

# General Terms and Conditions for IT Works Contracts and Contracts for the Maintenance of Individual Software

## A COMMON INTRODUCTORY PROVISIONS

### 1 Object and validity

1.1 The present General Terms and Conditions (GTC) govern the conclusion, content and execution of IT works contracts and contracts for the maintenance of individual software. (1)

1.2 Anyone (the supplier) submitting an offer to the customer thereby accepts the present GTC, unless stated otherwise in the tender. Changes and amendments to the present 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 clause 24 shall apply separately and mutually independently to the works contract and to the contracts for 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 any demonstrations is free of charge unless stated otherwise in the tender.

2.2 The offer is prepared on the basis of the customer's tender. If the offer deviates from the tender or the GTC of the customer, 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 3 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 for the rendering of services. 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 customer's interest in continuity.

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

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

3.4 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. subsuppliers, subcontractors) for the rendering of essential services and of services at the sites of the customer only with prior written consent of the customer. 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), 22 (confidentiality) and 23 (data protection and data security) on the engaged third parties (e.g. subsuppliers, 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. (2)

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. (3)

**5.3 Should the supplier violate the obligations arising from this clause, 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 annual remuneration, or of the entire remuneration if one-off remuneration has been agreed, though no more than CHF 50,000 in total.**

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 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).

3 SR 823.20

## 6 Definitionen

6.1 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).

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

6.3 Individual software: software manufactured for a special intended purpose of the customer on the customer'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 requirements specified by the customer at the level of code. <sup>(4)</sup>

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 of the software in question.

## B PRODUCTION OF THE WORK

### 7 Execution and documentation

7.1 The customer defines the work to be produced (such as individual software) in the contract. The customer provides the supplier in a timely manner with all the information necessary to perform the contract. Any other obligations of the customer to participate shall be agreed exhaustively 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 technology and the legal requirements.

7.3 Upon handover of the work, the supplier provides the customer with a complete, copyable documentation in electronic or paper form in the agreed languages and number. This documentation includes in particular an installation and user manual and, in the case of individual software, the source code including the information and documentation necessary to edit it.

7.4 The parties 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 deployed key persons only with the written consent of the customer. The customer shall refuse consent only on important grounds.

### 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 customer requests a change, the supplier shall advise the customer in writing within 10 working days whether or not the change is feasible and what effect it will have on the services and on remuneration and deadlines. The supplier may not refuse a request from the customer for a change, as long as it is

<sup>4</sup> For the procurement and maintenance of standard software, the „General Terms and Conditions for the Procurement and Maintenance of Standard Software“ shall apply.

feasible in objective terms and does not prejudice the general character of the contractual specifications. The customer shall decide whether the change shall be carried out within 10 working days of receipt of the notice.

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

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

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

## 9 Instruction and information

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

9.2 The supplier informs the customer regularly of the progress of work and immediately indicates to the customer any circumstances that may endanger performance in accordance with the contract.

## 10 Import requirements

The supplier guarantees compliance with any export restrictions and import regulations from the place of origin to the place of delivery in accordance with the contract. The supplier informs the customer in writing about any export restrictions of the country of origin.

## 11 Acceptance procedure

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

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

11.3 The supplier shall invite the customer to the acceptance inspection in a timely manner. A protocol shall be prepared on the results thereof, which shall be signed by both contracting parties.

11.4 Where agreed in writing, partial acceptances are possible. These are subject to successful final acceptance.

11.5 If no defects are noted in the inspection, the service is accepted by signing the protocol.

11.6 If only insignificant defects are noted in the inspection, the service is nonetheless accepted by signing the protocol. The supplier remedies the defects noted as part of its warranty services.

11.7 If there are significant defects, the acceptance is deferred. The supplier shall immediately remedy the defects noted and shall invite the customer 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 services are reimbursed. Compensation claims remain reserved.

11.8 If the customer fails to conduct the acceptance inspection within a reasonable grace period, the service shall be considered accepted.

## C MAINTENANCE AND SUPPORT

### 12 Maintenance and support of the individual software

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

12.2 To the extent agreed in the contract, the supplier provides support by advising and assisting the customer with respect to the use of the individual software covered by the maintenance agreement. The manner and scope of the support shall be specified in the contract.

### 13 Remote access

If the supplier renders services via remote access, it shall take all economically reasonable and technically and organizationally possible measures to protect data communications from unauthorized access by third parties and to comply with the obligations set out in clauses 22 and 23.

### 14 Documentation

The supplier updates the documentation of the individual software in accordance with clause 7.3 above to the extent necessary.

### 15 Remedy of incidents caused by third parties

On request of the customer, the supplier shall participate in the search for the cause of incidents and the remediation thereof, even if an incident or several incidents may have been caused by the interaction of several systems or components. The parties 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 requests by way of the agreed communication channels. The manner 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 during which the supplier must begin to analyze and remedy an incident from the time the incident report has been received. The reaction time depends on the priority assigned to an incident and shall be agreed in the contract. The parties shall jointly agree the assignment of the appropriate priority on the basis of the technical and economic needs of the customer.

