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**General Terms and Conditions of Business for the Purchase of Complete Informatics Systems and the Manufacture of Individual Software** January 2004 edition

**1 Scope of application and validity**

1.1 These General Terms and Conditions of Business (Terms and Conditions) provide for the conclusion, content and execution of contracts for the purchase of complete informatics systems<sup>1</sup>, the manufacture of individual software and other services, in particular work contracts.

1.2 The Purchaser refers to the applicable Terms and Conditions in the quote request. They are deemed accepted when the supplier submits a written offer.

1.3 Any deviation from the Terms and Conditions shall be expressly named as such in the specifications requirement or in the offer and must appear in the contractual document to be valid.

**2 Offer**

2.1 The offer including demonstrations is free of charge.

2.2 Should the offer deviate from the quote request of the Purchaser, the Supplier shall make express reference to said deviation.

2.3 Unless otherwise stated in the offer, the Supplier shall be bound for a period of 3 months from the date of the offer.

2.4 Until the contractual document has been signed or the offer accepted in writing (order), either party may withdraw from contract negotiations without financial consequences. Point 2.3 remains subject to further notice.

**3 Products and services**

The type, scope and properties of the products and services correspond to the accepted offer or are provided for in the contractual document. This document can make reference to further documents.

**4 Execution**

4.1 Execution takes place using recognised project management methods. The Supplier shall inform the Purchaser regularly of progress and shall obtain all the necessary specifications. In addition, he shall inform the Purchaser of any further develop-

ments which, for technical or economical reasons, would make a change in services seem advisable. The Purchaser shall submit to the Supplier in good time all instructions from his domain necessary for the fulfilment of the contract.

4.2 The contracting parties shall notify one another immediately of any circumstances from their domains which could jeopardise fulfilment of the contract.

4.3 The Purchaser agrees to grant the Supplier required access to his premises, provide the power supply and other connections as agreed and provide the necessary space for storage of material.

4.4 Any other duties to cooperate on the part of the Purchaser are stipulated in individual cases in the contractual document.

4.5 The Supplier and his staff shall comply with the company rules of the Purchaser, in particular guidelines governing access, insofar as the Supplier has been notified in writing prior to conclusion of the contract or such guidelines are agreed upon at a later date.

4.6 The Supplier shall only commission third parties with the consent of the Purchaser. The Purchaser may not withhold consent without reasonable grounds. In the context of official secrecy he is not required to disclose those grounds. The Supplier remains responsible for the provision of services to the Purchaser.

**5 Documentation**

5.1 Prior to the joint inspection, the Supplier agrees to provide the Purchaser with all installation and operating instructions necessary for operation in a format which can be copied and read by the Purchaser. In the quote request the Purchaser can request technical support documentation. Documentation is provided for users in German and for information scientists in German or English.

5.2 The Purchaser's auditor shall be granted access to system documentation for applications concerning accounting.

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<sup>1</sup> The General Terms and Conditions for Licencing apply to contracts exclusively covering the use of standard software. The General Terms and Conditions for the Purchase of Hardware apply to contracts exclusively covering the purchase of hardware. The General Terms and Conditions for Services apply to contracts exclusively covering services.

5.3 The Purchaser may copy and use the documentation as specified in the contract.

5.4 Should the Supplier remedy any defects he agrees to update the documentation as necessary.

## **6 Training**

6.1 The Supplier shall instruct the Purchaser's staff to the extent agreed.

6.2 The Supplier ensures that he can guarantee instruction for a period of five years from final acceptance.

## **7 Payment**

7.1 The Supplier shall provide the services at fixed prices or on a cost basis with an upper payment limit (cost ceiling). He shall state the type of costs and rate of charges in his offer.

7.2 The payment covers all services necessary for fulfilment of the contract. Payment covers in particular installation and documentation costs, costs for instruction, expenses, licensing fees, packaging, transport and insurance costs as well as any official taxes applicable at the time the contract was signed (e.g. VAT) and the prepaid recycling fee, which can be set out separately.

7.3 Invoices shall be issued following final acceptance or according to a payment plan if one has been agreed upon. Invoices are payable within 30 days of receipt.

7.4 If partial payments have been agreed upon (deposits and instalments), the Purchaser can require sureties from the Supplier in the quote request.

7.5 Payment is adjusted according to price rises only to the extent stipulated in the contract.

7.6 If the Supplier provides services on a cost basis he shall deliver a report along with the invoice. He shall state the services and the cost of each staff member employed per day.

## **8 Changes in service**

8.1 Either contracting party can apply in writing to the persons responsible for the project according to the project organisation for changes to the agreed services. If such changes are expected to impact costs or deadlines, the Supplier must submit an offer concerning the changes in services within a time period to be agreed. The offer comprises a feasibility assessment, a definition of necessary additional services and the consequences for the project as a whole, in particular as regards costs and deadlines. It states whether the project is to be completely or partially interrupted until the decision to proceed with the change

is made and how such an interruption would impact payment and deadlines.

8.2 Unless otherwise agreed, the Supplier shall continue his work in accordance with the contract during the inspection of modification proposals.

