



# **TERMS AND CONDITIONS OF PURCHASE OF GOODS AND SERVICES**

31 January 2018

These terms and conditions govern the purchase of goods (“Goods”) and/or services (“Services”) identified on the Purchase Order (“PO”) by the Finastra entity identified on the front of such PO (“Finastra”) and which issues the PO to the person, firm, company or organisation whose name appears on the coversheet of the PO, or who accepts the PO (“Vendor”).

#### **1. ENTRY INTO FORCE**

Save where there is a written agreement signed by the Parties relating to Goods and/or Services (including without limitation a Master Services Agreement) the terms and conditions herein, together with any attachments and exhibits, specifications, drawings, notes, instructions and other information, whether physically attached or incorporated by reference (together, “PO”) constitute the entire and exclusive agreement between Finastra and the Vendor. Vendor agrees that any terms different from or in addition to the terms herein, whether communicated orally or contained in any PO confirmation, invoice, acknowledgement, release, acceptance or other written correspondence, irrespective of the timing, shall not form a part of this PO, even if Vendor purports to condition its acceptance of the PO on Finastra agreement to such different or additional terms. Vendor’s electronic acceptance, acknowledgement of this PO, or commencement of performance constitutes Vendor’s acceptance of the terms and conditions set out herein.

#### **2. DELIVERY AND DELAY**

Time is of the essence in all orders specifying a delivery date. The delivery period specified shall be deemed to begin from the date of the PO. If Vendor’s timely performance of this PO is delayed or is likely to be delayed, then Vendor shall immediately notify Finastra. In the event the Vendor’s timely performance is delayed or is likely to be delayed, Finastra reserves the right to cancel the PO in respect of all or any of the goods or Services, whether or not some of the Goods or Services have been delivered within the specified period. Delivery will be considered as effected only when all Goods or Services are in Finastra’s actual possession and accepted in writing.

#### **3. FORCE MAJEURE**

Neither party shall be liable for any failure or delay in performance under this Agreement for causes beyond that party’s reasonable control and occurring without that party’s fault or negligence, including, but not limited to, acts of God, acts of government, flood, fire, civil unrest, acts of terror, strikes or other industrial action (other than those involving Vendor’s employees) (a “Force Majeure Event”) but in each case, only if and to the extent that the non-performing party is without fault in causing such failure or delay, and the failure or delay could not have been prevented by reasonable precautions and measures and cannot reasonably be circumvented by the non-conforming party through the use of alternate sources, workaround plans, disaster recovery, business continuity measures or other means. The party affected by the Force Majeure Event shall (a) promptly notify the other party in writing of any possible Force Majeure Event, the date of such event, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this Agreement; and (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the

performance of its obligations. At Finastra's option it may grant an extension to the delivery date or cancel the PO in whole or part. Provided Vendor can prove that a genuine force majeure exists to Finastra's satisfaction, Vendor shall be excused from any obligation under Clause 14, Default.

#### **4. QUALITY**

The Goods or Services shall comply in all respects with any samples, patterns, drawings and specifications stipulated in the PO and shall be fit for the purpose for which they are required, if specified by Finastra in the order or otherwise and shall be of the best quality and workmanship and free from all defects. All Services shall be performed in accordance with the best practices of the industry. The above standards of quality shall be guaranteed for twenty-four (24) months from date of final acceptance by Finastra or such other period as may be agreed. Finastra's reasonable decision as to the conformance of the quality of the Goods/Services delivered shall be binding. If any or all the Goods/Services fail to conform to the requirements of the PO in any respect, notwithstanding acceptance, or fail to be delivered with clear title, Finastra reserves the right, without prejudice to any other rights, to return any or all of the Goods/Services at Vendor's expense and risk, and to cancel the PO in respect of the Goods returned or the Services. Finastra may direct Vendor to repair or replace the Goods/Services at Vendor's cost and risk which shall be done with the greatest diligence. If Vendor fails to complete such replacement or repair in a timely manner, Finastra may choose other means to have repair or replacement at Vendor's cost. Finastra's remedies specified herein are not exclusive and are agreed between the parties without prejudice to other additional rights available at law or equity.

