

SAP Business ByDesign Supplemental Terms and Conditions

SAP and Customer have entered into an agreement for the purchase of certain SAP products and services ("Agreement") pursuant to which Customer is purchasing SAP Business ByDesign ("SAP BYD"). SAP BYD is deemed part of the Service (as defined in the General Terms and Conditions for SAP Cloud Services) and is provided under the terms and conditions of the Agreement. The Agreement includes an Order Form, the General Terms and Conditions for SAP Cloud Services, these supplemental terms and conditions (the "Supplement") and any Schedules referenced by those documents. This Supplement and any modifications to the Agreement made herein apply solely to SAP BYD and not to any other SAP product or service.

1. Use of Service.

1.1 Named User(s) may include Business Partners of Customer. "**Business Partner**" means a legal entity that requires access to SAP BYD in connection with Customer's internal business operations, such as customers, distributors and/or suppliers of Customer.

1.2 The base fee for SAP BYD includes three country-specific versions of SAP BYD. If Customer requires more than three country-specific versions of SAP BYD, Customer must purchase one subscription for each additional country-specific versions of SAP BYD.

1.3 There are three categories of Named Users that may be purchased with a subscription. Pricing and functionality vary for each category.

(a) Enterprise User - Enterprise users access core functionality across multiple business areas – such as human resources, financial management, and customer relationship management. Enterprise Users may be either Standard Enterprise Users or SCM Enterprise Users.

(b) Team User - Team Users are employees who need access to only one business area – such as sales force automation or basic reporting – to do their jobs. Team Users are always CRM Sales Team Users or Project Manager Team Leaders.

(c) Self-Service User - Self-service Users are employees who do not use core functionality, but access self-service functions incidental to their work – such as purchasing, travel and expense, and human resources. Self-Service Users may be either Standard Self-Service Users, SCM Self-Service Users or Project Management Self-Service Users.

1.4 The base fee for SAP BYD includes one production tenant and one test tenant. Customer may purchase subscriptions to additional test tenants that are described in the Documentation (each a "**Test Tenant**"). No more than fifty (50) Named Users for which Customer has a subscription may access each Test Tenant.

2. Go-Live, System Access and other Customer Obligations

2.1 Customer's productive use of SAP BYD will commence once Customer has activated the "**Confirm Go-Live**" activity in the business configuration of Customer's SAP BYD system. SAP's verification of readiness for productive use will take place when the activity "Request for Go-Live" is activated by Customer.

2.2 To access and use SAP BYD, Customer shall fulfill the additional obligations and prerequisites set out in the SAP BYD materials available from the SAP business center.

3. Add-Ons for SAP ByD

3.1 SAP will incorporate into Customer's SAP BYD environment add-ons for SAP BYD ("Add-on(s)") which Customer has licensed from authorized SAP partners, or which Customer has developed, or which have been developed by an authorized SAP partner specifically for use by Customer only (the latter two called "Customer-specific Add-on(s)").

3.2 SAP shall not be responsible for the support of any Add-on.

3.3 SAP will activate or de-activate a partner Add-on upon notification by the respective authorized SAP partner. SAP is not responsible for uploading a Customer-specific Add-on into Customer's SAP BYD environment.

- 3.4 SAP reserves the right to refuse to incorporate an Add-On into Customer’s SAP BYD system, or to temporarily or permanently deactivate an Add-On at any time if (i) SAP reasonably believes such Add-On may have a negative impact on Customer’s SAP BYD system (ii), such Add-On fails to meet SAP quality standards for Add-ons made available by SAP, or (iii) Customer is in breach of any term or condition of its Agreement with SAP.
- 3.5 Use of an Add-On is at Customer’s sole risk and SAP shall not be responsible for any changes or modifications of Customer Data by or through an Add-on. SAP incorporates Add-ons into Customer’s BYD environment “AS IS” and without any warranty, express or implied. SAP does not warrant that an Add-on is or will be available without interruption, including, without limitation, during any standard maintenance windows for SAP BYD.
SAP shall not be responsible for any negative impact of an Add-on on the availability, functionality or performance of Customer’s SAP BYD system.
- 3.6 Customer shall be solely responsible (i) for verifying that SAP BYD meets Customer’s compliance requirements and (ii) for adapting existing functionality to legal and regulatory requirements relevant for Customer. Statutory and tax reporting functionalities in an unsupported country will not be provided by SAP BYD. In addition, SAP BYD will not support local taxes for sales orders, purchase orders or financial posting outside the supported countries.
- 3.7 SAP may provide Customer additional functionality for SAP BYD by offering SAP Add-ons made available through a dedicated webpage. Customer acknowledges and agrees that SAP Add-ons may only be licensed through an electronic contracting process and Customer expressly accepts the validity and enforceability of any contract accepted by Customer and SAP through such electronic contracting process.

