

General terms and conditions for IT services

A COMMON INTRODUCTORY PROVISIONS

1 Subject matter and validity

1.1 These general terms and conditions (GTC) govern the conclusion, content and performance of contracts concerning IT services, especially in the areas of consulting, planning, support and training.

1.2 Anyone (the service provider) submitting an offer to the client thereby accepts these GTC, unless stated otherwise in the quote request. Amendments and addenda to these GTC shall require written agreement.

2 Offer

2.1 The offer, including demonstrations, is free of charge unless stated otherwise in the quote request.

2.2 The offer is to be prepared on the basis of the client's quote request. If the offer deviates from the quote request or the GTC of the client, the offer must indicate this expressly.

2.3 The service provider shall indicate value added tax separately in the offer.

2.4 The offer remains binding for the period indicated in the quote request. If there is no such indication, a period of six months after receipt of the offer shall apply.

3 Deployment of employees

3.1 The service provider shall deploy only carefully selected and well trained staff. It shall replace employees who do not have the requisite expertise or who otherwise interfere with or jeopardise performance of the contract. In doing so, it shall pay particular attention to the client's interest in continuity.

3.2 The service provider shall deploy only employees who have the authorisations required for rendering the services.

3.3 The parties shall inform each other in writing of the name and function of the employees deployed for contract performance.

3.4 The service provider shall exchange the deployed employees only with the client's written consent. The client will refuse consent only for important reasons.

3.5 The service provider shall comply with the internal regulations of the client, in particular the safety provisions and house rules. The client shall provide the necessary information in a timely manner. The service provider shall impose these obligations on its employees, subcontractors and sub-suppliers, as well as on the third parties it calls upon.

3.6 The provisions set out in section 3 shall also apply to other staff deployed by the service provider for contract performance, including freelancers.

4 Involvement of third parties

4.1 The service provider may call upon third parties (e.g. sub-suppliers, subcontractors) for the rendering of its services only with the prior written consent of the client. The service provider shall remain liable for service provision in accordance with the contract by the third parties called upon.

4.2 Substitution is excluded unless otherwise expressly agreed.

4.3 The parties shall impose the obligations set out in sections 3 (deployment of employees), 5 (workplace health and safety provisions, employment conditions, equal pay for men and women, and environmental law), 16 (confidentiality) and 17 (data protection and data security) on the third parties called upon (e.g. suppliers, subcontractors, substitutes).

5 Workplace health and safety provisions, employment conditions, equal pay for men and women, and environmental law

5.1 For services provided in Switzerland within the framework of contract performance, the service provider shall comply with the workplace health and safety provisions and employment conditions applicable at the place of performance, the notification and authorisation duties in accordance with the Federal Act of 17 June 2005 on Measures to Combat Illegal Employment (IEA)¹, the provisions on the equal treatment of men and women in terms of equal pay and the environmental law. The employment conditions shall be deemed to encompass collective and standard employment contracts or, where no such contracts exist, the actual employment conditions customary for the location and occupation.

5.2 For services provided abroad within the framework of contract performance, the service provider shall comply with the provisions applicable at the place of performance, but as a minimum with the Core Conventions of the International Labour Organization (ILO)².

5.3 If the service provider second workers from a foreign country to Switzerland to render the services, compliance with the provisions of the Posted Workers Act of 8 October 1999³ must be ensured.

5.4 For services provided in Switzerland within the framework of contract performance, the service provider shall comply with the provisions of Swiss environmental law applicable at the place of performance, namely the Environmental Protection Act

¹ SR 822.41

² ILO conventions: No. 29 of 28 June 1930 concerning Forced or Compulsory Labour (SR 0.822.713.9), No. 87 of 9 July 1948 concerning Freedom of Association and Protection of the Right to Organise (SR 0.822.719.7), No. 98 of 1 July 1949 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (SR 0.822.719.9), No. 100 of 29 June 1951 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (SR 0.822.720.0), No. 105 of 25 June 1957 concerning the Abolition of Forced Labour (SR 0.822.720.5), No. 111 of 25 June 1958

concerning Discrimination in Respect of Employment and Occupation (SR 0.822.721.1), No. 138 of 26 June 1973 concerning Minimum Age for Admission to Employment (SR 0.822.723.8), No. 182 of 17 June 1999 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (SR 0.822.728.2)

³ SR 823.20

(EPA)⁴, the Waters Protection Act (WPA)⁵, the Nature and Cultural Heritage Act (NCHA)⁶, the Forest Act (ForA)⁷ and the Chemicals Act (ChemA)⁸, as well as the ordinances based thereon.

