

MICRO FOCUS CUSTOMER TERMS - SOFTWARE

1. **Parties.** These terms represent the agreement (“**Agreement**”) that governs the purchase of software product licences and services from **Micro Focus LLC** (“**Micro Focus**”) by the Customer entity identified below (“**Customer**”).
2. **Orders.** “**Order**” means the accepted order including any supporting material which the parties identify as incorporated either by attachment or reference (“**Supporting Material**”). Supporting Material may include (as examples) software product lists, software specifications, standard or negotiated service descriptions, data sheets and their supplements, and statements of work (SOWs), published warranties and service level agreements, and may be available to Customer in hard copy or by accessing a designated Micro Focus website.
3. **Scope and Order Placement.** These terms may be used by Customer either for a single Order or as a framework for multiple Orders. In addition, these terms may be used on a global basis by the parties’ “**Affiliates**”, meaning any entity controlled by, controlling, or under common control with a party. The parties can confirm their agreement to these terms either by signature where indicated at the end or by referencing these terms on Orders. Affiliates participate under these terms by placing orders which specify software product or service delivery in the same country as the Micro Focus Affiliate accepting the Order, referencing these terms, and specifying any additional terms or amendments to reflect local law or business practices.
4. **Order Arrangements.** Customer may place orders with Micro Focus through our website, customer-specific portal, or by letter, fax or e-mail. Where appropriate, orders must specify a delivery date. If Customer extends the delivery date of an existing Order beyond ninety (90) days, then it will be considered a new order.
5. **Prices and Taxes.** Prices will be as quoted in writing by Micro Focus or, in the absence of a written quote, as set out on our website, customer-specific portal, or Micro Focus published list price at the time an order is submitted to Micro Focus. Prices are exclusive of taxes, duties, and fees (including installation, shipping, and handling) unless otherwise quoted. If a withholding tax is required by law, please contact the Micro Focus order representative to discuss appropriate procedures. Micro Focus will charge separately for reasonable out-of-pocket expenses, such as travel expenses incurred in providing professional services.
6. **Invoices and Payment.** Customer agrees to pay all invoiced amounts within thirty (30) days of Micro Focus’ invoice date. Micro Focus may suspend or cancel performance of open Orders or services if Customer fails to make payments when due.
7. **Delivery.** Micro Focus will use all commercially reasonable efforts to deliver software products in a timely manner. Micro Focus may elect to deliver software and related software product/license information by electronic transmission or via download.
8. **Support Services.** Micro Focus’ support services will be described in the applicable Supporting Material , which will cover the description of Micro Focus’ offering, eligibility requirements, service limitations and Customer responsibilities, as well as the Customer systems supported.
9. **Eligibility.** Micro Focus’ service, support and warranty commitments do not cover claims resulting from:
 1. improper use, site preparation, or site or environmental conditions or other non-compliance with applicable Supporting Material;
 2. Modifications or improper system maintenance or calibration not performed by Micro Focus

- or authorized by Micro Focus;
3. failure or functional limitations of any non-Micro Focus software or product impacting systems receiving Micro Focus support or service;
 4. malware (e.g. virus, worm, etc.) not introduced by Micro Focus; or
 5. abuse, negligence, accident, fire or water damage, electrical disturbances, transportation by Customer, or other causes beyond Micro Focus' control.
10. **Professional Services.** Micro Focus will deliver any ordered IT consulting, training or other services as described in the applicable Supporting Material.
 11. **Professional Services Acceptance.** The acceptance process (if any) will be described in the applicable Supporting Material, will apply only to the deliverables specified, and shall not apply to other products or services to be provided by Micro Focus.
 12. **Dependencies.** Micro Focus' ability to deliver services will depend on Customer's reasonable and timely cooperation and the accuracy and completeness of any information from Customer needed to deliver the services.
 13. **Change Orders.** We each agree to appoint a project representative to serve as the principal point of contact in managing the delivery of services and in dealing with issues that may arise. Requests to change the scope of services or deliverables will require a change order signed by both parties.
 14. **Software Performance.** Micro Focus warrants that its branded software products will conform materially to their specifications and be free of malware at the time of delivery. Micro Focus warranties for software products will begin on the date of delivery and unless otherwise specified in Supporting Material, will last for ninety (90) days. Micro Focus does not warrant that the operation of software products will be uninterrupted or error-free or that software products will operate in hardware and software combinations other than as authorized by Micro Focus in Supporting Material.
 15. **Services Performance.** Services are performed using generally recognized commercial practices and standards. Customer agrees to provide prompt notice of any such service concerns and Micro Focus will re-perform any service that fails to meet this standard.
 16. **Services with Deliverables.** If Supporting Material for services define specific deliverables, Micro Focus warrants those deliverables will conform materially to their written specifications for 30 days following delivery. If Customer notifies Micro Focus of such a non-conformity during the 30 day period Micro Focus will promptly remedy the impacted deliverables or refund to Customer the fees paid for those deliverables and Customer will return those deliverables to Micro Focus.
 17. **Product Warranty Claims.** When we receive a valid warranty claim for an Micro Focus software product, Micro Focus will either repair the relevant defect or replace the software product. If Micro Focus is unable to complete the repair or replace the software product within a reasonable time, Customer will be entitled to a full refund upon the prompt written confirmation by Customer that the relevant software product has been destroyed or permanently disabled. Micro Focus will pay for shipment of repaired or replaced software products to Customer.
 18. **Remedies:** This Agreement states all remedies for warranty claims. To the extent permitted by law, Micro Focus disclaims all other warranties.

