

# General Terms and Conditions for IT Services

## A COMMON INTRODUCTORY PROVISIONS

### 1 Object and validity

1.1 The present General Terms and Conditions (GTC) govern the conclusion, content and execution of contracts concerning IT services, especially in relation to consulting, planning, assistance and training.

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

### 2 Offer

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

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

2.3 The supplier shall indicate the value added tax separately in the offer.

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

### 3 Deployment of staff

3.1 The supplier shall deploy only carefully selected and appropriately trained staff. The supplier shall replace staff members who do not have sufficient expertise or otherwise interfere with or endanger performance of the contract. In particular, the supplier shall take account of the client's interest in continuity.

3.2 The supplier shall only deploy staff with the authorizations required for rendering of the services.

3.3 The parties shall inform each other in writing of the name and function of the staff members deployed to perform the contract.

3.4 The supplier shall exchange the deployed staff members only with the written consent of the client. The client shall refuse consent only on important grounds.

3.5 The supplier shall comply with the company regulations of the client, in particular the safety provisions and house rules. The client shall communicate the necessary information in a timely manner. The supplier shall impose these obligations on its staff, subcontractors, sub-suppliers, and engaged third parties.

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

### 4 Engagement of third parties

4.1 The supplier may engage third parties (e.g. sub-suppliers, subcontractors) for the rendering of its services only with prior written consent of the client. The supplier shall remain liable for the rendering of contractual services by the engaged third parties.

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

4.3 The parties shall impose the obligations set out in clause 3 (deployment of staff), 5 (observation of health and safety standards, conditions of employment, equal treatment of sexes in relation to salary), 16 (confidentiality) and 17 (data protection and data security) on the engaged third parties (e.g. sub-suppliers, subcontractors, substitutes).

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

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

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

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

### 6 Social insurances

6.1 If the supplier is a legal person, it shall, as an independent company, undertake the required registrations for itself and its staff members with respect to social insurances. If the supplier is not a legal person, the supplier must show upon submitting

1 ILO conventions: No. 29 of 28 June 1930 concerning Forced or Compulsory Labour (SR 0.822.713.9), No. 87 of 9 July 1948 concerning Freedom of Association and Protection of the Right to Organise (SR 0.822.719.7), No. 98 of 1 July 1949 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (SR 0.822.719.9), No. 100 of 29 June 1951 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (SR 0.822.720.0), No. 105 of 25 June 1957 concerning the Abolition of Forced Labour (SR 0.822.720.5), No. 111 of 25 June 1958 concerning Discrimination in Respect of Employment and Occupation (SR 0.822.721.1), No. 138 of 26 June 1973 concerning Minimum Age for Admission to Employment (SR 0.822.723.8), No. 182 of 17 June 1999 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (SR 0.822.728.2).

2 SR 823.20

the offer that he/she has joined a compensation fund as a self-employed person.

6.2 The client is not liable for social benefits (Old Age and Survivors' Insurance, Disability Insurance, Unemployment Insurance, etc.) or other compensation benefits, especially in the event of accident, sickness, disability or death.

## **7 Definitions**

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

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

## **B RENDERING OF SERVICES**

### **8 Execution and information**

8.1 The supplier undertakes to perform the contract diligently, faithfully and competently and guarantees that all services rendered comply with the contractual conditions and specifications, the current state of technology, and the legal requirements.

8.2 The client informs the supplier in a timely manner of all terms of reference necessary to perform the contract. Any other duties of the client to participate are agreed exhaustively in the contractual document.

8.3 The supplier informs the client regularly of the progress of work and, immediately and in writing, indicates to the client any facts or circumstances it has noted or that are recognizable to it that may interfere with or endanger the performance in accordance with the contract.

8.4 The client has the right to verify the status of performance of the contract and to demand information in that regard.

## **C SUPPLEMENTARY PROVISIONS FOR SERVICE ELEMENTS WITH THE NATURE OF A WORKS CONTRACT**

### **9 Documentation and instruction**

9.1 Together with the agreed service, the supplier provides the client with a complete, copyable documentation in electronic or paper form in the agreed languages and number.

9.2 The client may copy and use the documentation for the contractual purpose.

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

### **10 Changes to contractual specifications**

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

10.2 If the client requests a change, the supplier shall advise the client in writing within 10 working days whether or not the change is feasible and what effect it will have on the services provided and on remuneration and deadlines. The supplier may not refuse a request from the client for a change, as long as it is feasible in objective terms and does not prejudice the general character of the contractual specifications. The client shall decide whether the change shall be carried out within 10 working days of receipt of the notice.

10.3 If the supplier requests a change, the client may accept or refuse an application to that effect within 10 working days of receipt of the notice.

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

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

### **11 Acceptance**

11.1 The supplier shall indicate completion of the agreed services to the client in a timely manner.

11.2 The client shall inspect the services as soon as feasible according to usual business practice and shall indicate any defects to the supplier.

11.3 If any defects are insignificant, acceptance shall nonetheless take place at the time of conclusion of the inspection. If any defects are significant, the services rendered are not accepted. The claims available to the client in both cases are governed by clause 12.

