

Microsoft requires us to flow down the Indirect Distribution Terms and Conditions (Retail) that apply to you when buying Microsoft products.

MICROSOFT INDIRECT DISTRIBUTION TERMS AND CONDITIONS (RETAIL)

The following terms and conditions apply if you are a Subdistributor that acquires Products from a Microsoft distributor that is permitted to distribute such Products to you under Microsoft's Global Partner Agreement – Retail Distribution Channel Authorization ("**Distributor**") for further onward distribution into Microsoft's retail partner channel. These terms are in addition to any separate terms that may apply as between you and Distributor. If you onward distribute Products to another Subdistributor, you must notify each such Subdistributor that their right to distribute Products is also subject to their ongoing compliance with these terms. Compliance with these terms is a condition of distribution and failure to comply may result in the termination of your ability to distribute such Products without waiving any other rights or remedies that may be available to Distributor or Microsoft.

1. DEFINITIONS

"**Confidential Information**" means a party's non-public information, know-how, or trade secrets that (a) the party designates as being confidential; or (b) given the nature of the disclosure or circumstances surrounding the disclosure, the receiving party should treat as confidential.

"**Customer Agreement**" means an agreement between a Qualified Customer and Microsoft, or a Microsoft Affiliate, and the associated Microsoft license terms that govern a Qualified Customer's use of a Product.

"**Guide(s)**" means a document delivered or made available to you by Microsoft or Distributor that specifies the execution and operational details, policies, and requirements applicable to the distribution of a Product.

"**Indirect Reseller**" means a company or other legal entity located in the Territory that is authorized by Distributor or Microsoft to further onward distribute Products to a Reseller or a Qualified Customer also located in the Territory.

"**Indirect Provisioner**" means a company or other legal entity located in the Territory that is authorized by Distributor or Microsoft to act as an agent to further onward distribute Products to a Provisioner or a Qualified Customer also located in the Territory.

"**Laws**" means all applicable international, national, and local laws (including regulations and binding judicial law) as amended, extended, repealed and replaced, or re-enacted.

"**Marketing Materials**" means any marketing materials provided or made available by Microsoft to promote and facilitate the sale of Products.

"**Marks**" means trademarks, trade names, trade dress, or logos.

"Microsoft" means the applicable Microsoft entity that has authorized Distributor to distribute the Products under a Program.

"Product(s)" means the online services, tools, software, hardware, currency stored value, subscription services, professional support or consulting services or other products that Microsoft may make available or incentivize under a Program.

"Product Terms" or **"Additional Terms"** means the additional terms, conditions, or restrictions that apply to specific Products in connection with a Program.

"Program" means an engagement between Microsoft and Distributor under which Microsoft may make available to Distributor certain rights, Investments, or other benefits related to using, interoperating with, integrating, sublicensing, distributing, re-selling, promoting, or marketing Products.

"Provisioner" means an entity that is authorized to act as an agent to onward distribute Products directly to a Qualified Customer.

"Qualified Customer" means an End User within the Territory that acquires Product from a retail store or retail website. "End User" as used herein means a person, company, or other legal entity that acquires a Product for its end use rather than for resale.

"Reseller" means an entity that distributes Products directly to a Qualified Customer.

"Street Date" means the first date on which Product is made available for purchase and receipt by Qualified Customers.

"Subdistributor" means, as applicable, Indirect Reseller, Reseller, Indirect Provisioner or Provisioner.

"Territory" means the geographic region in which Distributor and Subdistributor are authorized to exercise rights in connection with the related Program.

2. DISTRIBUTION REQUIREMENTS

- (a)** Subdistributor shall distribute Products only in the Territory and only as permitted by Distributor.
- (b)** Subdistributor acknowledges and agrees that Microsoft (i) will have no liability to Subdistributor or any Qualified Customer arising from Product availability or any Product shortages; and (ii) may at any time discontinue a Product, limit order quantity, or impose other limitations or conditions on Products.
- (c)** Subdistributor shall not distribute Products provided by any source other than Distributor or another Subdistributor that acquires Products from Distributor unless such source is a Microsoft-approved distributor of the Products.
- (d)** If Microsoft or Distributor issues a notice of Product discontinuance, Subdistributor shall comply with any related instructions, including to immediately return or destroy all Products to Distributor if applicable.
- (e)** Subdistributor shall promptly report any damaged Products to Distributor and shall not further distribute any such damaged Products.
- (f)** Subdistributor shall adhere to all Guides and Product Terms applicable to the Products, whether provided by Distributor or Microsoft.