19. **Intellectual Property Rights.** No transfer of ownership of any intellectual property will occur under this Agreement. Customer grants Micro Focus a non-exclusive, worldwide, royalty-free right and license to any intellectual property that is necessary for Micro Focus and its designees to perform the ordered services. If deliverables are created by Micro Focus specifically for Customer and identified as such in Supporting Material, Micro Focus hereby grants Customer a worldwide, non-exclusive, fully paid, royalty-free license to reproduce and use copies of the deliverables internally.
20. **Intellectual Property Rights Infringement.** Micro Focus will defend and/or settle any claims against Customer that allege that an Micro Focus-branded software product or service as supplied under this Agreement infringes the intellectual property rights of a third party. Micro Focus will rely on Customer's prompt notification of the claim and cooperation with our defense. Micro Focus may modify the software product or service so as to be non-infringing and materially equivalent, or we may procure a license. If these options are not available, we will refund to Customer the amount paid for the affected software product in the first year or the depreciated value thereafter or, for support services, the balance of any pre-paid amount or, for professional services, the amount paid. Micro Focus is not responsible for claims resulting from any unauthorized use of the software products or services. This section shall also apply to deliverables identified as such in the relevant Support Material except that Micro Focus is not responsible for claims resulting from deliverables content or design provided by Customer.
21. **License Grant.** Micro Focus grants Customer a non-exclusive license to use the version or release of the Micro Focus-branded software listed in the Order. Permitted use is for internal purposes only (and not for further commercialization), and is subject to any specific software licensing information that is in the software product or its Supporting Material. For non-Micro Focus branded software, the third party's license terms will govern its use.
22. **Updates.** Customer may order new software versions, releases or maintenance updates ("Updates"), if available, separately or through an Micro Focus software support agreement. Additional licenses or fees may apply for these Updates or for the use of the software in an upgraded environment. Updates are subject to the license terms in effect at the time that Micro Focus makes them available to Customer.
23. **License Restrictions.** Micro Focus may monitor use/license restrictions remotely and, if Micro Focus makes a license management program available, Customer agrees to install and use it within a reasonable period of time. Customer may make a copy or adaptation of a licensed software product only for archival purposes or when it is an essential step in the authorized use of the software. Customer may use this archival copy without paying an additional license only when the primary system is inoperable. Customer may not copy licensed software onto or otherwise use or make it available on any public external distributed network. Licenses that allow use over Customer's intranet require restricted access by authorized users only. Customer will also not modify, reverse engineer, disassemble decrypt, decompile or make derivative works of any software licensed to Customer under this Agreement unless permitted by statute, in which case Customer will provide Micro Focus with reasonably detailed information about those activities.
24. **License Term and Termination.** Unless otherwise specified, any license granted is perpetual, provided however that if Customer fails to comply with the terms of this Agreement, Micro Focus may terminate the license upon written notice. Immediately upon termination, or in the case of a limited-term license, upon expiration, Customer will either destroy all copies of the software or return them to Micro Focus, except that Customer may retain one copy for archival purposes only.