4. Cloud Applications Studio. Customer may subscribe to the optional SAP Cloud Applications Studio. Customer’s use of the SAP Cloud Applications Studio is subject to the terms set forth in **Attachment 1** to this Supplement.

5. Private Edition. SAP Business by Design, Private Edition is an optional service and includes a dedicated multi-tenant system for single customer usage and customized maintenance windows, as defined below. Customer may elect to have up to 10 production tenants on a Private Edition system. These additional production tenants do not replace Test Tenant requirements. A minimum subscription of 200 Team Users and/or Enterprise Users is required for a subscription to SAP Business by Design, Private Edition.

6. Maintenance Windows

SAP can use the following maintenance windows for planned downtimes:

		Maintenance Windows
Regular Maintenance Windows		Customer may select from any one of the following two maintenance window options: (1) Tuesday and Thursday from 2 a.m. to 4 a.m. Local Time (*); or (2) Saturday from 2 a.m. to 6 a.m. Local Time(*).
Major Upgrades		Up to 4 times per year from Friday 10 p.m. to Saturday 10 p.m. Local Time (*). SAP will inform Customer in due time in advance (either by email or by any other electronic means).
(*) Local Time		UTC-4, Americas (summer); UTC-5, Americas (EST winter) UTC+2 , Europe (summer); UTC+3, Europe (CET winter) UTC+8, APJ

For Customers that have purchased a subscription to a Private Edition of the Service, the following maintenance windows shall apply:

		Maintenance Windows
Regular Maintenance Windows		Customer can request any regular maintenance window (duration 2 hours at two times per week or one four-hour maintenance window per week).
Major Upgrades		Up to 4 times per year from Friday 10 p.m. to Saturday 10 p.m. Local Time (*). SAP will inform Customer in due time in advance about the planned upgrade scheduling.

(*) Local Time	UTC-4, Americas (summer); UTC-5, Americas (EST winter) UTC+2 , Europe (summer); UTC+3, Europe (CET winter) UTC+8, APJ
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Attachment 1

Supplemental Terms for use of SAP Cloud Applications Studio

1. Definitions.
 - 1.1 "APIs" means SAP's application programming interfaces, as well as other commands or instructions that allow other software products to communicate with or call on the SAP Cloud Solution or the Cloud Applications Studio (for example, SAP enterprise services, ByDesign Business Objects, BAPIs, Idocs, RFC, and ABAP customer exits) provided under this Agreement.
 - 1.2 "Background Materials" means any pre-existing works that include intellectual property rights owned by either SAP or Customer that have been prepared by SAP or Customer outside the scope of the Agreement or that were licensed from a third party.
 - 1.3 "Cloud Applications Studio" means the overall SAP development environment to which SAP grants Customer access as outlined in this Supplement for development of the Customer Solution. It consists of the following elements: Software Development Kit, and Key User Tools.
 - 1.4 "Customer Solution" means a solution developed or packaged by Customer with the Cloud Applications Studio and/or the Key User Tools which adds new and independent functionality beyond that provided by the SAP Cloud Solution, including any new functional components for business processes not provided by the SAP Cloud Solution, that connect to and/or communicate through published SAP APIs or user exits, including new or modified user interface elements, new reports, new forms, new web services, and new or modified functionality. The Customer Solution must be custom-built to be used by Customer only without further distribution or licensing.
 - 1.5 "Customer Test Tenant" means an SAP Cloud Solution tenant which is simulating a live situation of a customer environment for testing purposes.
 - 1.6 "Key User Tools" means a set of tools that are available to configure, customize and extend the Customer Solution. This includes extensibility and flexibility enhancements as well as reporting enhancement capabilities. Configurations prepared with the Key User Tools may be incorporated into the Customer Solution.
 - 1.7 "Modification" means any alteration or modification to the SAP Cloud Solution, including but not limited to a change made to the source code and/or metadata of the SAP Cloud Solution.
 - 1.8 "SAP Cloud Solution" refers to the SAP Cloud product for which Customer has a valid subscription and with which the Cloud Application Studio will be used to develop the Customer Solution.
 - 1.9 "Software Development Kit" means the frontend components of the Cloud Applications Studio which are based on a developer framework and a user interface design tool. Customer develops solutions within the frontend Software Development Kit and based on a scripting language called SAP Cloud Applications Studio script.
 - 1.10 "Test Tenant" means an SAP Cloud Solution tenant which may be simulating a live situation of a Customer environment that is enabled for testing during software development and is operated by SAP. Frontend access is optionally available.
2. Customer Obligations
 - 2.1 Customer will be responsible for providing SAP with all necessary information on the Customer Solutions required for the applicable SAP Cloud Solution to interoperate with a Customer Solution and for SAP to fulfill its obligations under this Agreement.
 - 2.2 Customer is responsible for ensuring that the Customer Solution remains compatible and interoperable with the SAP Cloud Solution during the term of Customer's SAP Cloud Solution subscription.
 - 2.3 Customer must subscribe to a Test Tenant with the SAP Cloud Solution for a term equal to the term of the subscription for the Cloud Application Studio.
3. SAP Obligations
 - 3.1 SAP will provide Customer access to the Cloud Applications Studio for the purposes of this Agreement.
 - 3.2 SAP will provide Customer with required information to allow Customer to keep the Customer Solution compatible and interoperable with the Customer's SAP Cloud Solution subscription.

