

SAP Open Ecosystem
Sell On Premise Specific Terms and Conditions

(together with the SAP Open Ecosystem Sell On Premise Schedule
and all documents referenced therein **"Sell On Premise Open Ecosystem Model"**)

Article 1 Definitions and Interpretation

1. Definitions

"Distributor" means any legal entity to which SAP markets and distributes certain Software in connection with the "SAP PartnerEdge Sell On Premise Distribution Model"; a list of available distributors is displayed on SAP's partner-dedicated website.

"EULA" means the "End User License Agreement (for SAP On Premise indirect sales)" which is made available on www.sap.com/company/legal.

"EULA Acceptance Form" means the "Acceptance Form for End User License Agreement (for SAP On Premise indirect sales)" which will be provided by SAP on a deal by deal basis.

"EUMA" means the "SAP Delivered Support Agreement" which sets out the terms and conditions under which SAP provides support to End Users and which will be provided by SAP on a deal by deal basis.

"EUMA Effective Date" means the date on that the last signature was affixed to the EUMA or in case SAP does not sign the EUMA, any other act through which SAP accepts the EUMA or the order of SAP Delivered Support for the Software.

"Initial Term" means the period starting on the EUMA Effective Date and ending one year later but excluding the date of the EUMA Effective Date.

"Maintenance Services" with regard to this Sell On Premise Open Ecosystem Model means SAP Delivered Support.

"OE Partner Product List" with regard to this Sell On Premise Open Ecosystem Model means the list of SAP software made available by SAP named "SAP Authorized Reseller Product List" applicable to the country in which End User is located which is published on SAP's partner-dedicated website or directly provided to Open Ecosystem Partner by SAP or Distributor.

"Product Family" means an SAP product family which may comprise of one or several SAP software products or services as further set out on SAP's partner-dedicated website.

"Program Requirements" means certain minimum program requirements to be fulfilled by Open Ecosystem Partner, some of which are general Open Ecosystem requirements, some of which are specific for the "Sell Engagement" and some of which are specific for the different "On Premise" Product Families, including, without limitation, upholding a Sell Authorization for at least one "On Premise" Product Family and other requirements as set out in detail in the Open Ecosystem Program Guide.

"SAP Delivered Support" means SAP's support offering to directly provide support to End Users subject to the terms and conditions set out in the EUMA.

"Sell Authorization" means the specific training and qualification requirements for each product included in an "On Premise" Product Family that Open Ecosystem Partner wants to resell as set out in detail in the Open Ecosystem Program Guide, to be fulfilled by Open Ecosystem Partner.

"SUR" means the then-current List of Prices and Conditions SAP Software and Support used by SAP which includes additional or supplemental terms and conditions under which Software is licensed and which is made available on www.sap.com/company/legal. The SUR document is considered a Price List document in the meaning of Article 12 (Change to Terms) Nr.1 in Part 1 of the Open Ecosystem GTCs.

2. Any terms not defined in this Sell On Premise Open Ecosystem Model will have the meaning ascribed to them in any other part of the Agreement (as defined in the Master Open Ecosystem Agreement).

3. The headings in this Sell On Premise Open Ecosystem Model are for convenience only and are to be ignored in construing this Sell On Premise Open Ecosystem Model.

4. For clarification: Any reference in this Sell On Premise Open Ecosystem Model to a defined document is a reference to that defined document as amended, varied, novated or supplemented from time to time in line with Part 1 Article 12 "Change to Terms" of the Open Ecosystem GTCs.

5. Where the context so admits, the singular includes the plural and vice versa.

6. Any defined document referenced in this Sell On Premise Open Ecosystem Model will be provided by SAP upon request.

Article 2 Engagement Model

1. Upon Open Ecosystem Partner meeting the Program Requirements for the first time and subject to Open Ecosystem Partner's compliance with all Program Requirements at all times during the term of this Sell On Premise Open Ecosystem Model, SAP hereby grants to Open Ecosystem Partner and Open Ecosystem Partner hereby accepts from SAP the right to:

- a) purchase those Software products from Distributors for which Open Ecosystem Partner achieved and continues to uphold a successful Sell Authorization;
- b) market and distribute the Software purchased from a Distributor in its own name, at its own risk and for its own account to End Users located in the Territory (as defined in the SAP Open Ecosystem – Sell On Premise Schedule); and
- c) position SAP Delivered Support for the Software purchased from a Distributor to End Users located in the Territory (as defined in the SAP Open Ecosystem – Sell On Premise Schedule), if available for the Software product.