3. MARKETING

- (a) Microsoft grants to Subdistributor a non-exclusive, revocable, nontransferable and limited license to use the Marketing Materials and any Microsoft Marks that correspond to the Products that Subdistributor is authorized to distribute. Such use shall be solely in connection with the distribution of Products to Qualified Customers in the Territory and subject to these terms. All rights not expressly granted to Subdistributor with respect to the Marketing Materials and Marks are reserved by Microsoft. Subdistributor shall not remove or modify any proprietary notices, licenses, Marks or copyright notices contained in any Marketing Materials. Subdistributor shall at all times comply with the trademark and branding guidelines set forth by Microsoft at <https://www.microsoft.com/en-us/legal/intellectualproperty/Trademarks/EN-US.aspx>. Subdistributor shall promptly correct any misuse upon notice from Distributor or Microsoft.
- (b) Subdistributor shall use only the most up-to-date Marketing Materials and Marks. Following notification from Distributor or Microsoft that new Marketing Materials or Marks are available or that existing Marketing Materials or Marks have been modified, Subdistributor shall take reasonable efforts to promptly update its own use of any such Marketing Materials or Marks. Subdistributor shall reasonably cooperate with all requests from Distributor or Microsoft to immediately cease use of Marketing Materials or Marks, including in response to any third party infringement claim or requirement under Laws. Subdistributor shall not continue to use Marketing Materials or Marks after receiving notice from Distributor or Microsoft to cease such use, including in connection with a legal claim or to otherwise comply with Laws. Subdistributor shall promptly comply with all reasonable instructions in the event of a cease marketing event.
- (c) Subdistributor shall not use any unauthorized, illegal, counterfeit, or modified hardware or software in connection with any Product.
- (d) Subdistributor shall not repackage or otherwise hard bundle a Product with any other Product or product without Microsoft's prior written consent.
- (e) Subdistributor shall not create a promotional bundle (i.e., a soft-bundle) that could reasonably create confusion as to the manufacturer origin of the Product or harm Microsoft's brand name or reputation.
- (f) If Subdistributor is a Reseller or a Provisioner, it shall have sole responsibility for providing all aspects of customer support, customer service and billing for the purchase of Products except as may be set forth in the Product Terms. Such Subdistributor understands and agrees that Microsoft shall have no responsibility for support with regard to the purchase and fulfillment process for Products.

4. RESTRICTIONS

Subdistributor shall not:

- (a) (i) Change, decompile or reverse engineer any Product, in whole or in part, (except and only to the extent expressly required by Laws despite this limitation); (ii) lease, rent, sublicense, publish, change, adapt or translate any portion of any Product; (iii) make unauthorized copies of any Product; (iv) modify any accompanying Customer Agreement; or (v) cause any Product, in whole or in part, to be governed by an excluded license. An "excluded license" is any license that requires, as a condition of use, modification or distribution of the Product, that the Product be: (A) disclosed or distributed in source code form; (B) licensed for the purpose of making derivative works; or (C) redistributable at no charge.
- (b) Distribute Products with any terms that would alter Microsoft's obligations to the Qualified Customer as set forth in the applicable Customer Agreement, Product Terms or such other Microsoft written documentation that may be included in any Product.

- (c) Distribute any Product prior to the Street Date specified by Microsoft and communicated by Microsoft or Distributor or after the end-of-life date identified by Distributor or Microsoft, in either case, if applicable.
- (d) Embed advertising in any Product or in any transaction involving a Product unless approved by Microsoft.
- (e) Distribute any Product after receiving notice from Distributor or Microsoft to cease distribution, including in connection with a legal claim, recall, error, or defect scenario involving a Product. Subdistributor shall promptly comply with all reasonable instructions in the event of a cease distribution event.
- (f) Distribute Products other than to: (i) a Reseller or Provisioner in the Territory, as applicable; (ii) another Subdistributor in the Territory which then sells such Products to a Reseller or Provisioner in the Territory, as applicable; or (iii) a Qualified Customer in the Territory.
- (g) Liquidate or retain a liquidator or other unauthorized third party to dispose of Product inventory, unless the Guides applicable to such Product expressly authorize such use.

