



General Terms and Conditions for ICT Services

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A General provisions

1 Scope and applicability

1.1 These General Terms and Conditions (GTCs) govern the execution, content and handling of contracts for services provided under a contract for work and services, an agency contract or sale and rental law (including software licensing) in the area of information and communication technology (ICT) between clients and service providers (referred to collectively as "contracting partners").

1.2 When requesting a quote, the client refers to these GTCs. The service provider acknowledges that these GTCs apply by submitting a written quote or, in the absence of such quote, at the latest when accepting the order. The service provider's general terms and conditions of business or delivery do not apply, even if they are referred to in the quote or other related documents.

1.3 Any deviations from these GTCs must be expressly stated in the request and/or the quote and are only valid if mentioned in the contract.

2 Contractual components and order of precedence

2.1 In the event of conflicts between the various contractual components, the contract itself takes precedence over these GTCs, which in turn take precedence over the quote, which in turn takes precedence over the specifications. The contracting partners may agree otherwise in the contract.

3 Quote

3.1 The quote, including any presentations, is provided free of charge.

3.2 If the quote deviates from the client's request, the service provider must expressly state this.

3.3 Unless otherwise stated in the request, the service provider remains bound by the quote for three months from the date of submission.

3.4 The parties may withdraw from contract negotiations without any financial consequences at any time until the contract is executed or the client accepts the quote with a written order; the service provider nevertheless remains bound by its quote in accordance with 3.3 above.

4 Products and services, deliveries

4.1 The nature, scope and features of products and services are set out in the contract, which may contain references to further documents.

4.2 Benefits and risks are transferred when the client takes delivery of the service or product at the place of performance (see 22 below).

5 Performance

5.1 The contracting partners notify each other immediately of any circumstances arising on their respective sides that jeopardise or could jeopardise the performance of the contract.

5.2 The contract is performed in accordance with recognised methods, current standards and any instructions provided by the client under the contract.

5.3 The service provider informs the client regularly about the progress of the work and requests instructions from the client if anything is unclear.

6 Subcontracting

6.1 The service provider may only use subcontractors with the client's written consent. The client may not refuse to give consent without sufficient grounds, although grounds that are subject to official secrecy are not disclosed. The service provider remains responsible for providing the services to the client.

7 Documentation

7.1 The service provider supplies the client – before joint testing if this is stipulated in the contract – with the instructions for installation and use required to perform the contract or meet operating needs in a form that the client can read, edit and copy. The client may state in the request for a quote that technical maintenance documentation is to be supplied. Unless otherwise stated in the contract, the documentation is supplied in the contract language or in English.

7.2 For applications that concern financial accounting or have to be auditable for other reasons, the client's auditors must be given access to the system documentation.

7.3 The client may copy the documentation for use in accordance with the contract.

7.4 Where the service provider is required to rectify defects, it updates the documentation as necessary at no extra charge.

8 Instruction

8.1 The service provider provides instruction to the client's staff to the extent agreed in the contract.

8.2 The service provider also provides the instruction agreed in accordance with 8.1 above under its warranty at no extra charge.

9 Cooperation by the client

9.1 The client informs the service provider in good time of all its requirements for performing the contract.

9.2 The client gives the service provider access to its premises as necessary and makes the infrastructure needed to perform the contract available to the extent agreed in the contract.

9.3 Any other form of cooperation on the client's part is specifically agreed in the contract.

10 Remuneration

10.1 The service provider provides the services at fixed prices or on a time-spent basis with an upper limit on its remuneration (cost cap). It states all cost types and rates in its quote.

10.2 If the service provider invoices its services on a time-

spent basis, it provides a breakdown signed off by the relevant member of the client's staff together with the invoice. The breakdown shows the services provided and hours worked per day by each person involved.

10.3 The remuneration compensates the service provider for all services needed to perform the contract appropriately. In particular, it covers the cost of installation, documentation, instruction, expenses, licence fees, packaging, transport and insurance as well as any official taxes (e.g. value-added tax) applicable when the contract is executed and the Advance Recycling Fee, both of which can be shown separately.

10.4 Services are invoiced after they are provided or – where agreed in the contract – after they are signed off, and invoices are payable within 30 days of receipt, unless otherwise agreed in the contract, in particular in the form of a payment plan.

10.5 Where partial payments (down-payments and instalments) are agreed, the service provider can require the client to secure the amount in a suitable manner (e.g. by means of a bank guarantee).

