



Blue Orange Terms and Conditions

1 Scope

- 1.1 These terms and conditions ("Terms and Conditions") govern the agreement ("Agreement" – as described in Clause 1.2) on the sale and license, as applicable, by the contracting Blue Orange Entity ("Blue Orange") to a customer ("Buyer") of services performed by Blue Orange or another Blue Orange Entity ("Blue Orange Services") as well as hardware, software and services of third party vendors that are not a Blue Orange Entity (each a "Vendor") (collectively "Vendor Products") (Blue Orange Services and Vendor Products collectively "Products"). "Blue Orange Entities" shall mean any entity of the Blue Orange group of companies (Blue Orange Corporation and its affiliates and subsidiaries). A list of all current Blue Orange Entities may be found [here](#).
- 1.2 The Agreement shall include any terms and conditions agreed between the parties as well as these Terms and Conditions and any documents referred to herein. Terms and conditions of Buyer are explicitly rejected and shall not apply, even if Buyer refers to its own terms and conditions in his offer, acceptance or otherwise and Blue Orange does not object. No other agreement, statement or promise modifies these Terms and Conditions unless it is mutually agreed in written form or electronically by electronic signatures, email or Blue Orange portals ("Electronically").
- 1.3 In case of any inconsistencies between any individual agreements in place between Blue Orange and Buyer and these Terms and Conditions or any other terms and conditions referred to herein, the individual agreements shall prevail.

2 Country Specific Terms

- 2.1 Certain countries require specific terms that may be different from these Terms and Conditions. Such country specific terms (the "**Country Specific Terms**") take precedence for such country in case of a conflict with these Terms and Conditions. The Country Specific Terms can be found at

Pass-Through Terms

- 2.2 Certain Vendors require Blue Orange to pass-through terms ("Vendor Pass-Through Terms") for the Vendor Products to Buyers and their customers. By purchasing or licensing, as applicable, the Vendor Products from Blue Orange, Buyer agrees to the Vendor Pass-Through Terms, which shall form a part of the Agreement between Blue Orange and Buyer. The Vendor Pass-Through terms can be found at:
- To the extent required under the applicable Vendor Pass-Through Terms, Buyer will flow down such terms to its customer in its agreements with such customer.
- 2.3 Vendors may amend the respective Vendor Pass-Through Terms for the Vendor Products from time to time. In such case, Blue Orange will publish the updated terms on its website in the link set out in the preceding paragraph. Buyer agrees to be bound by such updated pass-through terms; it is Buyer's responsibility to check such link from time to time.
- 2.4 In case of conflicts between any applicable Vendor Pass-Through Terms and these Terms and Conditions or the Country Specific Terms, the Vendor Pass-Through Terms shall prevail.

3 Formation of Contract, Renewals

- 3.1 Any offerings on Blue Orange's website, in materials, quotes or otherwise, are nonbinding invitations to tender only.
- 3.2 Buyer's orders are offers to contract and, once received by Blue Orange, cannot be cancelled without Blue Orange's explicit agreement in written form or Electronically.

3.3 The Agreement comes into effect only upon Blue Orange's acceptance of Buyer's order. Buyer's order shall be deemed accepted by Blue Orange's execution of the order the latest.

3.4 Where applicable, any automatic renewal of an existing contract shall be deemed to have taken place for a successive term if the parties fail to serve notice of termination with the required minimum notice period prior to the renewal date.

4 Delivery, Transfer of Risk, Delivery and Service Dates

4.1 Deliveries are made CPT (Incoterms 2020) to the named destination agreed between the parties, to the extent these Terms and Conditions do not provide for otherwise. In case of an agreed pickup of the Products by Buyer, deliveries are made EXW (Incoterms 2020) at the agreed pickup location.

