

General Terms & Conditions for Licenses

A GENERAL

1 Scope and validity

1.1 These General Terms & Conditions regulate the conclusion, content and performance of contracts for the use and maintenance of standard software¹⁾.

1.2 These Terms & Conditions shall be deemed accepted upon the Licensor 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 Licensor shall specifically point out all differences between the offer and the details of the Licensee's request for offer.

2.3 The Licensor's offer shall specify the necessary requirements for the installation, use and maintenance of the standard software which the Licensee must satisfy.

2.4 The offer shall be binding for the period specified by the Licensee. If no period is stipulated in the offer, nor in the request for offer, the Licensor's offer shall be considered binding for 30 days from the date it was made.

B LICENSE

3 Scope of use

3.1 The Licensee is entitled to non-exclusive, non-transferable use of the standard software on the hardware specified in the contract or on any successor systems. The use of the software with a modified operating system or on hardware of a higher performance class shall be subject to the consent of the Licensor, which may however only be refused for valid reasons.

3.2 The Licensee may make copies of the standard software for backup and archive purposes.

3.3 In the event of a failure of the hardware, the Licensee may use the standard software on replacement hardware, at no extra cost.

4 Documentation

4.1 The Licensor shall supply to the Licensee, together with the standard software, complete documentation for the operation of the standard software. The documentation (e.g. handbooks, manuals) will be in the languages agreed to in the contract and in a format which can be reproduced.

4.2 The Licensee 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 Licensor and may require additional remuneration.

4.3 In the event that the Licensor should have to remedy a defect in the software, he shall update the documentation as far as necessary.

5 Training

The Licensor shall provide training for the Licensee's staff to enable them to use the standard software most efficiently, provided this need is specified in the request for proposal. Otherwise, the installation and user's guides are considered to be adequate.

6 Intellectual property rights

6.1 The Licensor or any third party shall retain the intellectual property rights for the standard software. Ideas, methods and techniques which are not protected by law or otherwise may be used and disposed of by both parties. Where third-party rights exist, the Licensor guarantees that he owns the relevant marketing rights and right of use.

6.2 The Licensee is granted a non-transferable and non-exclusive right to use the standard software.

7 Infringement of intellectual property rights

7.1 The Licensor shall contest at his own cost and risk any third-party claims arising from infringement of intellectual property rights. The Licensee shall advise the Licensor of such claims without delay and in writing. He shall grant the Licensor sole control over any court proceedings

¹⁾ Contracts including the use of standard software in association with the purchase of hardware and software are governed by the General Terms & Conditions for the procurement of Complete Data Systems and the Writing of Customised Software

and sole responsibility for taking measures for settlement in or out of court. Under these provisions, the Licensor shall hold the Licensee harmless of all costs and damages awarded against the Licensee.

7.2 If proceedings are instituted for infringement of intellectual property rights, the Licensor may either grant the Licensee the right to use the software free of any liability resulting from violation of intellectual property rights, or replace the software with another package that satisfies the essential contractual requirements.

8 Test period and approval

8.1 The Licensee shall test the standard software within the agreed test period, which starts the day after complete delivery and lasts for a minimum of 30 days. The software shall be considered approved after this test period unless the Licensee formally rejects it.

8.2 If the Licensee posts his formal rejection on the very last day of the test period, this shall still be treated as falling within the rejection period under the terms of the contract.

9 Import certificates

On accepting the software, the Licensee shall also assume the Licensor's obligations arising from import certificates.

C MAINTENANCE

10 Scope of maintenance

10.1 If requested by the Licensee, the Licensor shall provide maintenance of the standard software for a period of at least 6 years after expiry of the one-year limitation period for warranty rights.

10.2 Software maintenance shall include the elimination of faults in programs, and the adaptation and enhancement of software packages (new releases). At the request of the Licensee, and subject to separate remuneration, software maintenance shall include any adjustments required to enable the standard software to run with modified operating systems, databases and data storage devices.

10.3 The Licensor shall keep the Licensee updated on the latest improvements and enhancements in the software which may be of interest to him. In particular, the Licensor shall notify the Licensee of the consequences of any modifications of the performance of the standard software on the hardware. The Licensor may only supply or install enhanced programs with the Licensee's approval.

10.4 If requested, the Licensor shall help to diagnose the cause of a fault resulting from the interaction of several systems or components. If the Licensor can show that the fault was not caused by software for the maintenance of

which he is responsible, the Licensee shall be billed separately for this service.

10.5 If requested, the Licensor shall also rectify any faults whose causes can be traced back to errors on the part of the Licensee or third parties. This service shall be billed separately.