10.6 The remuneration is only altered during the term of the contract if the contract provides for this.

11 Changes to services

11.1 The service provider informs the client of any improvements and new developments that make a change to services technically or economically expedient, explaining the consequences of the change for the existing infrastructure and the readability of data.

11.2 Both contracting partners may request changes to the agreed services in writing through the staff members responsible (see 14.2 below). If these can be expected to have an effect on costs or deadlines, a new quote must be produced within a time frame agreed by the contracting partners. This new quote gives details of the estimated feasibility, the additional services required and the effect on services, in particular as regards costs and deadlines. It also indicates whether the provision of services is to be partially or completely interrupted until a decision has been made on the change and how such an interruption would affect the remuneration and deadlines. The service provider is only remunerated for the new quote if this has been expressly agreed.

11.3 Unless otherwise agreed, the service provider continues its work under the contract while proposed changes are under discussion.

11.4 Changes to services and any changes to the remuneration, deadlines and other points of the contract are set out in writing in an addendum to the contract before they are carried out. Any change to the remuneration is calculated at the rates applicable when the change is agreed. Changes that have no effect on costs, deadlines or quality can be agreed by having the relevant members of the service provider's and the client's staff sign a change log.

12 Warranty of title

12.1 The service provider warrants and represents that its quote and its services do not infringe any third parties' recognised rights.

12.2 The service provider defends itself against claims by third parties due to infringement of rights at its own expense

and its own risk. The client informs the service provider of any such claims in writing without delay and entrusts it, to the extent possible under the applicable procedural law, with the task of conducting any legal proceedings and taking any appropriate action to settle the dispute in or out of court. Subject to these conditions, the service provider assumes the courts' and lawyers' fees incurred by the client in connection with the dispute as well as other reasonable costs and licence payments, compensation or amends, provided the rights in question were not infringed by the client using the service provider's services in breach of the contract.

12.3 If legal action is taken due to infringement of rights or precautionary measures are requested, the service provider may at its own expense choose either to grant the client the right to use its services free from any liability for infringement of rights or to amend its services or replace them with other services that meet the contractual requirements to an equivalent degree. If neither is possible, the service provider must repay the remuneration received for the services after deducting a pro-rated amount for the use of the services up to that point based on the total duration (of a service) or normal use (of a product). The service provider remains liable for any loss or damage in accordance with 17 below.

13 Information security, confidentiality and data protection

13.1 The contracting partners undertake to maintain the confidentiality of facts and data that are neither in the public domain nor generally accessible. This also applies to any third parties involved in the contract. In case of doubt, facts and data are to be treated as confidential. The duty to maintain confidentiality applies before the contract is executed and continues to apply after the contractual relationship has ended or after all agreed services have been provided. Any legal obligation to disclose or notify takes precedence over this duty.

13.2 The service provider may share the facts and the main content of the request for a quote with potential subcontractors, but it must otherwise treat the request as confidential.

13.3 Any advertising or publication of project-specific services requires the prior written consent of the contracting partner, with the latter also being mentioned as a reference.

13.4 If one of the contracting partners or a third party acting on its behalf breaches the above duty to maintain confidentiality, that contracting partner must pay the other liquidated damages, unless it can prove that neither it nor the third party was at fault. The damages are equal to 10% of the total remuneration up to a maximum of CHF 50,000 in each case. Payment of the liquidated damages does not release the contracting partner from its duty to maintain confidentiality. Entitlements to compensation under the general principles of liability set out in Article 97 ff. of the Swiss Code of Obligations and in 17 below continue to apply, with the liquidated damages being deducted from any compensation awarded.

13.5 The service provider and its staff undertake to comply with the client's operational, technical and security requirements, in particular regarding access to premises and systems, provided that the service provider was informed about these in writing before the contract was executed or subsequently agreed to them.

13.6 All valid provisions on data protection, security and official or professional secrecy (Articles 320 and 321 of the Swiss

Criminal Code) must be complied with. In particular, the service provider must process personal data forwarded or accessible to it on the client's side only to the extent and for the purposes required to perform the contract. The contracting partners may conclude further contractual agreements, e.g. confidentiality agreements.

14 Deployment of staff

14.1 The service provider deploys only trustworthy, carefully chosen and properly trained staff to provide services under the contract, including secondary services. It replaces staff who the client believes lack the requisite specialist knowledge or hinder the performance of the contract in any other way within a reasonable time frame at the client's request.

14.2 The contracting partners agree the project organisation and name the individuals responsible for each function.

14.3 Where the client deems that increased protection is needed (e.g. for personal data), it can require the service provider to provide documentation on additional checks of the staff deployed (e.g. criminal records). Details are set out in the contract.