4.2 Blue Orange will arrange the transport to the named destination agreed between the parties. The risk of damage or loss of the Products shall transfer to Buyer upon handing over the Products to the carrier at the agreed point of origin. In case of an agreed pickup of the Products by Buyer, the risk of damage or loss shall transfer when the Products are made available for pickup and Buyer has been informed thereof, however, at the latest upon collection of the Products by Buyer.

4.3 Products sold by a Blue Orange Entity seated in the European Union and delivered within the European Union will be supplied customs cleared. For deliveries to agreed named destinations outside of the European

Union, Products will be delivered customs cleared only if sold by a Blue Orange Entity VAT-registered and import-enabled in the respective country. Otherwise, Buyer is responsible for custom clearance of the Products delivered to destinations outside of the European Union.

4.4 Blue Orange's estimated delivery and service dates are nonbinding, unless explicitly stated otherwise. Blue Orange will use commercially reasonable efforts, but is not obligated, to deliver or provide services on such estimated dates.

4.5 Unless agreed otherwise, Blue Orange may make partial deliveries to Buyer and to invoice such deliveries separately.

4.6 For the delivery of certain Products, including but not limited to software, activation keys, digital codes, gift cards and others, Blue Orange provides digital

distribution solutions by giving the Buyer access to Blue Orange Electronic Messages Portals. The access to the Electronic Messages Portals shall be subject to the Blue Orange Electronic Software Distribution Terms

5 Prices and Payment Terms

5.1 Prices are for Products (including services) only and unless agreed otherwise, prices do not include packaging, freight, insurance and other transport

related costs, value added tax, export/ import and any other duties, levies, fees and taxes, all of which have to be borne by Buyer.

5.2 The price stated in Blue Orange's order confirmation shall be binding and shall be deemed accepted by Buyer unless Buyer objects to the price in writing immediately after receiving the order confirmation.

5.3 Blue Orange shall invoice Buyer for all taxes applicable to sales of the Products, itemized by type and jurisdiction, which Blue Orange is required by law to collect from Buyer. If Buyer is required by law to deduct any amount from the amounts to be paid to Blue Orange under this Agreement on account of withholding taxes or any other taxes or levies of any kind, Buyer shall pay all such additional amounts so

that the net amounts received by Blue Orange are the amounts specified on the invoice. To the extent that any withholding tax is payable, Blue Orange and Buyer shall mutually collaborate and provide all assistance



reasonably requested to obtain the benefits of any applicable tax treaty between the country where the Blue Orange Entity that accepted Buyer's order is located and the applicable jurisdiction where the withholding tax applied.

5.4 Unless agreed otherwise, invoices are due immediately and to be paid promptly after receipt.

5.5 All Payments shall be made in full, in the agreed currency, and to the bank account stated in the invoice. Any bank and other charges required to effect payment

to Blue Orange's bank account shall be borne by Buyer.

Buyer's payment to Blue Orange is not dependent on receipt of payment from its customer including

without limitation in the event of insolvency or similar proceedings of its customer, in the event of any hacking or fraudulent use of Blue Orange Services or any portal through which the Blue Orange Services are obtained.

5.6 Any dispute on an invoice must be communicated to Blue Orange Electronically, within 7 days from the date when Buyer received the invoice.

5.7 Buyer is not entitled to exercise any retention rights in respect of or to set off own claims against any payment claim of Blue Orange, except where set-off is automatic by law.

5.8 In case of payment default, Blue Orange may charge late payment interest in accordance with applicable law. Furthermore, Blue Orange has the right to invoice Buyer for any other payments outstanding to Blue Orange, in which case all such invoiced payments shall become due immediately on receipt of the invoice by Buyer. Blue Orange's right to claim for further damages related to payment default in accordance with applicable law shall remain unaffected.

