# **Appendix 10: Standard terms for Cloud Services**

\* Updated with track changes from 1.6.2021 version of Microsoft Partner Agreement to nov.2023 version. (delete before use]

For delivery of Microsoft Online Services, the Microsoft standard terms apply as follows:

1) Microsoft Customer Agreement, with underlying contractual terms:

Microsoft's standard terms and conditions can be found here: <https://www.microsoft.com/licensing/docs/customeragreement>. These terms and conditions are deemed accepted by the Customer.

The Terms establish a direct agreement between Microsoft and Customer and mean that Customer acquires rights and obligations directly against Microsoft under such standard terms, and similarly, Microsoft will obtain rights and obligations against Customer. Before a direct agreement is established, and the Azure Services can be delivered, Microsoft must confirm that Customer is accepted as a customer. The term of the direct agreement between Microsoft and Customer is the same as in the agreement between Customer and Supplier, however the direct agreement may terminate if Microsoft terminates the services against Customer in accordance with the terms of the Microsoft Customer Agreement, or if Microsoft terminates or otherwise terminates the Suppliers’ rights to resell Microsoft Online Services.

The standard terms consist of the "Microsoft Customer Agreement", which contains general terms for the use of the Azure Services. The said agreement document also refers to other documents that are part of the contractual relationship:

|  |
| --- |
| Name: |
| Microsoft Customer Agreement |
| Product Terms |
| SLA |
| Microsoft Online Services Data Protection Addendum (DPA) |
| Financial addendum |

The current version of the above documents can be found here: <https://www.microsoft.com/licensing/docs/view/Licensing-Use-Rights>

It is recommended that you download current versions and print for archival purposes. This is not possible for Product Terms, but Microsoft has archive for those documents here: <https://www.microsoft.com/en-us/licensing/product-licensing/products>

Although Microsoft's standard terms establish a direct contractual relationship between you and Microsoft, Customer will not need to actively manage the customer relationship or direct orders or reduction in volume directly to Microsoft. Orders placed by Customer shall be submitted in writing to Contractor by authorized personnel listed in Exhibit 6, and Supplier will forward such orders to Microsoft. Please note that Microsoft reserves the right to accept all orders, and Microsoft does not guarantee that all Online Services are available to order or in desired volumes.

However, all prices and payment terms follow from Appendix 7 of this Agreement between Customer and Supplier (i.e. no direct payment from Customer to Microsoft).

Please note that the standard terms allow Microsoft to change these during the term, primarily when renewing a subscription term or ordering new services. Updated terms may therefore apply during the agreement period, and the Customer must keep track of the above URLs to check if new versions of the agreement documents apply. Our experience is that the Microsoft Customer Agreement is not updated as often (less than once a year), while SLA, DPA and Product Terms often can quickly change monthly. Our assessment is that the most important thing to comply with is Microsoft's "Acceptable Use Policy" (which prohibits storing illegal information in Azure, storing content that infringes third-party rights, etc.), license restrictions (e.g. prohibits decompiling Microsoft source code, etc.) as well as export control rules (i.e. not using the services in countries such as Iran, North Korea, etc.). And it is important to keep an eye on the DPA to ensure that the data processing agreement ensures compliance with privacy legislation.

In addition, it is important to thoroughly review the Product Terms, which set out the terms and conditions for use of the individual Online Services. These should be analyzed in order to have control over 1) restrictions on use that may affect planned/desired use of the services and 2) restrictions on use where it may have a cost consequence to go beyond the included license metrics. This is especially important where you subscribe to software such as D365 where the license metrics normally require some effort to understand, to ensure correct licensing.