#### 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. The repair time shall be determined in the contract.

16.4 The supplier notifies the customer that an incident has been remedied.

#### 16.5 Failure to meet agreed deadlines

**If the supplier fails to meet the deadlines referred to in clauses 16.1 through 16.3, the supplier shall be liable for a penalty, unless the supplier can prove that no fault is attributable to it. The amount of the penalty shall be set out in the contract on a case-by-case basis.**

**In such cases, a penalty is also owed if the services were accepted subject to a relevant reservation. Payment of penalties does not release the parties from performance or compliance with contractual obligations; penalties are offset against any compensation for damages.**

## 17 Beginning and duration

17.1 The contract enters into effect with the signature of both parties, unless otherwise stated in the contractual document. The contract is concluded either for a definite or for an indefinite time period.

17.2 If a contract is concluded for an indefinite time period and unless otherwise agreed, it may be terminated in writing by the customer as of the end of a calendar month, by the supplier, however, only after a term of five years. The termination may also only relate to certain parts of the contract. Unless otherwise agreed, the term of notice is 12 months for the supplier and 3 months for the customer.

17.3 The right to termination without notice on important grounds remains reserved to both parties at all times. Important grounds include the following in particular:

- the occurrence of events or circumstances that make continuation of the contractual relationship unreasonable for the terminating party, especially the continuing or repeated breach of essential contractual duties;
- the official publication of an application for bankruptcy or of a moratorium granted to a party.

## 18 Consequences of termination

In the contract, the contracting parties shall specify which resources, data and documents 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 time period.

## D COMMON FINAL PROVISIONS

### 19 Place of performance and transfer of benefits and dangers

19.1 The customer designates 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 dangers are transferred to the customer upon successful acceptance.

## 20 Default

20.1 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.

**20.2 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 in the case of one-off payments or of the remuneration for 12 months in the case of recurring services. 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.**

## 21 Remuneration

21.1 The supplier renders its services:

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

21.2 The contractually agreed remuneration covers all work which is necessary for the 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 dues (e.g. value added tax, customs). The individual cost elements must be listed separately in the offer.

21.3 The remuneration is due according to the payment plan or after handover of the work or its installation. When the remuneration is due, the supplier submits the corresponding invoice. The due date of the remuneration and the billing frequency for maintenance shall be set out in the contract. Value added tax shall be indicated separately.

21.4 The customer shall make payments due within 30 days of receipt of the invoice.

21.5 Subject to other arrangements set out in the contract, the supplier may, with a three-month period of notice, demand a justified adjustment of the recurring remuneration as of the beginning of the next calendar year, but at most according to the development of the Swiss national index for consumer prices.

## 22 Confidentiality

22.1 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.

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

22.3 The confidentiality obligation shall not be considered breached if confidential information is transmitted by the customer within the customer'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.

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

22.5 The parties shall impose the confidentiality obligation on their staff members, subcontractors, sub-suppliers and other engaged third parties.

**22.6 Should one of the parties violate the 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 annual remuneration, or of the entire remuneration if one-off remuneration has been agreed, 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.**

## 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 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.

23.2 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.

23.3 The parties shall impose these obligations on their staff members, subcontractors, sub-suppliers and other engaged third parties.

## 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 services rendered have all the agreed and assured characteristics as well as the characteristics that the customer may in good faith also expect without any special agreement. The supplier assumes a warranty of 12 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 customer 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 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 customer the rights to the work results according to the contractually agreed scope.



24.3 All documents made available by the customer 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 customer guarantees that the use of the documents by the supplier do not violate the intellectual property rights of third parties.

24.4 In the event of a defect, the customer has the option of demanding remediation of the defect or of deducting the value reduction from the remuneration. If there are substantial defects, the customer may withdraw from the contract. If the defect concerns the data carriers or documentation provided by the supplier, the customer additionally has the right to demand an error-free replacement delivery.

24.5 If the customer demands remediation of the defect or a replacement delivery, the supplier shall remedy the defects by the deadline imposed by the customer 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.

24.6 If the supplier fails to carry out the demanded remediation of the defect or the replacement delivery or fails to do so successfully, the customer has the option:

- a. of deducting the value reduction from the remuneration; or
- b. of demanding that the necessary documents (especially 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 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.

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

## 25 Intellectual property rights

25.1 All intellectual property rights (rights and contingent rights to intangible property and related rights) pertaining to the work within the framework of production and maintenance (especially pertaining to the source code and the documentation) belong to the customer, unless otherwise agreed in the contract. Personal rights to intangible property remain reserved, provided they are not transferrable by law.

25.2 The customer may dispose of the work 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 customer may grant the supplier rights to use the work products in the contract.

25.3 With respect to pre-existing intellectual property rights appertaining to parts of the work, the customer shall receive a non-exclusive, transferrable right to use without restrictions in terms of time, space and substance, which grants the customer the possibility to use and dispose of the work within the meaning of clause 25.2. 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 customer.

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

## 26 Breach of intellectual property rights

26.1 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 customer in writing. If the third party asserts claims directly against the customer, the supplier shall, upon the first request of the customer 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 customer 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.

26.2 If, pursuant to intellectual property rights asserted, the customer 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 customer may withdraw from the contract with immediate effect. The supplier shall indemnify the customer within the framework of clause 27. To the extent that the customer is responsible for the breach of intellectual 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 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.

27.2 In accordance with clause 27.1, 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.

## 28 Contract amendments, inconsistencies and partial invalidity

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

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

28.3 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.

## **29 Assignment and pledges**

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

## **30 Applicable law and place of jurisdiction**

30.1 Swiss law shall be applicable exclusively.

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

## **31 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) (5) is expressly excluded.