5.9 Blue Orange reserves the right to request advance payment. Blue Orange may grant other payment terms based on its assessment of Buyer's creditworthiness. Unless explicitly stated otherwise by Blue Orange, granted payment terms apply to the respective individual orders only. At any time, Blue Orange may grant, adjust and withdraw credit limits and request advance payment or another security for outstanding deliveries as well as new orders in its sole reasonable discretion. Blue Orange reserves the right to reject individual orders even if it has granted Buyer a credit limit. Blue Orange may request advance payment or another security for the excess order value if Buyer exceeds a credit limit. Buyer shall notify Blue Orange promptly of any material change in its financial situation, structure, share ownership or value of assets which may affect Buyer's credit status.

5.10 Blue Orange reserves the right to increase the price appropriately if cost increases occur after conclusion of the Agreement, in particular due to price increases by Vendors or other suppliers or exchange rate fluctuations. Upon request of Buyer, Blue Orange shall describe the reasons for the price adjustment.

6 Special Pricing Transactions

Blue Orange may provide special pricing or other conditions as allowed by certain Vendor terms and conditions. Buyer shall comply with all applicable Vendor terms and conditions. In the event of a breach of the Vendor terms and conditions by Buyer, Blue Orange has the right to invoice Buyer for the difference between the special price and the regular purchase price of the Vendor Product. Other claims of Blue Orange against Buyer shall remain unaffected.

7 Multi-Term Vendor Service Contracts

7.1 In the case of multi-term Vendor services contracts, which may have a term of several months or years, invoices may be issued for the entire term of the service contract, or periodically (e.g. on a monthly or an annual basis), as agreed between the parties.



Where agreed between the parties, Blue Orange will apply to Buyer and Buyer is obligated to apply to its customers the exact same invoicing scheme as set by the Vendor for the specific Vendor service.

- 7.2 While Buyer may be entitled to collect payments from its customers in the course of ordinary business, Buyer agrees to assign all of its future receivables under each contract for Vendor services to Blue Orange as security. Blue Orange reserves the right to disclose this assignment to Buyer's customer and proceed to collect such receivables directly from Buyer's customer.

- 7.3 Where permitted by local law, any payments collected by Buyer from its customer but not yet due under the Vendor's invoicing scheme must be secured by Buyer to be available to Blue Orange in the event of an insolvency.

7.4 If Buyer is in payment default, in full or in part, with one or more periodical payments for more than 7 days and payment is not made despite of a grace period of an additional 5 days, Blue Orange shall be entitled to terminate with immediate effect the Vendor services contract (with any other rights of Blue Orange under the law remaining unaffected) without any further liability to Buyer. Should Blue Orange withdraw from the Vendor services contract, Blue Orange shall be free to handle the services directly with the Buyer's customer or through another reseller.

8 Retention of Title

- 8.1 Blue Orange retains all right and title in all Products until all payment obligations of Buyer towards Blue Orange based on or in connection with this Agreement or other agreements between the parties are settled in full (until the transfer of title: "Retained Products"). Buyer shall store the Retained Products safely, separate from other products and adequately insured and shall not dispose of them other than as permitted hereunder.

- 8.2 Buyer is entitled to resell the Retained Product to its customers in the ordinary course of business as long as it is not in default with its payment obligations towards Blue Orange based on or in connection with this

Agreement or other agreements between the parties. Buyer hereby assigns to Blue Orange (which hereby accepts such assignment) its payment claims towards its own customers resulting from such resale, effective as of the moment such payment claim arises. Buyer is entitled to collect such payments as long as it is not in default with its payment obligations towards Blue Orange based on or in connection with this Agreement or other agreements between the parties. Where permitted

by law, once the Retained Product is processed or combined with other items (the "**Processed**

Product"), Blue Orange's retained title transfers to a share in the title in the Processed Product reflecting the value of the Retained Product relative to the value of the Processed Product.

9 Acceptance of Services, Inspection of Products, Notification of Defects

- 9.1 Buyer will promptly accept in written form or Electronically any work product created and delivered by Blue Orange that is conforming with the agreement between the parties. Buyer may not reject acceptance of such delivered work product in case of nonmaterial defects. Work product shall be deemed accepted by Buyer if it is not rejected in written form or Electronically within 7 days from the notification of the completion and delivery of the work product by Blue Orange, naming at least one material defect. Blue Orange shall solely decide whether the defect rises to the level of "**material defect**".