2. Open Ecosystem Partner will use its best efforts to market and position SAP Delivered Support for the Software purchase from a Distributor to End Users located in the Territory.

3. SAP will inform its Distributors located in the Territory:

- a) once Open Ecosystem Partner has fulfilled the Program Requirements for the first time by displaying the Open Ecosystem Partner as "Open Ecosystem Partner" on SAP's partner-dedicated website; and

- b) if Open Ecosystem Partner ceases to fulfill the Program Requirements or if this Sell On Premise Open Ecosystem Model is terminated, rescinded or ends in any other way by either showing the Open Ecosystem Partner as “non-operational” on or delisting the Open Ecosystem Partner from SAP’s partner-dedicated website.
4. Open Ecosystem Partner is solely responsible for accurately and completely representing the Software and the Maintenance Services. Open Ecosystem Partner assumes all financial and legal liability for the quality, reliability and accuracy of all representations and warranties made by Open Ecosystem Partner, its employees, agents and consultants beyond what is contained in the Documentation. Open Ecosystem Partner will at any presentation give the SAP Group and its licensors appropriate credit for the ownership of the Software, Documentation and other SAP Materials.
5. Open Ecosystem Partner must not deliver or recommend any software or other products that are incompatible with the Software.
6. Open Ecosystem Partner will be solely responsible for setting its own prices vis-à-vis the End User for the distribution of the Software.

Article 3 Advertising Materials

1. Open Ecosystem Partner may add its own material to the information supplied by either indirectly by Distributor or directly by SAP, solely for the purposes of Open Ecosystem Partner’s own marketing activities. Any material which is added must be clearly marked as Open Ecosystem Partner’s material.
2. All marketing and promotional materials developed by or for Open Ecosystem Partner, including, but not limited to, print advertisement, broadcast or telecast commercials, product brochures, sales aids, manuals, displays, and publicity concerning the Software distributed hereunder and related services must represent SAP’s image and position appropriately.

Article 4 Protection of rights

Open Ecosystem Partner is not entitled to:

1. Use the Software;
2. make any modifications, add-ons or other derivative work to the Software; and
3. copy or otherwise reproduce temporarily or permanently in whole or in part the Software, not even for back-up purposes.

Article 5 License

1. Use rights for the Software that Open Ecosystem Partner orders via a Distributor from SAP for a specific End User will be granted from SAP to Distributor on the basis of an End User specific agreed order and then granted by Distributor to Open Ecosystem Partner on the basis of an individual license agreement (“**Indirect Partner License**”) and from the Open Ecosystem Partner to the End User on the basis of an individual license agreement (“**Indirect End User License**”), as further described in this Article 5.

In addition to that, SAP enters into a direct contractual relationship with the End User via the EULA Acceptance Form, and the EULA referenced therein as described in the subsections 2 to 6 below.

