

## PUBLICATION 1 TRADE CONTROLS, LOGISTICS SERVICES, DELIVERY, AND CUSTOMS CLAUSES

**1.1 Definitions.** Solely with respect to these Trade Controls, Logistics Services, Delivery, and Customs Clauses ("TLDC 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 TLDC Clauses.

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

"**Associated Person**" means a natural person, company, corporation, firm, partnership, cooperative, association, government, state, statutory authority, foundation or trust, which or who is (a) an Affiliate of Customer, (b) an Owner of Customer, (c) a director or officer of Customer, (d) a subcontractor of Customer involved in the performance of this Agreement, (e) an authorized user of the Service or recipient of the Products, or (f) an other representative of Customer.

"**CPE**" means the equipment (including hardware, cables, connectors, and related software) that is supplied by Orange as part of the Services and managed by Orange for use with such Services. CPE is never owned by Customer.

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

"**End User**" means the ultimate recipient and end user of an Orange Deliverable or Service, being either Customer or a Customer Affiliate. Subject to the terms of the Agreement, the End User may include Customer's or its Affiliate's third party suppliers and contractors.

"**Importer of Record**" or "**IOR**" means the customs term for the entity named as importer on import customs declarations and responsible for (a) ensuring the imported Products comply with local laws and regulations, (b) filing a completed duty entry and associated documents, and, (c) paying the assessed import duties and other taxes on those Products.

"**Incoterms**" means the international trade terms "**Incoterms® 2010**" as published by the International Chamber of Commerce (ICC) on January 1, 2011.

"**Orange**" means the applicable Orange Business Services 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 Product, hardware, software, corresponding documentation, supply and any related goods, technology and data that Orange sells or leases to Customer (or in the case of software, sells a license right to use such Software) under the Agreement.

"**Owner**" means any natural person who or which (a) own individually or jointly, directly or indirectly, at least 50% of the voting power of Customer, or (b) possess individually or jointly, directly or indirectly, the power to direct or cause the direction of the management and policies of or with respect to Customer, whether through ownership of securities, by contract, or otherwise.

"**Trade Control Rules**" means customs, export/re-export and import controls, restrictions, bans, prohibitions or license/authorization requirements on trade or finance under the laws and regulations of the European Union and its member states, the United States, and/or others relevant countries. Trade Control Rules include in particular, but not limited to: (a) the provisions of 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), (b) the provisions of United States Export Administration Regulations (EAR), and the International Traffic in Arms Regulations (ITAR), (c) the economic, financial, trade sanctions programs or embargos against targeted foreign countries, regimes, named individuals or entities in accordance with the resolutions of the United Nations Security Council (UNSC) or under the laws and regulations of the European Union and its member states, the United States, or of any others relevant countries or authorities, (d) the provisions of the local regulations in the countries of departure and delivery including any customs regulations, export and import controls, approvals, certifications, authorizations or licenses (e.g. export and import license, cryptographic authorization, certificate of conformity with technical standards, etc.).

**1.2 General Provisions.** Orange hereby informs Customer, and Customer acknowledges and agrees, that Orange Deliverables and Services (and all activities related to both) as supplied by Orange to Customer under the Agreement are or may be subject to Trade Control Rules. Each Party shall comply with all Trade Control Rules and acknowledges in particular that under Trade Control Rules, delivery, export, import, use and/or re-export of Orange Deliverables and Services are or may be subject to prior approvals, certifications, authorizations and/or licenses (hereinafter collectively referred to as "**Permits**"). In the absence of any contrary written agreement, 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 country.

**1.3 Trade Controls.** Orange will supply Orange Deliverables and Services to Customer under the Agreement in compliance with applicable Trade Control Rules. Customer will cooperate with Orange and communicate all relevant information and documentation as required by Trade Control Rules including in particular all information related to the end use, countries of destination, and End Users of the Orange Deliverables and Services. Information about End Users includes but is not limited to the names, addresses, contact information, share capital (amount and ownership), and any other relevant information as required by Trade Control Rules. Customer also will ensure that End Users of

Orange Deliverables and Services cooperate with Orange and provide Orange with all required information, certificates, reports, or undertakings.