8.3 Changes in service and any other modifications as regards payment, deadlines and other contract points shall be recorded in writing and appended to the contract prior to execution. Adjustment of payment is calculated according to the rate of charges reported at the time the change was agreed upon. For agreement to changes which have no significant effect on the scope of services, payment and deadlines, a signature on the modification report by responsible parties appointed on the part of the Purchaser and on the part of the Supplier shall be sufficient.

## **9 Rights to individual software**

9.1 The rights to individual software manufactured by the Supplier exclusively for the Purchaser, including source code, program descriptions and documentation in written or machine readable form shall be transferred to the Purchaser. Both parties are entitled to use and dispose of ideas, processes and methods which are not legally protected. Software documentation (in particular documented source code including overview, data and function models and function description) and remaining documents shall be submitted to the Purchaser prior to the joint inspection and, if requested, before any partial payments.

9.2 Patent rights to inventions which have come into being as a result of contract fulfilment belong to

- the Purchaser if the inventions were made by the Purchaser's staff;
  - the Supplier if the inventions were made by the Supplier's staff or a third party commissioned by him;
  - the Purchaser and the Supplier if the inventions were made jointly by the Purchaser's and Supplier's staff or a third party commissioned by the Supplier.
- The contracting parties mutually waive the levying of licence fees. They can transfer their rights to a third party or grant a third party usage rights without the consent of the other party.

## **10 Rights to standard software**

10.1 Industrial property rights to standard software remain with the Supplier or third party. Insofar as third parties are entitled to rights, the Supplier shall guarantee that he is in possession of the necessary rights of use and sale.

10.2 The Purchaser purchases the non-

transferable and non-exclusive right of application and use of the standard software to the extent agreed upon in the contractual document.

10.3 The Purchaser can produce copies of the standard software for security and storage purposes.

10.4 During a hardware failure, he is entitled to use the standard software on replacement hardware without additional payment.

## **11 Industrial property rights**

11.1 The Supplier guarantees that his offer and services do not violate the recognised industrial property rights of any third party in Switzerland.

11.2 The Supplier shall defend against third party claims of violation of industrial property rights at his own risk and cost. The Purchaser shall notify the Supplier of such claims in writing and without delay and shall leave conduct of any action or any in or out of court settlement of a lawsuit solely up to him. Under these conditions, the supplier shall bear any ensuing costs or payment of damages incurred by the purchaser.

11.3 If an action is filed on account of violation of industrial property rights or a precautionary measure taken, the Supplier can, at his own expense, choose either to grant the Purchaser the right to use the software free of any liability due to violation of industrial property rights or to modify or replace the software with another which fulfils the essential contractual requirements, or he shall be liable to pay damages.

## **12 Privacy and data protection**

12.1 The contracting parties shall keep private facts and data which have not yet been published or which are not generally accessible. This obligation shall also be imposed on third parties involved. In case of doubt, facts and information shall be treated confidentially. The obligation to maintain secrecy is in effect prior to conclusion of the contract and remains in effect after the contractual relationship has ended or the agreed service has been provided. This is subject to any legal duty of disclosure.

12.2 The Supplier may inform potential cooperating third parties of the fact and essential content of the quote request.

12.3 Advertising and publications about services specific to the project require written consent from contracting parties.

12.4 If one of the contracting parties or a third party commissioned by him violates the above obligation to maintain secrecy, the offending party shall pay

the other party a contract penalty unless he can prove that neither he nor the third party involved was at fault. This amounts to 10% of the total payment per case, however not more than CHF 50,000 per case. Payment of the contract penalty does not discharge the obligation to maintain secrecy; the right to assert damage claims remains intact, the contract penalty will be deducted from damages owing.

12.5 Valid data protection rules must be observed. If needs be, special data protection and security provisions shall be stipulated.

## **13 Employment of staff**

13.1 The Supplier shall only employ carefully selected and well trained staff. At the Purchaser's request he shall replace within a reasonable time period persons who do not have the necessary expertise or who impede fulfilment of the contract in any other way.

13.2 The contracting parties shall agree on the project organisation team and designate the persons responsible.

## **14 Testing and acceptance**

14.1 The Supplier shall only release for acceptance complete systems or individual software that has been tested. The Purchaser may ask to see the test logs.

14.2 The contracting parties shall agree on rules of acceptance which determine the following: date of acceptance, timetable for joint testing, acceptance procedure, acceptance criteria such as functions, availability, performance, qualification of defects and the Purchaser's duty to cooperate.

14.3 Joint testing is conducted prior to acceptance. The Supplier invites the Purchaser to testing in good time. A log is created about the test and its results and signed by both contracting parties.

14.4 Partial acceptance is also possible with mutual consent. This is valid subject to complete acceptance.

14.5 If no defects are present at the time of testing, the service is accepted by signing the report.

14.6 If immaterial defects are present at the time of testing, the service is accepted by signing the report anyhow. The Supplier must rectify the identified defects as part of his warranties. Defects are deemed immaterial when all the essential functions of the solution can be used.