25. **License Transfer.** Customer may not sublicense, assign, transfer, rent or lease the software or software license except as permitted by Micro Focus. Micro Focus-branded software licenses are generally transferable subject to Micro Focus' prior written authorization and payment to Micro Focus of any applicable fees. Upon such transfer, Customer's rights shall terminate and Customer shall transfer all copies of the software to the transferee. Transferee must agree in writing to be bound by the applicable software license terms. Customer may transfer firmware only upon transfer of associated hardware.
26. **License Compliance.** Micro Focus may audit Customer compliance with the software license terms. Upon reasonable notice, Micro Focus may conduct an audit during normal business hours (with the auditor's costs being at Micro Focus' expense). If an audit reveals underpayments then Customer will pay to Micro Focus such underpayments. If underpayments discovered exceed five (5) percent of the contract price, Customer will reimburse Micro Focus for the auditor costs.
27. **Confidentiality.** Information exchanged under this Agreement will be treated as confidential if identified as such at disclosure or if the circumstances of disclosure would reasonably indicate such treatment. Confidential information may only be used for the purpose of fulfilling obligations or exercising rights under this Agreement, and shared with employees, agents or contractors with a need to know such information to support that purpose. Confidential information will be protected using a reasonable degree of care to prevent unauthorized use or disclosure for 3 years from the date of receipt or (if longer) for such period as the information remains confidential. These obligations do not cover information that: i) was known or becomes known to the receiving party without obligation of confidentiality; ii) is independently developed by the receiving party; or iii) where disclosure is required by law or a governmental agency.
28. **Personal Information.** Each party shall comply with their respective obligations under applicable data protection legislation. Micro Focus does not intend to have access to personally identifiable information ("PII") of Customer in providing services. To the extent Micro Focus has access to Customer PII stored on a system or device of Customer, such access will likely be incidental and Customer will remain the data controller of Customer PII at all times. Micro Focus will use any PII to which it has access strictly for purposes of delivering the services ordered.
29. **US Federal Government Use.** If software is licensed to Customer for use in the performance of a US Government prime contract or subcontract, Customer agrees that consistent with FAR 12.211 and 12.212, commercial computer software, documentation and technical data for commercial items are licensed under Micro Focus' standard commercial license.
30. **Global Trade compliance.** Software products and services provided under these terms are for Customer's internal use and not for further commercialization. If Customer exports, imports or otherwise transfers software products and/or deliverables provided under these terms, Customer will be responsible for complying with applicable laws and regulations and for obtaining any required export or import authorizations. Micro Focus may suspend its performance under this Agreement to the extent required by laws applicable to either party.
31. **Limitation of Liability.** Micro Focus' liability to Customer under this Agreement is limited to the greater of \$1,000,000 or the amount payable by Customer to Micro Focus for the relevant Order. Neither Customer nor Micro Focus will be liable for lost revenues or profits, downtime costs, loss or damage to data or indirect, special or consequential costs or damages. This provision does not limit either party's liability for: unauthorized use of intellectual property, death or bodily injury caused by their negligence; acts of fraud; wilful repudiation of the Agreement; nor any liability which may not be excluded or limited by applicable law.

32. **Disputes.** If Customer is dissatisfied with any software products or services purchased under these terms and disagrees with Micro Focus' proposed resolution, we both agree to promptly escalate the issue to a Vice President (or equivalent executive) in our respective organizations for an amicable resolution without prejudice to the right to later seek a legal remedy.
33. **Force Majeure.** Neither party will be liable for performance delays nor for non-performance due to causes beyond its reasonable control, except for payment obligations.
34. **Termination.** Either party may terminate this Agreement on written notice if the other fails to meet any material obligation and fails to remedy the breach within a reasonable period after being notified in writing of the details. If either party becomes insolvent, unable to pay debts when due, files for or is subject to bankruptcy or receivership or asset assignment, the other party may terminate this Agreement and cancel any unfulfilled obligations. Any terms in the Agreement which by their nature extend beyond termination or expiration of the Agreement will remain in effect until fulfilled and will apply to both parties' respective successors and permitted assigns.
35. **General.** This Agreement represents our entire understanding with respect to its subject matter and supersedes any previous communication or agreements that may exist. Modifications to the Agreement will be made only through a written amendment signed by both parties. The Agreement will be governed by the laws of the country of Micro Focus or the Micro Focus Affiliate accepting the Order and the courts of that locale will have jurisdiction, however, Micro Focus or its Affiliate may, bring suit for payment in the country where the Customer Affiliate that placed the Order is located. Customer and Micro Focus agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply. Claims arising or raised in the United States will be governed by the laws of the state of California, excluding rules as to choice and conflict of law.