

# TRICENTIS PURCHASE ORDER TERMS AND CONDITIONS

This Tricentis Purchase Order Terms and Conditions (“T&Cs”) and the PO (defined below, including any supplemental terms either referenced herein or in the PO (collectively referred as “Agreement”), apply exclusively to all (i) services, including professional/consulting services (“Services”), (ii) physical items as well as software, data, scripts or code (“Goods”), and (iii) any Goods conceived, produced or developed in connection with the Services (“Deliverables”) (Services, Goods, and Deliverables collectively referred to as “Products”) provided by the vendor under a PO (“Vendor”) to the Tricentis entity which has ordered the Products (“Company”), unless there is a separate written agreement between the parties in place. Any other terms and conditions presented by Vendor are expressly rejected. In the event of any conflict or inconsistency, the order of precedence is (1) the PO, and (2) the T&Cs. This Agreement constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes all prior oral and written communications.

## 1. ORDERS AND DELIVERY

**1.1. “PO”** means (i) order forms, or (ii) statements of works executed by the parties or (iii) any other document as agreed by the parties, specifying the type, scope, and qualification of the Products, the respective fees and additional conditions (if any), or (iv) purchase orders issued by Company which incorporate the T&Cs by reference and Vendor accepts such purchase order.

**1.2. Time of Essence.** Delivery dates specified in the PO are of the essence. Company shall not be liable to accept any part of such Products which are delayed and may, at its option, cancel the PO. If Vendor encounters or anticipates difficulty in meeting the delivery schedule, Vendor shall promptly notify Company in writing.

**1.3. Change Order.** Company may, at any time, request additions, deletions, or revisions to the Products ordered and all approved requests will be incorporated as change order to the PO via a separate written amendment. Vendor will not provide any Products outside of the PO until a change order has been executed.

**1.4. Shipping.** All Goods are to be suitably packed for shipment to secure the lowest transportation and insurance rates and to meet carrier requirements. Risk of loss shall be borne by Vendor until delivery.

**1.5. Acceptance.** All Goods and Deliverables will be subject to inspection and testing, and if, in Company's sole discretion, Products found not in accordance with the specifications, instructions, samples, or the Agreement shall be subject to rejection, return and back charge as appropriate, together with the necessary costs of handling and shipping. Company's payment of all or any part of the fees prior to such inspection and testing of the Products shall not constitute a waiver. If Vendor fails to promptly correct defects in or replace nonconforming Goods and Deliverables, Company may make such corrections or replace such Products, and charge Vendor any costs incurred. Depending on the item's nature and subject to Company's sole discretion, partial acceptance may be possible. Company shall be entitled to offset any amounts of non-conforming Goods and Deliverables from fees owing to Vendor.

**1.6. Services.** Except as agreed otherwise, Vendor shall perform the Services at the office location of Company. Performance of Services must be evidenced by appropriate activity reports submitted by Vendor and approved by Company.

**1.7. Personnel.** Vendor employees, approved subcontractors, agents, and/or other representatives that provide Products hereunder (“Personnel”) shall remain in the employment or at the direction of Vendor. No provision of this Agreement will be deemed to create a contractual relationship between Company and any Personnel and Vendor shall be directly responsible for all Products performed by Personnel. Company may request in its sole discretion Personnel to be removed or replaced, and Vendor shall promptly replace said Personnel with new Personnel acceptable to Company.

**1.8. Subcontracting.** Vendor shall not contract for any part of the Products without the prior written consent by Company, however, no approval hereunder shall relieve Vendor of any of its obligations. Upon Company's request, Vendor shall provide for each subcontractor all relevant information to ensure compliance with this Agreement.

**1.9. Insurance.** Vendor shall carry and maintain for the term of valid POs, at its own expense, all necessary insurance coverage adequate for the defense and indemnification of claims, demands, or actions arising out of or taken by Vendor, or its Personnel based on this Agreement, including but not limited to general business liability and professional liability insurance, and shall provide Company with evidence of upon request.

