

# General Terms and Conditions for the Purchase and Maintenance of Hardware

## A COMMON INTRODUCTORY PROVISIONS

### 1 Object and validity

1.1 The present General Terms and Conditions (GTC) govern the conclusion, content and execution of contracts concerning the purchase of hardware (including the operating software) and the maintenance thereof.

1.2 Anyone (the seller) submitting an offer to the buyer thereby accepts the present GTC, unless stated otherwise in the tender. Changes and amendments to the present GTC shall require written agreement.

1.3 Unless otherwise expressly provided in the contractual document, the provisions concerning delivery, acceptance and warranty in accordance with clause 25 shall apply separately and mutually independently to the hardware purchase and to the maintenance of the hardware. The warranty rights arising from the maintenance contract shall not affect those arising from the purchase contract.

### 2 Offer

2.1 The offer including any demonstrations is free of charge unless stated otherwise in the tender.

2.2 The offer is prepared on the basis of the buyer's tender. If the offer deviates from the tender or the GTC of the buyer, the offer must indicate this expressly.

2.3 The seller shall indicate the value added tax and the advance recycling fees separately in the offer.

2.4 The offer remains binding during the time period indicated in the tender. If there is no such indication, a time period of three months after receipt of the offer shall apply.

### 3 Deployment of staff

3.1 For services rendered by staff of the seller at sites of the buyer, the seller shall deploy only carefully selected and appropriately trained staff. The seller shall replace staff members who do not have sufficient expertise or otherwise interfere with or endanger performance of the contract. In particular, the seller shall take account of the buyer's interest in continuity.

3.2 For the rendering of services in accordance with clause 3.1, the seller shall only deploy staff with the authorizations required for rendering of the services.

3.3 To the extent that the seller renders services on site, it shall comply with the company regulations, in particular the house rules, of the buyer. The seller shall in any event comply with the relevant safety provisions. The buyer shall communicate the necessary information in a timely manner. The seller shall impose these obligations on its staff, subcontractors, subsuppliers, and engaged third parties.

3.4 The provisions set out in clause 3 shall also apply to other staff deployed by the seller for the purpose of contract performance, especially also to freelance workers.

### 4 Engagement of third parties

4.1 For services rendered by staff of the seller at the sites of the buyer, the seller may engage third parties (e.g. subsuppliers, subcontractors) for the rendering of its services only with prior written consent of the buyer. The seller shall remain liable for the rendering of contractual services by the engaged third parties.

4.2 Substitution is excluded, subject to express agreements to the contrary.

4.3 The parties shall impose the obligations set out in clause 3 (deployment of staff), 5 (observation of health and safety standards, conditions of employment, equal treatment of sexes in relation to salary), 23 (confidentiality) and 24 (data protection and data security) on the engaged third parties (e.g. subsuppliers, subcontractors, substitutes).

### 5 Observation of health and safety standards, conditions of employment, equal treatment of sexes in relation to salary

5.1 Sellers domiciled or established in Switzerland shall comply with the health and safety standards and conditions of employment applicable in Switzerland as well as the principle of equal treatment of sexes in relation to salary. Conditions of employment shall be deemed to encompass collective and normal employment contracts or, where no such contracts exist, the actual conditions of employment usual for the location and profession. Sellers domiciled in a foreign country shall comply with the relevant conditions applicable where the service is rendered abroad, but at least with the core conventions of the International Labour Organization. (1)

5.2 If the seller second workers from a foreign country to Switzerland to render the service, the provisions of the Secondment Act of 8 October 1999 shall be complied with. (2)

**5.3 Should the seller violate the obligations arising from clause 5, the seller shall be liable to pay a penalty unless the seller proves that no fault is attributable to it. The penalty shall amount per case of violation to 10% of the annual remuneration, or of the entire remuneration if one-off remuneration has been agreed, though no more than CHF 50,000 in total.**

1 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).

2 SR 823.20

## **6 Deliveries of replacement parts**

For at least 5 years from handover or installation of the hardware, the seller shall guarantee the buyer the delivery of hardware replacement parts.

## **7 Definitions**

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

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

7.3 Incident: a malfunction that limits or interferes with the contractually agreed usability or availability of the hardware (including the operating software). Incidents also include malfunctions caused by third parties, especially due to interactions with hardware or other software.