2. Open Ecosystem Partner must inform the End User of and include express provisions in its agreement with the End User stating that:
 - a) the use of the Software is subject to the terms and conditions of the Indirect End User License and that with regard to the use of the Software End User must also adhere to the stipulations of the EULA Acceptance Form and the EULA referenced therein;
 - b) SAP will neither deliver any Software nor the applicable license key until SAP received End User’s duly signed EULA Acceptance Form; and
 - c) SAP has the right not to enter into the EULA Acceptance Form agreement with an End User as long as any of the adverse conditions as set out in this Article 5 (License) no. 4 to 6 is present.
3. Open Ecosystem Partner must ensure that:
 - a) each End User accepts the then-current license terms by signing the then-current EULA Acceptance Form; and
 - b) the person signing the EULA Acceptance Form is duly authorized to represent and has the full legal capacity to legally bind the End User.
4. Open Ecosystem Partner is prohibited from making any changes to the EULA Acceptance Form, the EULA and the SUR. Open Ecosystem Partner must further ensure that End User does not change the EULA Acceptance Form, the EULA and the SUR.
5. If the relevant End User has not duly signed the EULA Acceptance Form or if the content of the EULA Acceptance Form, the EULA or the SUR is unduly changed or is incomplete, SAP will not accept the corresponding Software order for such End User and will, thus, neither deliver any Software nor the applicable license key. Open Ecosystem Partner will indemnify SAP against any and all losses, actions, claims, expenses, demands and liabilities which may be incurred by or made against SAP if the EULA Acceptance Form, the EULA and/or the SUR were unduly changed or are incomplete.
6. SAP’s obligation to enter into the EULA Acceptance Form agreement with an End User is suspended where and for as long as certain adverse conditions are present as provided for in Article 5 (SAP’s obligation to deliver) of Part 1 of the Open Ecosystem GTCs.
7. Open Ecosystem Partner must ensure that all Software ordered for an End User is captured under a valid Indirect End User License between Open Ecosystem Partner and such End User.
 - a) To this extent Open Ecosystem Partner must – in particular – ensure that:
 - i. For each End User opportunity, Open Ecosystem Partner executes an Indirect End User License before ordering Software from Distributor; and
 - ii. the person signing an Indirect End User License is duly authorized to represent and has the full legal capacity to legally bind the End User.
 - b) Open Ecosystem Partner must ensure that each Indirect End User License is legal, valid, binding and enforceable and that the obligations assumed by the Parties thereunder constitute legal, valid, binding and enforceable obligations.
 - c) Open Ecosystem Partner must inform each End User that SAP will not accept the corresponding Software order for such End User opportunity and will, thus, neither deliver any Software nor the applicable license keys if SAP has not received from the Distributor the confirmation that an Indirect End User License was duly signed by the End User for the Software agreed in the order between Distributor and SAP.
 - d) Upon SAP’s request, Open Ecosystem Partner must provide a copy of the signed Indirect End User License agreement to SAP (whereby blackening any references to commercial terms, especially prices). Open Ecosystem Partner must ensure that End User has given its consent for SAP to review each Indirect End User License.
 - e) Open Ecosystem Partner bears all consequences and costs resulting from breach of its duties set forth in the Agreement, especially if Open Ecosystem Partner did not conclude an Indirect End User License, if an Indirect End User License is not legal, valid, binding or enforceable or if the obligations assumed by the Parties thereunder do not constitute legal, valid, binding and enforceable obligations.

Article 6 SAP Delivered Support Agreement/EUMA

1. Conclusion of the SAP Delivered Support Agreement/EUMA
 - a) If an End User wants to order SAP Delivered Support and provided SAP offers SAP Delivered Support for the relevant Software product(s), the End User will need to conclude a EUMA directly with SAP.
 - b) Open Ecosystem Partner must inform the End User that:
 - i. SAP will not deliver any SAP Delivered Support until SAP received End User's duly signed EUMA; and
 - ii. SAP has the right not to provide SAP Delivered Support as long as any of the adverse conditions as set out in this Article 6 (SAP Delivered Support Agreement/EUMA) no. 1c) is present.
 - c) Open Ecosystem Partner must ensure that the person signing the EUMA is duly authorized to represent and has the full legal capacity to legally bind the End User. Open Ecosystem Partner is prohibited from making any changes to the EUMA. Open Ecosystem Partner must further ensure that End User does not change the EUMA.
 - d) If the relevant End User has not duly signed the EUMA or if the content of the EUMA was unduly changed or is incomplete, SAP will not accept the corresponding SAP Delivered Support order for such End User and will, thus, not provide SAP Delivered Support. Open Ecosystem Partner will indemnify SAP against any and all losses, actions, claims, expenses, demands and liabilities which may be incurred by or made against SAP if the EUMA was unduly changed or is incomplete.
2. Payment of fees for SAP Delivered Support
 - a) For the Initial Term, Open Ecosystem Partner must collect - at its own risk - all fees for SAP Delivered Support from each End User for which a EUMA was concluded and pay such fees directly to the Distributor. For that purpose, Open Ecosystem Partner must invoice each End User the exact amount of fees for SAP Delivered Support stated in the EUMA that the relevant End User signed.
 - b) After the Initial Term, SAP will invoice each End User directly for SAP Delivered Support.

Article 7 Term and Termination for convenience

1. Term. This Sell On Premise Open Ecosystem Model comes into effect as of the Effective Date defined in the SAP Open Ecosystem – Sell On Premise Schedule and remains in full force and effect until and including 31 December of the same year. Thereafter its term is automatically extended for subsequent periods of one year.
2. Termination for convenience. Either Party may terminate this Sell On Premise Open Ecosystem Model for convenience with three months' prior written notice to 31 December of each year.
3. Termination for non-compliance with Program Requirements. SAP may terminate this Sell On Premise Open Ecosystem Model with three months' prior written notice if Open Ecosystem Partner:
 - a) did not meet all of the Program Requirements for the first time within six months after the Effective Date defined in the SAP Open Ecosystem – Sell On Premise Schedule; or
 - b) does not comply with any of the Program Requirements.
4. Extraordinary termination rights and the right to termination for just cause remain unaffected.

