

General Terms & Conditions for Hardware Procurement

1 Scope and validity

1.1 These General Terms & Conditions regulate the conclusion, content and performance of contracts for the purchase of hardware products, including the associated operating systems¹⁾.

1.2 These Terms & Conditions shall be deemed accepted upon the Seller submitting an offer.

2 Offers

2.1 The offer, and any demonstrations, shall be made free of charge, unless it is otherwise stated in the request for offer.

2.2 The Seller shall specifically point out any differences between the offer and the details of the Buyer's request for offer.

2.3 The offer shall be binding for the period specified by the Buyer. If no period is stipulated in the offer nor in the request for offer, the Seller's offer shall be considered binding for 4 months from the date it was made.

2.4 Either party may withdraw from negotiations prior to the signing of the contract without financial consequences.

3 Documentation

3.1 The Seller shall supply complete documentation (e.g. handbook, manual) for the operation and maintenance of all equipment, in the languages agreed to in the contract and in a format which can be reproduced.

3.2 The Buyer may copy and use the documentation for the purposes specified in the contract. The use for any purpose other than those specified in the contract requires the consent of the Seller and may require additional remuneration.

4 Training

The Seller shall provide initial training for the Buyer's staff. The scope of this initial training shall be specified in more

¹⁾ Contracts awarded for the procurement of entire systems are governed by the General Terms & Conditions for the Procurement of Complete Data Systems and the Writing of Customised Software.

Contracts which comprise exclusively the use of standard software packages are subject to the General Terms & Conditions for Licenses.

detail in the request for offer or in the contract. If such a specification is missing, then the installation and users instructions are considered sufficient.

5 Remuneration

5.1 The Seller shall supply all goods and services at fixed prices.

5.2 The remuneration shall cover all goods and services required for the due fulfilment of the contract. In particular, the remuneration shall include installation and documentation costs, initial training costs, expenses, license fees, packaging, transport, insurance and unloading costs and any fiscal or other public duties.

5.3 If the Seller offers a discount on any of his goods and services, and the government, its institutions and enterprises co-ordinate their similar purchases, the basis used to calculate the price shall include the total purchases.

5.4 The remuneration is due once the goods and services are inspected, but not later than 30 days after delivery or installation. Any due dates not subject to this provision will be agreed separately in the payment schedule. When payment is due, the Seller shall submit a request for payment to the Buyer. The Buyer shall settle within 30 days after receipt of the request for payment.

5.5 In the case where partial payments are agreed upon (payments in advance and on account), the Seller shall provide some form of security if the Buyer so requests.

5.6 If the Seller reduces the list prices for his goods or services before delivery is made, the remuneration shall be adjusted accordingly.

6 Confidentiality

6.1 Both parties shall treat in strict confidence all matters which are not publicly known or generally accessible. If there is any doubt, this confidentiality clause shall nevertheless be observed. The parties are obliged to observe this confidentiality clause both before the contract is signed and after the contractual relationship ends. This provision shall not affect either party's legal obligation to disclose information.

6.2 Any advertisement or publication about goods and services supplied for a specific project requires the written permission of the other party.

6.3 If either party violates the above confidentiality obligations, he shall be liable to pay a contract penalty, unless he can prove that no fault is attributable to him. For each infringement the penalty shall amount to 10% of the total remuneration, but not more than CHF 50,000 per infringement. Paying the contract penalty shall not release the party from its obligation to observe confidentiality. The penalty shall count towards any compensation payable.

7 Delivery and installation

7.1 Delivery of the purchased goods is acknowledged by the Buyer's authorised recipient signing the delivery note.

7.2 If the Buyer wishes that the Seller installs the purchased goods, this will be specified in the request for offer.

7.3 The Buyer shall grant the Seller the necessary access to his premises, and make arrangements as agreed for the supply of electricity and connections to the data network. He shall also provide storage space for materials and tools.

7.4 The Seller shall comply with the Buyer's company rules and regulations, particularly his safety standards and house rules.

8 Inspection

8.1 The Buyer shall inspect the purchased goods within 30 days of delivery. If the Seller is responsible for installation, the 30-day period starts once installation is complete. The Buyer shall notify the Seller immediately of any defects.

8.2 Defects which were not apparent at the time of inspection shall be notified to the Seller in writing within 10 days of their detection.

9 Default

9.1 If the parties have, in the written contract, agreed upon an exact deadline for performance, the party which does not meet the deadline so fixed shall be in default immediately upon the expiration of such deadline. As to due dates not agreed upon as fixed, a party shall only be in default after being reminded thereof and after expiration of a reasonable time extension to be granted by the other party. Unless the Buyer notifies the Seller to the contrary, the Seller shall still be under obligation to supply the goods after the delivery date has expired.

9.2 If the Seller is in default he shall be liable to pay a contract penalty, unless he can prove that no fault is attributable to him. This penalty shall be one tenth of 1% of the total remuneration for each day of delay, with a maximum of 10%. The contract penalty shall be payable even if the items are accepted without reservation. Paying the contract penalty shall not release the Seller

from his other contractual obligations. However, the penalty shall count towards any compensation payable.

10 Warranty

10.1 The Seller warrants that the goods and services he provides have the qualities agreed upon and also any other qualities which the Buyer may assume in good faith without requiring explicit agreement.

10.2 In event of a defect, the Buyer has the options of reducing the amount of remuneration to be compensated for the reduction in value, or withdrawing from the contract, or requesting delivery of acceptable items (replacement). The replacement may consist of the replacement of defective components.