15 Default

15.1 The contracting partners are automatically in default if they fail to meet deadlines agreed in the contract as giving rise to default or fail to meet other deadlines within a reasonable time frame after being reminded of them.

15.2 If the service provider is in default and the contract is still not completely performed within a reasonable time frame specified by the client, the client has the following options:

- Insist on performance by the service provider and claim compensation for loss or damage caused by the service provider's non-performance.
- In the case of services provided under a contract for work and services, arrange a replacement itself or through a third party at the service provider's expense, requiring the service provider to hand over the documentation and materials (including source code) produced specifically for the client under the contract or for which a handover has been specially agreed (e.g. under escrow arrangements).
- Waive performance of the contract and claim compensation for loss or damage caused by the service provider's non-performance where the latter is at fault.
- Waive performance of the contract and partially or completely cancel the contract retroactively as of the time of execution, declaring any prior performance affected by the cancellation to be null and void and claiming compensation for loss or damage incurred as a result of the cancellation where the service provider is at fault. In the case of ongoing contracts, the retroactive cancellation of the contract is replaced by extraordinary termination with immediate effect.

15.3 If the service provider is in default, it is liable for liquidated damages in respect of the deadlines specified in the contract, unless it can prove that neither it nor third parties contracted by it are at fault. The damages are equal to 0.1% of the total remuneration per day for each default up to a maximum of 10% of the total remuneration for one-time services or 10% of the annual remuneration for recurring services. The damages

are payable even if the services have been accepted without reservation or the client makes use of the legal recourse outlined in 15.2 above. Payment of the liquidated damages does not release the service provider from its other contractual obligations. The client remains entitled to claim compensation in accordance with 17 below, with the liquidated damages being deducted from any compensation awarded.

16 Warranty

16.1 The service provider warrants and represents that products and services it provides under the contract for work and services meet the agreed specifications, as well as any specifications the client may expect in good faith based on the state of the art when the contract is executed, without these needing to be specially agreed (unless otherwise stated in the contract).

16.2 Where a defect is found, the client may demand that it be rectified free of charge or that a deduction be made from the remuneration to reflect the reduced value. The service provider must rectify the defect within a reasonable time frame and bear all costs arising from the rectification.

16.3 If the service provider does not rectify the defect or fails to rectify it on time or successfully, the client may make a deduction from the remuneration to reflect the reduced value. In the case of significant defects, it may take action in accordance with 15.2 above.

16.4 Defects must be reported within 60 days of their discovery. The warranty expires one year after delivery or sign-off. Spare parts intervals are reset after defects are rectified. Rectification of defects deliberately misrepresented by silence can be demanded up to ten years after delivery or sign-off.

16.5 Services provided after the warranty has expired may be invoiced on the basis of normal market terms.

16.6 Differing warranties for third-party products must be set out in the contract.

17 Liability

17.1 The service provider is liable for any loss or damage caused by itself, its agents and its subcontractors in connection with the contractual relationship, unless it can prove that neither it nor the agents/subcontractors are at fault. Unless otherwise agreed in the contract, liability for ordinary negligence is limited to CHF 1 million per contract.

17.2 To the extent that the law allows, any liability for lost profits is excluded.

18 Replacements and maintenance

18.1 The service provider undertakes to supply the client with replacement parts/products for at least five years after hardware is delivered or signed off. Any other replacement period must be stated in the contract.

18.2 The service provider undertakes to maintain the hardware and software originally supplied to the client for at least four years after the one-year warranty expires. Any maintenance work required by the client is performed under contract on the basis of normal market terms.

19 Consequences of ending the contractual relationship

19.1 The contracting partners agree in the contract which materials, data and documents provided under the contract are

to be returned to the other contracting partner or destroyed after the end of the contractual relationship and the time frame for this.

20 Data processing location

20.1 Unless otherwise stated in the contract, the service provider must process data on behalf of the client in Switzerland and in accordance with Swiss law. The client has the right to check compliance with the law.

21 Assignment, transfer and pledging

21.1 Rights and obligations arising from the contractual relationship may not be assigned, transferred or pledged to third parties without the prior written consent of the contracting partner. The client only refuses to give its consent to the assignment and pledging of claims by the service provider in justified cases.

21.2 The service provider assumes the client's liabilities in connection with import certificates on delivery to the extent provided for in the contract.

22 Place of performance

22.1 The place of performance for the service provider's services is the place agreed in the contract or, in the absence of such agreement, the client's address.