Article 8 Model-specific Effect of Termination

1. If this Sell On Premise Open Ecosystem Model is terminated, rescinded or ends in any other way, Open Ecosystem Partner's right to:
 - a) purchase Software from Distributors;
 - b) market and distribute the Software; and
 - c) position SAP Delivered Support,to End Users located in the Territory under this Sell On Premise Open Ecosystem Model as set out in Article 2 (Engagement Model) immediately ends.
2. However, Open Ecosystem Partner will be allowed to distribute each Software product ordered from a Distributor for a specific End User for that SAP accepted Distributor's order before this Sell On Premise Open Ecosystem Model was terminated, rescinded or ended in any other way ("**Accepted Software**") without undue delay to the End User for whom the Software product was ordered. Obligations existing or arising under subsisting individual orders remain unaffected. SAP is entitled to refuse to accept orders if SAP has reasonable grounds to believe that the End User cannot go live with the Software during the term of this Sell On Premise Open Ecosystem Model.
3. Notwithstanding anything in Article 8 (Effect of Termination) of Part 1 of the Open Ecosystem GTCs, Open Ecosystem Partner will be allowed to use the SAP Logo and other SAP trademarks which he was authorized to use as set out in Article 4 (Trademark License) of Part 1 of the Open Ecosystem GTCs solely in connection with the Documentation in order to distribute the Accepted Software without undue delay to the specific End User for whom the Accepted Software was agreed under an order between SAP and Distributor.
4. SAP will inform its Distributors about the termination of this Sell On Premise Open Ecosystem Model by either showing the Open Ecosystem Partner as "non-operational" on or delisting the Open Ecosystem Partner from SAP's partner-dedicated website.

Article 9 Warranty, Third Party Claims, Other Faults

1. As SAP does not provide any goods or licenses directly to Open Ecosystem Partner, no warranty provisions for any defects as to quality or defects in title shall apply.
2. If a third party claims that the exercise of the rights granted by Distributor to Open Ecosystem Partner under the Sell On Premise Distribution Model infringes its rights, Open Ecosystem Partner must fully inform SAP in writing without delay. If Open Ecosystem partner ceases to exercise its rights granted to mitigate loss or for other just reason, Open Ecosystem Partner must notify the third party that such cessation does not imply any recognition of the claimed infringement. Open Ecosystem Partner will conduct the dispute with the third party both in court and out of court only in consultation and agreement with SAP or authorize SAP to assume sole conduct of the dispute.
3. If SAP fails to properly perform any of its duties herein that is not within the ambit of defect liability, or is otherwise in breach, Open Ecosystem Partner must give written notice of the failure or breach to SAP and fix a limited additional time period during which SAP has the opportunity to properly perform its duty or otherwise rectify the situation. SAP will compensate for loss or wasted anticipatory expenditure subject to the exclusions and limitations in Article 10.

Article 10 Liability

1. SAP's liability in contract, tort, and otherwise for loss including but not limited to wasted anticipatory expenditure, under this Sell On Premise Open Ecosystem Model is subject to the following provisions :

a) In cases of intent, SAP's liability extends to the full loss; in cases of gross negligence, SAP's liability is limited to the amount of foreseeable loss that would have been prevented through the exercise of due care; in cases of absence of a guaranteed quality, SAP's liability is limited to the amount of foreseeable loss that would have been prevented by the presence of the guaranteed quality.

b) In other cases: SAP is not liable except for breach of a major obligation (Kardinalpflicht) and only up to the limits in Article 10 no. 1 c). A breach of a major obligation in the meaning of this is assumed where the duty itself is a necessary prerequisite for the contractual performance, or where the breach of the relevant duty jeopardizes the purpose of the contract and where Open Ecosystem Partner could legitimately rely upon its fulfillment.

c) Liability in cases under Article 10 n no. 1 b) is limited to € 200,000 per incident and limited in total to €500 ,000 for all claims arising out of this Sell On Premise Open Ecosystem Model.

2. Contributory fault and contributory negligence may be claimed. The limits of liability in Article 13 no. 1 do not apply to personal injury liability or liability under the Austrian Product Liability Act (Produkthaftungsgesetz).

3. For all claims against SAP in contract, tort, or otherwise for loss or wasted anticipatory expenditure the time bar comes into effect after a period of one year. That period begins at the point in time specified in the Austrian Civil Code (ABGB), section 1489. The provisions in sentences 1 to 2 in this Article 10 no. 3 do not apply to liability for personal injury, or liability under the Austrian Product Liability Act.