



1. Subject and Definition

1.1 These terms and conditions shall apply to all agreements governing IT services.

1.2 As defined by these terms and conditions, IT services comprise all services including but not limited to consultation as part of development, elaboration, and practical use of computer programs (software), in particular

- organizational studies and other studies, expert reports
- the creation of requirement specifications, technical specifications, designs, and concepts
- the development, modification, and expansion of software
- adaptation of standard software
- training.

2. Finalization of the Contract

2.1 Orders, agreements, and changes are only binding if they are made or confirmed in writing by the customer. Official correspondence shall be conducted with the appropriate contact person in the Purchasing or IT departments. Determinations made with other departments, insofar as agreements are concerned that would modify any items established in the contract, require the express written consent from the appropriate Purchasing or IT department.

2.2 The general terms and conditions of the contractor are not applicable even if they are not expressly objected to.

2.3 The contractor must keep the finalization of this agreement confidential. Said contractor may reveal the name of the customer to third parties only with the customer's prior written consent.

3. Content of the Contract

The contractual agreement consists of

- the order letter from the customer,
- these "General Purchasing Terms and Conditions for IT Services,"
- the customer's documentation guidelines, if relevant, and
- the guidelines and technical standards for the contracted services generally valid at the time the contract is finalized.

The previous documents are authoritative in the sequence given.

4. Prices

4.1 The agreed prices and compensation rates are fixed and include regularly incurred travel costs and times, material costs, and costs for the use of the contractor's testing systems. VAT as mandated by law is not included.

4.2 If a total price has been agreed upon and then a change leading to a reduction in the scope of delivery is agreed after the contract is finalized, then a revised total price will be agreed upon based on pricing terms from the contractual price, while also taking into account any reduced costs. The same shall apply in the event that an agreement is made to increase the scope of delivery after the contract is finalized if the contractor has indicated in writing that a price change will be necessary before the revision leading to the increased scope was agreed upon.

5. Professional Concerns from the Contractor

If the contractor determines that the customer's description of service - a concept, other tasks, or specifications - cannot be objectively satisfied, or is erroneous or unclear, then the contractor must communicate this in writing to the customer without delay providing technical reasons to support this determination.

6. Change of Service

6.1 If the customer desires a change in the agreed service after the contract has been finalized, then the contractor must take the desired change into account when performing services, unless this is not reasonable to the contractor with respect to its professional performance and the contractor communicates this in writing immediately to the customer, at the latest within 5 working days after the change request has been received.

6.2 Within 5 working days after the change request has been received, the contractor must state in writing whether the change desired by the customer has any impact on the agreed upon compensation or time schedule; should there be any impact, then a justification for this must be provided.

6.3 If an extensive review concerning the viability of a change request or its impact is necessary, in particular the impact on agreed compensation or time schedule, then the contractor must communicate this in writing within the time frame indicated in Item 6.2 while providing reasons and stating the expected duration of this review. The performance of such a review requires a separate agreement.

6.4 Until an agreement is made to conduct a review in accordance with Item 6.3 or to make a change requested by the customer, the services must be performed according to the contractual agreement valid before the change was requested, provided that the customer does not request an interruption in accordance with Item 7.

7. Interruption of Contract Performance

7.1 In the event that the contractor makes a notification in accordance with Item 5 or the customer requests a change in accordance with Item 6.1, the customer is entitled to request an interruption in the performance of any or all services at any time. If the customer does not request such an interruption and the contractor determines that the continuation of work based on the existing specifications would not create useful results, then the contractor must communicate this in writing to the customer without delay.

7.2 The parties to the contract must make a reasonable agreement concerning the consequences of the interruption. The agreed upon performance schedule will change according to the scope of the portion of the services delayed by the interruption, at most by the number of working days affected by the interruption for the performance of the contract.

8. Collaboration of the Customer

8.1 The customer shall share with the contractor all information and documentation needed to perform the contractual services and shall make quick decisions necessary for the performance of the contract.

8.2 While services are being performed on a project basis within the customer's office, the customer shall provide free of charge the necessary work space, computer time, and software.

8.3 The contractor will require in writing and in detail that the customer observe its duty to collaborate provided that the customer does not comply with this requirement independently and the contractor sees himself as impaired by this in performing his services in a timely manner.

9. Collaboration between the Contractual Parties

9.1 Contractor and customer will each appoint a specialist and a representative for him/her to be available and authorized as a contact person while the contract is being performed, to make the necessary decisions, or to have these decisions made without delay. These individuals may only be switched due to important reasons, which must be communicated immediately to the contractual party.

9.2 The customer is authorized at any time to demand access to observe the services being performed and to receive an explanation of the status of the work being performed.

9.3 Depending on the type and scope of the project, the contractual parties will meet regularly to ascertain the progress of the project and discuss any outstanding issues. The contents and results of the meetings must be set down in recorded minutes signed by both contractual parties.

10. Employees of the Contractor, Subcontractors

10.1 The contractor has the right to issue instructions in technical and disciplinary terms to its own employees. This is also the case when contractual services on a project basis are to be performed on the premises of the customer.

