

VIRTUOS SOLUTIONS PRIVATE LTD.



VIRTUOS STANDARD TERMS & CONDITIONS OF SALE OF SOFTWARE AS A SERVICE (VSTAC-OSO-SAAS)

VSTAC-OSO-SAAS
AMENDED AS OF 6TH APRIL 2009

Virtuos|Confidential

F 2 / 9 OKHLA PHASE 1
NEW DELHI 110 020
PHONE: 011-46527950-55
FAX: 91 11 46527955:
INFO@VIRTUOS.COM
WWW.VIRTUOS.COM



CUSTOMER ACKNOWLEDGEMENT

The Buyer & bonafide user of Software Services from Virtuos (hereafter called Customer) acknowledges agreement with **Virtuos Standard Terms & Conditions Of Sale Of Software-As-A Service- hereafter will be called as “VSTAC-OSO-SAAS”** [also located at www.virtuos.com/virtuosol/about/saastac.pdf and the reference or a weblink of the same is either mentioned on the Quotation sheet (Printed), Emailed Quotation or Emailed Offer or Proforma Invoice or Advertisement or Product Brochure] by the placement of an order to purchase Software Solution/Services under Software-As-A Service (hereafter called SaaS) platform (hereafter called Purchase Order) from Virtuos Solutions Private Ltd.(hereafter referred as Virtuos). Virtuos’s offer (by advertisement, by quotation or however given) being accepted by Customer verbally or by accepting the Virtuos's Quotation/Proforma Invoice or by making the advance payment or by start using “SaaS” shall be treated as Purchase Order.

The “SaaS” rendered are subject to the Terms and Conditions to the exclusion of any other terms and conditions stipulated or referred to by Customer. The Customer acknowledges that he/she is aware of the contents of and agrees to be bound by the “VSTAC-OSO-SAAS” and reference of this “VSTAC-OSO-SAAS” before the placement of the Purchase Order or entering into this contract with Virtuos.

All Purchase orders must obtain pre-approval with an acceptable method of payment, as established by Virtuos’s credit department. Virtuos may require additional inputs or information before accepting any Purchase order, and depending upon the credit approval department’s decision we may choose to accept or decline the Purchase Order.

These terms and conditions of Virtuos supersede and control over those contained in the Customer's Purchase Order. Unless Virtuos Order Acceptance Department (OAD) specifically agrees in writing through overt reference or other express written indication of assent, the terms and conditions of Purchase Order set by the customer shall have no effect even if Virtuos's Marketing/Sales/Support/Accounts staff acknowledged the receipt of Purchase Order or its terms or signed as accepted on the Customer's Purchase Order duplicate copy. **THE FINAL AUTHORITY TO ACCEPT OR DECLINE THE CUSTOMER PURCHASE ORDER SHALL REST WITH VIRTUOS'S ORDER ACCEPTANCE DEPARTMENT THROUGH A SEPARATE LETTER QUOTING THE PURCHASE ORDER ACCEPTANCE REFERENCE NUMBER, OR THE SAME SHALL BE SENT BY POST/COURIER OR EMAIL TO THE CUSTOMER WITHIN 3-5 BUSINESS DAYS OF THE RECEIPT OF THE PURCHASE ORDER OR PAYMENT WHICHEVER IS LATER.**

Customer warrants that it is buying for its own internal use only and not for re-sale purposes.



*Definition: **Software as a Service (SaaS, typically pronounced 'sass')** is a model of software deployment whereby a provider leases an application to customers for use as a service on demand. SaaS software vendors may host the application on their own web servers or download the application to the consumer device, disabling it after use or after the on-demand contract expires. The on-demand function may be handled internally to share Authorized User Access within a firm or by a third-party application service provider (ASP) sharing Software between firms.*

ORDER ACCEPTANCE POLICIES

1. Purchase Price, Quotation, Payment and Tax/Other Levies.

(a) Prices and promotions if listed/published from time to time in Virtuos's Shopping Sites or Corporate WebSites are subject to change without prior notice. Prices mentioned in the advertisements and other forms of Promotional campaigns through web, mail or courier are also subject to change without notice. Prices for certain governmental, corporate, and institutional customers participated under tender may be set forth in a bid or other written agreement between the parties.