23 Applicable law and place of jurisdiction

23.1 The contractual relationship is subject to Swiss law.

23.2 The terms of the Vienna Convention (United Nations Convention on Contracts for the International Sale of Goods, signed in Vienna on 11 April 1980) do not apply.

23.3 The place of jurisdiction is the client's domicile, unless stated otherwise in the contract.

B Special provisions

24 Intellectual property rights

24.1 Rights to results of work

24.1.1 The rights to the results of work performed by the service provider in performance of the contract pass automatically to the client. These include in particular designs, documentation, analyses etc. produced by the service provider as part of the contractual relationship. Both contracting partners have rights of use and disposal over ideas, processes and methods underlying the results of work that are not protected by law.

24.1.2 This rule does not affect third-party products or the service provider's pre-existing rights, unless these are inseparable from the results of work. In such cases, the service provider grants the client a non-exclusive, transferrable right for an unlimited period to benefit from the pre-existing rights for its own purposes, unless stated otherwise in the contract.

24.2 Individual software rights

24.2.1 The exclusive rights to the individual software produced specially by the service provider for the client, including source code, program descriptions and documentation, regardless of whether these are in written or machine-readable form,

transfer to the client on creation. Both contracting partners retain rights of use and disposal over ideas, processes and methods that are not protected by law. The software documentation (in particular documented source code, complete with the overview, data and function models and function description) and other documents must be handed over to the client before sign-off and on request before any instalments are paid.

24.3 Patent rights

24.3.1 Patent rights to inventions created in performance of the contract belong to

- the client in the case of inventions created by its staff;
- the service provider in the case of inventions created by its staff or by third parties contracted by it;
- both the client and the service provider in the case of inventions created jointly by the client's staff and the service provider's staff or third parties contracted by the service provider. The contracting partners do not charge each other licence fees. Each may transfer its rights to third parties or grant third parties usage rights without the other's consent.

24.4 Rights to standard software

24.4.1 The protection rights pertaining to standard software remain with the service provider or with third parties. If these rights are owned by third parties, the service provider guarantees that it has the requisite usage and distribution rights.

24.4.2 The client acquires the non-exclusive right to use the standard software to the extent agreed in the contract.

24.4.3 Depending on what is agreed in the contract, the right to use the standard software may apply on an open-ended basis or for a specified or unspecified period (until termination). Open-ended usage rights are transferrable.

24.4.4 The client may make copies of the standard software for backup and archiving purposes.

24.4.5 When hardware breaks down, the client is entitled to use the standard software on replacement hardware at no extra charge.

24.4.6 Manufacturers' licence terms apply to the extent that they are stated in the contract and do not conflict with it, these GTCs or the other contractual components.

25 Testing and sign-off of contractual services

25.1 The service provider undertakes to submit for sign-off only deliverables that have been properly tested or are ready for sign-off, e.g. complete systems, individual software, concepts and documents. The client may request testing records.

25.2 The contracting partners agree the sign-off terms, which must as a minimum include the following: sign-off deadline, joint testing timetable, sign-off procedure, sign-off criteria (e.g. functions, availability, key performance indicators), definition of defects and client's duty to cooperate.

25.3 Joint testing is carried out prior to the sign-off. The service provider invites the client to take part in good time. A record is kept of the testing and its results and is signed by both contracting partners.

25.4 Partial sign-offs are possible by mutual agreement but do not replace the overall sign-off.

25.5 If no defects are found in testing, the service is deemed to be signed off when the testing record is signed.

25.6 Likewise, if insignificant defects are found in testing, the service is deemed to be signed off when the testing record is signed, unless stated otherwise in the contract. The service provider rectifies the defects found free of charge within a reasonable deadline appropriate to the circumstances and agreed by both contracting partners in line with the warranty.

25.7 Unless otherwise agreed by the contracting partners (see 25.2 above), defects qualify as insignificant if they do not have a material effect on the use of the service to be signed off.

25.8 If significant defects are found, the sign-off is postponed. The service provider rectifies the defects found immediately and invites the client to take part in further testing in good time. If significant defects are also found in this further testing, the procedure set out in 15.2 above applies.

25.9 Unless otherwise agreed by the contracting partners (see 25.2 above), a defect qualifies as significant if it has a material effect on the use of the service to be signed off.

25.10 If the client declines to take part in the sign-off test even though the conditions for it are met (see 25.1 and 25.3 above) and despite being reminded and given a reasonable deadline, the service is deemed to be signed off.

25.11 The parties may agree the testing and sign-off in accordance with this section 25 of hardware and standard software that are not provided under contract.