10.3 The warranty rights shall be time barred one year after the delivery date. Where defects are fraudulently concealed, the corresponding rights of the Buyer shall only be time barred after 10 years from the delivery date.

11 Liability

11.1 Each party shall be liable for any damages arising from failure to meet deadlines or due dates (default), unless he proves that no fault is attributable to him. The party shall be liable for any fault, i.e. intent and all degrees of negligence. Liability shall not exceed the amount of damages which have actually arisen. The liability for default shall be limited to 20% of the total remuneration per contract; should the remuneration amount to less than CHF 1 million, liability shall not be reduced to less than CHF 200,000. Further statutory rights arising from waiving future performance or from holding to the contract shall be reserved. In any case, claims for the loss of anticipated profit are excluded from liability.

11.2 If any damage arises as a result of a defect, the Seller shall pay compensation unless he proves that no fault is attributable to him. The Seller shall be liable for any fault, i.e. intent and all degrees of negligence. Liability shall not exceed the amount of damages which have actually arisen. Liability for personal injury shall be unlimited. Liability for damage to property shall be limited to 30% of the total remuneration per contract; should the remuneration amount to less than CHF 3 million, liability shall not be reduced to less than CHF 900,000. Liability for purely pecuniary damage shall be limited to 10% of the total remuneration per contract; should the remuneration amount to less than CHF 3 million, liability shall not be reduced to less than CHF 300,000. In any case, claims for the loss of anticipated profit are excluded from liability.

11.3 Each party shall be liable for other breaches of contract (e.g. breach of confidentiality, violation of the obligation to inform the other party, the use of a subcontractor without permission of the Buyer, violation of general obligations of loyalty and due diligence), unless the party proves that no fault is attributable to him. The parties shall be liable for any fault, i.e. intent and all degrees of negli-

gence. Liability shall not exceed the amount of damages which have actually arisen. Liability shall be limited to 10% of the remuneration per contract; should the remuneration amount to less than CHF 3 million, liability shall not be reduced to less than CHF 300,000. In any case, claims for the loss of anticipated profit are excluded from liability.

12 Delivery of spare parts

The Seller guarantees the supply of spare parts to the Buyer for at least 5 years from the date of delivery. Deviations from this time-limit shall be specified in the contract.

13 Import certificates

When the Buyer accepts delivery he shall also assume the Seller's obligations arising from import certificates.

14 Place of performance

14.1 The place of performance for the goods and services supplied by the Seller shall be the location where the hardware is installed.

14.2 Benefit and risk shall pass to the Buyer at the place of performance

15 Assignment and pledging of receivables

Receivables due to the Seller may not be assigned or pledged to third parties not affiliated with the Seller without the Buyer's written permission.

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

16.1 Where contractual duties are performed in Switzerland, the Seller shall grant to his employees health and safety standards as well as conditions of employment in force or usually practised at the place of performance. He shall ensure that women and men are treated equally with respect to their salaries. Conditions of employment shall be those contained in the respective collective employment contracts or in standard employment contracts, or, in the absence of these, the employment conditions which are usually granted at the place of performance or in a particular profession. The Seller shall contractually impose these duties upon his subcontractors.

16.2 Should the Seller violate these obligations, he shall be liable to pay a contract penalty unless he proves that no fault is attributable to him. The penalty shall amount per case to 10% of the total remuneration, though to no more than CHF 50,000 per case.

17 Applicable law

17.1 The contractual relationship between the two parties shall be governed by Swiss law.

17.2 The provisions of the Vienna Convention (the United Nations Convention of Contracts for the International Sale of Goods, concluded in Vienna on 11.4.1980) shall not be applicable.

18 Special provisions regarding "Year 2000 Conformity"

18.1 The Seller guarantees that the products (software, hardware and complete data systems) fully comply with all „Year 2000 Conformity“ requirements.

18.2 "Year 2000 Conformity" shall mean that neither the performance nor the functionality of products supplied shall be impaired by the alteration of date formats and date values. This shall apply to all valid date values prior to, during and after the year 2000.

18.3 "Year 2000 Conformity" shall especially also mean that

- no current date value may interrupt or impair the functioning of supplied products;
- the processing of data linked to dates shall produce correct results for all date values. If contractually stipulated, this shall also apply to the combination with additional products; it shall apply to the combination of the hardware with the supplied operating system or application software even without express contractual stipulation.
- all elements relevant to the specification of dates contained in interfaces and data storage shall unambiguously and without human interference allow the specification of the century, in order to preclude any ambiguity. This shall also apply to the computation of leap-years;
- if elements of dates (e.g. the indication of the year) should be represented in a format which does not indicate the century, the latter shall be inferred unambiguously from dates so represented, consistently through all processing of date values or data containing a date-reference.

18.4 "Date format" shall mean a field configuration which contains information about date values (e.g. information about days, weeks, months, years, centuries) in any part of the supplied hardware, the pertaining operation system and application software and their combination.

18.5 A „valid date value“ shall mean a value within a value range defined in the functional specification or which may be assumed in good faith.

18.6 Should the hardware not comply with "Year 2000 Conformity" requirements, this shall be deemed to be a material defect. The Seller shall be liable for warranty according to paragraph 10 and 11 of these General Terms & Conditions, **with the special provision, deviating from paragraph 10.3, 1st sentence, of these General Terms & Conditions, that warranty rights in connection with "Year 2000 Conformity" requirements shall only be time barred on 1 January 2002.**

*Original: German
In case of disputes the German text shall prevail.*