

General Terms & Conditions for the Procurement of Complete Data Systems and the Writing of Customised Software

1 Scope and validity

1.1 These General Terms & Conditions regulate the conclusion, content and performance of contracts for the procurement of complete data systems¹⁾ and for the writing of customised software, as well as any contractual obligations to produce a work.

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

2.3 The offer shall be binding for the period specified by the Customer. If no period is stipulated in the offer nor in the request for offer, the Supplier'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 Performance of contract

3.1 The Supplier shall regularly inform the Customer on the progress of work and in particular shall ensure that he is in receipt of all the necessary specifications and requirements. The Supplier shall inform the Customer immediately about matters which could compromise the completion of the contract. The Supplier shall also keep the Customer informed of new developments warranting a modification of contractual services for technical or cost reasons.

3.2 The Customer shall ensure that the Supplier receives in good time all the specifications and requirements needed for the performance of the contract. Further obligations on the part of the Customer to co-operate will be specified as necessary in the contract.

3.3 The Customer shall provide the Supplier with the necessary access to his premises and make arrangements as agreed for the supply of electricity and connections to the data network. He will also provide storage space for materials and tools.

3.4 The Supplier shall comply with the Customer's company rules and regulations, particularly his safety standards and house rules.

4 Documentation

4.1 Before joint inspection, the Supplier shall provide the Customer with complete documentation (e.g. handbooks, manuals) for the operation and maintenance, written in the languages agreed to in the contract and printed in a format which can be reproduced.

4.2 The Customer 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 Supplier and may require additional remuneration.

4.3 If the Supplier has to rectify defects, he shall update the documentation and source code as necessary.

5 Use of subcontractors

5.1 The Supplier may only subcontract work to third parties with the Customer's permission. The Supplier shall remain responsible for all goods and services provided.

5.2 The Customer may require the Supplier to use a specific subcontractor. In this case the Customer shall bear the risk if the subcontractor's work is defective, as long as the Supplier can prove that he has tasked the subcontractor correctly and provided adequate supervision.

5.3 The Supplier shall provide the names of all subcontractors at the Customer's request.

6 Training

The Supplier shall provide initial training for the Customer's staff. The scope of this training shall be specified in detail in the request for offer or in the contract. If such a specification is missing, the installation and users instructions are considered sufficient. The Supplier guarantees that

¹⁾ Contracts which exclusively concern the use of standard software are governed by the General Terms & Conditions for Licenses. Contracts which exclusively concern the purchase of hardware are governed by the General Terms & Conditions for Hardware Procurement.

he is able to provide training to permit optimal use of the hardware and software.

7 Remuneration

7.1 The Supplier shall provide his services at fixed prices or at cost, with a limit applied to the amount of remuneration (cost ceiling). The Supplier shall specify the cost types and rates in his offer.

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

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

7.4 Payment is due once the goods and services are accepted, unless stipulated otherwise in the payment schedule. When a payment is due, the Supplier shall submit a request for payment to the Customer. The Customer shall settle within 30 days after receipt of the request for payment.

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

7.6 The remuneration shall only be adjusted for general price increases where this is provided for, and to the extent specified in the contract.

7.7 If the Supplier reduces the list prices for his goods or services prior to acceptance in whole or in part, the remuneration shall be adjusted accordingly.

8 Changes to contractual specifications

8.1 Either party may submit a written request for contractual specifications to be modified. If the Customer requests a change, the Supplier shall advise him in writing within 20 working days whether or not the change is feasible and what effect it will have on the goods and services provided under the contract, including remuneration and deadlines. The Customer shall then decide within 20 working days whether or not the change is to be accomplished. If the Supplier requests a change, the Customer shall approve or reject the substantiated change request within a period of 20 working days.

8.2 The Supplier may not refuse a request from the Customer for a change, as long as it is feasible in objective terms and does not prejudice the general character of the contractual specifications.