## **B PURCHASE OF HARDWARE**

### **8 Handover and installation**

8.1 The hardware (including the operating software) is handed over upon signature of the delivery note by a person designated by the buyer at the place of performance.

8.2 On request of the buyer and against separate payment, the seller takes care of the installation of the hardware (and the operating software). Any duties to participate/obligations of the buyer are agreed exhaustively in the contractual document.

### **9 Use of the operating software**

The manner and scope of the use of the operating software inextricably associated with the hardware shall be governed by the intended purpose of the hardware. The buyer may sell the hardware (including the operating software) to third parties, provided that the buyer renounces its own use thereof.

### **10 Documentation**

10.1 Together with the hardware (and the operating software), the seller provides the buyer with the relevant documentation (especially installation and user manual) in electronic or paper form in the agreed languages and number.

10.2 The buyer may copy and use the documentation for the contractual purpose.

### **11 Instruction**

Where agreed and against separate payment, the seller conducts an initial instruction to be determined according to scope and target audience.

### **12 Import requirements**

The seller guarantees compliance with any export restrictions and import regulations from the place of origin to the place of delivery in accordance with the contract. The seller informs the

buyer in writing about any export restrictions of the country of origin.

## **C MAINTENANCE AND SUPPORT**

### **13 Content and scope of maintenance**

13.1 The services to be rendered shall be agreed in the contract.

13.2 Subject to a contractual agreement to the contrary, maintenance of the hardware encompasses keeping it in working order (on a preventive basis) and restoring it to working order (remediation of malfunctions and errors) through repair and replacement of defective parts.

13.3 The seller is required to keep impeccable replacement material on hand for the duration of the contract or to deliver it within a reasonable time period.

### **14 Support**

14.1 The support services to be rendered shall be agreed in the contract.

14.2 Subject to a contractual agreement to the contrary, support encompasses advice and assistance to the buyer with respect to the use of the hardware covered by the contract (including the operating software).

14.3 If the seller is required to render support services, the seller undertakes to establish and maintain an efficient organization; the seller shall inform the buyer immediately of the communication channels for support inquiries and of the competent contact persons. The contract shall specify whether and how inquiries and reports may be transmitted in writing, by telephone or electronically.

### **15 Information obligations**

The seller informs the buyer, immediately and in writing, of any facts or circumstances it has noted or that are recognizable to it that may interfere with or endanger maintenance of the hardware (including the operating software). The seller regularly informs the buyer of technical improvements of the hardware (including the operating software).

### **16 Standby, reaction and repair time**

#### **16.1 Standby time**

During the maintenance standby time set out in the contract, the seller receives reports concerning malfunctions and requests by way of the agreed communication channels. The manner and scope of the services to be provided during the standby time shall be agreed contractually.

#### **16.2 Reaction time**

The reaction time covers the period during which the seller must begin to analyze and remedy a malfunction from the time the malfunction report has been received. It shall be agreed in the contract. The parties shall jointly agree the assignment of the appropriate priority on the basis of the technical and economic needs of the buyer.

### 16.3 Repair time

The repair time covers the maximum period from receipt of a malfunction report by the seller until the successful remedy of the incident. The repair time shall be determined in the contract.

16.4 The seller notifies the buyer that the malfunction has been remedied.

### 16.5 Failure to meet agreed deadlines

**If the seller fails to meet the deadlines referred to in clauses 16.1 through 16.3, the seller shall be liable for a penalty, unless the seller can prove that no fault is attributable to it. The amount of the penalty shall be set out in the contract on a case-by-case basis.**

**In such cases, a penalty is also owed if the services were accepted subject to a relevant reservation. Payment of penalties does not release the parties from performance or compliance with contractual obligations; penalties are offset against any compensation for damages.**

## 17 Reports

On request of the buyer, the seller prepares a report after the conclusion of each maintenance job and provides the buyer with a copy thereof.

## 18 Beginning and duration

18.1 The contract enters into effect with the signature of both parties, unless otherwise stated in the contractual document. The contract is concluded either for a definite or for an indefinite time period.

18.2 If the maintenance contract is concluded for an indefinite time period and unless otherwise agreed, it may be terminated in writing by the buyer as of the end of a calendar month, by the seller however only after a term to be agreed in the contract. The termination may also only relate to individual services. Unless otherwise agreed, the term of notice is 12 months for the seller and 3 months for the buyer.

