



Microsoft Cloud Negotiation Tips

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Introduction

For Microsoft, contract negotiations with customers relating to Cloud Services are everyday business. Hence, Microsoft has much experience on what its customers usually want to know with regard to Microsoft's Cloud Services and the conclusion of a contract in this regard. To make Microsoft's Cloud Services and contractual approaches more understandable and transparent, we summarize the most frequently asked customer questions and set out respective responses to each question.

Further useful information regarding Microsoft Cloud Services and the respective contracts can be found in the Microsoft Cloud Compendium which is available [here](#).

1. With which Microsoft entity does the Cloud Service contract need to be concluded?

With respect to customers established in Europe, generally, all contract documents relating to the licensing of Products are signed between a company within the customer's organization (e.g., the parent company) and Microsoft Ireland Operations Limited ("MIOL"). However, the Purchase Agreement, if applicable, is concluded with the responsible local Microsoft entity, and the data processing agreement and the EU Standard Contractual Clauses ("SCC") are concluded between Microsoft Corporation and all group companies of customer which are using the Cloud Services.

The Purchase Agreement sets out the commercial terms and conditions for licensing and stipulates the particulars of the operational handling of orders and subsequent payment. Only when entering into this Purchase Agreement, the customer or the affiliate, respectively, will be generally entitled and thus able to order Microsoft products (including online services) from the responsible local Microsoft entity and, in turn, to be licensed by MIOL. The Purchase Agreement partly refers to the provisions in the Microsoft Business and Services Agreement ("MBSA"), including its Country Specific Provisions. In conclusion, the customer or its affiliate, respectively, has two contract partners: The local Microsoft entity with regard to the commercial aspects and MIOL with regard to the licensing aspects.

2. Is it possible to negotiate the Online Services Terms (“OST”), Service Level Agreements (“SLA”) and/or Product Terms (“PT”)?

No, the OST, SLA and PT need to be unified for all our customers in order to be able to offer the same range and quality of services to all Microsoft customers. The reason for this is that Microsoft, being a Hyperscale Cloud Provider, can't amend its terms and conditions individually for each customer, particularly because the terms and conditions are aligned to the respective products ordered by the customer.

3. How are the EU Standard Contractual Clauses (“SCC”) included in the Cloud Service contract?

The SCC are included in the OST and, hence, contained in every Cloud Services contract. The SCC are concluded between the customer and Microsoft Corporation. Within the customer, all group companies which are using the Cloud Services need to subscribe to these SCC because, from the viewpoint of the data protection authorities, these group companies are the responsible "data controllers" which must have a direct contractual relationship with the US- (i.e., a non-EU-) domiciled Microsoft Corporation. Microsoft offers a supplemental agreement (Affiliate DPA) for this purpose.

4. Is it possible to negotiate where data at rest is stored?

Although the location where data at rest is stored is not explicitly negotiable, Microsoft provides its customers using the Microsoft Enterprise Services (Office 365, Dynamics 365 and Windows Intune) with the possibility to decide in which country or region the data at rest shall be stored. For European customers, the customer data of Microsoft Enterprise Services are stored by default in Microsoft data centers within the European Union, in particular in Dublin and in Amsterdam. Further details can be found in the OST and in Microsoft's [Trust Center](#). For Azure Services, customers can generally choose the region where their data are stored. Information about services which do not enable regional storage may also be found in the Trust Center.

5. Is Microsoft open to negotiation with regard to its liability provisions?

Microsoft's approach on liability is well adjusted to the products and services provided by Microsoft and considers the risks associated with them. It also considers statutory local law requirements (if necessary) by including the local law amendments to the Cloud Service contracts. In summary, the liability provisions in the Cloud Service contracts are carefully worded and appropriately address both the interests of the customer and of Microsoft.

6. Is it possible to align the Cloud Service contract to special customers /situations?

Generally, yes. Microsoft considers such special customers/situations by offering additional addenda for different business sectors, e.g. for the financial services industry, which meet the

special requirements of the supervisory authorities. Please let us know if your business requires such special treatment so that we can assess together which addendum would be appropriate to set up the contractual relationship adjusted to the requirements you have to comply with when using Microsoft's Cloud Services.

7. Is it possible to get documents relevant for the Cloud Service contract as hard copy together with the contract?

We do not provide you with hard copies of the relevant documents (e.g. the OST). However, we include references to those relevant documents in the Cloud Service contract and you can also find all these documents for your information as soft copies (e.g. online under our [Microsoft Licensing Terms](#)). You are free to print those documents at any time and to archive them with your Cloud Service contract.

8. Is it possible to agree on fixed prices for Cloud Services?

Generally, Microsoft agrees on fixed prices for a time period of 3 years (except for Online Services for which the respective current Online Services price list applies). The prices will be renegotiated after three years (beginning from the date of the enrollment of the respective customer entity) by way of a contract extension. The renegotiation of prices is common and, considering inflation rates, also necessary from an economic perspective. In return, you are able to quit the contractual relationship with us when you are not willing to accept the renegotiated prices.