11 Performance of contract

11.1 The Licensee shall grant the Licensor the necessary access to his premises, and make arrangements as agreed for the supply of electricity and connections to the data network.

11.2 The Licensor shall comply with the Licensee's company rules and regulations, particularly his safety standards and house rules.

12 Service hours, availability, response time and fault clearance

12.1 The Licensor shall provide his services during the hours specified in the contract.

12.2 During normal service hours the Licensor shall begin to rectify software faults as soon as possible and not later than the times agreed in the contract. At the request of the Licensee and subject to separate remuneration, the Licensor shall continue to work outside the normal service hours.

12.3 Software faults shall be rectified within a reasonable time frame, using temporary solutions if necessary.

13 Updating of documentation

The Licensor shall update the documentation as necessary.

14 Changes to services

14.1 The Licensee may request a change to the agreed services. The Licensor shall advise the Licensee in writing within one month whether or not he is prepared to make the requested change and on what terms. The Licensee shall then decide within one month whether or not the change is to be accomplished.

14.2 Any modifications to services and changes in remuneration, deadlines or other aspects of the contract shall be agreed in writing in an amendment to the contract, before they are performed.

14.3 Unless agreed otherwise, the Licensor shall continue his normal scheduled work whilst proposed changes are under review.

Changes to the remuneration will be calculated according to the rates in the original cost calculations.

D PROVISIONS COMMON TO BOTH PARTIES

15 Obligation to disclose facts

The Licensor shall inform the Licensee of any facts or circumstances which might significantly facilitate, reduce the cost of, complicate or even render impossible the performance of the contract.

16 Remuneration

16.1 Remuneration shall be in the form of a one-time payment or a recurring fee. Maintenance work may be charged based on cost. In this case the Licensor shall specify the cost types and rates in his offer.

16.2 The Licensor may request an increase of the recurring fee to take effect at the start of the next calendar year, providing he justifies the increase and gives three months' notice. The increase shall not exceed the corresponding rise in the Swiss Index of the Cost of Consumer Goods.

16.3 The remuneration shall cover all services required for due fulfilment of the contract. In particular, it shall cover installation and documentation, packaging, transport, travel and insurance costs, expenses and any fiscal or other public duties.

16.4 Use of the standard software during the test period is free of charge.

16.5 When a payment is due, the Licensor shall submit a request for payment to the Licensee. The Licensee shall settle within 30 days after receipt of the request for payment.

16.6 The Licensee may request that a recurring fee be changed to a one-time payment if the Licensor offers the same standard software in return for a one-time payment after the signing of the contract. Any remuneration already paid shall count towards the one-time payment.

16.7 If the Licensor offers a discount on his services, and if the government, its institutions and enterprises coordinate their similar procurement, the basis used to calculate the price shall include the total purchases.

17 Confidentiality

17.1 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.

17.2 If either party violates the above confidentiality obligations, he shall be liable to pay a contract penalty to the other party unless he can prove that no fault is

attributable to him. For each infringement this penalty shall amount to 10% of the one-time payment, or a year's remuneration at the time of infringement, in either case not more than CHF 50,000 per infringement. Paying the contract penalty shall not release the party from his obligation to observe confidentiality. The penalty shall count towards any compensation payable.

18 Default

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 be in default only after being reminded thereof and after expiration of a reasonable time extension to be granted by the other party.

19 Warranty

19.1 The Licensor warrants the careful and successful performance of his services. He shall not be liable for warranty in cases where the Licensee is at fault.

19.2 In the event of a defect, the Licensee may initially only demand an improvement free of charge. The Licensor shall complete the improvement immediately and entirely at his own expense.

19.3 If the Licensor does not undertake or successfully complete the improvement, the Licensee has options of:

- reducing the amount of remuneration to be compensated for the reduction in value; or
- withdrawing from the contract, however only in the case of material defects; or
- requesting delivery of the necessary documentation and material (especially the source code) where this is legally and contractually possible, and making the necessary adjustments himself or commissioning a third party to do so at the Licensor's cost and risk (This shall only apply in the case of material defects).

19.4 The warranty rights shall be time barred one year after the acceptance of the software or the performance of the maintenance work. Defects shall be notified immediately upon their detection.

19.5 Maintenance work performed by the Licensor within the limitation period shall be deemed an improvement of defects unless the Licensor proves the contrary.

20 Liability

20.1 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 one-time payment or to the annual fee

(as applicable at the time when the Licensor came into default) for the software which, because of the delay, cannot be used as specified; liability shall however not be limited to an amount less than CHF 50,000. 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.