**1.10. Right to Audit.** Vendor shall ensure, and ensure that its subcontractors shall, maintain accurate and transparent books, accounts, records, and other documentation (“Records”) related to the Products to demonstrate compliance with applicable laws and regulations and this Agreement. The Records shall be kept in reasonable detail and accuracy. All Records will be maintained for three (3) years after the termination or completion of the Agreement. If any audit being conducted raises issues, such Records shall be maintained for as long as required for the resolution of the issues. Authorized representatives of Company (including third party auditors) shall have the right to conduct on-site audits of Vendor to the extent necessary to determine Vendor's compliance under this Agreement.

## 2. FEES

**2.1. Pricing.** Fees shall be firm and not subject to adjustment or variation unless specifically approved in writing by Company. Vendor is not entitled to any other compensation or fees for Products that are not identified in the PO. Company shall have no obligation for reimbursement of any expenses, including travel expenses, incurred by Vendor unless such expenses have been approved.

**2.2. Invoicing.** If not otherwise agreed in the PO, payment is due forty-five (45) days following Company's receipt of an undisputed invoice. Each invoice must specify the PO number, Company entity name, invoice number and date, amount due, and (if applicable) Taxes. Vendor must provide supporting documentation along with the invoice and other information that Company may reasonably request to verify the accuracy of any fees. Company may require a financial statement from Vendor at any time.

**2.3. Taxes.** All fees payable by Company to Vendor under this Agreement are exclusive of all sales and use, goods and services, value added, excise, or any other taxes, levies, and assessments of any jurisdiction (“Taxes”). Vendor shall invoice Company for all Taxes that Vendor is required to collect from Company related to this Agreement under applicable law, rule, or regulation. If any deduction or withholding is required by law to be made by Company, Company is expressly directed to deduct from all fees payable to Vendor and remit to the applicable governmental authority all withholding taxes and source deductions, as may presently, or after this Agreement takes effect, be imposed by law or regulation as an obligation upon Company with respect to any such amounts payable to Vendor. All invoices issued by Vendor to which Company applied such deduction or withholding are considered to be paid in full to Vendor. VENDOR IS LIABLE FOR AND SHALL, WITHOUT LIMIT AND AT ITS OWN COST, INDEMNIFY, DEFEND AND HOLD COMPANY HARMLESS FROM AND AGAINST ALL CLAIMS RESULTING FROM VENDOR'S FAILURE TO PAY TAXES THAT ARE VENDOR'S RESPONSIBILITY.

## 3. INTELLECTUAL PROPERTY

**3.1. “IP Rights”** mean any worldwide common law and statutory rights, whether arising under the applicable law or any other state, country, jurisdiction, government, or public legal authority, associated with (i) patents, utility models, invention disclosures and applications therefor, (ii) trade secrets, or proprietary information, (iii) copyrights; (iv) trademarks and service marks, (v) industrial designs, (vi) rights in databases and data collections; (vii) economic rights of authors and inventors, however denominated, (viii) rights to apply for, file for, certify, register, record, perfect or any similar or equivalent rights to any of the foregoing, provided those rights or applications (where such applications can be made) are capable of protection in the applicable jurisdiction.

**3.2. Ownership.** Unless otherwise specified in a PO, Products provided are “Works made for hire” and to the extent permissible under applicable law, Vendor assigns to Company all rights, title, and interest in the Products, free from any third-party rights and Company owns all right, title and interest in and to such Products. Vendor agrees to execute such documents necessary to implement and carry out the provisions of this section. Passage of title of the Products shall not relieve Vendor of its obligations under this Agreement.

**3.3. Perpetual Rights.** Where an ownership assignment is not possible, Vendor grants to Company a full, paid-up, exclusive, assignable, sublicensable, perpetual, irrevocable, worldwide license to the rights conceived, produced, or developed by Vendor in connection with the Products to permit Company to use, copy, modify, distribute, and fully exploit such Products.

**3.4. Pre-Existing IP.** Notwithstanding anything to the contrary herein, Vendor shall retain ownership of all IP Rights created or acquired by Vendor outside the scope of this Agreement (“Pre-Existing IP”). If the Products include or are covered by any Pre-Existing IP, Vendor grants Company a license as set out in Section 3.3, except that such license shall be non-exclusive.

**3.5.** Upon completion of the Products or when a PO expires or is terminated, Vendor shall provide Company with all material and information that is needed for full compliance with this Section 3.