5.5 For services provided abroad within the framework of contract performance, the service provider shall comply with the environmental protection provisions applicable at the place of performance, but at least with the agreements on the environment in accordance with Annex 2 of the PPO⁹ that are relevant for the service provider's performance.

5.6 The service provider is obliged to contractually impose the requirements according to sections 5.1 to 5.5 above on its subcontractors.

5.7 If the service provider or one of its subcontractors violates obligations arising from section 5, the service provider shall be liable to pay a contract penalty unless it proves that it is not at fault. The penalty shall amount to 10% of the total remuneration per violation, but no more than CHF 50,000 in total.

6 Social security

6.1 If the service provider is a legal entity, it shall, as an independent company, take care of the necessary registrations for itself and its staff members with respect to social security. If the service provider is not a legal entity, the service provider must show upon submitting the offer that he/she is affiliated to a compensation fund as a self-employed person.

6.2 The client is not liable for social benefits (old-age and survivors' insurance, disability insurance, unemployment insurance, etc.) or other compensatory benefits, especially in the event of accident, sickness, disability or death.

7 Definitions

7.1 Contract: all of the documents belonging to the agreement (i.e. main document plus all associated components such as the GTC and other appendices).

7.2 Contractual document: the main document belonging to the agreement (i.e. without additional associated components such as the GTC and other appendices).

B PROVISION OF SERVICES

8 Execution and information

8.1 The service provider undertakes to perform the contract diligently, faithfully and competently, and guarantees that all services rendered comply with the contractual conditions and specifications, the current state of the art and the statutory requirements.

8.2 The client shall supply the service provider in a timely manner with all guidance necessary to perform the contract. Any further cooperation duties of the client shall be conclusively agreed in the contractual document.

8.3 The service provider shall provide the client with regular information on the progress of work and shall immediately inform it in writing of any facts or circumstances it has noted or that are recognisable to it that may interfere with or jeopardise performance in accordance with the contract.

8.4 The client shall have the right to check the status of contract performance and to request information in that regard.

C SUPPLEMENTARY PROVISIONS FOR SERVICE ELEMENTS WITH THE NATURE OF A WORKS CONTRACT

9 Documentation and instruction

9.1 Together with the agreed service, the service provider shall provide the client with the agreed quantity of complete, copyable documentation in electronic format or hard copy in the agreed languages.

9.2 The service provider may copy and use the documentation for use in accordance with the contract

9.3 Where agreed and against separate payment, the service provider shall furnish initial instruction to be determined according to the scope and target audience.

10 Changes to contractual specifications

10.1 The parties may at any time submit a written request for contractual specifications to be modified.

10.2 If the client requests a change, the service provider shall inform the client in writing within ten working days whether or not the change is feasible and what effect it will have on the services to be provided and on remuneration and deadlines. The service provider may not refuse a change request from the client if the change is feasible in objective terms and the general nature of the services to be provided is maintained. The client shall decide whether the change shall be carried out within ten working days of receipt of the notice.

10.3 If the service provider requests a change, the client may accept or reject a corresponding request within ten working days of receipt of the notice.

10.4 Changes, especially concerning the scope of the services, remuneration and deadlines, must be specified in writing in an addendum to the contract before execution.

10.5 During consideration of change requests, the service provider shall continue its work in accordance with the contract, unless the client instructs otherwise.

11 Acceptance

11.1 The service provider shall notify the client in good time of the completion of the agreed services.

11.2 The client shall inspect the services as soon as feasible according to usual business practice and shall notify the service provider of any defects.

⁴ SR 814.01

⁵ SR 814.20

⁶ SR 451

⁷ SR 921.0

⁸ SR 813.1

⁹ SR 172.056.11

11.3 If any defects are insignificant, acceptance shall nevertheless take place upon completion of the inspection. If any defects are significant, the services rendered shall not be accepted. The claims available to the client in both cases are governed by section 12.

11.4 If, despite a reminder, the client fails to conduct the acceptance inspection within a reasonable grace period, the service shall be deemed accepted.

12 Warranty

12.1 The service provider guarantees that the services rendered have all the agreed and assured characteristics, as well as the characteristics that the client may in good faith also expect without any special agreement. The service provider furthermore guarantees that it hands over any works produced within the framework of the contract in good faith with all the agreed and assured characteristics required for the intended use and that the works comply with the relevant statutory requirements. The service provider assumes a warranty of 24 months from the receipt or acceptance of the fully supplied, contractually agreed services. During the warranty period, the client may claim defects at any time. Even after expiry of the warranty period, the service provider is required to honour claims arising from the warranty rights of the client set out below, provided that the defects were brought to the service provider's attention in writing during the warranty period.