- 3.3 SAP will incorporate the Customer Solution into Customer's SAP Cloud Solution environment. SAP shall not be responsible for the support of the Customer Solution. SAP will activate or deactivate the Customer Solution upon notification by Customer. SAP is not responsible for uploading the Customer Solution into Customer's SAP Cloud Solution environment. SAP reserves the right to refuse to incorporate the Customer Solution into Customer's SAP Cloud Solution Environment, or to temporarily or permanently deactivate the Customer Solution at any time if (i) SAP reasonably believes such Customer Solution may have a negative impact on Customer's SAP Cloud Solution system or (ii), Customer is in breach of any term or condition of its Agreement with SAP. Use of the Customer Solution is at Customer's sole risk and SAP shall not be responsible for any changes or modifications of Customer Data by or through the Customer Solution. SAP incorporates the Customer Solution into Customer's SAP Cloud Solution environment free of charge, "AS IS" and without any warranty, express or implied. SAP does not warrant that the Customer Solution is or will be available without interruption, including, without limitation, during any standard maintenance windows for the SAP Cloud Solution. However, SAP will use reasonable endeavours to make the Customer Solution available based on the SAP Cloud Solution service level agreement applicable to the SAP Cloud Solution. SAP shall not be responsible for any negative impact of the Customer Solution -on on the availability, functionality or performance of Customer's SAP Cloud Solution system.
4. Use Rights / Intellectual Property Rights
- 4.1 SAP hereby grants Customer, for the term of the Order Form, a non-exclusive, limited license for up tot ten (10) Named Users to access and use the Cloud Applications Studio and its Documentation to develop and test the Customer Solution. Customer is not permitted to use the Cloud Applications Studio as a business application.
- 4.2 Customer is not permitted to sublicense or rent the Cloud Applications Studio. Except to the extent expressly authorized herein and except to the extent stipulated by indispensable statutory requirements, third parties are not authorized to use or have access to the Cloud Applications Studio or its Documentation. Customer is not permitted to create Modifications or derivative works of the Cloud Applications Studio. Customer irrevocably assigns to SAP all rights, title and interest in and to any such Modifications and derivative works created by Customer. Any further use as not expressly set forth herein is strictly prohibited and subject to a separate written agreement and subject to the then current terms and conditions for such use.
- 4.3 SAP may provide Customer with certain front-end components of the Cloud Applications Studio which need to be installed by Customer on its hardware. Customer is responsible for installing such front-end components of the Cloud Applications Studio.
- 4.4 Customer acknowledges that ownership of and title to all intellectual property rights in the Cloud Application Studio, the SAP Cloud Solution and any SAP APIs are and shall remain the sole property of SAP and its licensors. Except for the licenses explicitly granted by SAP to Customer herein, SAP owns all rights and title, including all intellectual property rights, in and to any SAP software, libraries and tools made available by SAP to Customer.
- 4.5 Customer will not copy, translate, disassemble or decompile, nor create or attempt to create, by reverse engineering or otherwise, the source code from the object code of the Cloud Application Studio. In the event source code is provided to Customer, SAP, in its sole discretion, reserves the right to delete, or to require the deletion of, such source code and all copies thereof in Customer's possession or control whenever a future release, version or correction provides for like functionality in an object code format.
- 4.6 Subject to the terms set out herein, Customer shall own the portions of the Customer Solution developed by Customer hereunder and the intellectual property rights therein, excluding any SAP Background Materials, SAP APIs or SAP libraries and any derivative works thereof.

