

General terms and conditions for IT works contracts and contracts for the maintenance of individual software packages

A COMMON INTRODUCTORY PROVISIONS

1 Subject matter and validity

1.1 These general terms and conditions (GTC) govern the conclusion, content and performance of IT works contracts and contracts for the maintenance of individual software packages.¹

1.2 Anyone (the supplier) 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.

1.3 Unless otherwise expressly provided in the contractual document, the provisions concerning delivery, acceptance and warranty in accordance with section 24 refer separately and independently of each other to the works contract and to the maintenance of the individual software. The warranty rights arising from the maintenance contract shall not affect those arising from the works contract.

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 supplier 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 supplier shall deploy only carefully selected and well trained staff for the provision of goods/services. 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 supplier shall deploy only employees who have the authorisations required for providing the goods/services.

3.3 The supplier 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 supplier shall impose these obligations on its employees, subcontractors and sub-suppliers, as well as on the third parties it calls upon.

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

4 Involvement of third parties

4.1 The supplier may call upon third parties (e.g. sub-suppliers, subcontractors) for the provision of essential goods/services and goods/services at the client's premises only with the prior written consent of the client. The supplier 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), 23 (confidentiality) and 24 (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 goods/services provided in Switzerland within the framework of contract performance, the supplier 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)² and the provisions on the equal treatment of men and women in terms of equal pay. 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 goods/services provided abroad within the framework of contract performance, the supplier 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)³.

¹ For the procurement and maintenance of standard software, the General terms and conditions for the procurement and maintenance of standard software shall apply.

² SR 822.41

³ 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)

5.3 If the supplier second workers from a foreign country to Switzerland to provide the goods/services, compliance with the provisions of the Posted Workers Act of 8 October 1999⁴ must be ensured.

5.4 For good/services provided in Switzerland within the framework of contract performance, the supplier shall comply with the provisions of Swiss environmental law applicable at the place of performance, namely the Environmental Protection Act (EPA)⁵, the Waters Protection Act (WPA)⁶, the Nature and Cultural Heritage Act (NCHA)⁷, the Forest Act (ForA)⁸ and the Chemicals Act (ChemA)⁹, as well as the ordinances based thereon.

5.5 For goods/services provided abroad within the framework of contract performance, the supplier 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 PPO¹⁰ that are relevant for the supplier's performance.

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

5.7 If the supplier or one of its subcontractors violates obligations arising from this section, the supplier shall be liable to pay a contract penalty unless it proves that it is not at fault. Per violation, the penalty shall amount to 10% of the annual remuneration or of the total remuneration if one-off remuneration has been agreed, but no more than CHF 50,000 in total.

6 Definitions

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

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

6.3 Individual software: software manufactured for a special intended purpose of the client at the client's request, as well as modifications and further developments of that software.

6.4 Standard software: software manufactured for a large number of different clients, without taking account of the client's specified requirements at code level.¹¹

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

6.6 Patch: small changes to software, generally to remedy a bug or security problem in the software in question.

B PRODUCTION OF THE WORK

7 Execution and documentation

7.1 The client shall define the work to be produced (such as individual software) in the contract. The client shall provide the supplier with all the information necessary for contract performance in a timely manner. Any further cooperation duties of the client shall be conclusively agreed in the contractual document.

7.2 The supplier undertakes to produce the work in accordance with the contractual provisions and specifications, the current state of the art and the statutory requirements.

7.3 Upon handover of the work, the supplier shall provide the client with the agreed quantity of complete, copyable documentation in electronic format or hard copy in the agreed languages. This documentation shall include in particular an installation and user manual and, for individual software, the source code, including the information and documentation necessary to edit it.

7.4 The parties shall inform each other in writing of the name and function of the key persons deployed for production of the work.

7.5 The supplier shall exchange the key persons deployed only with the client's written consent. The client will refuse consent only for important reasons.

8 Changes to contractual specifications

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

8.2 If the client requests a change, the supplier 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 goods/services to be provided and on remuneration and deadlines. The supplier may not refuse a change request from the client if the change is feasible in objective terms and the general nature of the goods/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.

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

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

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

⁴ SR 823.20

⁵ SR 814.01

⁶ SR 814.20

⁷ SR 451

⁸ SR 921.0

⁹ SR 813.1

¹⁰ SR 172.056.11

¹¹ For the procurement and maintenance of standard software, the General terms and conditions for the procurement and maintenance of standard software shall apply.

9 Instruction and information

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

9.2 The supplier shall provide the client with regular information on the progress of work and shall immediately inform it of any circumstances that may jeopardise performance in accordance with the contract.

10 Import regulations

The supplier ensures 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 client in writing about any export restrictions in the country of origin.

11 Acceptance procedure

11.1 The supplier undertakes to release only completely tested works and individual software for acceptance. The client may request to inspect the test logs.