#### **5. INSPECTION**

Goods may be subject to inspection, including inspection prior to dispatch and/or receipt. Inspection shall not constitute acceptance or avoid Vendor's obligations under the PO.

#### **6. ACCEPTANCE OF GOODS/SERVICES**

Providing the Goods/Services conform to all requirements under the PO, the Goods shall be accepted upon successful completion of all acceptance tests or upon successful performance of Services (as determined by Finastra) whichever is the later. At Finastra's election all or part of any non-conforming Goods/Services may be used, nevertheless Finastra shall be entitled to an equitable reduction in the price due to the non-conformance. In case of rejection of all or any of the Goods, Finastra may accept a replacement or, if the replacement can only be effected with a delay in delivery, the PO may be cancelled, wholly or in part, without Finastra being liable to pay any compensation whatsoever to Vendor.

#### **7. PAYMENT**

(i) Payment for Goods or Services accepted by Finastra will be effected within 60 (sixty) days of the date of delivery of the Goods or Services or receipt of the invoice, whichever is later.

(ii) If any part of this PO is cancelled, or any part of the Goods returned, pursuant to Clauses 3, 4, 5, or 6, the price shall be reduced by an amount equal to the price or value of the Goods not delivered or not accepted without prejudice to any other rights that Finastra may

have under this PO, or at law as a result of Vendor's failure to comply with the PO. Any deposit or advance payment made in respect of such Goods shall thereupon be reimbursed to Finastra. If, however, Finastra accepts Goods notwithstanding a delay in delivery, no increase in price shall be made on that account.

## **8. INTELLECTUAL PROPERTY**

For the purposes of the PO:

“Claim” means any claim, demand, loss, damage, liability, cost or expense (including professional fees and costs as incurred) for which one party may be obligated to defend, indemnify and hold the other party harmless; and

“IPR” means any and all tangible and intangible: (a) copyrights and other rights associated with works of authorship throughout the world, including but not limited to copyrights, neighbouring rights, moral rights, and mask works, and all derivative works thereof; (b) trademark and trade name rights and similar rights; (c) trade secret rights; (d) patents, designs, algorithms, utility models, and other industrial property rights, and all improvements thereto; (e) all other intellectual and industrial property rights (of every kind and nature throughout the world and however designated) whether arising by operation of law, contract, license, or otherwise; and (f) all registrations, applications, renewals, extensions, continuations, divisions, or reissues thereof now or hereafter in force (including any rights in any of the foregoing).

(i) Vendor shall defend and hold harmless Finastra from and against any and all Claims as incurred, arising out of or in connection with infringement or alleged infringement of IPR of any third party which Vendor uses or incorporates in the Goods or Services specified in this PO.

(ii) All IPR produced from or arising as a result of the performance of PO shall become the absolute property of Finastra and Vendor shall do all that is reasonably necessary to ensure that such rights vest in Finastra, at no cost to Finastra, by the prompt execution of appropriate instruments or the making of agreements with third parties.

## **9. PASSING OF TITLE**

The title in the Goods or Services shall pass to Finastra on acceptance pursuant to Clause 6, without prejudice to Finastra's rights under any other clauses of the PO or at law or equity.

## **10. DOCUMENTS AND LANGUAGE**

All documents and correspondence relating to the PO must be in the English language and must bear Finastra's PO number. Finastra is entitled to waive this requirement in writing at its discretion.

## **11. TAXES AND DUTIES**

All amounts invoiced under the PO shall be deemed to include all taxes, levies, social securities and other charges and duties imposed in connection with the provision of the Services and the supply of Goods. Value added tax in countries of the European Union or an equivalent sales tax which is due in respect of the supply from Vendor to Finastra, shall be clearly identified separately on the invoice.