#### 4. WARRANTY, LIABILITY, INDEMNIFICATION

**4.1. Warranty.** Vendor represents, warrants, and covenants that (i) Products are unencumbered and performed in a professional and workmanlike manner using reasonable skill, care and diligence, in accordance with industry standards and conform to the specifications, free from defects; (ii) Products do not infringe any third party rights; (iii) no Goods or Deliverables are subject to an open source, public-source, freeware or other third party license agreement that requires Company to disclose or license or to be made available at no charge any material; (vi) Vendor, its Personnel and the Products comply with applicable local, state and federal laws, rules, regulations and ordinances, (iv) Vendor and its Personnel comply with Company's Code of Conduct available at [www.tricentis.com/legal-information/contracts](http://www.tricentis.com/legal-information/contracts).

**4.2. Remedy.** Vendor shall immediately replace or repair, free of charge, Products which are defective in materials or workmanship or otherwise not in conformity with the requirements of the PO. Unless Vendor corrects or replaces such Product, Company may at its sole discretion (i) require the delivery of such Goods and Deliverables at a reduction in price, or (ii) terminate the PO for breach and recover expenses for obtaining substitute supplies. The warranty period will be extended for which the defective Products cannot be used for their intended purpose.

**4.3. Liability.** IN NO EVENT SHALL COMPANY BE LIABLE TO VENDOR FOR INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES.

**4.4. Indemnity.** Vendor shall indemnify, defend, and hold harmless Company, its affiliates, and their respective directors, officers, shareholders, employees, and agents as well as Company customers ("Indemnitees") against all claims and actions asserted or commenced by a third party ("Claim") and all losses, damages, liabilities, costs and expenses of any kind, including, without limitation, reasonable attorneys' fees, that are incurred by the Indemnitees in connection with or resulting from such Claim, if such Claim is based upon or results from: (i) any breach by Vendor of this Agreement or any of Vendor's representations, warranties, or obligations herein, (ii) an allegation that the Product infringes third party rights, or (iii) personal injury or property damage made by or on behalf of Vendor or its Personnel, except those claims resulting solely from the Indemnitees' gross negligence or willful misconduct. Vendor shall provide replacement or modified Goods or Deliverables that do not infringe third-party rights, or shall acquire Company's right to continue to use the Goods or Deliverables in the form in which they gave rise to the Claim. The Indemnitees will have the right to participate in the defense of all Claims and may appear (at their own expense) with counsel. Vendor shall have the right to fully-control the defense of each Claim; provided that it shall not agree to any settlement that imposes any financial or specific performance obligation on, or admission of liability by, an Indemnitee without such party's prior express written consent.

#### 5. CONFIDENTIAL INFORMATION, DATA PRIVACY AND SECURITY

**5.1. "Confidential Information"** means all information which Company protects against unrestricted disclosure to others, furnished by Company or its representatives to Vendor or its Personnel that (i) is identified as confidential, internal, or proprietary, or (ii) is by its nature recognizable as confidential or is disclosed in a manner that it may be reasonably inferred to be confidential, internal, or proprietary.

**5.2. Obligations.** Vendor shall use Confidential Information solely for performing its obligations or exercising its rights under this Agreement, keep all Confidential Information in strict confidence; and not disclose, cause, or permit disclosure of the Confidential Information to any third party, except as permitted under this Agreement. Vendor shall limit disclosure of any Confidential Information to its Personnel that have a "need to know" to carry out the Product provision and ensure that such Personnel have signed an agreement containing disclosure and use provisions. The above restrictions on the use and disclosure of Confidential Information shall not apply to any Confidential Information that: (i) has become generally available to the public through no act or omission of the Vendor; (ii) at the time of disclosure to Vendor was known free of restriction; (iii) is lawfully acquired free of restriction by the Vendor; or (iv) is independently developed by Vendor without reference or access to the Confidential Information. Vendor may disclose Confidential Information to the extent required by law, regulation, court order or regulatory agency if Vendor gives Company prior notice of such disclosure (if legally permitted) and provides assistance in contesting the required disclosure. Vendor shall disclose only that portion of the Confidential Information which is legally required to be disclosed and shall request that disclosed Confidential Information is treated confidential.