2) Microsoft Partner Agreement, with underlying contractual terms:

This is our agreement with Microsoft, which gives the Supplier the right to resell subscriptions to Microsoft online services. This agreement requires us to mirror the Microsoft Customer Agreement with you and other customers we resell to (see point 1 above) and obliges us to also mirror a number of other terms. As a result, the following additional terms and conditions also apply to the Customer:

* The Customer will be able to submit support incidents (report error situations) related to the Microsoft Azure Services, but these should only be directed to us as the Supplier. We will pass these on to Microsoft through our distributor [insert companyname when you are an indirect reseller, remove all yellow text if direct bill], where we cannot resolve the inquiry ourselves.
* The same applies to any claims by the Customer for SLA refunds in accordance with Microsoft's SLA provisions, which the Supplier will follow up against Microsoft. If Microsoft accept the Customer's claim, the Supplier will, after receiving settlement from Microsoft, ensure that the same is deducted on future invoices to the Customer.
* If Microsoft, upon signing this Agreement or subsequently amending the standard terms during the term of the Agreement, requires documentation or active confirmation from Supplier that Customer has accepted Microsoft's standard terms or subsequent updates, as well as orders made, Customer is obliged to assist Supplier in submitting necessary documentation or providing necessary confirmations to Microsoft.
* Customer understands that the Customer accepts that the Supplier may share information about individual at the Customer with Microsoft and our distributor [insert companyname when you are an indirect reseller, remove all yellow text if direct bill] in support matters, such as telephone number, email, and website address. Customer also accept, by entering into a direct agreement with Microsoft, that Microsoft has the right to process Customer personal data, including collecting, using, transferring, and processing such data. The Customer is responsible for notifying applicable individuals/data subjects of the processing as required by law.
* Customer also understands that Microsoft must approve you as a Customer and that Microsoft may also cancel you as a customer where you do not meet eligibility requirements to receive the online services.
* In principle, it is possible to cancel services with 30 days' notice as stated in the Microsoft Customer Agreement, but for some services there are fixed subscription/minimum periods, or there may be limitation for the possibility to extend the term. This is stated in the order confirmations from Microsoft that we will share.
* Upon receipt of an invoice from Supplier for Microsoft Online Services, Customer understands that Supplier must notify Microsoft of any discrepancies between actual consumption and the consumption shown on the invoice within 25 days of the Suppliers receipt of invoice from Microsoft. The Customer therefore undertakes to notify the same to the Supplier within 15 days, so that the Supplier manages to communicate any objections within the deadline that applies. Until Microsoft agrees to adjust the invoice basis/make credits, the Customer must pay the nominal amount in the invoice received.
* Microsoft requires us as a reseller to 1) verify that you as a customer only use original software when Microsoft software is installed by you as a customer and 2) assist in ensuring that customers we have resold to are correctly licensed, for example in terms of the number of users and devices. The Customer therefore agrees that the Supplier has the right to perform license audits of the Customer, at regular intervals, to verify that the Customer is properly licensed for products subscribed to/ purchased through the Supplier as a reseller. The Client is obliged to assist free of charge to the extent necessary with the collection of information necessary to perform such an audit, including providing the necessary access to relevant information and documentation.
* The terms of the Microsoft Partner Agreement, and underlying agreement documents, are subject to change with 180 days' notice as a general rule, and with only 30 days' notice in some cases. If such changes affect the obligations that we must reflect towards you as an end customer, we may make corresponding updates to the terms in this section 2.

Memory points for other appendixes (Deleted before use against customer]:

* The MPA sets out an obligation to obtain a binding order from each end customer. This is ensured by entering into a final agreement specifying the initial volume. However, it is important that subsequent additional orders are also documented in writing with the end customer, so that there is traceability on all additional purchases. In addition, it should be agreed in advance with the Customer who the authorized purchasers are, so this does not create discussions afterwards. Please note that duration must also be specified in the orders/agreements with the end customers. MPA also allows to give customers administrative rights in their own portal solution that communicates with MS portals, so end customers can order or reduce withdrawals directly against MS. All such orders etc. are considered to come from you as the retailer themselves, so it should be reflected in the end customer's terms and conditions that the Customer is bound by such orders/changes. **Action**: this must be taken into account in Appendix 6, i.e. describe how the customer can order new services, terminate existing services, or change the volume to existing ones, who can do this from the customer's side and how this is documented.
* Microsoft will initially return to you any prepaid fees for a customer, provided that the cancellation is not due to a violation of the MPA by you, or by Customer of the MCA. The same should be reflected towards the end customers, including that the end customer is not reimbursed for prepaid remuneration in such situations/the customer must still pay for committed consumption. **Action**: Remember to state in the price Appendix 7 that the prices/subscription period is committed in the defined period, and define the selected billing cycle (monthly vs. annual advance payment)
* The MPA states that subscriptions with commitment are automatically renewed for a corresponding period at the expiry, provided that termination is not made before the subscription is renewed, or in accordance with the cancellation policy (normally you have 2 weeks to cancel Online services). Not all software subscriptions automatically renew at the end of the subscription period. This must be checked and informed to the individual end customer. **Action**: this can be addressed in Appendix 4.
* Billed "as you go" subscriptions follow the prices Microsoft has set for the current billing period. Thus, the unit price for an online service may change over a subscription period. It is important that prices towards end customers are agreed in the same way. **Action**: can be addressed in Appendix 7.
* As a reseller, you have a 60-day due date on invoices from Microsoft. You should thus mirror a somewhat shorter payment deadline towards end customers, for example 30 days, to ensure payment from the end customer before Microsoft's invoice is due. If the price to the end customer is based on so-called "reservation", then reflect to the end customer the current subscription period (and that there is no renewal), and that any prepayment for unused capacity will not be refunded. **Action**; Mirror this in Appendix 7
* Since reseller is required to comply with export control rules, this responsibility should also be mirrored towards the retailer's end customers. Especially since Microsoft may suspend access to the Online Services. This also follows from the Microsoft Customer Agreement, which will apply to the end customers, so it is enough to mirror the agreement to the end customers and require the end customers to comply with the agreement. **Action**: remember to check this.
* Note that Azure plans are priced in USD, and billed in local currency by MS. Make sure the same is agreed with your end customers to avoid any currency risk. **Action**: regulate in Appendix 7
* Note that pre-view releases must be marked as such by you as a reseller towards the end customer, and that you must make the end customer aware of the terms that apply to the end customer in the Microsoft Customer Agreement. **Action**, state this in Appendix 2.
* Some Azure services have usage restrictions, and they may be changed by MS from time to time. See: <http://azure.microsoft.com/en-us/documentation/articles/azure-subscription-service-limits/> for more information. These should be checked and if relevant be informed to the end customers. **Action**, where applicable, addresses in Appendix 2.
* Since you as a reseller have 1) a duty to verify that the customers you have resold online services to only use original software, and 2) an obligation to verify that the customers are correctly licensed both for software, client licenses, terminal server licenses and subscriptions for online services in general, it should be considered for each individual customer whether such efforts are paid for through the "ordinary" resale income, or whether this should be paid separately for. For Azure services based on consumption, correct licensing will normally be ensured through Microsoft's own counter, but if you as a reseller resell subscriptions to software products/services with more complex licensing models, for example based on the number of users, devices etc., then license verification will take more time. For example, for D365, SharePoint, etc. In such cases, consideration should be given to charging a special fee to fulfil this license audit obligation. Action, address any additional payment, for example on T&M, in the price appendix (appendix 7).
* You will disclose to end customers that Azure Stack Hub software is hosted by you as a reseller and that use of such software/service is subject to your privacy statement and not Microsoft's. **Action**; where relevant this can be addressed in your data processing agreement with end customer.
* DO NOT list MS as a supplier to government customers. MS says you are solely responsible for delivering with such customers. I.e. should not be identified as a subcontractor in Appendix 6. Nor for private customers.
* For resale of third-party products available for purchase through MS, you must reflect the relevant third-party contractual terms and conditions with the relevant end customer. **Action**: if the Third Party Terms apply to Third Party Products, include in Appendix 10.