(b) Oral quotations made by Virtuos or written quotations which do not have a period specified are valid only to the end of the business day upon which they are given.

(c) Payment is due before delivery, unless credit terms have been arranged in advance with Virtuos's Credit Department. In such cases, payment terms shall be as set forth in the credit agreement. In any case all the payments must be made immediately against the delivery of the "SAAS" as per the terms of the Invoice. Time is the essence of the payment. In addition, Virtuos shall have discretion to withhold any further delivery of "SaaS" to Customer until all overdue amounts are fully discharged. Virtuos reserves the right to demand immediate payment for any "SAAS" already delivered to the customer.

(c) Virtuos collects Sales Tax or Value Added Tax, Octroi (if applicable), any other levies along with any difference in such rates at the time of quote/sale, execution of the order or immediately after the execution of the order from the customer. Customer is bound by such changing Tax structures, Value Added Taxes, Inter-state Taxes, customs duties during the entire period of order completion. All-Inclusive-Price quotes are subject to the prevailing Tax structures or other levies, and any changes taken place after the receipt of the Purchase Order but before the execution of the Order shall be to the account of the customer, and pro-rata changes will apply on the final billing.

(d) Purchase Prices are tailor-made as per the quantity, customer profile, and according to the promotional offers or other Software Vendor or Publisher of Software As A Service (hereafter SaaS Publisher) discounts from time to time, hence Virtuos shall not promise to offer uniform pricing at all the times. The Prices quoted may be subject to change due to changing market



conditions, service discontinuation, SaaS Publisher's price changes, changes in the international or national tax structure, or other demand-supply schedules or Currency fluctuations, or any other extenuating reasons beyond Virtuos's control. While Virtuos uses reasonable efforts to include accurate and up-to-date information on its Websites, Virtuos makes no warranties or representations as to the Virtuos's accuracy. Virtuos assumes no liability or responsibility for any errors or omissions in the content on its websites.

2. Authorized User Access Permissions

Virtuos shall permit the "Customer" to use "SaaS" as ordered by the customer in full or part by instalments or in any sequence. Where the "SaaS" are so permitted by instalments, each instalment shall be deemed to be the subject of a separate contract and no default or failure by Virtuos in respect of any one or more instalments shall vitiate the Contract in respect of "SaaS" previously delivered or undelivered products.

Access Permissions of SaaS is through Internet by way of accessing the Remote Servers or the Authorized Sites of SaaS Publisher depending upon location or customer preference. Virtuos shall not arrange shipping in the form of Compact Disc or any physically movable storage medium as the Software is delivered as a Service.

Delivery and accessibility times of "SaaS" are estimates only and Virtuos shall not be liable for delays or any consequential losses arising out of delays even if the customer is intimated of such delays or not.

All the delivery periods quoted in the Proforma Invoice or Quotation are only indicative and shall vary due to extraneous reasons. Number of Business Days refers to the working days (excluding public holidays, bank holidays/strikes, Saturdays, Sundays In India and the country of "SaaS Publisher").

"SaaS" delivered through internet, web, or from FTP Sites shall not accompany any User Licenses since the Services are delivered through Internet.

3. Acceptance of Delivery by the Customer

Unless the Customer notifies Virtuos to the contrary within 15 (Fifteen) Days of Proof of Concept (POC) from the day of delivery/installation of SaaS for POC purpose and such notification is confirmed in writing within 24 hours, the SaaS shall be deemed to have been accepted by the Customer as being in good condition and in accordance with the Purchase Order. The Customer shall not be entitled to withhold payment of all or any of the Price of the "SaaS" whilst any claim is being investigated by Virtuos.