- 9.2 Buyer shall inspect any Products promptly upon delivery for quantity deviations, damaged packaging, labelling errors, visible defects in quality and any other visible damage. If the delivered Products or packages show any visible defects Buyer must note this on the proof of the delivery document ("POD"). Additionally, Buyer must notify Blue Orange Electronically of these visible defects promptly, however, not later than 7 days from the delivery date. This note must provide a sufficiently clear description of the defects (including pictures). Buyer shall sign the POD immediately upon examination of the Products.



- 9.3 Any rights of Buyer regarding any defects not notified to Blue Orange in accordance with Clause 10.2 shall be permanently excluded. The preceding sentence shall not apply to the extent a defect could not have been detected in the inspection in accordance with Clause 10.2 should it have been duly performed (concealed defects or damage).
- 9.4 Buyer must notify Blue Orange Electronically of any concealed defects or damage not detected in the due inspection in accordance with Clause 10.2 promptly, however, not later than 7 days from the date of detection. This notification must provide a sufficiently clear description of the defects or damage (including pictures). Any rights of Buyer regarding any defects not notified to Blue Orange in accordance with the preceding sentence shall be permanently excluded.
- 9.5 The defect notification process shall be subject to Blue Orange's Return Policy. In case of any conflicts between the Terms and Conditions and the Return Policy, the Returns Policy shall prevail.

10 Warranty, Returns

- 10.1 Buyer acknowledges that Blue Orange is not the manufacturer of the Vendor Products and has to rely on the manufacturer to perform any returns or warranty obligations. To the extent permitted by applicable law, Blue Orange provides to Buyer the Vendor Product warranties and remedies provided to Blue Orange by the Vendor.
- 10.2 Subject to Clause 11.1, (i) Blue Orange warrants that at the time of delivery, Products will conform to the agreed specifications; and (ii) to the extent permitted by applicable law, (a) Blue Orange makes no other warranty, express or implied by statute or otherwise, such as the warranty of merchantability, fitness for purpose, workmanlike quality, non-infringement or arising from any previous course of dealing; and (b) unless it is specifically stated in the software's applicable license agreement, software is provided "as is" with no additional warranty. To the extent Blue Orange cannot lawfully disclaim any implied or statutory warranties, Buyer's statutory

rights remain in force.

- 10.3 Subject to Clause 11.1 and to the extent permitted by applicable law, Buyer's sole remedy for Blue Orange's breach of its warranty under Clause 11.2 are, at Blue Orange's choice: (i) repair of the Products; (ii) replacement of the Products; or (iii) the return of the Product and refund of the purchase price paid.
- 10.4 Unless otherwise agreed in written form or Electronically, the returned Products shall be delivered by Buyer DDP Blue Orange's supplying warehouse (Incoterms 2020). The risk of loss or damage to any returned Products shall remain with Buyer until the Products are delivered to Blue Orange's premises.
- 10.5 Unless agreed otherwise, Buyer's warranty claims shall become time-barred 12 months from the acceptance or delivery of the Products.
- 10.6 The warranty and return process shall be subject to Blue Orange's Return Policy

In case of any conflicts between the Terms and Conditions and the Return Policy, the Return Policy shall prevail.

11 Security Requirements

- 11.1 Buyer and its customers must take all reasonable measures required to prevent unauthorized access to or use of any service or Blue Orange portal. This includes, but is not limited to the obligation to: (i) permit access and use only by authorized persons; (ii) reasonably ensure that such authorized persons keep confidential and do not share with any third party access data;
- (iii) reasonably ensure that such authorized persons only access and use any service or Blue Orange portal within the scope of their respective authorizations; (iv) reasonably ensure that any authorized persons receive adequate regular security awareness training; AND (v)



ensure that any optional multi-factor authentication functionality ("MFA") is activated and implement

and maintain any other state-of-the-art technical and organizational security measures.