18.3 The right to termination without notice on important grounds remains reserved to both parties at all times. Important grounds include the following in particular:

- the occurrence of events or circumstances that make continuation of the contractual relationship unreasonable for the terminating party, especially the continuing or repeated breach of essential contractual duties;
- the official publication of an application for bankruptcy or of a moratorium granted to a party.

## 19 Consequences of termination

In the contract, the contracting parties shall specify which resources, data and documents made available within the framework of the contractual relationship must be returned to the other party or destroyed upon termination of the contractual relationship and within what time period.

## D COMMON FINAL PROVISIONS

### 20 Place of performance and transfer of benefits and dangers

20.1 The buyer designates the place of performance. Unless otherwise agreed, the place of delivery of the hardware (including the operating software) shall be considered the place of performance.

20.2 Benefits and dangers are transferred to the buyer upon handover or installation.

### 21 Default

21.1 If the parties fail to meet agreed deadlines (transactions for delivery by a fixed date), they are immediately considered in default, and in all other cases upon receiving a reminder.

**21.2 If the seller is in default, the seller shall be liable to pay a penalty, unless the seller can prove that no fault is attributable to it. This penalty shall amount to 0.1% of the total contract for each day of delay, but at most 10% of the entire remuneration in the case of one-off payments or of the remuneration for 12 months in the case of recurring services. The penalty is also owed if the services were accepted subject to a relevant reservation. Payment of the penalty does not release the seller from compliance with contractual obligations. Penalties are offset against any compensation for damages.**

### 22 Remuneration

22.1 The seller renders services for a fixed price. The remuneration is either one-off or recurring.

22.2 The contractually agreed remuneration covers all work which is necessary for the proper performance of the contract. In particular, the remuneration covers the transfer of ownership rights pertaining to the hardware, any agreed maintenance and support services, the granting of the rights to use the operating software, all documentation, packaging, transport, insurance and unloading costs, advanced recycling fees as well as fees and public dues (e.g. value added tax).

22.3 The remuneration is due upon handover of the hardware and the operating software or installation thereof, subject to any contractually agreed payment plan. When the remuneration is due, the seller submits the corresponding invoice. The due date of the remuneration and the billing frequency for maintenance shall be set out in the contract. Value added tax shall be indicated separately.

22.4 The buyer shall make payments due within 30 days of receipt of the invoice.

22.5 Subject to other arrangements set out in the contract, the seller may, with a three-month period of notice, demand a justified adjustment of the recurring remuneration as of the beginning of the next calendar year, but at most according to the development of the Swiss national index for consumer prices.

## 23 Confidentiality

23.1 The parties shall treat all facts and information confidentially that are neither obvious nor generally accessible. In cases of doubt, facts and information shall be treated confidentially. The parties undertake to take all economically reasonable and technically and organizationally possible measures to ensure that confidential facts and information are effectively protected from access and knowledge by unauthorized parties.

23.2 The confidentiality obligation predates conclusion of the contract and persists after termination of the contractual relationship.

23.3 The confidentiality obligation shall not be considered breached if confidential information is transmitted by the buyer within the buyer's own company (or within the Federal Administration, as applicable) or to engaged third parties. This applies to the seller to the extent the transmission is required to perform the contract or contractual provisions are transmitted within the company.

23.4 Without the written consent of the buyer, the seller may not advertise the fact that cooperation with the buyer exists or existed, and the seller may also not list the buyer as a reference.

23.5 The parties shall impose the confidentiality obligation on their staff members, subcontractors, subsuppliers and other engaged third parties.

**23.6 Should one of the parties violate the confidentiality obligations above, it shall be liable to pay a penalty to the other party unless it proves that no fault is attributable to it. This penalty shall amount per case of violation to 10% of the annual remuneration, or of the entire remuneration if one-off remuneration has been agreed, though no more than CHF 50,000 in total. Payment of the penalty does not release the party from compliance with confidentiality obligations. Penalties are offset against any compensation for damages.**

## 24 Data protection and data security

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

24.2 Personal data may be processed only for the purpose and to the extent necessary for performance and execution of the contract. 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.

24.3 The parties shall impose these obligations on their staff members, subcontractors, subsuppliers and other engaged third parties.

