

Supplier Terms and Conditions

Microsoft SPLA Program Partner

By ordering Microsoft SPLA Products from Arrow, You are accepting the following terms and conditions (the “**Terms and Conditions**”). These Terms and Conditions will be binding between You and the local Arrow Enterprise Computing Solutions, Inc. or Arrow Central Europe GmbH, Affiliate in the Territory to which You will issue Your Orders (“**Arrow**”).

Microsoft has licensed certain Microsoft products and managed services known as Microsoft SPLA (“**Microsoft Products**”) to You pursuant to a Services Provider License Agreement entered into by You and Microsoft, including the current Microsoft SPLA Program Guide as amended from time to time (“**the Microsoft Program Partner Guide**”), (together, “**the Microsoft Agreement**”). The details of such Program are described in the current Microsoft Program Partner Guide. The Microsoft Program Partner Guide is incorporated into these Terms and Conditions by reference such that, in particular, all applicable obligations provided therein shall apply to You. The then current version of the Microsoft Program Partner Guide is posted on the Microsoft Portal. Defined terms used in these Terms and Conditions shall have the meaning given under the Microsoft Program Partner Guide unless defined herein otherwise.

By accepting these Terms and Conditions, You agree to the following, in addition to the terms You have agreed with Microsoft:

1. Arrow shall offer You the Microsoft Products conditional upon: (i) You being enrolled in the Microsoft Program Partner Guide pursuant to a Services Provider License Agreement and providing Arrow a copy thereof, (ii) You complying with the obligations contained in the Microsoft Agreement, (iii) You providing hosting services, (iv) You not re-distributing or reselling the Microsoft Products other than as expressly provided for in the Microsoft Agreement, (v) You complying with the obligations contained in these Terms and Conditions. You shall indemnify and hold harmless ArSCSProw against all liability, loss, expense, damage, claim or otherwise incurred by Arrow in relation to or by reference to any breach by You of the Microsoft Agreement or these Terms and Conditions.
2. You shall confirm Your monthly use report of all Microsoft Products distributed by Arrow to You and consolidate the monthly use of Your affiliates and Your Software Services resellers (the “**Monthly Report**”) within ten (10) days after the end of each calendar month (even if there was no usage in a given month). The Monthly Report will provide all applicable information requested in the Monthly Report, including the total number of licenses required for each Software Services licensed by You during the preceding calendar month. You must also include the End-User name and address if the End User generated more than U.S.\$ 1,000 per month in revenue. In case of a zero use report, You must include a statement that You did not use any of the Licensed Software to provide Software Services during the previous calendar month. In the event You fail to provide the Monthly Report when due, Arrow shall have the right to estimate the license usage by You in its sole discretion for Your monthly usage and Arrow reserves the right to invoice You for such amount, including any fees incurred by Arrow from Microsoft. Failure to timely tender two (2) Monthly Reports shall constitute grounds for termination of these Terms and Conditions.
3. By virtue of raising the Monthly Report described in paragraph 2, You shall be deemed to have submitted a corresponding purchase order to Arrow. Arrow shall accordingly invoice You for the applicable fees and You shall pay the same in accordance with the payment terms stated on the invoice. Failure to pay any due invoices in accordance with agreed payment terms shall constitute grounds for Arrow to immediately terminate these Terms and Conditions.
4. You shall maintain clear and accurate records containing all data reasonably required in order to verify compliance with these Terms and Conditions. Microsoft and Arrow shall have the right, upon reasonable prior notice, to directly, or to direct its independent auditors to, audit and analyse the relevant records of You (including all records, orders, invoices and volume reports) during normal business hours and with minimal disruption to verify compliance with these Terms and Conditions. If the result of such audit indicates that payment is due, You shall make such payment promptly.
5. Arrow does not make any representations or warranties with respect to the Microsoft Products. ARROW EXPRESSLY EXCLUDES ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES RELATED TO THE PERFORMANCE, QUALITY, MERCHANTABILITY OR

FITNESS FOR ANY PARTICULAR PURPOSE OF THE MICROSOFT PRODUCTS OR THE SERVICES HEREUNDER.

ARROW DOES NOT SEEK TO LIMIT OR EXCLUDE ITS LIABILITY IN THE EVENT OF DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE OR FOR FRAUD OR FOR ANY OTHER LIABILITY FOR WHICH IT IS NOT PERMITTED BY LAW TO DO SO. SUBJECT TO SECTION TO THE FOREGOING AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL ARROW BE LIABLE TO YOU FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL OR INDIRECT DAMAGES OF ANY KIND OR FOR CORRUPTED DATA, LOST PROFITS OR SAVINGS, LOSS OF BUSINESS OR OTHER ECONOMIC LOSS WHETHER DIRECT OR INDIRECT, ARISING OUT OF OR IN RELATION TO THESE TERMS AND CONDITIONS OR THE SERVICES HEREUNDER, EVEN IF ARROW HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF THE NATURE OF THE CAUSE OF ACTION OR THEORY ASSERTED. NOTWITHSTANDING THE ABOVE, IN NO CIRCUMSTANCES SHALL ARROW'S MAXIMUM LIABILITY TO YOU ARISING FROM OR RELATING TO THESE TERMS AND CONDITIONS EXCEED THE AMOUNT YOU PAID TO ARROW FOR THE SERVICES UNDER THESE TERMS AND CONDITIONS.