- 11.2 In the event Blue Orange gains knowledge indicating that Buyer or its customer is in breach of the obligations under Clause 12.1 or that a service or Blue Orange portal provided to Buyer or its customer is accessed or used by an unauthorized person and to the extent such breach or unauthorized access or use may cause damage to Blue Orange, Blue Orange has the right to suspend Buyer's or its customer's access until this is remedied. Blue Orange will take reasonable steps to inform Buyer or its customer of any such potential breach or unauthorized access or use in order to give Buyer or its customer opportunity to disprove or remedy such breach or unauthorized access or use before any suspension, unless an immediate suspension is reasonably required to prevent damage to Blue Orange, Buyer or its customer. Other rights of Blue Orange in relation to the breach or unauthorized access, including but not limited to any right to terminate the access to the service or Blue Orange portal for cause or to claim for damages, shall remain unaffected.

- 11.3 Blue Orange has the right to audit Buyer's and its customers compliance with the obligations under Clause

12.1 in case there are facts indicating that Buyer is in breach of such obligations or without such indication once every 12 months period. Buyer and its customers must reasonably allow for such audit. This includes but is not limited to permitting remote screening Buyer's or its customer's IT environment for MFA activation.

12 Intellectual Property Rights

- 12.1 Any proprietary rights in any Products including, but not limited to copyrights, patent rights, trademarks, trade secret rights and any other intellectual property rights, shall at all times and for all purposes vest and remain vested in Blue Orange or its relevant third party licensor.

- 12.2 It is the responsibility of Buyer to comply with and to make sure its customers comply with any terms and conditions of license attaching to the software supplied and to instruct its customers accordingly. Unless applicable laws permit otherwise, Buyer shall not carry out directly or indirectly any act of reverse engineering, particularly, but not limited to, copying, decompiling, disassembling Products in full or in part, extracting their source code, modifying, adapting, or reproducing their components, and any other acts not authorized by the license. In the event of a breach by Buyer or its customer of this Clause 13.2, Buyer shall defend, indemnify and hold Blue Orange harmless from and against all claims and resulting damages and losses (including any attorney's fees) incurred by Blue Orange as a result of such breach.

13 Limitation of Liability, Buyer Indemnity

- 13.1 Subject to Clauses 14.2 and 14.3, Blue Orange's total liability under or in connection with the Agreement whether arising from contract, tort (including negligence) or otherwise shall in no event exceed the lower of: (a) the aggregate amounts paid by Buyer for Products purchased or licensed, as applicable, from Blue Orange under the Agreement over the 12 months prior to the event giving rise to the claim; OR (b) EUR one million.
- 13.2 Subject to Clause 14.3, Blue Orange shall not be liable for: (a) any indirect, special, incidental, punitive or consequential damages; (b) loss of profits; (c) loss of revenue, business or business opportunity; (d) loss of agreements or contracts; (e) loss of anticipated savings; (f) loss of use or corruption of software, data or information; (g) loss of or damage to goodwill; (h) loss, additional payments, damage or inconvenience in connection with rework, repair, manufacturing expense, or costs of product recall; AND (i) loss, additional payments, damage or inconvenience Buyer or any customer may suffer arising from the suspension or termination of any manufacturer authorization or program; suffered by Buyer that arises under or in connection with the Agreement.

13.3 Notwithstanding any other provisions of this Agreement, neither party excludes or limits its liability to the other party for: (i) death or personal injury caused by its negligence; (ii) willful misconduct and gross negligence; (iii) fraud, fraudulent misrepresentation or fraudulent concealment of defects; (iv) under applicable mandatory product liability law; and (v) anything else which cannot be excluded or limited at law.