Orange will not supply any Orange Deliverables or Services to a destination or in a manner that is prohibited.

When Customer is liable for obtaining any Permits (including for importation or use of the Orange Deliverables and Services), Customer will obtain such Permits in its own name and at its own expense. Customer will take all lawful steps to maintain and secure such Permits. Orange will provide reasonable assistance to Customer in obtaining, maintaining, and securing such Permits as may be necessary.

Obtaining all required Permits from any relevant authority or authorities shall be a condition precedent to the supply by Orange to Customer of corresponding Orange Deliverables or Services. If appropriate Permits are denied by the relevant authorities, the Parties will discuss in good faith and define by mutual agreement the best solution to be implemented, including possible modifications of the Orange Deliverables or Services to meet regulatory constraints.

Customer agrees not to export, re-export, import, or transfer, directly or indirectly, any Orange Deliverable or Service supplied under the Agreement to any country or End User to which such export, re-export, import, or transfer is banned or restricted by Trade Control Rules without first obtaining any required Permits from the relevant authorities. In particular, Orange Deliverables and Services may not be exported, re-exported, imported, or transferred to any End User engaged in activities related to weapons of mass destruction. Such activities include but are not necessarily limited to activities related to: (a) the design, development, production, or use of nuclear materials, nuclear facilities, or nuclear weapons, (b) the design, development, production, or use of missiles or support of missiles projects, and (c) the design, development, production, or use of chemical or biological weapons. Customer shall not, without prior appropriate Permits, export, re-export, import, or transfer any Orange Deliverables or Services, either directly or indirectly, to any restricted party as designated by the United Nations Security Council and the relevant authorities in the European Union, in the United States, and in any other relevant countries (e.g. List of persons, entities and groups, Consolidated List, Denied Persons List, Specially Designated Nationals and Blocked Persons Lists, Debarred and Suspended Parties Lists, Entities List, Foreign Sanctions Evaders List, etc.). Customer also understands and agrees that export, re-export, or transfer, directly or indirectly of any Orange Deliverable or Service may be subject to reporting requirements to the relevant authorities (e.g. under U.S. Export Administration Regulations where reports have to be made to the U.S. Commerce Department's Bureau of Industry & Security, etc.). Customer undertakes to comply with all such applicable reporting requirements.

Each Party represents, warrants, and covenants to the other that neither itself nor any of its Associated Person has been or is: (a) listed by any government agency as being debarred, suspended, proposed for suspension or debarment or otherwise ineligible for participation in government procurement programs or other government projects; (b) subject to any international trade or finance sanctions or embargoes, (c) listed on any watch list, maintained for the purpose of enforcing international trade and finance sanctions, or (d) suspended, revoked, or denied its import and/or export capacities or privileges, or, (e) subject to a notice of violation or penalties or others sanctions issued either by the U.S. Bureau of Industry and Security (BIS), the U.S. Department of State, U.S. Department of Treasury - Office of Foreign Assets Controls, nor any other U.S. government agency or any other government agency in any country. If either Party (the "**Non-compliant Party**") ceases to comply with the above representation, warranty and covenant at any time during the Term, the Non-compliant Party will immediately notify the other Party (the "**Notified Party**"). In such case, the Notified Party will be entitled, without liability to the Non-compliant Party, to immediately suspend or terminate any of its obligations, the affected Orange Deliverables or Services, or the Agreement.

If otherwise necessary in order to comply with any Trade Control Rules (in particular, but not limited to, in case of modification of existing, or implementation of new economic, financial, trade sanctions programs or embargoes), either Party will be entitled, without liability to the other Party, to immediately suspend or terminate any of its obligations, the affected Orange Deliverables or Services, or the Agreement.