6. The Microsoft Product license shall terminate at any time if You are no longer eligible to participate in the Microsoft Program Partner Guide and Arrow shall accordingly discontinue distribution of the Microsoft Products to You. Arrow's responsibility to collect Monthly Reports and payments for Microsoft Products licenses, and accordingly Your obligation to pay outstanding invoices, shall survive termination or expiration of these Terms and Conditions for the duration of each such Microsoft Product license term. Upon termination or expiration of the Microsoft Agreement, You shall either provide Arrow, or, destroy and certify to Arrow the destruction of, all copies of the Microsoft Products that are in Your possession, or that were otherwise copied or installed under the Services Provider License Agreement. Upon any termination or expiration, notwithstanding the foregoing, Arrow shall have no further obligations to You in respect to the Microsoft Products.

7. These Terms and Conditions become effective upon your acceptance of them shall be valid for an initial term of two years, and thereafter shall automatically renew for successive one (1) year terms unless earlier terminated in accordance with the Microsoft Agreement. These Terms and Conditions shall automatically terminate upon termination of the distribution agreement between Microsoft and Arrow.

8. Miscellaneous.

8.1. These Terms and Conditions constitutes the entire understanding and agreement between the Parties hereto with respect to the matters herein, and supersedes all prior or contemporaneous representations or agreements, written or oral, with respect to the matters covered herein.

8.2. Nothing in these Terms and Conditions is intended to create, or shall be construed as creating, a joint venture, or agency, or taxable entity between the Parties, or any right to pledge the other's credit; it being understood that Arrow and You are independent contractors and shall not be deemed to be employed by, or an employee of, the other.

8.3. These Terms and Conditions may not be altered, modified, amended or waived, in whole or in part, in any way, except by an instrument in writing signed by duly authorized officers of You and Arrow.

8.4. Performance of any obligation required of a Party hereunder may be waived only by a written waiver signed by a duly authorized officer of the Party for whose benefit such obligation was to be performed. Any waiver shall in no way be construed as a waiver of any subsequent breach of these Terms and Conditions by the other Party.

8.5. If any provision of these Terms and Conditions is found void, invalid or unenforceable, it shall not affect the validity of the balance of these Terms and Conditions, which shall remain valid and enforceable according to its terms.

8.6. Neither party shall be deemed in default if its performance or obligations hereunder are delayed or become impossible or impractical by reason of any act of God, war, fire, earthquake, labor dispute, accident, civil commotion, epidemic, act of government or government agency or officers, or any other cause beyond such Party's reasonable control.

8.7. The headings of the Sections are inserted for convenience only and are not intended to affect the meaning or interpretation of these Terms and Conditions.

8.8. The obligations set forth in these Terms and Conditions shall survive any termination of these Terms and Conditions, particularly the provisions relating to the protection of Confidential Information.

8.9. All notices, requests, authorizations, consents, waivers, and other communications under these terms and conditions must be in writing (or electronically given) and will be deemed to have been duly given when: (i) delivered by hand (with written confirmation of receipt); or (ii) when delivered, if sent by a nationally recognized overnight delivery service to the address first written above (or to such other addresses as a party may designate by written notice to the other party.

8.10. You may not assign these Terms and Conditions without Arrow' written consent.

8.11. The English language version of these Terms and Conditions controls. If You are in a country or an administrative division of a country, that requires that contracts be written or agreed to in a certain language, it is the express wish of both parties that these Terms and Conditions, and any associated documentation, be written (or electronically given) and agreed to in English. These Terms and Conditions will in all respects be governed by and construed in accordance with the laws of the country in which the registered offices of the local Arrow Enterprise Computing Solutions, Inc. Affiliate to which You issue Your Orders are located, and any dispute related to or arising from these Terms and Conditions will be submitted to the competent Courts of the jurisdiction in which the registered offices of the local Arrow Enterprise Computing Solutions, Inc. Affiliate to which You issue Your Orders are located. The application of the UN Agreement pertaining to contracts of international purchase of goods dated January 1, 1989 (UNCISG) BGBI 96/1988 and all its relevant and valid amendments shall expressly be excluded.