26 Purchase of hardware

26.1 Purchased hardware is deemed to have been delivered when the delivery note is signed by the person designated by the client at the agreed delivery address.

26.2 The service provider installs the purchased hardware at the agreed location in accordance with the installation instructions and puts it into operation, unless expressly agreed otherwise in the contract.

26.3 The client checks the purchased hardware within 30 working days for external damage and to ensure that it functions and performs as required following installation. If the hardware has been installed by the service provider, the 30-day period begins once the installation is complete. If any defects are found, the service provider must be informed immediately.

27 Hardware maintenance

27.1 Hardware maintenance includes repairing or replacing broken or faulty parts to restore normal operation as well as carrying out technical upgrades. Preventive maintenance is carried out to ensure continued operation to the extent required by the manufacturer's instructions and current practices. Parts that have been replaced become the service provider's property, unless the client's information security and data protection policies do not allow this. In such cases, the original parts remain the client's property without giving rise to additional costs.

27.2 When hardware develops a fault, the service provider takes part in efforts to determine the cause of the fault at the client's request, even if the fault involves interaction between a number of systems and/or components. If the service provider can prove that the fault was not caused by the hardware it is responsible for maintaining, this work is invoiced separately.

28 Software maintenance

28.1 Software maintenance includes fixing bugs as well as updating and upgrading programs (new releases). Charges may be made for adding new functions.

28.2 When software develops a fault, the service provider takes part in efforts to determine the cause of the fault at the client's request, even if the fault involves interaction between a number of systems and/or components. If the service provider can prove that the fault was not caused by the software it is responsible for maintaining, this work is invoiced separately.

28.3 Wherever possible, the service provider also rectifies software faults caused by the client or a third party. It does so at the client's request and for a fee to be agreed in advance.

28.4 The client is not obliged to adopt every new software version, but the service provider is entitled to discontinue maintenance of older software versions after allowing for a reasonable transition period (12 months, unless otherwise agreed).

29 Service hours, response time and fault rectification time

29.1 The service provider accepts fault reports and provides maintenance services during service hours. The response time during service hours is measured from the moment a fault is reported until the moment work begins to rectify it. The fault rectification time is measured from the moment the fault is reported until the moment it is fully rectified.

29.2 Unless otherwise agreed,

- service hours are Monday to Friday from 8 a.m. to 5 p.m. (not including national public holidays or local public holidays in the place of performance); and
- the response time is four hours.

29.3 The service provider begins work to rectify the fault within the response time and completes it within a fault rectification time to be agreed as appropriate in accordance with any fault classification specified in the contract as required.

29.4 At the client's request, the service provider also provides its services outside service hours for an additional fee.

30 Support by the service provider

30.1 In addition to maintenance, the service provider also provides the client with support services if required. These are specified in the maintenance contract.

31 Termination of maintenance and support contracts

31.1 Open-ended maintenance or support contracts can be terminated at any time, subject to any maintenance or support obligations arising from procurement contracts. Termination may be limited to certain parts of a contract, provided adjustments to the remuneration are agreed. The notice period is 12 months for the service provider and three months for the client.

31.2 If a maintenance or support contract is terminated, any prepaid fees are refunded pro rata.

31.3 Either contracting partner may terminate a maintenance or support contract without notice at any time if the other commits a serious breach of its terms. In this case, the remuneration is calculated pro rata or, in the case of a one-time payment, proportionally on the basis of 60 months worked, without

prejudice to the right to claim compensation.

31.4 Additional termination arrangements are to be agreed as necessary.

32 Secondment, self-employed contractors

32.1 If the service provider offers staff secondment on a commercial basis, this is subject to the Employment Services Act. The service provider must ensure that the necessary permits and contracts are in place for the staff deployed, register them for social security and provide evidence of these facts on request.

32.2 If staff are seconded to the client, the service provider is responsible for carefully selecting them in good faith on the basis of their professional and personal suitability. The client is responsible for ensuring that the instructions given to the seconded staff are correct and expedient and for monitoring and controlling the services to be provided.

32.3 If the service provider is a natural person, that person must include with the quote proof that he or she is self-employed and affiliated to a cantonal compensation office. The client is not liable for any social security contributions (old age and survivors' insurance, disability insurance, unemployment insurance etc.) or any other benefits, in particular in the case of accidents, sickness, disability or death.

32.4 If seconded staff or self-employed contractors are involved in any other work that could affect the performance of the contract, this must be agreed in advance with the client. The client must be informed immediately of any foreseeable absences.