **1.3 Supplies & Customs Formalities**

In the absence of any written agreement to the contrary, Orange does not warrant that the Orange Deliverables will qualify for any preferential tariff, free trade agreement, or special program which may be in force between the exporting and importing countries.

#### **1.3.1 CPE**

For CPE, Orange will be responsible for making CPE available in the Delivery Locations agreed with Customer.

For Delivery Locations where Orange is not capable of making any CPE available to Customer, an alternative solution such as equipment resale should be considered by both Parties. In such case, Customs formalities will be those described in Clause 1.3.2 "Customer Equipment" below.

#### **1.3.2 Customer Equipment**

##### **1.3.2.1 Domestic Supply**

Domestic supply covers sale of Customer Equipment by an Orange local Affiliate with supply of such Customer Equipment in the same country where this Orange local Affiliate is incorporated.

This Orange local Affiliate will bill applicable local taxes for such domestic supply.

##### **1.3.2.2 International Supply**

Orange will be responsible for shipping and exporting the Customer Equipment to the Delivery Locations according to Incoterms agreed between the Parties in Clause 1.3.2.3 "Incoterms" here under.

Customer will appoint the entity acting as IOR (either Customer, its local Affiliate or the consignee named by Customer in the importing country) which will be responsible for performing the importation of the Customer Equipment. As importer of Customer Equipment such IOR will be liable for administrative and import customs formalities as required by the Trade Control Rules in the importing countries and in particular will be responsible for (a) paying applicable import duties and taxes, and, (b) obtaining any Permits required for import.

##### **1.3.2.3 Incoterms**

Unless otherwise agreed between the Parties and excluding domestic supply covered in Clause 1.3.2.1 "Domestic Supply" here above, shipping and exporting to the Delivery Locations of Customer Equipment by Orange will be made under the Incoterm DAP named place designated by Customer in each Order.

The use of or reference to "Incoterms" or similar sales terms applicable to the shipment and export of Customer Equipment by Orange in any quote, Order, or other related document shall not modify the provisions of the Agreement relative to the transfer of risk of loss and title with respect to the subject Customer Equipment.

## **END OF TRADE CONTROLS, SUPPLIES, AND CUSTOMS FORMALITIES**