



General Terms and Conditions for the Purchase of Hardware

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 hardware products¹ and licences for the accompanying software.

1.2 The Vendee refers to the applicable Terms and Conditions in the quote request. They are deemed accepted when the Vendor 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 Vendee, the Vendor shall make express reference to said deviation.

2.3 Unless otherwise stated in the offer, the Vendor 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 Documentation

4.1 The Vendor shall provide the Vendee with all installation and operating instructions necessary for operation in a format which can be copied and read by the vendee. In the quote request the Vendee can request technical support documentation. Documentation is provided for users in German and for information scientists in German or English.

4.2 The Vendee may copy and use the documentation as specified in the contract.

4.3 Should the Vendor remedy any defects, he agrees to update the documentation as necessary.

5 Training

The Vendor shall instruct the Vendee's staff to the extent agreed.

6 Payment

6.1 The Vendor provides services at fixed prices.

6.2 Payment covers all services necessary for fulfilment of the contract. Payment covers in particular installation and documentation costs, costs for instruction, expenses, licencing 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.

6.3 Invoicing takes place upon fulfilment of the agreed service or according to a payment plan if one has been arranged. Invoices are payable within 30 days of receipt.

6.4 If partial payments have been agreed upon (deposits and instalments), the Vendee can require sureties from the Vendor in the quote request.

6.5 If the Vendor lowers his list prices for services prior to delivery, payment is adjusted accordingly.

7 Privacy and data protection

7.1 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.

7.2 The Vendor may inform potential cooper-

¹ The General Terms and Conditions for the Purchase of Complete Informatics Systems and the Manufacture of Individual Software apply to contracts covering the purchase of complete systems. The General Terms and Conditions for Licencing apply to contracts exclusively covering the use of standard software.

ating third parties of the fact and essential content of the quote request.

7.3 Advertising and publications about services specific to the contract require the written consent of the contracting parties.

7.4 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 in each case, however not more than CHF 50,000 per case. Payment of the contract penalty does not discharge the Vendor from his other contractual obligations; the right to assert damage claims remains intact, the contract penalty will be deducted from damages owing.

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

8 Delivery and installation

8.1 Delivery of the object sold is effected when a recipient designated by the Vendee signs the delivery note at the agreed place.

8.2 The Vendor installs the object sold at the agreed place and puts it into operation unless otherwise expressly agreed.

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

8.4 The Vendor shall comply with the company rules of the Vendee, in particular guidelines governing access, insofar as the Vendor has been notified in writing prior to conclusion of the contract or such guidelines are agreed upon at a later date.

9 Industrial property rights

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

9.2 The Vendor shall defend against third party claims of violation of industrial property rights at his own risk and cost. The Vendee shall notify the Vendor 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 Vendor assumes any ensuing costs or payment of damages incurred by the Vendee.

9.3 If an action is filed on account of violation of industrial property rights or a precautionary meas-

ure taken, the Vendor can, at his own expense, choose either to grant the Vendee the right to use the object sold free of any liability due to violation of industrial property rights or to replace the object with another which fulfils the essential contractual requirements, or he shall be liable to pay damages.

10 Default

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

10.2 If the Vendor 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 Vendor from his other contractual obligations; the right to assert damage claims remains intact, the contract penalty will be deducted from damages owing.

11 Warranties

11.1 The Vendor guarantees his products and services to exhibit the agreed qualities, and those qualities the Vendee may require in good faith without special agreement in keeping with state-of-the-art technology.

11.2 The Vendee shall inspect the object sold within 30 days of delivery. When installation is performed by the Vendor, the term shall begin following installation. The Vendee shall notify the Vendor immediately of any defects detected.

11.3 In the event of a defect the Vendee can initially only request a free repair. The Vendor shall repair the defect within a reasonable period of time and shall bear all costs incurred.

11.4 If the Vendor does not perform the requested repair, does not perform it on time or does not perform it successfully, the Vendee can deduct from payment an amount corresponding to the reduced value or in the case of considerable defects he can withdraw from the contract. A defect is deemed considerable when, as a result of same, an essential function of the object sold cannot be used.

11.5 The warranty rights (as per 11.1 to 11.4) become invalid within one year of installation or of delivery if installation is waived. Following the repair of reported defects the time periods for the replacement parts recommence. Claims of fraudulent concealment

can be asserted ten years after installation or delivery.

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

12 Liability for damages

12.1 Each contracting party shall be 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.

12.2 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 claim

12.3 For pure financial losses liability in the case of slight negligence equals not more than the resulting damages. For total payment up to CHF 250,000, liability shall not exceed CHF 50,000 per claim. When total payment exceeds CHF 250,000, liability shall amount to 20% of the total payment, however, not more than CHF 500,000 per claim. Liability for loss of profits is excluded.

12.4 Special agreements must be made for aggravated risk.

13 Replacement and maintenance

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

13.2 The Vendor agrees to maintain hardware pursuant to the General Terms and Conditions for the Maintenance of Hardware and Software at the Vendee's request for a minimum of 5 years following expiration of the one-year warranty period.

13.3 Replacements and maintenance performed by the Vendor following expiration of the warranty period shall be subject to payment at generally accepted market terms.

14 Place of fulfilment

The place of fulfilment for the Vendor's services is the place of installation of the hardware.

15 Assignment, transfer and pledge

15.1 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.

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

16 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 Terms and Conditions. These Terms and Conditions take precedence over the offer and the offer takes precedence over the specifications requirement.

17 Applicable law and place of jurisdiction

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

17.2 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.

17.3 Place of jurisdiction is the registered office of the Vendee or the registered office of the Vendor 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 Hardware results in a difference due to the versions in various languages, the German version shall be authoritative.