## **12. INVOICING**

Vendor shall submit an original invoice to Finastra's Accounts Payable Department's email address; [finastra.ap@finastra.com](mailto:finastra.ap@finastra.com) and shall reference, as a minimum, the PO number and a Finastra contact reference.

## **13. DELIVERY**

Vendor shall be responsible for ensuring that Goods are sufficiently and properly packed to guard against loss, damage or deterioration during transport and storage at destination. As a minimum, packages must bear the Finastra PO number and contact reference name, failing this Finastra reserves the right to reject the delivery. Packing must be reasonably suitable for the designated transport. All Goods shall be delivered 'freight and carriage paid' to Finastra. Vendor will insure the Goods under the PO against all risks. Vendor shall bear all risk of loss, damage and any additional costs or expenses until the Goods have been accepted by Finastra.

## **14. DEFAULT**

Any loss, damage or expenses incurred by Finastra due to any failure or lack of performance on Vendor's part will be borne by Vendor. Finastra reserves the right to deduct such sums either directly from the invoice or from any other amount due from Finastra to Vendor without prejudice to any other rights available at law or equity.

## **15. TERMINATION**

Finastra may terminate Vendor's performance and future deliveries under this Agreement, in whole or in part, at any time by giving written notice to Vendor and Finastra's sole obligation in respect of any such termination shall be to pay for the Goods and Services delivered to, and accepted by, Finastra prior to termination. In addition, and without limitation of any other right or remedy that Finastra may have at law or equity, Finastra may terminate Vendor's performance and future deliveries under this Agreement if Vendor materially breaches any obligation under this Agreement and fails to remedy such material to the reasonable satisfaction of Finastra within thirty (30) days after Finastra gives Vendor notice of breach.

## **15. USE OF PREMISES**

For Services performed on Finastra's premises or Finastra's customer's premises, Vendor must perform all work in such manner as to cause minimum interference with the operations of Finastra and of other contractors on the premises. Vendor must take all necessary and reasonable precautions to prevent occurrence of any injury or death to any person or any damage to any property or to the environment and to follow all applicable Finastra's policies whilst on Finastra's premises. Finastra shall not be liable to Vendor for, and Vendor shall indemnify and hold Finastra from and against, any and all Claims for (i) injury or death and/or (ii) damage to property and/or equipment; arising directly or indirectly out of any act or omission by Vendor at Finastra's or Finastra's customer's premises. Vendor must insure its personnel against all risks of damage, loss or injury caused by such personnel, including third party liability.

## **16. LIABILITY**

**NOTWITHSTANDING ANYTHING ELSE IN THE PO OR OTHERWISE, FINASTRA WILL NOT BE LIABLE TO VENDOR WITH RESPECT TO THE SUBJECT MATTER OF THE PO, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY AMOUNTS IN EXCESS OF THE AMOUNT FINASTRA PAID TO VENDOR IN THE SIX MONTHS PRECEDING THE EVENT OR CIRCUMSTANCE GIVING RISE TO SUCH LIABILITY.**

**IN NO EVENT WILL FINASTRA BE LIABLE TO VENDOR FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL DAMAGES OR LOSS OF PROFITS ARISING OUT OF, OR IN CONNECTION WITH, THE PO, WHETHER OR NOT FINASTRA WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.**

**THE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN. NOTHING IN THE PO LIMITS EITHER PARTY'S LIABILITY FOR BODILY INJURY OF A PERSON, DEATH, OR PHYSICAL DAMAGE TO PROPERTY OR ANY LIABILITY WHICH CANNOT BE EXCLUDED UNDER APPLICABLE LAW.**