5. TERMINATION OF STATUS

- (a) Subdistributor acknowledges that Microsoft or Distributor may terminate or indefinitely suspend these Microsoft Indirect Distribution Terms and Conditions and all rights granted hereunder or otherwise to distribute the Products at any time and for any reason immediately on written notice to Subdistributor.
- (b) Subdistributor must take the following actions upon termination of its rights to distribute Products unless otherwise directed in writing by Microsoft or Distributor: (i) immediately cease distribution of the Products; (ii) promptly remove any other advertising, marketing or branding, including but not limited to in-store and online merchandising, that include the Microsoft Products, Marketing Materials or Marks; (iii) return to Distributor or Microsoft or destroy, at no expense to Microsoft, all Products, Marketing Materials and Microsoft Confidential Information in Subdistributor's possession or control in strict accordance with Microsoft's instructions; and (iv) provide any other cooperation, as reasonably requested, to Distributor and Microsoft

6. GENERAL

- (a) **Compliance with Laws.** Subdistributor shall: (i) ensure that the distribution, sale and disposition of Products comply with all Laws; (ii) use its best efforts to prevent unauthorized distribution, duplication, or pirating of Products; and (iii) not knowingly distribute or aid in the distribution of any counterfeit product.
- (b) **Cooperation with Laws.** Subdistributor shall cooperate with Microsoft's and Distributor's reasonable requests aimed at ensuring their compliance with Laws applicable to the Products. If Microsoft or Distributor is required to report to any governmental agency that regulates any matter related to the distribution of Products, Subdistributor will reasonably cooperate and provide assistance as needed.
- (c) **Records and Audits.** Subdistributor shall keep and maintain complete and accurate records on its premises of all matters governed by these Indirect Distribution Terms and Conditions. During the term and for a period of 2 years following the termination of the Indirect Distribution Terms and Conditions, Subdistributor agrees that Distributor, Microsoft, or their designated representatives, may conduct audits of Subdistributor's applicable books, records, systems and operations upon 24 hours' notice, to verify Subdistributor's compliance with the Indirect Distribution Terms and Conditions. Unless otherwise requested by Microsoft, Subdistributor will promptly correct any errors and omissions disclosed by such audit.
- (d) **Product Warranty.** Subdistributor understands and agrees that the Products are provided with no warranty from Microsoft except to Qualified Customers as may be set forth in the applicable Customer Agreement or Product Terms accompanying a Product. Subdistributor will ensure that any applicable Customer Agreement or materials containing the warranty shall accompany the applicable Product that Subdistributor distributes.

The limited warranties contained therein are in lieu of all other warranties, express or implied, or statutory, including implied warranties of fitness for a particular purpose, noninfringement of intellectual property or any other obligations or liabilities on Microsoft's part, and Subdistributor shall waive and disclaim any such other warranties to the full extent permitted by Laws. Subdistributor will not make any representations, warranties, guarantees or promises with respect to any Product that would alter Microsoft's obligations to Qualified Customers. Subdistributor will be responsible for any extended manufacturer's warranty that it provides to Qualified Customers.

- (e) Privacy/Security.** Subdistributor shall adhere to all applicable privacy Laws related to the storage, collection, use and processing of personal information and payment card data related to its distribution of Products. In addition to any other security measures required by Distributor, Subdistributor shall implement and maintain commercially reasonable security procedures and measures in connection with the ecommerce systems used in distributing the Products (including physical lock/key security, computer and communications network security and data security) designed to prevent disclosure of Microsoft intellectual property and Confidential Information to any unauthorized persons or any damage to Products, Marketing Materials or Microsoft Confidential Information. Subdistributor shall promptly notify Distributor and Microsoft in writing in the event of any material breach or failure to comply with these or any other security or data protection requirements or of any breach of its security affecting Products, Marketing Materials or Microsoft intellectual property or Microsoft Confidential Information and shall reasonably cooperate with Distributor and Microsoft with respect to investigating or mitigating such breach.
- (f) Modification.** Microsoft may modify the Indirect Distribution Terms and Conditions from time to time. Distributor will notify Subdistributor of any such modifications and Subdistributor must comply with such modified terms according to the notice from Distributor.
- (g) Systems Integration Requirements.** Subdistributor must satisfy any systems integration requirements provided by Distributor or Microsoft prior to and as an ongoing condition of distributing Products to Qualified Customers.
- (h) Maintaining and Reporting Eligible Status.** From time to time, Distributor or Microsoft may require Subdistributor to provide such information as reasonably necessary to demonstrate that Subdistributor meets all requirements to participate as a Subdistributor and is in compliance with these Indirect Distribution Terms and Conditions. .