Orange may suspend or terminate any supply of Orange Deliverables or Services without notice if, in Orange's reasonable judgment, Customer's or an End User's use of the Orange Deliverables or Service violates any applicable Trade Control Rules or any terms and conditions of this Clause 1.3 (Trade Controls).

In case of failure, omission, or non-fulfilment by Customer of any of its obligations under this Clause 1.3 (Trade Controls), Customer shall bear the consequences, and Customer shall indemnify, defend and hold harmless, at its own expenses, Orange from any and all fines, overpayment of levies, import and custom duties, excise or other similar or equivalent taxes, forfeitures, destructions, sale prohibitions, delays, penalties, losses, costs, damages, and expenses (including attorney's fees) resulting from such failure, omission, or non-fulfilment.

The obligations of this Clause 1.3 (Trade Controls), shall survive after the expiry of the Term of the Agreement.

## **1.4 Logistic Services, Delivery and Customs Formalities**

### **1.4.1 CPE**

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

For Delivery Locations where Orange has no capability to make any CPE available to Customer, an alternative solution (e.g. equipment resale) should be considered by both Parties. Customs formalities in such a case will be those described in Clause 1.4.2 (Products).

**1.4.2 Products**

**1.4.2.1 Domestic Supply.** Domestic supply covers the sale of Products by an Orange local Affiliate with delivery of such Products in the same country where this Orange local Affiliate is incorporated.

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

**1.4.2.2 International Supply.** Orange will be responsible for shipping and exporting the Products to the Delivery Locations according to Incoterms agreed between the Parties, as described in Clause 1.4.2.3 (Incoterms).

Customer will appoint the entity acting as IOR (either Customer, its local Affiliate, or the consignee named by Customer in the importing country), and such entity will be responsible for performing the importation of Products. As importer of Products, such IOR will be liable for all administrative and import customs formalities as required by the Trade Control Rules in the importing countries, including without limitation (a) paying all applicable import duties and taxes, and (b) obtaining any Permits required for import.

**1.4.2.3 Incoterms.** Unless otherwise agreed between the Parties and excluding domestic supply covered in Clause 1.4.2.1 (Domestic Supply); shipping and exporting to the Delivery Locations of Products 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 Products by Orange in any quote, Order, or other related document shall not modify the provisions of the Agreement or these TLDC Clauses relative to the passing of risk of loss and title with respect to the subject Products.

**1.4.2.4 Risk of Loss.** Upon delivery of Products to the first carrier, Customer will bear all risk of loss, damage, or destruction. Customer will ensure that appropriate personnel are available to take control of the shipment when it is delivered at the address designated by Customer in its Order.

**1.4.2.5 Title.** Title of Products passes to Customer upon delivery to the first carrier; however, Orange hereby reserves and maintains, and Customer hereby grants and conveys to Orange, a purchase money security interest in Products (or its equivalent under applicable local law) until such time as Customer remits full payment of all amounts due for Products hereunder to Orange. Customer (a) will execute all documents requested by Orange for the purposes of perfecting its security interest in Products, and (b) will take any and all steps required by Orange to maintain a valid continuing security interest in or other liens on Products. All costs, expenses, and taxes incurred by Orange in connection with any of the foregoing (including attorneys' fees and disbursements) will be the responsibility of Customer. Without limiting the generality of the foregoing, Orange may file a copy of the Agreement as a financing statement. Customer's right to possession and interest in Products will cease immediately upon Customer's failure to make payment in full on the due date or if Customer is declared bankrupt or a receiver or administrator is appointed in respect of Customer. In such cases, without prejudice to any other rights of Orange, Orange will be entitled to enter Customer's or the End User's premises for the purpose of recovering Products.

**END OF TRADE CONTROLS, LOGISTICS SERVICES, DELIVERY, AND CUSTOMS CLAUSES**