## **17. DATA PROTECTION**

**Vendor represents and warrants that:**

- (i) it will take all necessary steps to ensure that it operates at all times within the requirements of Directive 95/46/EC ("Directive") and all other laws applicable to the Data Subject.**
- (ii) will not use or disclose any Personal Data (as such term is defined in the Directive) that is processed for or on behalf of Finastra, except to the extent necessary to perform its obligations under this PO;**
- (iii) only to the extent that Vendor actually processes Personal Data it will:**
  - a. implement and maintain appropriate technical and organizational measures and other protections for Personal Data (including, without limitation, not loading any Personal Data provided to Vendor on any laptop computers or any portable storage media that can be removed from Vendor's premises unless in each case (i) such data has been encrypted and (ii) such data is loaded onto portable storage media solely for the purpose of moving such data to off-site storage);**
  - b. report to Finastra any breaches of security of Personal Data immediately after discovery ("Security Incident");**
  - c. cooperate fully with Finastra in investigating any Security Incidents;**
  - d. cooperate fully with Finastra's requests for access to, correction of, and destruction of Personal Data in Vendor's possession;**
  - e. comply with all instructions or other requirements provided or issued by Finastra from time to time relating to Personal Data; and**
  - f. permit Finastra and/or its duly authorized representatives, on reasonable prior notice, to inspect and audit Vendor's business premises and computer systems to enable Finastra to verify that Vendor is in full compliance with its processing obligations under this PO;**

(iv) it will not transfer Personal Data across any country border unless it is (a) strictly unavoidable for the proper performance under this PO, and (b) notified to Finastra in writing prior to any such transfer. Upon Finastra's request, Vendor shall enter into such other arrangements with Finastra as Finastra considers appropriate (e.g. the EU Model Clauses) in order to ensure that Vendor's transfers are lawful.

(v) it will not provide Finastra with Personal Data of any third party or its own employees. Notwithstanding the foregoing, if Vendor does provide Finastra with any Personal Data, Vendor represents and warrants that it has obtained the necessary consent to provide that Personal Data to Finastra and to allow Finastra to use, disclose, and transmit such Personal Data on a worldwide basis among Finastra and its affiliates in connection with this PO.

#### **18. GOVERNMENTAL AUTHORISATIONS**

Vendor shall be responsible for obtaining all governmental authorisations necessary, including but not limited to applicable export authorisations, for the performance of Vendor's obligations hereunder. In the event that Vendor fails to obtain any such authorisations as may be necessary to complete the work, Finastra may require that all such work be replaced with work that does comply or at any time terminate this PO in which event the Vendor shall refund all payments made by Finastra.

#### **19. ASSIGNMENT OF CONTRACT / CHANGE OF CONTROL**

(i) Vendor shall not assign or novate, either in whole or in part, this PO or any of Vendor's rights, duties, or obligations hereunder to any person or entity without the prior express approval of Finastra.

(ii) Notwithstanding any conditions under which Finastra may grant such approval, Vendor shall remain a guarantor to Finastra of the performance of the assigned or delegated duties and obligations in accordance with the PO and all applicable laws.

(iii) Finastra may assign or novate, either in whole or in part, the PO or any of Finastra's rights, duties, or obligations hereunder to any person or entity.

(iv) Finastra reserve the right to terminate this contract in event of a change of control of Vendor. Vendor shall notify Finastra promptly in the event of a change of control.

#### **20. COMPLIANCE**

(i) Vendor represents and warrants that it will comply with all applicable local and national laws, regulations and codes pertaining to its performance of its obligations under the PO.

(ii) Vendor complies, and procures that its subcontractors and all members of its group comply, with the 10 universal principles of the UN Global Compact.

(iii) Vendor shall not, and shall procure that its subcontractors and each member of its group shall not, act in any fashion or take any action that will render Finastra liable for a violation of (a) any applicable anti-bribery legislation (including but not limited to, the U.S. Foreign Corrupt Practices Act and the UK Bribery Act 2010), which prohibits the offering, giving or promising to offer or give, or receiving, directly or indirectly, money or anything of value to any third party to assist it them or Finastra in retaining or obtaining business or in

performing the Work or (b) any applicable anti-slavery or human trafficking legislation (including but not limited to the Modern Slavery Act 2015).