20.2 If any damage arises as a result of services not being performed successfully or with due care, the Licensor shall pay compensation unless he proves that no fault is attributable to him. The Licensor 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 per contract to 50% of the one-time payment or to 300% of the annual fee; liability shall however not be reduced to an amount less than CHF 300,000. Liability for purely pecuniary damage shall be limited per contract to 20% of the one-time payment or to the annual fee; liability shall however not be reduced to an amount less than CHF 50,000. The basis for the calculation of the annual fee shall be the software which, because of the damage, could not be used as specified. In any case, claims for the loss of anticipated profit are excluded from liability.

20.3 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 Licensee, 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 negligence. Liability shall not exceed the amount of damages which have actually arisen. Liability shall be limited per contract to 10% of the one-time payment or to 50% of the annual fee; liability shall however not be reduced to an amount less than CHF 50,000. The compensation for damages caused by a violation of intellectual property rights shall not be limited. In any case, claims for the loss of anticipated profit are excluded from liability.

20.4 Both parties shall be liable for the acts of their auxiliary persons as if they had carried out such acts personally.

21 Duration of contract

21.1 The license contract shall be deemed to be concluded for an indefinite period unless otherwise agreed in the written contract.

21.2 The Licensee may terminate a license contract based on a recurring fee for software use and maintenance at any time without financial penalty, as long as he gives 30 days' notice.

21.3 The Licensee shall be free to separately terminate maintenance services at any time. The Licensor may only terminate maintenance services after a period of six years. Three months' notice shall apply.

21.4 A license contract based on one-time payment or recurring fee may be terminated without notice if the other party is in severe breach of contract. In such cases the remuneration shall be payable on a pro-rata basis. This shall not affect any entitlement to compensation.

21.5 The Licensee shall return the original standard software and any copies to the Licensor within 30 days of the termination of contract. Alternatively, he must submit written confirmation that he has destroyed the original and all copies in his possession. The Licensee shall in justified situations be entitled to keep one copy of the standard software for archiving purposes.

22 Place of performance

22.1 The place of performance for the services provided by the Licensor shall be the location where the standard software is installed.

22.2 Benefit and risk shall pass to the Licensee at the place of performance.

23 Assignment and pledging of receivables

Receivables owed to the Licensor may not be assigned or pledged to third parties not affiliated with the Licensor without the written agreement of the Licensee.

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

24.1 Where contractual duties are performed in Switzerland, the Licensor 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 Licensor shall contractually impose these duties upon his subcontractors.

24.2 Should the Licensor 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.

25 Applicable law

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

26 Special provisions regarding "Year 2000 Conformity"

26.1 The Licensor guarantees that the standard software fully complies with all „Year 2000 Conformity“ requirements.

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

26.3 "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;
- 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.

26.4 "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 products (hardware, software and complete data systems).

26.5 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.

26.6 Should the contract provide for maintenance obligations of the Licensor or a third party, the Licensor or the third party shall, at the latest within 9 months after conclusion of the licensing or maintenance agreement, in fixing faults in programs, adapting or enhancing software packages (new releases), ensure full „Year 2000 Conformity“ of the standard software to be maintained.

26.7 Should the contract be concluded after 1.1.1999, the Licensor shall achieve „Year 2000 Conformity“ within 3 months after conclusion of the contract, though at the latest by 1.9.1999.

26.8 The Licensor shall conclusively demonstrate that the standard software to be maintained complies with the „Year 2000 Conformity“ requirements. The parties shall agree on the method of demonstration.

26.9 Should the standard software not comply with the "Year 2000 Conformity" requirements, this shall be considered a material defect. The Licensor shall be liable for warranty as stipulated in paragraph 19 and 20 of these General Terms & Conditions, **with the special provision that warranty rights in connection with „Year 2000 Conformity“ requirements shall only be time barred on 1 January 2002.**

26.10 Non-compliance with "Year 2000 Conformity" requirements shall be deemed to be a material defect in the sense of the provisions in paragraph 19, conferring to the Licensee the right to obtain from the Licensor the requisite documentation (including, but not limited to, the source code, as well as the development documentation) and to make, or have made by third parties, at the cost and risk of the Licensor, the necessary alterations, especially adaptations and extensions of the software, to render it fully compliant with "Year 2000 Conformity" requirements. The Licensee shall only have this right in the event that the Licensor should not, or not successfully, rectify the defect in accordance with the stipulations in paragraph 19. The liability to pay compensation for damages shall be reserved.

Original: German

In case of disputes the German text shall prevail.