**5.3. Data Collection.** Vendor expressly authorizes the use and processing of Vendor's contact information relating to its Personnel for invoicing, billing, and other business inquiries, contract management and order fulfilment by Company and its affiliates in compliance with applicable privacy laws and its privacy policy

[www.tricentis.com/legal-information/privacy-policy](http://www.tricentis.com/legal-information/privacy-policy).

**5.4. Data Processing.** Vendor shall not process, and Company does not authorize the processing of any personal data by Vendor unless a data processing agreement is executed between the parties.

**5.5. Security.** Vendor shall use and maintain generally accepted industry standard administrative, physical, and technical safeguards for protection of Company's security, confidentiality, and integrity.

#### 6. TERM AND TERMINATION

**6.1. Termination for Breach.** Company may terminate a PO, in whole or in part, immediately (i) if Vendor fails to comply with any material term of this Agreement after Company has provided Vendor fifteen (15) days' prior written notice specifying the nature of such default and Vendor fails to cure such default within such fifteen (15) day period; or (ii) of Vendor's dissolution, liquidation, insolvency or bankruptcy.

**6.2. Termination for Convenience:** Company may, by providing at least fifteen (15) days' prior written notice stating the extent and effective date, terminate any PO for convenience in whole or in part. In such event, Vendor shall immediately cease all services (including shipment of Products). Company shall pay Vendor that portion of fees related to the Products completed and/or delivered to Company's satisfaction prior to such termination, together with Vendor's actual, reasonable, verifiable direct costs, if any, incurred in closing-out such services, less any payments made prior to such termination. Vendor shall not be paid for any Products performed after receipt of a notice of termination. Vendor shall have no further claim against Company on account of such termination.

**6.3. Effect of Termination.** All provisions of this Agreement pertaining to warranties, taxes, audits, intellectual property, confidentiality, indemnity, limitations of liability, choice of law, and jurisdiction shall survive completion and acceptance of any Products or the termination of a PO. In addition, no later than ten (10) days after termination or non-renewal, Vendor shall return or certify destruction of all Confidential Information in its possession or control of Company.

#### 7. MISCELLANEOUS

**7.1. Notices.** All notices must be in writing and addressed to the parties as set out in the PO by certified or registered mail, courier, or email.

**7.2. No Publicity.** Vendor shall not disclose or use Company's name, trademarks or logos and shall refrain from making or causing to be made, any public announcement, advertisement, or news release of any kind concerning this PO, without express written permission of Company.

**7.3. Exports.** Vendor acknowledges that the Product delivered under this Agreement may be subject to the export and import control laws of various countries ("Export Laws"). Both parties will comply with the Export Laws in the performance of this Agreement. Vendor will cooperate with Company as reasonably necessary to ensure compliance with Export Laws and agrees to provide all information reasonably requested by Company for the purposes of export and import licensing procedures.

**7.4. No Waiver.** Company's failure or delay in exercising any of its rights shall not constitute a waiver of such rights unless expressly waived in writing.

**7.5. Relationship.** The parties are independent contractors, and nothing contained in this Agreement shall be construed to constitute as agents, partners, joint ventures, or otherwise as participants in a joint undertaking, that would give a party the express or implied right, power, or authority to create any duty or obligation of the other party.

**7.6. Force Majeure.** Neither Party shall be in default of this Agreement because of a delay or failure in performance of its obligation resulting from any cause beyond its reasonable control, provided it gives reasonably prompt notice to the other Party and uses reasonable efforts to mitigate the delay or failure.

**7.7. No Assignment.** Vendor may not assign its rights or delegate its duties under this Agreement without the prior written consent of Company.

**7.8. Severability.** If any provision of this Agreement is held to be invalid or unenforceable, such provision will be interpreted in a manner that best reflects the parties' intentions, and any other provisions will remain in full force and effect.

**7.9. Law and Jurisdiction.** This Agreement and the subject matter thereof shall be governed and construed according to the laws of the country/state in which Company as specified in the PO is located, without reference to conflict of laws principles. Any claims are subject to the exclusive and appropriate federal, state, or local court having jurisdiction over the matter where Company is located. The parties hereby disclaim and exclude the application hereto of the United Nations Convention on Contracts for the International Sale of Goods. Notwithstanding the foregoing, Company may bring a claim for equitable relief in any court with proper jurisdiction.