13.4 The exclusions and limitations of liability under this Clause 14 shall apply mutatis mutandis in favor of any statutory representative, officer, employee, subcontractor, agent or assistant of Blue Orange, should it be directly liable to Buyer for damages in connection with the Agreement.

13.5 Buyer shall – on first request – defend, indemnify and hold harmless Blue Orange from and against any third-party claim arising out of or in connection with a negligent or willful breach by Buyer of the Agreement and compensate Blue Orange for any cost, damage or expense incurred based on or in connection with such claim, including but not limited to, the costs of defense against the allegation of such a claim.

14 Force Majeure

14.1 Except for payment obligations, no party shall be liable for any delays or failures to perform any of its obligations under this Agreement due to causes beyond its reasonable control (including but not limited to acts of nature, acts of war, terrorism, riots or civil disorders, operational disruptions, manmade or natural disasters, acts or omissions of government, failures of power, utilities or critical infrastructure, epidemic/ pandemic medical crises, delay of deliveries or failure to deliver by Vendors or other suppliers of Blue Orange, general shortages in raw materials or Vendor Products, strikes or lockouts, criminal acts, delays in delivery or transportation, or inability to obtain labor, materials or Products through regular sources) (“Force Majeure Events”) provided that the affected party uses commercially reasonable efforts to limit the effect of that delay or failure to perform on the other party and to remedy the Force Majeure Event affecting it.

14.2 Each party shall immediately notify the other party in written form or Electronically of the Force Majeure Event and its estimated duration. Except for payment obligations, the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If such delay or failure continues for more than 60 days from the date of initial notification of the occurrence of the Force Majeure Event, either party shall be entitled to terminate the Agreement or the relevant part of it so affected immediately on notice in written form or Electronically to the other party.

If no termination is notified the parties shall meet and discuss in good faith the resolution of the situation.

15 Assignment

Blue Orange is permitted to assign or transfer to any Blue Orange Entity or any other third party or otherwise dispose of the Agreement or any of its rights and obligations thereunder without consent of Buyer. Buyer is not permitted to assign or transfer to any third party or otherwise dispose of the Agreement or any of its rights and obligations thereunder without prior consent of Blue Orange in written form or Electronically which shall not be unreasonably withheld.

16 Data Protection

16.1 Each party shall comply with any laws on the protection of personal data applicable to it. It is Buyer’s responsibility to assess and determine Products’ suitability and compliance with such laws with regard to the intended use especially in terms of the technical and organizational measures, the engagement of sub- contractors, data center locations and transfers of data where relevant.

16.2 Blue Orange processes certain personal data of Buyer and the customer or their respective personnel that is collected in connection with the Agreement in the capacity of a controller.

16.3 Where Blue Orange offers Vendor Products, it does not process any personal data on behalf of Buyer and the customer nor has it access to any such personal data in the context of the Vendor Product offering.

16.4

where Blue Orange or Buyer respectively, acting in a capacity of a processor, processes personal data on behalf and bound by the instructions of the respective other party, acting in a capacity of a controller on its own behalf or such of a third party, the Data Processing Agreement that is available at eu.tdsynnex.com/data-processing-agreement shall apply. The Data Processing Agreement establishes the mandatory minimum required under applicable law with regard to the processing of personal data by a party as a processor on behalf and bound by the instructions of the other party as a controller. As it pertains to the matters addressed in Clause 17.4, the Data Processing Agreement shall prevail over any other agreements between the parties should any conflicts arise.