*Definition: **Proof of concept** is a short and/or incomplete realization (or synopsis) of a certain method or idea(s) to demonstrate its feasibility, or a demonstration in principle, whose purpose is to verify that some concept or theory is probably capable of exploitation in a useful manner. A related (somewhat synonymous) term is "proof of principle".-party application service provider (ASP) sharing Software between firms.*

4. Vendor User Permission Agreements.

Customer agrees to abide by all Authorized User Permissions/ provisions or end user agreement imposed by the SaaS Publisher from time to time. End User Usage Agreement (EUUA) and its terms are binding on the Customer at all times during the usage of the Software as a Service.

5. Purchase Order Amendments

Any amendments in the Purchase Order shall not be entertained except if the SaaS ordered with Virtuos, its Principals including SaaS Publisher in India or abroad is/are not reserved or released for End user access by then. Any amendment in the Purchase Order is limited to in the quantity or total value of the Contract of the same or equivalent “SaaS” of the same description.

Any amendments in the Purchase Order by the customer shall attract additional Service charges or handling charges in addition to the SaaS’s differential cost, and the same shall be borne by the customer.

LIMITED SERVICE SUPPORT OF SAAS PUBLISHER

(a) Virtuos agrees that it has no direct or indirect control on the quality of the Software As A Service (SaaS) it sells. It would be purely the Customer's preference of brand, version or configuration hence Virtuos shall not be responsible for any inconvenience, loss or productivity, loss by the customer on account of using the Software As A Service or any associated auxiliary services. “SaaS” delivered by Virtuos as a Solution Partner of reputed Global Ondemand CRM Service Providers and “SaaS Publisher” and often come with optional Product Annual Support (PAS). “SaaS” required to be registered for Support by the customer to claim free basic support through web from SaaS Publisher. Virtuos shall play a contributory role for arranging such support from the SaaS Publisher to the customer when required, however the Service Level Agreements (SLA) between Virtuos and the Customer are deemed to be between the Customer and Service Provider (Original Supplier) unless otherwise agreed upon separately.



(b) Virtuos does not warrant the performance or integrity of any SaaS, but merely passes through to the Customer whatever end-user basic support the SaaS Publisher provide with their respective SaaS offerings.

(c) All the terms and conditions of the Product Annual Support or basic support are in accordance with the SaaS Publisher's user guidelines, manuals and other documents/guides that accompanied the Service delivery.

(d) VIRTUOS DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED BY LAW, INCLUDING MERCHANTABILITY AND USE FOR A PARTICULAR PURPOSE.

LIMITATION OF LIABILITY

IN NO EVENT SHALL VIRTUOS BE LIABLE FOR SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFIT OR OPPORTUNITY EVEN IF VIRTUOS IS ADVISED OF THEIR POSSIBILITY. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY IS STATED IN THE SAAS PUBLISHER END USER SOFTWARE ANNUAL SUPPORT GUIDES ACCOMPANYING THE SAAS. IN NO EVENT SHALL VIRTUOS'S LIABILITY EXCEED THE REPAIR, REPLACEMENT WITH THE SAME OR EQUIVALENT, REPLACEMENT WITH UPGRADED SAAS OR COST OF THE SPECIFIC SOFTWARE PURCHASED OR SUBSCRIBED FROM VIRTUOS.

VIRTUOS IS NOT LIABLE FOR ANY SAAS NOT BEING AVAILABLE FOR USE DUE TO INTERNET OR INFRASTRUCTURE RELATED LATENCY OR DISRUPTIONS OR FOR LOST OR CORRUPTED DATA OR SOFTWARE. VIRTUOS IS NOT RESPONSIBLE FOR DELAY IN DELIVERY OR INSTALLATION AND/OR ANY CONSEQUENTIAL DAMAGES INCLUDING LOSS OF BUSINESS OR PROFITS.

AGREEMENT (VSTAC-OSO-SAAS)

Any terms and Conditions that are interpreted differently in this Virtuos Standard Terms & Conditions of Sale of Software As A Service (VSTAC-OSO-SAAS) then the SaaS Publisher Standard terms & conditions apply.



This is not the exclusive Agreement, and all other terms and conditions regarding the SaaS, Support and Authorized Usage from SaaS Publisher shall simultaneously be applicable on the customer.

