



**PURCHASE ORDER TERMS AND CONDITIONS
FOR THE SUPPLY OF GOODS AND THE PROVISION OF SERVICES OTHER THAN HHRR-RELATED
PROFESSIONAL SUPPORT AND CONSULTANCY SERVICES
IN EUROPE, MIDDLE EAST AND AFRICA**

These terms and conditions apply if there is not a negotiated agreement between the BMC Software entity (“BMC”) issuing a valid purchase order (“Order”) and the person or entity identified as seller (“Seller”) in the Order.

If there is a negotiated agreement, the terms of the agreement override these terms and conditions; otherwise, the Order together with these terms and conditions (and any attachments thereof) will be the sole agreement between BMC and Seller with respect to the goods (“Goods”) and /or services (“Services”) identified in the Order.

No other documents (including, without limitations, Seller’s proposals, invoices, quotations or acknowledgements) will become part of the Order and/or these terms and conditions unless approved in writing by BMC.

No waiver of a term or condition or modification of these terms and conditions shall be binding unless approved in writing by BMC.

If a translation of this document in a language other than English has been submitted to Seller, the English version shall prevail in case of inconsistency or discrepancy with the translation thereof.

Payments. BMC will be invoiced upon delivery and acceptance for fees and reimbursable expenses, if any, payable hereunder. Invoiced amounts will be due and payable within sixty (60) days after receipt of a correct and undisputed invoice. All invoices submitted for payment must include a detailed description of the Goods and/or Services and a valid Order number. Payment will be in EUR currency unless otherwise stated in the Order. Payment will not constitute acceptance of the Goods and/or Services. BMC, at its option, and without prior notice to Seller, shall have the right to setoff or deduct from any Seller’s invoice, any credits, refunds or claims of any kind due to BMC.

Acceptance and Completion Criteria.

Acceptance Criteria – Seller will deliver all requirements contained on the Order. The BMC representative will either accept or reject Seller’s delivery of the Goods or Services. BMC will not reimburse Seller, or be liable for, the Goods and Services that are rejected.

Completion Criteria – Seller’s obligations under the Order will be completed when any one of the following first occurs: Seller satisfies the above Acceptance Criteria and completes the requirements of the Order or the Order is terminated.

Termination. At the sole discretion of BMC, the Order or any portion thereof may be cancelled at any time by providing written notice to Seller. In the event of such cancellation, and as requested by BMC, all work will immediately cease and payment for the Goods supplied or

Services rendered through the termination date will be paid in full.

Representations and Warranties. Seller represents and warrants that:

- it will supply the Goods and provide the Services: (i) in accordance with Order as well as any applicable laws and regulations; (ii) free from any rights of third parties (including intellectual property rights thereon); and (iii) fit for any particular purpose specified in the Order or, in absence thereof, fit for the purposes for which such Goods and/or Services would ordinarily be used;
- all Goods will (i) be manufactured, processed and assembled by Seller or its authorized subcontractors; (ii) be free from defects in design, material and workmanship; (iii) be new and contain first-quality components and parts; and (iv) conform to any applicable specification, requirement, certification and/or acceptance criterion identified herein and in the Order;
- all Services will (i) be of professional quality exceeding or conforming to generally-accepted best professional practices that are considered the standard for first-class contractors within Seller’s industry; and (ii) conform to any applicable specification, requirement, certification and/or acceptance criterion identified herein and in the Order.

Seller hereby assigns to BMC full title to all intellectual property rights in any material, document and/or other deliverable resulting from the Services.

Intellectual property rights in any Goods existing prior to the issue of the Order will remain vested in Seller; to the extent that such pre-existing intellectual property rights are embedded in any material, document and/or other deliverable resulting from the Services, Seller grants BMC a worldwide, irrevocable, transferable, non-exclusive, royalty-free license to use the pre-existing intellectual property rights as part of such Goods.

If any claim is made against BMC that the Goods and/or Services infringe a third party’s intellectual property rights, Seller shall at its cost (but at BMC’s discretion): (i) procure for BMC the right to continue using the Goods and/or Services; (ii) modify the Goods and/or Services so they cease to be infringing; or (iii) replace the Goods and/or Services by non-infringing equivalents. Otherwise, BMC is entitled to terminate the Order and to reclaim all sums which it has paid to Seller thereunder.

Insurance. Seller shall obtain and keep in force until it fully performs its obligation under the Order adequate liability insurance (including, without limitation, for commercial and products liability coverage) and statutory worker’s compensation/employer’s liability insurance with reputable and financially sound insurers, which however will not relieve Seller from any liability towards BMC. The insured amount cannot be considered as limitation of liability.



All such insurance shall be with an insurance provider/underwriter authorized to do business in the country(ies) in which the Goods are to be supplied or the Services are to be performed. Upon request of BMC, Seller shall provide evidence of the insurance policies underwritten by Seller.

