

General terms and conditions for IT services

A COMMON INTRODUCTORY PROVISIONS

1 Subject matter and validity

- 1.1 These general terms and conditions (GTC) govern the conclusion, content and performance of contracts concerning IT services, especially in the areas of consultancy, planning, support and training.
- 1.2 Anyone (contractor) 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.

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 contractor 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 contractor shall deploy only carefully selected and well trained staff. 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 contractor shall deploy only employees who have the authorisations required for providing the goods/services.
- 3.3 The parties shall inform each other in writing of the name and function of the employees deployed for contract performance.
- 3.4 The contractor shall exchange the deployed employees only with the client's written consent.

The client will refuse consent only for compelling reasons.

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

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

4 Involvement of third parties

- 4.1 The contractor may engage third parties (e.g. suppliers, subcontractors) for the rendering of its services only with the prior written consent of the client. The contractor shall remain liable for the provision of goods/services 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), 16 (confidentiality) and 17 (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 contractor 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)¹ 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 contractor 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) in accordance with Annex 6 to the PPA².
- 5.3 If the contractor 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 1999³ must be ensured.
- 5.4 For goods/services provided in Switzerland within the framework of contract performance, the contractor shall comply with the provisions of Swiss environmental law applicable at the place of performance, namely the Environmental Protection Act (EPA)⁴, the Waters Protection Act (WPA)⁵, the Nature and Cultural Heritage Act (NCHA)⁶, the Forest Act (ForA)⁷ and the Chemicals Act (ChemA)⁸, as well as the ordinances based thereon.
- 5.5 For goods/services provided abroad within the framework of contract performance, the contractor 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 to the PPO⁹ that are relevant for the contractor's performance.
- 5.6 The contractor is obliged to contractually impose the requirements according to sections 5.1 to 5.5 above on its subcontractors.
- 5.7 If the contractor itself or a third party engaged by it violates obligations arising from this section 5, it shall be liable to pay a contract penalty unless it proves that it is not at fault. The penalty shall amount to 10% of the agreed maximum total remuneration including optional goods/services, or 10% of the**

remuneration agreed for the subsequent 12 months in the case of permanent contracts, or 10% of the remuneration for the preceding 12 months in the case of a shorter remaining contract term, but at least CHF 3,000 per violation and no more than a total of CHF 100,000 per contract; in the case of a framework contract, this upper limit shall apply once for the entire contractual relationship. Payment of the contract penalty shall not imply release from compliance with contractual obligations and shall be offset against any claims for damages.

6 Social security

- 6.1 If the contractor is a legal entity, it shall, as an independent company, take care of the necessary registrations for itself and its staff members with respect to social security. If the contractor is not a legal entity, the contractor must show upon submitting the offer that he/she is affiliated to 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 compensatory benefits, especially in the event of accident, sickness, disability or death.

7 Definitions

- 7.1 Contract: all of the documents belonging to the agreement (i.e. main document plus all associated components such as the GTC and other appendices).
- 7.2 Contract document: the main document belonging to the agreement (i.e. without additional associated components such as the GTC and other appendices).

B PROVISION OF SERVICES

8 Execution and information

- 8.1 The contractor undertakes to perform the contract diligently, faithfully and competently, and guarantees that all goods/services provided comply with the contractual conditions and specifications, the current state of the art and the statutory requirements.

¹ SR 822.41
² SR 172.056.1
³ SR 823.20
⁴ SR 814.01
⁵ SR 814.20

⁶ SR 451
⁷ SR 921.0
⁸ SR 813.1
⁹ SR 172.056.11

- 8.2 The client will supply the contractor in a timely manner with all guidance necessary to perform the contract. Any further cooperation duties of the client shall be conclusively agreed in the contract document.
- 8.3 The contractor shall provide the client with regular information on the progress of work and shall immediately inform it in writing of any circumstances it has noted or that are recognisable to it that may interfere with or jeopardise performance in accordance with the contract.
- 8.4 The client shall have the right to check the status of contract performance and to request information in that regard.

C SUPPLEMENTARY PROVISIONS FOR SERVICE ELEMENTS WITH THE NATURE OF A WORK CONTRACT

9 Documentation and instruction

- 9.1 Together with the agreed goods/services, the contractor shall provide the client with the agreed quantity of complete, copyable documentation in electronic format or hard copy in the agreed languages.
- 9.2 The contractor may copy and use the documentation for use in accordance with the contract.
- 9.3 Where agreed and against separate payment, the contractor shall furnish initial instruction to be determined according to the 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 contractor 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 contractor 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.
- 10.3 If the contractor requests a change, the client may accept or reject a corresponding request within ten working days of receipt of the notice.

- 10.4 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.
- 10.5 During consideration of change requests, the contractor shall continue its work in accordance with the contract, unless the client instructs otherwise.