16.5 Buyer acknowledges and agrees that Blue Orange in the context of the distributor – Buyer relationship,

(i) processes and stores personal data in the US or in other countries outside European Economic Area in the context of certain processing activities, (ii) assesses the credit worthiness of Buyer and, if relevant for the transaction, the customer before entering into and during the term of the Agreement. For this purpose, personal data such as name, address, date and place of birth, business email and telephone, will be shared with credit agencies or credit insurers; (iii) Blue Orange may disclose data including the personal data of Buyer and customer (and their personnel) when obliged to do so in the course of vendor audits; when necessary for the Agreement (e.g. for vendor drop shipments, Third Party Services), or when necessary for Vendor's or Blue Orange's legitimate interest or legal obligation (e.g. antibribery, antifraud, combat grey market, verification of marketing funding) and (iv) Blue Orange may anonymize personal data and use such anonymized personal data as well as any other non-personal data relating to Buyer, the customer or their respective personnel in its own discretion.

16.6 Detailed information on how Blue Orange processes personal data may be found in the Privacy Statement Buyer (i) represents that it has in place or undertakes

to obtain all necessary authorizations, approvals, contracts, consents and notices to enable lawful use, processing and transfer of the personal data by Blue Orange, its agents and suppliers as described in the Privacy Statement and (ii) shall provide all necessary notices, information and communication (including Blue Orange's Privacy Statement) about how Blue Orange uses and processes personal data collected from or provided by Buyer (including transfer of personal data to third parties) without undue delay to the relevant data subject.

17 Compliance with Laws

17.1 The parties will comply with all applicable laws, including, but not limited to, anti-bribery and anti-corruption and anti-facilitation of tax evasion laws and regulations.

17.2 The parties shall not offer, promise or give the other party or any officer, employee or representative of such party (a "**Delegate**") any financial or other advantage which could, or is intended to, cause the other party or that Delegate to abuse any position of trust held by such party or that Delegate, or fail to act with good faith or impartiality in circumstances where it is expected to do so.

17.3 Buyer acknowledges and agrees that all supplies of goods, software and technology between Blue Orange and Buyer are subject to the export control laws and regulations of national legislation, the European Union, the United Kingdom. Directly or indirectly, to, or for use by, (i) any embargoed or sanctioned country or region, or to (ii) any person or entity to which exports are restricted pursuant to any applicable government list of prohibited and restricted parties or to (iii) any person directly or indirectly owned or controlled by the foregoing.

17.4 Buyer shall not, directly or indirectly, transfer or otherwise make available to any other person or entity any of the goods, software or technology supplied by Blue Orange for use in any activities related to the design, development, production or use of any nuclear, chemical or biological weapons, or any missiles, rocket systems or unmanned aerial vehicles. Buyer shall defend, indemnify and hold harmless Blue Orange from any claim against or penalty incurred by Blue Orange as a result of the failure of Buyer to comply with such laws and regulations.

17.5 The Products will comply with all laws applicable in the jurisdiction to which the Products are delivered. The parties shall comply with their respective obligations and liabilities under all legal regimes that may

apply with respect to an import or sale of the Products, such as licensing, reporting, registration or payment obligations. In cross-border transactions Buyer is liable to comply with the requirements thereunder. In particular, Buyer shall assume and comply with all requirements that apply to an importer of the Products. The Buyer agrees that, as between Buyer and Blue Orange, Buyer will

be solely financially responsible to pay all fees, levies, taxes and costs in connection with compliance with this Clause 18.5. The Buyer shall provide Blue Orange with all information reasonably necessary to determine that Buyer is in compliance with all applicable laws and regulations upon request.

17.6 If Buyer sells voice over IP products ("**VoIP Products**") it may be treated as telecommunication provider in the country the VoIP-Products are sold to ("**Territory**"). In such case Buyer shall disclose the telecommunication provider status to its customers. Buyer shall fulfill and comply with all applicable laws, including applicable telecommunications regulations and/or rules, regulations, and requirements of

the telecommunications regulatory authority (or authorities) of the Territory, including without limitation the submission of any notifications or registrations applicable to the resale of VoIP Products. Buyer acknowledges and agrees that,

notwithstanding anything to the contrary in any Vendor VoIP terms and having carried out all relevant enquiries and

due diligence (including as to the application of telecommunications regulations in the Territory), Blue Orange is entering into the Agreement as an authorized distributor only and, in particular, in reliance on the Buyer's undertaking that: (a) it shall not use the VoIP Products for its own use; and (b) the following applies: Under applicable telecommunications regulations, the Buyer who sells VoIP Products to its customers is the provider of VoIP Products to such customers.