Confidential Information. For a period of 5 years from the issue of the Order, each party will keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to that party or its agents and any other confidential information concerning the disclosing party's business or its products which the receiving party may obtain and the receiving party will restrict disclosure of such confidential material to such of its employees, agents, contractors or subcontractors as need to know the same for the purpose of discharging the receiving party's obligations to the disclosing party and will ensure that such employees, agents, contractors or subcontractors are subject to like obligations of confidentiality as bind the receiving party. No personal data shall be provided to Seller under the Order.

Personal Data. BMC adheres to its Controller and Processor Binding Corporate Rules Policy approved by European data protection authorities with respect to compliance with European data protection laws.

To the extent BMC provides Personal Data to Seller, Seller agrees to process Personal Data on behalf of BMC in accordance with the all applicable privacy laws and regulations. BMC is responsible for complying with all legal requirements relating to the collection, use, processing and transfer of Personal Data. BMC and Seller acknowledge and agree that when BMC is the "Data Controller" of such Personal Data, Seller is the "Data Processor" of such Personal Data, and both parties will fulfill their respective legal obligations. BMC alone as the Data Controller will determine the purposes for which and the manner in which such Personal Data will be processed by Seller.

Seller and/or its subcontractors will: (i) process the Personal Data only for the purpose of fulfilling its obligations under the Order and these terms and conditions as well as all applicable local and foreign privacy and data protection laws; (ii) process Personal Data strictly in accordance with BMC's lawful and explicit instructions; (iii) at all times during the performance of the Order, have appropriate technical and organizational measures (including encrypting measures when files containing Personal Data are in transit); (iv) not modify, amend or alter the contents of the Personal Data except as required or permitted by the Order or with BMC's prior written consent; (v) include the Personal Data in any product or service offered by Seller to third parties; and (vi) notify BMC promptly in the event of a third party claim resulting from a harmful release or misuse of Personal Data.

"Personal Data" has the meaning given to it in the EU Directive 95/46 EC and includes any personally identifiable information received by Seller from, or on behalf of BMC, relating to a person, which is sufficient to cause such person to be identified, directly or indirectly.

Assignment. Seller will not be entitled to assign the Order or any portion thereof without the prior written consent of BMC.

Choice of Law and Dispute Settlement. The Order and these terms and conditions shall be interpreted and governed by the domestic laws of the country where the BMC Software entity issuing the Order is registered; any unresolved dispute between the parties arising in connection with the Order and/or these terms and conditions shall be submitted for resolution to the jurisdiction of the competent courts of the country where the BMC Software entity issuing the Order is registered.

Seller represents and warrants that it complies with all laws of the relevant jurisdiction and has all the required permits and authorizations of any nature to supply the Goods and perform the Services in the territory specified in the Order.

Indemnity. Without prejudice to applicable mandatory laws of the relevant jurisdiction, Seller shall, without limitation, indemnify and hold harmless BMC for all liabilities, damages, cost, losses or expenses incurred by BMC (i) as a result of Seller's breach of the Order and/or these terms and conditions and (ii) for any claim made by a third party against BMC in connection with the Goods and/or Services (including, without limitation, any claim that such Goods and/or Services infringe a third party's intellectual property rights).

Limitation of Liability. To the maximum extent permitted by the laws of the relevant jurisdiction:

- in no event will BMC, including its subsidiaries, be liable for any lost revenues, lost profits, incidental, consequential, special or punitive damages;
- save in case of gross negligence or willful misconduct, in no event will BMC's and its subsidiaries' liability for direct damages exceed the amount payable by BMC under the Order.

Non-Restrictive Relationship. BMC shall not be precluded from independently developing, acquiring from other third parties, distributing or marketing other goods or services which may perform the same or similar functions as the Goods provided or Services performed under the Order.

Notices. Any notice must be given duly signed by registered mail, courier, fax or by e-mail to the address of the relevant Party as stated in the Order or to such other address as such Party may have notified in writing. E-mail and fax require written confirmation of the receiving Party. Seller's reply, correspondence, information or documentation related to the Order must be provided in the language used in the Order.

Miscellaneous. The invalidity or unenforceability of any term of the Order and/or these terms and conditions will not adversely affect the validity or enforceability of the remaining terms. The Order will be given effect as if the invalid or unenforceable term (whether stipulated in the Order or these terms and conditions) had been replaced by a term with a similar economic effect. Failure to enforce or



exercise any term of the Order and/or these terms and conditions does not constitute a waiver of such term and does not affect the right later to enforce such or any other term therein contained. Provisions of the Order and/or these terms and conditions which either are expressed to survive the Order's termination or from their nature or context are meant to survive such termination (including, for the avoidance of doubt, "Representations and Warranties", "Indemnity", "Confidential Information" and "Personal Data Security") will remain in full force and effect notwithstanding such termination. The Order, together with these terms and conditions, constitutes the entire agreement between the Parties and replaces any prior agreement between them with regard to its subject matter.

Final Provisions. No on premises access (including physical or remote) can be granted under the Order.