11.2 The contracting parties shall agree the acceptance criteria, the schedule for the acceptance procedure and the date of acceptance.

11.3 The supplier shall invite the client to the acceptance inspection in a timely manner. A record of the results thereof shall be prepared and signed by both parties.

11.4 If agreed in writing, partial acceptances shall also be possible. These shall be subject to successful final acceptance.

11.5 If no defects are noted in the inspection, the goods/service shall be accepted by signing the record.

11.6 If only insignificant defects are noted in the inspection, the goods/service shall likewise be accepted by signing the record. The supplier shall remedy the defects found within the scope of the warranty.

11.7 If there are significant defects, acceptance shall be deferred. The supplier shall immediately remedy the defects noted and shall invite the client to a new inspection in a timely manner. If significant defects are noted again in that inspection, and if the contracting parties are unable to agree on a continuation, the contract shall be terminated and all goods/services reimbursed. Claims for compensatory damages remain reserved.

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

C MAINTENANCE AND SUPPORT

12 Maintenance and support for individual software

12.1 To the extent agreed in the contract, the supplier shall maintain the individual software for the purpose of preserving its usability. The type and scope of the service shall be specified in the contract.

12.2 To the extent agreed in the contract, the supplier shall provide support by advising and assisting the client with respect to the use of the individual software to be maintained. The type and scope of the support shall be specified in the contract.

13 Remote access

If the supplier provides goods/services via remote access, it shall take all economically reasonable and technically and organisationally possible precautions to protect data communications from unauthorised access by third parties and to comply with the obligations under sections 22 and 23.

14 Documentation

The supplier shall update the individual software documentation referred to in section 7.3 above as necessary.

15 Remedy of incidents caused by third parties

At the request of the client, the supplier shall participate in the search for the cause of incidents and the remediation thereof, even if one or more incidents may have been caused by the interaction of several systems or components. The parties shall determine in advance how these services are to be remunerated if it is proven that the malfunction was not caused by the software maintained by the supplier.

16 Standby, reaction and repair time

16.1 Standby time

During the standby time set out in the contract, the supplier receives incident reports and client requests through the agreed communication channels. The type 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 in which the supplier has to start analysing and remedying an incident from the time of receipt of the incident report. It depends on the priority assigned to an incident and is to be agreed in the contract. The parties shall jointly agree on the assignment of the respective priority based on the technical and economic needs of the client.

16.3 Repair time

The repair time covers the maximum period from receipt of an incident report by the supplier until the successful remedy of the incident. It shall be specified in the contract.

16.4 The supplier shall notify the client that the incident has been remedied.

16.5 Failure to comply with agreed timeframes

If the supplier fails to comply with one of the timeframes under sections 16.1 to 16.3, it shall be liable to pay a contract penalty, unless it proves that it is not at fault. The amount of the penalty shall be set out in the contract on a case-by-case basis. In such cases, contract penalties are owed even if the goods/services are accepted subject to a corresponding reservation. Payment of contract penalties shall not release the parties from performance or compliance with their contractual obligations; penalties shall be offset against any compensation for damages.

17 Start and duration

17.1 The contract will come into force upon signature by both parties, unless otherwise stated in the contractual document. The contract is entered into for either a fixed or an indefinite period.

17.2 If a contract is concluded for an indefinite period, it may be terminated in writing by the client at the end of a calendar month, unless otherwise agreed; however, the supplier may not terminate the contract until after a term of five years. The termination may also concern only certain parts of the contract. Unless otherwise agreed, the notice period is twelve months for the supplier and three months for the client.

17.3 The right to termination without notice for good cause remains reserved to both parties at all times. Good cause includes the following in particular:

- the occurrence of events or circumstances that make the continuation of the contractual relationship unreasonable for the terminating party, especially the persistent or repeated breach of essential contractual obligations;
- the official publication of the opening of bankruptcy proceedings or of a moratorium on debt enforcement concerning a party.

18 Consequences of termination

The contracting parties shall specify in the contract which operating resources, data and documentation 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 timeframe.

D COMMON FINAL PROVISIONS

19 Place of performance and transfer of benefits and risks

19.1 The client determines the place of performance. Unless otherwise agreed, the place of installation of the work shall be considered the place of performance.

19.2 Benefits and risks are transferred to the client upon successful acceptance.

20 Default

20.1 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.

20.2 If the supplier 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 in the case of one-off payments or of the remuneration for twelve months in the case of recurring services. It shall be owed even if the goods/services are accepted subject to a corresponding reservation. Payment of the contract penalty shall not release the supplier from compliance with the contractual obligations. Contract penalties shall be offset against any compensation for damages.

21 Remuneration

21.1 The supplier shall provide the goods/services:
a. at fixed prices; or
b. on a time and material basis with an upper limit on remuneration (cost ceiling).