11 Acceptance

- 11.1 The contractor shall notify the client in good time of the completion of the agreed goods/services.
- 11.2 The client shall inspect the goods/services as soon as feasible according to usual business practice and shall notify the contractor of any defects.
- 11.3 If any defects are insignificant, acceptance shall nevertheless take place upon completion of the inspection. If any defects are significant, the goods/services provided shall not be accepted. The claims available to the client in both cases are governed by section 12.
- 11.4 If, despite a reminder, the client fails to conduct the acceptance inspection within a reasonable grace period, the goods/services shall be deemed accepted.

12 Warranty

- 12.1 The contractor 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 contractor 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 contractor assumes a warranty of 24 months from the receipt or acceptance of the fully supplied, contractually agreed goods/services. During the warranty period, the client may notify defects at any time. Even after expiry of the warranty period, the contractor is required to honour claims arising from the warranty rights of the client set out below, provided that the defects were brought to the contractor's attention in writing during the warranty period.
- 12.2 The contractor guarantees that it and the third parties it calls upon are in possession of all the

rights to provide the goods/services in accordance with 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 contractor, 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 contractor does not violate the property rights of third parties.
- 12.4 In the event of a defect, the client shall have the option of requesting rectification or deducting the corresponding value reduction from the remuneration.
- 12.5 If the client demands remediation of the defect, the contractor 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, the right to rectification shall also encompass the right to new production.
- 12.6 If the contractor fails to carry out the requested rectification, or fails to do so successfully, the client shall have the option
- a. of deducting the corresponding value reduction from the remuneration or,
 - b. of demanding that the necessary documents (in particular the source code) be handed over – to the extent the contractor is entitled to hand them over – and to take the necessary measures itself or have them carried out by a third party at the expense and risk of the contractor, or
 - c. of withdrawing from the contract.
- 12.7 If damage has occurred due to a defect, then the contractor shall additionally be liable for compensation therefor in accordance with section 20.

D COMMON FINAL PROVISIONS

13 Place of performance

The contractor determines 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 firmly agreed deadlines (expiry date transactions), they shall immediately be deemed to be in default, and in all other cases upon receiving a reminder.
- 14.2 If the contractor is in default, it shall be liable to pay a contract penalty unless it proves that it is not at fault. The penalty shall amount to 0.1% per commenced calendar day of delay, but no more than a total of 10% of the maximum total remuneration including optional goods/services per contract and case of default, or 10% of the remuneration agreed for the subsequent 12 months in the case of permanent contracts, or 10% of the remuneration for the preceding 12 months in the case of a shorter remaining contract term at the beginning of the default. It shall be owed even if the goods/services are accepted subject to a corresponding reservation. Payment of the contract penalty shall not imply release from compliance with contractual obligations and shall be offset against any claims for damages.**

15 Remuneration

- 15.1 The contractor will render the services:
- a. at fixed prices; or
 - b. on a time and material basis with an upper limit on remuneration (cost ceiling).
- 15.2 The contractually agreed remuneration covers all work which is necessary for proper performance of the contract. In particular, it includes all contractually agreed ancillary deliverables, material, packaging, transport and insurance costs, the transfer or use of rights, documentation, secretarial and infrastructure costs (overheads), social benefits, expenses, fees and public levies. Any value added tax or import tax due shall be payable together with the remuneration, but must always be indicated separately in the offer, contract and invoice.
- 15.3 The remuneration shall be due upon the supply of the goods/services, subject to any contractually agreed payment plan. The contractor shall assert the remuneration due by submitting an invoice.
- 15.4 The client shall make outstanding payments within 30 days of receipt of the invoice.

15.5 For central Federal Administration procurements¹⁰, the contractor is obliged to submit an electronic invoice¹¹ to the client if the contract value exceeds CHF 5,000 (excl. VAT). The client determines the delivery options.

16 Confidentiality

16.1 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.

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

16.3 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 contractor, item(s) procured and mandate value, award 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 FoIA¹², PPA¹³, PPO¹⁴).

16.4 The confidentiality obligation shall not be considered 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 contractor insofar as transmission is necessary for contract performance or contractual provisions are transmitted within the group.

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

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

16.7 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 maximum total agreed remuneration including optional goods/services, or 10% of the remuneration agreed for the subsequent 12 months in the case of permanent contracts, or 10% of the remuneration for the preceding 12 months in the case of a shorter remaining contract term, but no more than CHF 50,000 in total per case. Payment of the contract penalty shall not imply release from compliance with the confidentiality obligations and shall be offset against any claims for damages.

16.8 Irrespective of these confidentiality agreements, the contractor and persons acting on its behalf may be deemed auxiliaries of an authority and thus be subject to official secrecy. A breach of official secrecy is punishable under Article 320 of the SCC¹⁵.