12.2 The service provider guarantees that it and the third parties it calls upon are in possession of all the rights to render the services in accordance with the contract. In particular, it is entitled to grant the client the rights to the work results according to the contractually agreed scope.

12.3 All documents made available by the client to the service provider, including those in electronic format, may be used and copied exclusively for the purpose of rendering the services. To that extent, the client guarantees that the use of the documents by the service provider does not violate the property rights of third parties.

12.4 In the event of a defect, the client shall have the option of requesting rectification or deducting the corresponding value reduction from the remuneration.

12.5 If the client requests rectification, the service provider shall remedy the defect by the deadline imposed by the client and bear the costs arising therefrom. If remediation of the defect is only possible by way of new production, the right to rectification shall also encompass the right to new production.

12.6 If the service provider fails to carry out the requested rectification, or fails to do so successfully, the client shall have the option

- a. of deducting the corresponding value reduction from the remuneration, or
- b. of demanding that the necessary documents (in particular the source code) be handed over – to the extent the service provider is entitled to hand them over – and to take the necessary measures itself or have them taken by a third party at the cost and risk of the service provider, or
- c. of withdrawing from the contract.

12.7 If damage has occurred due to a defect, the service provider shall additionally be liable for compensation therefor in accordance with section 20.

D COMMON FINAL PROVISIONS

13 Place of performance

The client determines the place of performance. Unless otherwise agreed, the place of delivery shall be considered the place of performance.

14 Default

14.1 If the parties fail to meet firmly agreed deadlines (expiry date transactions), they shall immediately be deemed to be in default, and in all other cases upon receiving a reminder.

14.2 If the service provider is in default, it shall be liable to pay a contract penalty unless it proves that it is not at fault. This penalty shall amount to a total of 0.1% per contract per day of delay, but no more than 10% of the total remuneration. It shall be owed even if the services are accepted subject to a corresponding reservation. Payment of the contract penalty shall not release the service provider from compliance with the contractual obligations. Contract penalties shall be offset against any compensation for damages.

15 Remuneration

15.1 The service provider will render the services:

- a. at fixed prices; or
- b. on a time and material basis with an upper limit on remuneration (cost ceiling).

15.2 The contractually agreed remuneration covers all work which is necessary for proper performance of the contract. In particular, the remuneration covers the transfer of rights, all documentation and material costs, as well as expenses and public levies (e.g. value added tax).

15.3 The remuneration shall be due upon rendering of the services, subject to any contractually agreed payment plan. The service provider shall assert the remuneration due by submitting an invoice. Value added tax shall be indicated separately.

15.4 The client shall make outstanding payments within 30 days of receipt of the invoice.

15.5 For central Federal Administration¹⁰ procurements, the service provider is obliged to submit an electronic invoice¹¹ to the client if the contract value exceeds CHF 5,000 (excl. VAT). The client determines the delivery options.

16 Confidentiality

16.1 The parties shall treat as confidential all facts and information that are neither obvious nor generally accessible. In case of doubt, facts and information are to be treated confidentially. The parties undertake to take all precautions that are commercially reasonable and technically and organisationally possible to ensure that confidential facts and information are effectively protected from access and knowledge by unauthorised parties.

16.2 The confidentiality obligation shall exist before the contract is concluded and shall persist after termination of the contractual relationship.

¹⁰ Art. 7 of the GAOO (SR 172.010.1)

¹¹ <http://e-rechnung.admin.ch>

16.3 The confidentiality obligation will not apply for the client if it is obliged to publish the following facts and information: name and address of the service provider, object of the procurement and value of the contract, tender procedure carried out, date of contract conclusion and commencement, and timeframe of contract execution. This shall be without prejudice to the mandatory duties of disclosure under Swiss law (e.g. as per the Freedom of Information Act¹², the Public Procurement Act¹³ and the Public Procurement Ordinance¹⁴).

16.4 The confidentiality obligation shall not be considered breached if confidential information is transmitted by the client within the group (or within the Federal Administration) or to any third parties called upon. This shall apply to the service provider insofar as transmission is necessary for contract performance or contractual provisions are transmitted within the group.

16.5 Without the written consent of the client, the service provider may not advertise the fact that cooperation exists or existed with the client, and the service provider may not list the client as a reference either.

16.6 The parties shall impose the confidentiality obligation on their employees, subcontractors, sub-suppliers and other third parties called upon.

16.7 If one of the parties violates the confidentiality obligations above, it shall be liable to pay a contract penalty to the other party unless it proves that it is not at fault. Per violation, the penalty shall amount to 10% of the total remuneration, but no more than CHF 50,000 in total. Payment of contract penalties shall not release the parties from compliance with confidentiality obligations. Contract penalties shall be offset against any compensation for damages.