14.7 If considerable defects are present, acceptance shall be deferred. The Supplier shall rectify the defects immediately and invite the Purchaser to a

new inspection in good time. If this test also indicates considerable defects and the contracting parties do not agree to continue, this contract shall end and all services shall be reimbursed. The right to assert damage claims remains intact.

A defect is deemed considerable when, as a result of same, an essential function of the solution cannot be used.

14.8 If the Purchaser does not conduct acceptance testing within a reasonable period of grace despite warnings, or if he uses the results productively without the consent of the Supplier, the service is considered accepted.

## 15 Default

15.1 The contracting parties shall be in default immediately upon non-compliance with the dates stipulated in the contract as default-incurring, or for other deadlines following warning and after a reasonable extension has been granted.

15.2 If the Supplier defaults, a contract penalty shall be due unless he can prove that neither he nor any third parties commissioned by him were at fault. This penalty amounts to one-tenth of a percent per day delayed, however not more than 10% of the total payment. The contract penalty is still due when services are accepted without reservation. Payment of the contract penalty does not discharge the supplier from his other contractual obligations; the right to assert damage claims shall remain intact, the contract penalty will be deducted from damages owing.

## 16 Warranties

16.1 The Supplier warrants that his products and services exhibit the agreed qualities, and those qualities the Purchaser may require in good faith without special agreement in keeping with state-of-the-art technology.

16.2 In the event of a defect the Purchaser can initially only request a free repair. The Supplier shall repair the defect within a reasonable period of time and shall bear all costs incurred. If the defect can only be rectified by a new product, the right to repair shall include the right to a new product.

16.3 If the Supplier does not perform the requested repair, does not perform it on time or does not perform it successfully, the Purchaser can deduct from payment an amount corresponding to the reduced value. In the case of considerable defects he can opt to withdraw from the contract or demand the required documents (in particular the source code) - provided the Supplier is entitled to submit same - and take appropriate measures himself or have them taken by a third party.

16.4 Defects must be reported within 60 days of

discovery. Warranty rights become invalid one year after final acceptance. Following the repair of reported defects the time periods for the repaired parts recommence. Claims of fraudulent concealment can be asserted ten years after final acceptance.

16.5 Alternative warranties for third-party products are to be provided for in the contractual document.

## 17 Liability for damages

17.1 Each contracting party is liable for damages caused by him or by a third party commissioned by him arising from the contractual relationship if he cannot prove that neither he nor the third party called on by him was at fault. He shall be liable at most for the resulting damages.

17.2 In the case of slight negligence, personal damage liability is unlimited. For property damage, liability is limited to a maximum of CHF 1,000,000 per contract.

17.3 For pure financial losses, liability in the case of slight negligence equals not more than the resulting damages. For total payment up to CHF 1,000,000, liability shall not exceed CHF 200,000 per contract. When total payment exceeds CHF 1,000,000, liability shall amount to 20% of the total payment, however not more than CHF 1,000,000 per contract. Liability for loss of profits is excluded.

17.4 Special agreements must be made for aggravated risk.

## 18 Replacement and maintenance

18.1 The Supplier guarantees the Purchaser delivery of replacement parts and products for a minimum of six years from final acceptance. Any other time period is to be set out in the contractual document.

18.2 The Supplier agrees to maintain hardware and software pursuant to the agreed maintenance contract at the Purchaser's request for a minimum of five years following expiration of the one-year warranty period.

18.3 Replacements and maintenance by the supplier following expiration of the warranty period shall be subject to payment at generally accepted market conditions.

## 19 Place of fulfilment

Place of fulfilment for the Supplier's services is the place of installation of the hardware or software.

## 20 Termination of contractual relationship

20.1 Upon termination of the contractual relationship the Supplier shall submit to the Purchaser all

documents received from same and all results, in particular those results in written or machine readable format, to without prompting.

20.2 Further contract terms are to be stipulated as required.

## **21 Assignment, transfer and pledge**

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 other contracting party. This consent may not be denied without grounds. Individual companies within a Group are not considered to be third parties.

21.2 The Purchaser assumes upon delivery the obligations of the Supplier arising from import certificates, provided and insofar as the Supplier has mentioned same in the offer.

## **22 Elements of contract and precedence**

In the event of inconsistencies between the contract elements, the contractual document shall take precedence over the conditions of these General Terms and Conditions. These General Terms and Conditions take precedence over the offer and the offer takes precedence over the specifications requirement.

## **23 Applicable law and place of jurisdiction**

23.1 In other respects, Swiss law shall apply to the contractual relationship.

23.2 The provisions of the Wiener Kaufrecht (United Nations Convention on Contracts for the International Sale of Goods, concluded in Vienna on 11/4/1980) do not apply.

23.3 Place of jurisdiction is the registered office of the Purchaser or the registered office of the Supplier if located in the same canton. The place of jurisdiction shall be stipulated in the contractual document.

***If the interpretation of the General Terms and Conditions of Business for the Purchase of Complete Informatics Systems and the Manufacture of Individual Software results in a difference due to the versions in various languages, the German version shall be authoritative.***