17 Data protection and data security

17.1 The parties undertake to take the economically reasonable and technically and organisationally possible precautions to ensure that the data arising in the course of contract execution, made available for proper contract performance or created on their premises is effectively protected against unauthorised access by third parties. This applies especially to security-related data and personal data. In this regard, all statutory requirements must be complied with¹⁶.

17.2 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.

17.3 If the contractor is provided with data of the client within the scope of contract performance, the contractor shall be obliged to return such data after termination of the contract and to irrevocably delete or destroy it on both primary

¹⁰ Art. 7 of the GAOO (SR 172.010.1)

¹¹ <https://www.efv.admin.ch/efv/en/home/efv/erechnung/aktuell.html>

¹² SR 152.3

¹³ SR 172.056.1

¹⁴ SR 172.056.11

¹⁵ SR 311.0

¹⁶ At the time of going to press, in particular: the Federal Act on Data Protection (FADP; SR 235.1) and the Federal Act on Information Security in the Confederation (Information Security Act, ISA; SR 128), in each case including the implementing ordinances

and secondary media (test or backup media, etc.). The deletion or destruction of the data shall be carried out in accordance with the currently recognised state of the art and shall be confirmed to the client in writing upon request. The return, deletion or destruction of the data must take place within 30 days after contract termination. If the data on backup media cannot be deleted, the backups must be protected in accordance with the recognised state of the art and must be deleted or destroyed within one year at the latest. If the contractor is subject to a legal obligation to retain data, the return, deletion or destruction of the data subject to this retention obligation must take place within 30 days after the end of the retention period.

- 17.4 The parties shall impose these obligations on their employees, subcontractors and sub-suppliers, as well as on other third parties called upon.
- 17.5 Any right of the client to audit the contractor's security measures with regard to data protection and data security shall be the subject of a separate contractual agreement between the parties.

18 Property rights

- 18.1 All property rights (intangible property rights and related rights, as well as entitlements) pertaining to the agreed work results generated within the framework of contract performance 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.
- 18.2 The client may dispose of all work results 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 contractor rights to use the work results in the contract.
- 18.3 With respect to pre-existing property rights appertaining to parts of agreed work results, 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 results within the meaning of section 18.2. The contractor 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.

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

19 Breach of property rights

- 19.1 The contractor shall immediately, at its own expense and risk, defend against claims asserted against it by third parties for a breach of property rights within the scope of its contractual goods/services. If a third party brings proceedings against the contractor, the contractor must immediately inform the client in writing. If the third party asserts the claims directly against the client, the contractor shall, upon the first request of the client and to the extent possible under the applicable code of procedure, support its defence and participate in the dispute. The contractor undertakes to bear all costs (including compensation for damages) incurred by the client as a result of the defence, the conduct of the proceedings and any settlement of the legal dispute. In the event of a settlement, the contractor shall be required to assume the agreed payment to the third party only if the contractor gave its prior consent.
- 19.2 If, due to a breach of property rights for which it is not responsible, the client is prevented from using or availing itself of the contractual goods/services in whole or in part, it shall grant the contractor a reasonable period of time to either modify or replace its goods/services in such a way that they do not breach any third-party rights or else to procure a licence from the third party, at the contractor's discretion, while retaining the same scope of performance. The contractor shall bear all associated costs and reimburse the client for its expenses. If the contractor fails to implement any of these options within the deadline, the client may, at its discretion, withdraw from the contract with immediate effect or forgo the use of the relevant part of the goods/services, with a proportionate reduction in the remuneration. In any case, even in the event of slight negligence, it may demand compensation for the damage directly associated with this. In addition, section 20 applies.

20 Liability

- 20.1 The parties are liable for all damages they cause to the other party unless they prove that they are not at fault. In any event, liability is limited to the actual, proven damage incurred; liability for loss of profits is excluded. Unless otherwise stipulated in the contract, liability for slight negligence, with the exception of personal injury, shall be limited to a maximum of CHF 1 million per contract. However, the limitation of liability shall apply only if the liable party took all reasonable measures to minimise the damage.
- 20.2 In accordance with section 20.1, 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. suppliers, subcontractors, substitutes) in the same way as for their own conduct.

21 Contract amendments, inconsistencies and partial invalidity

- 21.1 Amendments and addenda to the contract as well as cancellation of the contract must be in writing.
- 21.2 In the event of inconsistencies between the provisions, the following order of precedence shall apply: contract document, GTC, quote request, offer.
- 21.3 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.

22 Assignment and pledging

The contractor 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.

23 Applicable law and place of jurisdiction

- 23.1 The contractual relationship shall be governed exclusively by substantive Swiss law.
- 23.2 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.

- 23.3 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