18 No Waiver

The failure or delay of a party to exercise any of its rights under the Agreement shall not be considered a waiver of such right or limit such party to exercise that right or any other right under the Agreement in future.

19 No Third Party Rights Unless explicitly provided for otherwise in the Agreement, no person that is not a party to this Agreement shall have any rights based on or in connection with it.

20 Independent Contractors, No Agency

The relationship between the parties under the Agreement is that of independent contractors and no party shall have the authority to act on behalf of or represent the other party. The Agreement will not be construed to create or imply any partnership, agency or joint venture between the parties.

21 Entire Agreement

21.1 The Agreement constitutes the entire agreement and replaces and supersedes any prior agreements between the parties with regard to its subject matter; there are no side agreements.

21.2 Each of the parties acknowledges that:

21.2.1 it does not enter into this Agreement on the basis of and does not rely, and has not relied, on any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral or written, express or implied) made or agreed to by any person (whether a party to this Agreement or not) except those expressly repeated or referred to in this Agreement and the only remedy or remedies available regarding any misrepresentation or untrue statement made to it shall be any remedy available under this Agreement; and

21.2.2 this Clause 22.2 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Agreement which was induced by fraud, for which the remedies available shall be all those available under the law governing this Agreement.

22 Form Requirements Any amendment, supplement or termination of the Agreement as well as any notices or other communication under or in connection with it must be in written form or Electronically and executed by an authorized representative of the respective party in order to be legally effective. The form requirement in the preceding sentence applies accordingly in respect of any waiver of such form requirement.

23 Severability

23.1 If any provision of this Agreement is illegal, invalid or unenforceable or held so by the courts of any jurisdiction to which it is subject, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remainder of the Agreement which shall remain in full force and effect. Subject to Clause 24.2, the parties shall replace such provision by a valid and enforceable provision that comes as close as possible to the commercial purpose the parties pursued with

the invalid or unenforceable provision when entering into the Agreement. The preceding sentence shall apply mutatis mutandis in respect of any unintended

gaps in the Agreement.

23.2 The parties expressly agree that should any limitation or provision contained in this Agreement be invalid or held so by the courts of any jurisdiction to which it is subject, it shall to that extent be deemed to be omitted but, if any party thereby becomes liable for loss or damage which would have otherwise been excluded, such liability shall be subject to the other limitations and provisions set out in this Agreement.

24 Applicable Law

The Agreement as well as any disputes arising out of or in connection with it shall be governed by the substantive law applicable in the country where the contracting Blue Orange Entity has its corporate seat, excluding such country's conflict of law principles. The United Nations Convention on Contract for the International Sale of Goods shall not apply.

25 Place of Performance, Jurisdiction

Unless otherwise agreed, the place of performance for all obligations of the parties based on or in connection with the Agreement is the corporate seat of Blue Orange. Subject to the following sentence, the competent courts at the corporate seat of Blue Orange shall have exclusive jurisdictions for any disputes arising out of or in connection with the Agreement. The preceding sentence shall not apply where applicable law provides for a different place of jurisdiction that the parties cannot derogate from by agreement.

26 Counterparts

This Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full original of this Agreement for all purposes. If this Agreement is executed in counterpart, it shall not be effective unless each party has executed at least one counterpart.

27 Cumulative Rights

The rights and remedies expressly conferred by this Agreement are cumulative and additional to any other rights or remedies a party may have.

28 Confidentiality

- 28.1 Each party undertakes that it shall not at any time during the Agreement and for a period of two years after completion, termination, or expiry (as applicable) of the Agreement disclose to any person any confidential

