



Consulting Services Terms

These Consulting Services terms are incorporated by reference into the Master Terms.

1. Customer may procure Consulting Services under an Order Form.
2. Consulting Services are: (a) performed on a time and materials basis ("T&M") and (b) deemed accepted upon delivery. A T&M work day is eight hours of services performed during regular business hours (8am – 5pm local time, Monday through Friday), excluding a federal, local or bank holiday, which is observed by Licensor or Customer.
3. Daily rates are calculated as follows: (a) up to four hours at 50% of the daily T&M rate and (b) over four and up to eight hours per day 100% of the daily T&M rate. Each hour over eight hours in a single day will be charged on a pro-rata basis (the daily rate divided by eight hours to determine the charge per hour). Training services are charged the full daily rate regardless of the number of hours worked. Licensor staff will be entitled to home (or equivalent) visits every weekend. The estimated total fees stated in a Work Order cover labor costs only and do not include Expenses that Licensor will invoice separately subject to the Agreement.
4. Prepaid Consulting Services for five days or less, or the hourly equivalent of 40 hours or less, must be utilized within three months of purchase. All other Prepaid Consulting Services must be utilized within 6 months of purchase. No refund is given for any Prepaid Consulting Services not utilized within the required time period.
5. The Work Order is intended to describe the scope of work that may be provided by Licensor. Licensor will provide only those Consulting Services as directed and requested by Customer and only as time allows. Licensor will use commercially reasonable efforts to complete the Consulting Services described in a Work Order and does not guarantee that such Consulting Services will be completed within the estimated hours or days stated in a Work Order. Any changes to the scope or description of Consulting Services must be stated in a change order approved and executed by both parties before Licensor may begin work on any services not stated in the Work Order.
6. Licensor owns all intellectual property rights to all Materials. Upon full payment by Customer of the Consulting Services fees, Licensor grants Customer a non-exclusive, royalty-free, world-wide, non-transferable license to use the Materials, including a reasonable number of copies, solely (i) for Customer's internal business and (ii) as necessary for use with the Software. The copyright notice and other legends of ownership must be reproduced on each copy of such Materials (in whole or in part). Whole or partial copies of the Materials in any form is subject to the same terms as the original copy.
7. Customer must not use any third party software, including any open source software, in conjunction with any Materials, that causes the Materials to become subject to any third party license applicable to such third party software or require the public disclosure or distribution of any Materials or the licensing of any Materials for the purpose of making derivative works.
8. In order to support Consulting Services, Customer shall provide Licensor with the following without charge:
 - a. design documents needed to support the provision of Consulting Services,
 - b. office space, phones, facilities, and network connectivity and computer systems for on-site Licensor personnel or on-site Licensor training,
 - c. timely access to Customer business experts and project team members to identify and resolve business or technical issues, and
 - d. necessary software licenses for Licensor's software products referenced in a Work Order and any third party licenses for development tools as needed to support the scope of work set out in a Work Order.
9. Licensor warrants that the Consulting Services will be performed using reasonable skill and care. The sole and exclusive remedy for breach of this warranty is Licensor's re-performance of the defective Consulting Services. Materials are licensed "as is" and are not eligible for Maintenance. Licensor makes no other express, implied, or statutory warranties, including all warranties of merchantability or fitness for a particular purpose or non-infringement, for any Materials delivered in connection with the Consulting Services. Further, Customer must ensure that the Software made available to Licensor personnel during the course of performing Consulting Services, including for deployment, implementation, or installation, is covered by Customer's stated license entitlement.
10. Licensor may suspend any or all Consulting Services upon ten days written notice to Customer in the event Customer is in breach of the Agreement.
11. Limitations and restrictions in connection with prepaid training courses and education services are stated at <http://www.tibco.com/services/educational/training-restrictions-limitations.jsp>. Content provided during training courses are Materials for the purpose of this Agreement. Materials from education or training services are limited to one copy for each registered attendee. The prepaid Consulting Services limitations stated in Section 4 of these terms do not apply to training and education services.