8.3 Any changes in contractual specifications, remuneration, deadlines or other aspects of the contract shall be agreed in a written amendment to the contract before they are performed. The basis for adjusting the remuneration shall be the rates used in the original cost basis, with adjustments for price increases to the extent specified in the contract.

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

9 Hardware and customised software rights

9.1 The Customer shall retain all rights pertaining to hardware specifically produced according to his specifications and to all customised software commissioned by the Customer, including source code, program descriptions and documentation, in both written or machine-readable format. Ideas, methods and techniques which are not protected by law or otherwise may be used and disposed of by both parties. The Supplier shall provide the Customer, prior to joint inspection, with a complete documentation of the software (especially documented source code including outline, data and function models and description of functioning) and with other documentation.

9.2 Patent rights to inventions made in the course of contract performance but not actually being a subject matter of the contract shall be owned as follows:

- by the Customer, if the invention was made by one of his employees
- by the Supplier, if the invention was made by one of his employees or subcontractors
- by both the Customer and the Supplier, if the invention was made jointly by their employees or subcontractors. The parties agree not to charge each other any license fees and may assign their rights to third parties or grant third parties the right of use without the other's permission.

10 Intellectual property rights and rights of use for standard software

10.1 The Supplier or any third party shall retain the intellectual property rights for the standard software. Where third-party rights are involved, the Supplier guarantees that he owns the relevant marketing rights and rights of use.

10.2 The Customer shall be granted a non-transferable and non-exclusive right to use the standard software on the hardware specified in the contract and 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 Supplier, which may however only be refused for valid reasons.

10.3 The Customer may make copies of the standard software for backup and archive purposes. In the event of a failure of the hardware specified in the contract, the Customer may use the standard software on replacement hardware, at no extra cost.

11 Infringement of intellectual property rights

11.1 The Supplier shall contest at his own cost and risk any third-party claims arising from infringement of intellectual property rights. The Customer shall advise the Supplier of such claims without delay and in writing. He shall grant the Supplier sole control over any court proceedings and sole responsibility for taking measures for settlement in or out of court. Under these provisions, the Supplier shall hold the Customer harmless of all costs and damages awarded against the Customer.

11.2 If proceedings are instituted for infringement of intellectual property rights, the Supplier shall either afford the Customer the right to use the software free of any liability resulting from violation of intellectual property rights, or he shall replace the software with another package that satisfies the fundamental contractual requirements.

12 Confidentiality

12.1 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.

12.2 Any advertisement or publication about goods and services supplied for a specific project require the other party's written permission.

12.3 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 total remuneration, but 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.

13 Deployment of staff and loyalty

13.1 The parties shall notify each other in writing of the names and functions of staff with project responsibility. They shall deploy these staff as specified in the project organisation.

13.2 In the performance of this contract, neither party shall deploy staff who were working for the other party on the same project either during contract negotiations

or after the signing of the contract. If either party fails to observe this provision, he shall be liable to pay a contract penalty unless he can prove that no fault is attributable to him. For each infringement this penalty shall amount to 10% of the total remuneration, but no more than CHF 50,000 per infringement. Further claims for compensation under this clause shall be excluded.

14 Inspection and acceptance

14.1 The parties shall perform a joint inspection prior to final acceptance. The Supplier shall give the Customer adequate notice of the inspection date. A report to be signed by both parties shall be drawn up on the tests and their results. Acceptance in several parts is also possible, subject to agreement by both parties.

14.2 If the inspection reveals minor defects, acceptance shall nevertheless take place with the conclusion of the inspection. However, the Supplier shall immediately rectify the defects found and notify the Customer as soon as this is done.

14.3 If the inspection reveals material defects, acceptance shall be postponed. The Supplier shall immediately rectify the defects found and shall invite the Customer to another inspection in good time. If the postponed acceptance leads to contractual deadlines being exceeded, the Supplier shall be in immediate default.

15 Default

15.1 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.