11.4 If, despite a reminder, the client fails to conduct the acceptance inspection within a reasonable grace period, the service shall be considered accepted.

## **D COMMON FINAL PROVISIONS**

### **12 Warranty**

12.1 The supplier guarantees that the services rendered 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 furthermore guarantees that it hands over any works produced within the framework of the contract in good faith with all the agreed and assured characteristics required for the intended use and that the works comply with the relevant legal requirements. The supplier assumes a warranty of 12 months from the receipt or acceptance of the fully rendered, contractually agreed services. During the warranty period, the client may claim defects 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.

12.2 The supplier guarantees that it and engaged third parties are in possession of all the rights to render their services under the contract. In particular, it is entitled to grant the client the rights to the work results according to the contractually agreed scope.

12.3 All documents made available by the client to the supplier, including those in electronic form, may be used and copied exclusively for the purpose of rendering the services. To that extent, the client guarantees that the use of the documents by the supplier do not violate the intellectual property rights of third parties.

12.4 In the event of a defect, the client has the option of demanding remediation of the defect or of deducting the value reduction from the remuneration.

12.5 If the client demands remediation of the defect, the supplier shall remedy the defect by the deadline imposed by the client and bear the costs arising therefrom. If remediation of the defect is only possible by way of new production, then the right to remediation shall also encompass the right to new production.

12.6 If the supplier fails to carry out the demanded remediation of the defect or fails to do so successfully, the client has the option:

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

12.7 If damage has occurred due to the defect, then the supplier shall be additionally liable for compensation therefor in accordance with clause 20.

### 13 Place of performance

The client designates the place of performance. Unless otherwise agreed, the place of delivery shall be considered the place of performance.

### 14 Default

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

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

### 15 Remuneration

15.1 The supplier renders the services:

- a. for a fixed price; or
- b. in accordance with costs with an upper limit on remuneration (cost ceiling).

15.2 The contractually agreed remuneration covers all work which is necessary for the proper performance of the contract. In particular, the remuneration covers the transfer of rights, all documentation and material costs as well as fees and public dues (e.g. value added tax).

15.3 The remuneration is due upon rendering of the services, subject to any contractually agreed payment plan. When the remuneration is due, the supplier submits the corresponding invoice. Value added tax shall be indicated separately in the invoice.

15.4 The client shall make payments due within 30 days of receipt of the invoice.

### 16 Confidentiality

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

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

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

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

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

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

### 17 Data protection and data security

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

17.2 Personal data may be processed only for the purpose and to the extent necessary for performance and execution of the contract. To that extent and for that purpose, personal data may also be transmitted to a company in Switzerland or abroad associated with one of the contracting parties, provided that the prerequisites set out in the provisions of Swiss data protection legislation are met.

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

## 18 Intellectual property rights

18.1 All intellectual property rights (rights to intangible property and related rights) pertaining to agreed work products generated within the framework of performance of the contract shall belong to the client, unless otherwise agreed in the contract. Personal rights to intangible property remain reserved, provided they are not transferrable by law.

18.2 The client may dispose of all work products without restrictions in terms of time, space and substance. The disposal rights encompass all rights of use possible now and in future, especially use, publication, sale and modification. Modification encompasses in particular change, further processing and use for the creation of new work products. The client may grant the supplier rights to use the work products in the contract.

18.3 With respect to pre-existing intellectual property rights appertaining to parts of agreed work products, the client shall receive a non-exclusive, transferrable right to use without restrictions in terms of time, space and substance, which grants the client the possibility to use and dispose of the work products within the meaning of clause 18.2. The supplier undertakes not to establish any rights based on those pre-existing rights which might be asserted against the possibilities of use granted here. In particular, the supplier undertakes to transfer or license these intellectual property rights only subject to the rights of use of the client.

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

## 19 Breach of intellectual property rights

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

19.2 If, pursuant to intellectual property rights asserted, the client is unable to use the contractually owed services in whole or in part, then the supplier has the option of changing its services in such a way that they do not breach the rights of third parties but nonetheless comply with the contractually owed scope of services, or of obtaining a licence from the third party at its own expense. If the supplier fails to implement any of these options within a reasonable period, the client may withdraw from the contract with immediate effect. The supplier shall indemnify the client within the framework of clause 20. To the extent that the client is responsible for the breach of intellectual property rights, the claims against the supplier are excluded.

## 20 Liability

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

20.2 In accordance with clause 20.1, the parties shall be liable for the conduct of their staff members and other auxiliary persons as well as third parties engaged for the purpose of performance of the contract (e.g. subsuppliers, subcontractors, substitutes) in the same way as for their own conduct.

## 21 Contract amendments, inconsistencies and partial invalidity

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

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

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

## 22 Assignment and pledges

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

## 23 Applicable law and place of jurisdiction

23.1 Swiss law shall be applicable exclusively.

23.2 The exclusive place of jurisdiction shall be **Zurich**.

## 24 Vienna Convention

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