21.2 The contractually agreed remuneration covers all work which is necessary for proper performance of the contract. In particular, the remuneration covers the granting of all contractually agreed rights of use, any agreed maintenance and support services, all documentation and insurance costs, as well as fees and public levies (e.g. value added tax, customs duties). The individual cost elements must be listed separately in the offer.

21.3 The remuneration shall be due according to the payment plan or after handover of the work or its installation. The supplier shall assert the remuneration due by submitting an invoice. The due date of the remuneration and the billing frequency for maintenance shall be based on the contract. Value added tax shall be indicated separately.

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

21.5 For central Federal Administration¹² procurements, the supplier is obliged to submit an electronic invoice¹³ to the client if the contract value exceeds CHF 5,000 (excl. VAT). The client determines the delivery options.

21.6 Subject to contractual arrangements to the contrary, the supplier may, with a three-month notice period, demand a justified adjustment of the recurring remuneration as of the beginning of the next calendar year, but at most in line with the trend of Switzerland's Consumer Price Index.

22 Confidentiality

22.1 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.

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

22.3 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 supplier, 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 Act¹⁴, the Public Procurement Act¹⁵ and the Public Procurement Ordinance¹⁶).

22.4 The confidentiality obligation shall not be considered

¹² Art. 7 of the GAOO (SR 172.010.1)

¹³ <http://www.e-rechnung.admin.ch>

¹⁴ SR 152.3

¹⁵ SR 172.056.1

¹⁶ SR 172.056.11

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 supplier insofar as transmission is necessary for contract performance or contractual provisions are transmitted within the group.

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

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

22.7 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 annual remuneration or of the total remuneration if one-off remuneration has been agreed, 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.

23 Data protection and data security

23.1 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.

23.2 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.

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

24 Warranty

24.1 The supplier guarantees that it hands over the work 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 supplier furthermore guarantees that the goods/services supplied 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 supplier assumes a warranty of 24 months from the final acceptance of the work produced. During the warranty period, defects may be claimed at any time. Even after expiry of the warranty period, the supplier is required to honour claims arising from the warranty rights of the client set out below, provided that the defects were brought to the supplier's attention in writing during the warranty period.

24.2 The supplier guarantees that it and the third parties it calls upon are in possession of all the rights to provide its

goods/services in accordance with the contract. In particular, it is entitled to grant the client the rights to the work according to the contractually agreed scope.

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

24.4 In the event of a defect, the client shall have the option of requesting rectification or deducting the corresponding value reduction from the remuneration. If there are substantial defects, the client may withdraw from the contract. If the defect concerns the data storage devices or documentation supplied by the supplier, the client shall additionally have the right to demand an error-free replacement delivery.

24.5 If the client requests rectification or a replacement delivery, the supplier shall remedy the defects by the imposed deadline 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.

24.6 If the supplier fails to carry out the requested rectification or replacement delivery, or fails to do so successfully, the client shall have the option

- of deducting the corresponding value reduction from the remuneration, or
- of demanding that the necessary documents (in particular the source code and the information and documentation required to edit it) be handed over – to the extent the supplier 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 supplier, or
- of withdrawing from the contract.

24.7 If damage has occurred due to a defect, then the supplier shall additionally be liable for compensation therefor in accordance with section 27.

25 Property rights

25.1 All property rights (intangible property rights and related rights, as well as entitlements) pertaining to the work within the framework of production and maintenance (especially pertaining to the source code and documentation) 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.

25.2 The client may dispose of the work 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 supplier rights to use the work results in the contract.

25.3 With respect to pre-existing property rights appertaining to parts of the work, 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 within the meaning of section 25.2. The supplier 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.

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

26 Breach of property rights

26.1 The supplier 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 supplier, the supplier shall immediately inform the client in writing. If the third party asserts claims directly against the client, the supplier shall, upon the client's first request and to the extent possible under the relevant code of procedure, participate in the dispute. The supplier 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 supplier shall be required to assume the agreed payment to the third party only if the supplier gave its prior consent.

26.2 If, pursuant to property rights asserted, the client is unable to use the contractually owed goods/services in whole or in part, the supplier shall have the option of changing its goods/services in such a way that they do not breach the rights of third parties but nonetheless comply with the contractually owed scope of goods/services, or of obtaining a licence from the third party at its own expense. If the supplier fails to implement any of these options within a reasonable timeframe, the client may withdraw from the contract with immediate effect. The supplier shall indemnify the client within the framework of section 27. Insofar as the client is responsible for the breach of property rights, the claims against the supplier are excluded.

27 Liability

27.1 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.

27.2 In accordance with section 27.1, 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.

28 Contract amendments, inconsistencies and partial invalidity

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

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

28.3 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.

29 Assignment and pledging

The supplier 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.

30 Applicable law and place of jurisdiction

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

30.2 Application of the provisions of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (Vienna Convention)¹⁷ is expressly excluded.

30.3 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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¹⁷ SR 0.221.211.1