## 25 Warranty

25.1 The seller guarantees that it hands over the hardware (including the operating software) in good faith with all the agreed and assured characteristics required for the intended use and that it complies with the relevant legal requirements. The seller furthermore guarantees that the services rendered have all the agreed and assured characteristics as well as the characteristics that the buyer may in good faith also expect without any special agreement. The seller assumes a warranty of 12 months from the handover or installation of the hardware (including operating software) or from receipt of the fully rendered, contractually agreed services. During the warranty period, defects may be claimed at any time. Even after expiry of the warranty period, the seller is required to honour claims arising from the warranty rights of the buyer set out below, provided that the defects were brought to the seller's attention in writing during the warranty period.

25.2 The seller guarantees that it is in possession of all the rights to render its services under the contract. In particular, it is entitled to distribute the operating software delivered with the hardware and to grant the buyer the rights to use the operating software according to the contractually agreed scope.

25.3 In the event of a defect, the buyer has the option of demanding remediation of the defect, delivery of hardware (including operating software) without defects, or of deducting the value reduction from the remuneration. If there are substantial defects, the buyer may withdraw from the contract.

25.4 If the buyer demands remediation of the defect or a replacement delivery, the seller shall remedy the defects by the imposed deadline and bear the costs arising therefrom.

25.5 If the seller fails to carry out the demanded remediation of the defect or replacement delivery or fails to do so successfully, the buyer has the option

- a. of deducting the value reduction from the remuneration;
- b. of demanding that the necessary documents be handed over – to the extent the seller is entitled to hand them over – and to have the necessary measures carried out by a third party at the expense and risk of the seller; or
- c. of withdrawing from the contract.

25.6 If damage has occurred due to the defect, then the seller shall be additionally liable for compensation therefor in accordance with clause 27.

## 26 Breach of intellectual property rights

26.1 The seller shall, at its own expense and risk and without delay, defend against claims by third parties concerning breach of intellectual property rights. Should a third party initiate proceedings against the seller, the seller shall without delay inform the buyer. If the third party asserts claims directly against the buyer, the seller shall, upon the first request of the buyer and to the extent possible under the relevant code of procedure, participate in the lawsuit. The seller undertakes to bear all costs (including compensation for damages) incurred by the buyer due to the proceedings and any settlement of the lawsuit out of court. If the dispute is settled out of court, the seller is only required to assume the agreed payment to the third party if the seller agreed to the payment in advance.

26.2 If, pursuant to intellectual property rights asserted, the buyer is unable to use the contractually owed hardware (including the operating software) or to avail itself of services in whole or in part, then the seller has the option of replacing the hardware (including the operating software) by other hardware or 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 seller fails to implement any of these options within a reasonable period, the buyer may withdraw from the contract with immediate effect. The seller shall indemnify the buyer within the framework of clause 27. To the extent that the buyer is responsible for the breach of intellectual property rights, the claims against the seller are excluded.

## **27 Liability**

27.1 The parties are liable for all damages they cause to the other party, unless they can prove that no fault can be attributed to them. Liability for personal injuries is unrestricted. In any event, liability is limited to the effectively arising, proven damage. Unless the contract states otherwise, liability for slight negligence is at most CHF 1 million per contract. Liability for loss of profits is excluded.

27.2 In accordance with clause 27.1, the parties shall be liable for the conduct of their staff members and other auxiliary persons as well as third parties engaged for the purpose of performance of the contract (e.g. suppliers, subcontractors, substitutes) in the same way as for their own conduct.

## **28 Contract amendments, inconsistencies and partial invalidity**

28.1 Changes and amendments to the contract as well as cancellation of the contract shall be in writing.

28.2 In the event of inconsistencies among the provisions, the following order of precedence applies: contractual document, GTC, tender, offer.

28.3 If individual provisions of the contract turn out to be invalid or unlawful, the validity of the contract is not affected. In such cases, the provision in question shall be replaced by an effective provision that is as equivalent as possible in economic terms.

## **29 Assignment and pledges**

The seller may not assign or pledge claims vis-à-vis the buyer unless the buyer has consented in writing in advance. The buyer may refuse consent only in justified cases.

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

30.1 Swiss law shall be applicable exclusively.

30.2 The exclusive place of jurisdiction shall be **Bern**.

## **31 Vienna Convention**

Application of the provisions of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (Vienna Convention) (3) is expressly excluded.