- 4.7 Except to the extent explicitly specified, nothing in this Supplement shall be construed, whether by implication, estoppel or otherwise, to transfer ownership rights in or grant license rights to the Background Materials of the other party. Nothing shall restrict SAP or any SAP Affiliate from independently developing any new or improved functionalities, products, means, systems and/or processes related to the SAP Cloud Solution, including but not limited to the Customer Solution, which in whole or in part are congruent, similar and/or comparable to developments by Customer. SAP reserves the rights to provide additional or new SAP software products.
- 4.8 Customer shall be entitled to grant subcontractors, agents or freelancers access to the Cloud Applications Studio to develop on Customer's behalf. Customer must ensure and shall be responsible that such third parties adhere to the terms of the Agreement and Customer is liable to SAP for any breach of these terms due to such access by subcontractors, agents or freelancers.
- 5 Additional Licensing Terms
- 5.1 In order to create the Customer Solution, and subject to Customer's full compliance with the following additional licensing terms, SAP hereby grants to Customer a limited, royalty-free, fully paid-up, non-exclusive, worldwide, non-transferable right and license to reproduce APIs solely for the purpose of incorporating them into the Customer Solution, provided however that Customer has no right to transfer, sublicense or otherwise distribute any APIs to any third party on a stand-alone basis or separately from the Customer Solution that complies with the limitations of this Supplement. Customer shall not modify or create a derivative work of any APIs, in whole or in part, except to create the Customer Solution in accordance with this Supplement.
- 5.2 The Customer Solution must not: (i) unreasonably impair, degrade or reduce the performance or security of the SAP Cloud Solution or the Cloud Applications Studio ; (ii) enable the bypassing or circumventing of SAP license restrictions and/or provide users with access to the SAP Cloud Solution or the Cloud Applications Studio to which such users are not directly licensed; (iii) render or provide, without written consent from SAP, any information concerning SAP software license terms, SAP software, or any other information related to SAP products. Customer shall refer any customer requiring such information to SAP; and/or (iv) permit mass data or metadata extraction from an SAP software to a non-SAP software, including use, modification, saving or other processing of such data in the non-SAP software.
- 5.3 In exchange for the right to develop the Customer Solution, Customer covenants not to assert any Intellectual Property Rights in the Customer Solution created by Customer against any SAP product, service, or future SAP development. Customer also acknowledges that SAP APIs constitute and contain valuable intellectual property of SAP and its licensors, and, in order to protect such intellectual property, Customer will not delete or in any manner alter the copyright and other proprietary rights notices appearing on APIs as delivered, and will reproduce such notices on all copies it makes of the APIs.
- 5.4 If Customer transfers or assigns the Customer Solution or any part thereof or substantially all of the rights thereto to any third party that threatens a lawsuit or claim against SAP, SAP has the right to terminate the Agreement and take the Customer Solution out of Customer's SAP Cloud Solution environment. In this case, Customer grants to SAP a non-exclusive, perpetual, worldwide, fully paid up royalty-free license, with the right to grant sublicenses, to use, reproduce, display, distribute, and create derivative works of the Customer Solution, and to make, have made, use, lease, sell, offer for sale, import, export or otherwise transfer any apparatus or product (including through standard distribution channels), and to practice any method, covered by any intellectual property rights in the Customer Solution.
- 5.5 APIs are subject to ongoing changes. Customer must adapt the Customer Solution to such changes to APIs.
- 6 Export and Import

- 6.1 Any front-end components of the Cloud Applications Studio are subject to German, European Community and/or US export control regulation. The export and re-export is restricted by German, European Community and/or US law. Any re-export into a member state of the European Union (if the Customer has its seat within the European Union) might be restricted by national laws and regulations, in particular if the final destination of the front-end components is outside the European Union.
- 6.2 Any re-export outside the European Union is restricted by German, European Community and/or United States export control regulation. Prior to any export, the Customer shall seek advice from the competent export authorities and, if necessary, apply for the required export authorizations. Certain countries might be exempt from such obligation; the Customer should therefore contact SAP in order to obtain a list of exempted countries. This obligation also applies to any re-export of the front-end components an affiliated company. The foregoing obligation does not apply if the destination is a country listed in the Community General Export Authorisation No EU001 (OJ No. L159/200 of 30 June 2000) (Australia, Japan, Canada, New Zealand, Norway, Poland, Switzerland, Czech Republic, Hungary, United States). Even in this case, however, national export control laws may apply.
- 6.3 The electronic transfer or download of the front-end components can constitute an export as well as any physical shipping of data media. The import and the use of the front-end components in the country of destination may also be restricted or banned by national regulation of that country.