CANCELLATION OF CONTRACT OR PURCHASE ORDERS

All purchase orders placed with Virtuos shall not be cancelled by the customer under normal circumstances even if there is any delay in executing such order in time due to factors such as delay in coordination or delay in accessing the SaaS through Internet or due to extraneous reasons beyond the control of Virtuos.

FORCE MAEJURE & LIABILITY

Neither party shall be liable for any delay in performing any of its obligations under these VSTAC-OSO-SAAS if such delay is caused by circumstances beyond the reasonable control of the party so delaying, and such party shall be entitled to a reasonable extension of time for the performance of such obligations.

Virtuos's total liability herein in respect of each event or series of connected events shall not exceed the prorata price paid in excess for the future period (Period of contract) towards "SaaS".

OTHER TERMS AND CONDITIONS AS PART OF VSTAC-OSO-SAAS

- a) The customer shall indemnify VIRTUOS and keep VIRTUOS fully and effectively indemnified against any loss of or damage to any property or injury to or death of any persons caused by any negligent act or omission or wilful misconduct of the Customer, its employees, agents or sub-contractors or by any breach of its contractual obligations arising out of these Terms and Conditions.
- b) Virtuos and Customer agree that Virtuos will not be liable for SaaS not being available for use, or for data or software which is lost, corrupted, deleted or altered. SaaS shall not be liable to the Customer for any incidental, indirect, special or consequential damages arising out of or in



connection with the purchase, use or performance of products or services, even if Virtuos has been advised of their possibility.

c) Any service response times stated by Virtuos in the service contracts are approximate only and Virtuos shall not be liable for any direct or indirect loss or damage arising from its failure to meet such response times, howsoever occasioned.

d) Any typographical, clerical or other error or omission in sales literature, quotation, price list, acceptance of offer, invoice or other documents or information issued by Virtuos shall be subject to correction without any liability on the part of Virtuos.

(d) These Terms and conditions and any transactions made under them shall be interpreted by and be subject to the laws prevailing in the country.

(e) In the event any section or portion of a section of these Terms and conditions are deemed unlawful or unenforceable, that section or portion of a section shall be stricken from the Terms and conditions and the remaining terms shall continue in full force and effect.

(c) All the disputes are subject to the jurisdiction of New Delhi and/ Hyderabad even:

i) if the Purchase Order is released by the customer from a different place,

ii) if the Purchase Order or payment is released to the different office/location of Virtuos,

iii) if the payment is made or received at the different location

iv) if the Invoice or Order Acceptance is issued from the different office/location of Virtuos.

(d) Virtuos shall not be responsible for damages or delays resulting from Acts of God, strikes, fire, theft, death, or SaaS Publisher's delays and from other actions, both governmental and otherwise, including but not limited to war, riot, seizure, and embargo.

VIRTUOS SHALL NOT BE RESPONSIBLE FOR ANY DIRECT, INDIRECT, PUNITIVE, CONSEQUENTIAL DAMAGES OR PRODUCTIVITY LOSS INCLUDING OTHER LOSSES FOR ANY DELAY IN EXECUTING THE ORDER IN FULL OR PART EVEN IF VIRTUOS IS ADVISED OF THE SAME. CUSTOMER SHALL NOT DEPEND HIS BUSINESS OR BUSINESS GAINS, PROFITS ON THE "SAAS" EITHER EXPRESSLY PROMISED OR WRITTEN BY VIRTUOS IN ITS QUOTATION SHEET, OR PROFORMA INVOICE OR ANY OTHER SUBSEQUENT DOCUMENTS. SINCE THE "SAAS" THAT VIRTUOS SELLS ARE NOT PACKAGED SOLUTIONS AND THESE REQUIRE EXHAUSTIVE IMPLEMENTATION & DEVELOPMENT / RE-DEVELOPMENT, THE TIME TAKEN FOR EXECUTING THE PURCHASE ORDER MAY CONSIDERABLY TAKE TIME. ALL TIME FRAMES AND COSTS FOR THE DELIVERY OF SAAS IS ONLY APPROXIMATE ESTIMATES.