17 Data protection and data security

17.1 The parties undertake to comply with the provisions of Swiss data protection legislation. They undertake to take the economically reasonable and technically and organisationally possible precautions to ensure that data arising in the framework of contract execution are effectively protected against unauthorised knowledge by third parties.

17.2 Personal data may be processed only for the purpose and to the extent necessary for contract performance and execution. To that extent and for that purpose, personal data may also be transmitted to a company in Switzerland or abroad associated with one of the contracting parties, provided that the prerequisites set out in the provisions of Swiss data protection legislation are met.

17.3 The parties shall impose these obligations on their employees, subcontractors and sub-suppliers, as well as on other third parties called upon.

18 Property rights

18.1 All property rights (intangible property rights and related rights, as well as entitlements) pertaining to agreed work results generated within the framework of contract performance shall belong to the client, unless otherwise agreed in the contract. Personal rights to intangible property remain reserved, provided they are not transferable by law.

18.2 The client may dispose of all work results without restrictions in terms of time, space and substance. The power of disposal encompasses all current and future potential rights of use, especially use, publication, sale and modification. Modification encompasses in particular change, further processing and use for the creation of new work results. The client may grant the service provider rights to use the work results in the contract.

18.3 With respect to pre-existing property rights appertaining to parts of agreed work results, the client shall receive a non-exclusive, transferable right of use without restrictions in terms of time, space and substance, which grants the client the possibility to use and dispose of the work results within the meaning of section 18.2. The service provider undertakes not to establish any rights based on those pre-existing rights which could be asserted against the possibilities of use granted here. In particular, it undertakes to transfer or license these property rights only subject to the rights of use of the client.

18.4 Both parties retain the right to use and dispose of ideas, processes and methods that are not legally protected.

19 Breach of property rights

19.1 The service provider shall immediately, at its own expense and risk, defend against claims by third parties concerning a breach of property rights. If a third party brings proceedings against the service provider, the service provider shall immediately inform the client in writing. If the third party asserts claims directly against the client, the service provider shall, upon the client's first request and to the extent possible under the relevant code of procedure, participate in the dispute. The service provider undertakes to bear all costs (including compensation for damages) incurred by the client due to the proceedings and any out-of-court settlement. In the event of an out-of-court settlement, the service provider shall be required to assume the agreed payment to the third party only if the service provider gave its prior consent.

19.2 If, pursuant to property rights asserted, the client is unable to use the contractually owed services in whole or in part, the service provider shall have the option of changing its services in such a way that they do not breach the rights of third parties but nonetheless comply with the contractually owed scope of services, or of obtaining a licence from the third party at its own expense. If the service provider fails to implement any of these options within a reasonable timeframe, the client may withdraw from the contract with immediate effect. The service provider shall indemnify the client within the framework of section 20. Insofar as the client is responsible for the breach of property rights, the claims against the service provider are excluded.

20 Liability

20.1 The parties are liable for all damages they cause to the other party unless they prove that they are not at fault. Liability for personal injury is unrestricted. In any event, liability is limited to the actual, proven damage. Unless otherwise stipulated in the contract, liability for slight negligence is no more than CHF 1 million per contract. Liability for loss of profits is excluded.

20.2 In accordance with section 20.1, the parties shall be liable for the conduct of their employees, other auxiliaries and third parties called upon for the purpose of contract performance (e.g. sub-suppliers, subcontractors, substitutes) in the same way as for their own conduct.

¹² SR 152.3

¹³ SR 172.056.1

¹⁴ SR 172.056.11

21 Contract amendments, inconsistencies and partial invalidity

21.1 Amendments and addenda to the contract as well as cancellation of the contract must be in writing.

21.2 In the event of inconsistencies between the provisions, the following order of precedence shall apply: contractual document, GTC, quote request, offer.

21.3 If individual provisions of the contract prove to be invalid or unlawful, this shall not affect the validity of the contract. In such cases, the provision in question shall be replaced by an effective provision that is as equivalent as possible in economic terms. The same shall apply in the event of a gap in the contract.

22 Assignment and pledging

The service provider may not assign or pledge claims vis-à-vis the client unless the client has given its prior written consent. The client may refuse consent only in justified cases.

23 Applicable law and place of jurisdiction

23.1 Swiss law alone shall apply, with the exclusion of conflict of law provisions.

23.2 Application of the provisions of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (Vienna Convention)¹⁵ is expressly excluded.

23.3 If the client is a unit of the central Federal Administration or a unit of the decentralised Federal Administration without legal personality, the exclusive place of jurisdiction shall be **Bern**; in all other cases, it shall be at the client's registered office.

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¹⁵ SR 0.221.211.1