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

16 Warranty

16.1 The Supplier warrants that the goods and services he provides have the qualities agreed upon and also any other qualities which the Customer may assume in good faith without requiring explicit agreement. The Supplier shall not be liable for warranty insofar as the Customer is at fault.

16.2 In the event of a defect, the Customer may initially only demand an improvement free of charge. The Supplier

shall complete the improvement within a deadline fixed by the Customer and entirely at his own expense. In cases where the defect can only be rectified by re-manufacturing the system, the right to demand an improvement shall also include such re-manufacturing.

16.3 If the Supplier does not undertake or successfully complete the improvement, the Customer has the options of:

- reducing the amount of remuneration payable to the Supplier proportionally to the reduction in value of goods or services supplied; 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 Supplier's cost and risk. This shall only apply in the case of material defects.

16.4 Defects shall be notified within 60 days of their detection. The warranty rights shall be time barred one year after acceptance. For improved parts, the notification and warranty period shall commence anew upon completion of the improvement. Where defects are fraudulently concealed, the corresponding rights of the Customer shall only be time barred after 10 years from the acceptance date.

16.5 Replacements and maintenance or service work carried out by the Supplier within the warranty period shall be deemed an improvement of defects unless the Supplier proves the contrary.

17 Liability

17.1 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.

17.2 If any damage arises as a result of a defect, the Supplier shall pay compensation unless he proves that no fault is attributable to him. The Supplier 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.

17.3 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 Customer, 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 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. 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.

17.4 Both parties shall be liable for the acts of their auxiliary persons (e.g. employees, subcontractors) as if they had carried out such acts personally.

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18 Spare parts, maintenance and servicing

18.1 The Supplier guarantees the provision of spare parts to the Customer for at least 6 years from the acceptance date. Deviations from this time limit are to be specified in the contract.

18.2 At the Customer's request the Supplier shall maintain and service the hardware and software for at least 5 years from the end of the 12-month warranty period in accordance with the Customer's General Terms & Conditions for Hardware and Software Maintenance.

18.3 Replacements as well as maintenance and service work carried out by the Supplier after the 12-month warranty period shall be chargeable and shall be billed at the going market rate.

19 Import certificates

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

20 Place of performance

20.1 The place of performance for the goods supplied and services provided by the Supplier shall be the location where the hardware or software is installed.

20.2 Benefit and risk shall pass to the Customer at the place of performance.

21 Assignment and pledging of receivables

Receivables payable to the Supplier may not be assigned or pledged to third parties not affiliated with the Supplier without the Customer's written permission.

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

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

22.2 Should the Supplier 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.

23 Applicable law

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

23.2 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.

24 Special provisions regarding "Year 2000 Conformity"

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

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

24.3 "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.

24.4 "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).

24.5 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.

24.6 In the joint inspection prior to final acceptance, the Supplier shall conclusively demonstrate that the system or the customised software comply with the "Year 2000 Conformity" requirements. The parties shall agree on the method of demonstration.

24.7 Should the joint inspection reveal, or should it turn out at a later date, that the complete data system or the customised software do not comply with the "Year 2000 Conformity" requirements, the Supplier shall be liable for warranty as stipulated in paragraph 16 and 17 of these General Terms & Conditions, **with the special provision that warranty rights in connection with „Year 2000 Conformity“ requirements shall only be time barred after 1 January 2002.**

24.8 Non-compliance with "Year 2000 Conformity" requirements shall be deemed to be a material defect in the sense of the provisions in paragraph 16, conferring to the

Customer the right to obtain from the Supplier 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 Supplier, the necessary alterations, especially adaptations and extensions of the software, to render it fully compliant with "Year 2000 Conformity" requirements. The Customer shall only have this right in the event that the Supplier should not, or not successfully, rectify the defect in accordance with the stipulations in paragraph 16. The liability to pay compensation for damages shall be reserved.

Original: German

In case of disputes the German text shall prevail.