Vendor's failure to comply with this clause 20 shall constitute a material breach of the PO and Finastra shall be entitled to terminate the PO with immediate effect without notice.

**21. APPLICABLE LAW; DISPUTE RESOLUTION; JURISDICTION AND VENUE.**

(i) This Agreement and its performance shall be construed in accordance with and governed by;

(a) the laws of the New York, U.S.A. for orders placed by Finastra or any entity controlled by Finastra and having its principal place of business in the Americas;

(b) the laws of England and Wales for orders placed by Finastra or any entity controlled by Finastra and having its principal place of business outside of the Americas.

(ii) Any dispute that arises between the Vendor and Finastra in connection with these terms, which is not settled within sixty (60) days from the date that either party notifies the other in writing that such a dispute exists, or within such longer period as may be mutually agreed upon, shall, be resolved by arbitration under the rules in effect on the date that the arbitration is initiated of;

(a) the American Arbitration Association, where the law of New York applies, and

(b) the London Court of International Arbitration, where the law of England and Wales applies.

(iii) A sole arbitrator shall be appointed by the court, unless the parties agree in a particular case that the tribunal should consist of more than one arbitrator, or unless the Court determines in view of all the circumstances of the case that a three (3) member tribunal is appropriate.

(iv) The place of arbitration shall be London, England, or New York City, as appropriate.

(v) Responsibility for paying the costs of the arbitration, including the costs incurred by the parties themselves in preparing and presenting their cases, shall be apportioned by the tribunal.

(vi) The award shall be final and binding on the parties as from the date it is made.

(vii) Judgment upon the award rendered may be entered in any court having jurisdiction, or application may be made to such court for a judicial acceptance of the award and an order of enforcement, as the case may be.

**22. GENERAL TERMS**

(i) Neither party shall be bound by any variation to the terms of this PO unless agreed by the parties in writing.

(ii) A party's election not to insist on strict performance of any requirement of this PO will not operate or be construed to waive any future omission or breach, or any other provision of the PO.

(iii) If any court of competent jurisdiction holds that any provision of the PO is illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining provisions of



the PO will not be affected or impaired, and all remaining terms of the PO remain in full force and effect, provided that this provision shall not be applied to defeat the intent of the parties.

(iv) The parties shall treat the terms, conditions, and existence of the PO as confidential Information. Vendor shall obtain Finastra written consent prior to any publication, presentation, public announcement, or press release concerning its relationship as a supplier to Finastra.

(v) Any notice to be given under the PO will be in writing and addressed to the party at the address stated in the front of the PO. Notices will be deemed given and effective (a) if personally delivered, upon delivery, (b) if sent by an overnight service with tracking capabilities, upon receipt; (c) if sent by electronic mail, at such time as the party which sent the notice receives confirmation of receipt by the applicable method of transmittal; or (d) if sent by certified or registered mail, within five days of deposit in the mail.

### **About Finastra**

Finastra unlocks the potential of people and businesses in finance, creating a platform for open innovation. Formed in 2017 by the merger of Misys and D+H, we provide the broadest portfolio of financial services software in the world today—spanning corporate banking, retail banking, investment management, managed services, and treasury and capital markets. Our solutions enable customers to deploy mission critical technology on premise or in the cloud. Our scale and geographical reach means that we can serve customers effectively, regardless of their size or geographic location—from global financial institutions, to community banks and credit unions. Through our open, secure and reliable solutions customers are empowered to accelerate growth, optimize cost, mitigate risk and continually evolve to meet the changing needs of their customers. 48 of the world's top 50 banks use Finastra technology. Please visit [www.finastra.com](http://www.finastra.com) and follow @Finastra on Twitter.