10.2 If an employee employed by the contractor to perform contractual services has to be replaced by another employee due to reasons not to be represented by the customer, then the contractor will be responsible for the period of familiarization.

10.3 The contractor may employ subcontractors only after obtaining a written consent from the customer.

11. Invoicing upon Termination due to Contract Violation

11.1 If the customer terminates the contract for good cause, the services completed by contractor until receipt of such notice of termination shall be delivered and/or performed to customer and will be only reimbursed according to the individual order to the extent completed and delivered and/or performed, if they are of use for the customer. Any services not completed by contractor until receipt of such termination notice can be taken over by the customer against reimbursement of contractor's direct and proven cost for such services, but no more than the part of the price as per the individual order representing such non-completed services.

11.2 Where the contractor suspends payment or becomes the subject of insolvency proceedings or of an out-of-court settlement the customer shall be entitled to terminate the contract with immediate effect in which event the provisions of sub-paragraph 11.1 aforesaid shall apply.

12. Deadlines, Delays

12.1 If the contractor determines that he cannot meet the agreed deadlines for whatever reason, then the contractor must communicate this in writing to the customer without delay while providing reasons. The obligation to observe the agreed deadlines shall remain unaffected.

12.2 In the event of delay by the contractor, the customer is authorized to demand a lump-sum for the occurred damage in the amount of 1% of the individual price of the service, with which the contractor is in delay, a max. of 5% in total of the total value of the order for each completed week of the delay; all rights to further legal claims remain reserved (esp. cancellation or damage compensation). The contractor has the right to prove that no damages whatsoever or significantly lesser damages arose in consequence of the delay.

12.3 In the event of delay by the contractor, the customer itself can perform the unfinished services at the expense of the contractor or have this done by third parties after a reasonable grace period set by the customer has expired without result. Instead of this, the customer can withdraw from the contract after a reasonable grace period set by the customer has expired without result. With service contracts, a right to cancel the contract for an important reason shall take effect instead of withdrawal.

12.4 Provisions of the law shall be valid in addition to the regulations determined in the previous paragraphs.

13. Completion of Services, Inspection, Acceptance

13.1 The contractor shall notify the customer in writing about the completion of services. The customer will inspect the services rendered. If the inspection results in a determination that the services comply with the contract, then the customer will declare its approval.

13.2 Upon release or acceptance of partial services, the totality of services will not be approved until the customer's total acceptance occurs as related to the interaction of all partial services in compliance with the contract.

13.3 The following items 13.4 to 13.10 shall also apply to the development, modification or expansion of software.

13.4 The contractor shall install the finished software on the agreed upon computer platform ready for operation and shall then provide the customer with the documents needed for the completion of its services in compliance with the contract, including proper documentation.

13.5 Once the installation is ready for operation, a test phase will follow while the customer and contractor together inspect the compliance of the programs with the agreed upon specifications - especially functionality and performance. During the test phase, the contractor shall make available free of charge qualified employees for an appropriate amount of time.

13.6 The length of the test phase and the test criteria are agreed upon in the contract. If changes to services are agreed upon while the contract is being performed, the test criteria will have to be changed accordingly.

13.7 The contractor shall immediately correct any errors that occur during the test phase and shall verify the result during the test.

13.8 The customer will declare his approval after the test phase has been successfully completed. The test phase is deemed successful when the programs match the agreed upon

specifications.

13.9 If the test phase ends partly or wholly unsuccessfully, then the customer is justified in withholding approval. This approval may not

be withheld due to unsubstantial defects. In the event that approval is denied, then the contractor must immediately correct any errors. Once the errors have been declared corrected, then the test phase will be repeated. The contractor will bear the expense of repeating these tests, excluding the customer's personnel costs.

13.10 The customer shall deliver his approval in writing.

14. Liability for Defects

14.1 The customer is fully entitled to legal claims based on defects against the contractor; in each case, the customer has the right to demand that the contractor either corrects the defect or delivers a new product. The right to receive compensation for damages shall remain expressly unaffected.

14.2 Program errors that are not corrected within a reasonably brief time with respect to the consequences of the error must be temporarily corrected by means of systems rerouting that is convenient for the customer; the obligation to ultimately correct the error shall remain unaffected. Any documentation must be corrected to reflect the eliminated error.

14.3 The customer shall support the contractor in correcting the defect by providing any information and documentation needed to analyze the defect.

14.4 The statute of limitations for liability-related claims for defects is 24 months.

14.5 If there is an aggravated risk or any special urgency, then the customer may correct the defect on its own at the expense of the contractor.

14.6 Defects that depend on the description of services or other specifications from the customer are not included in the warranty obligation of the contractor; this shall not apply provided that the contractor has violated its duty according to Item 5.

14.7 Legal provisions shall be valid in addition to the regulations determined in the previous paragraphs.

15. Data Protection

The contractor may only employ individuals for performing contractual tasks whom the contractor has instructed to be in compliance with privacy policy in accordance with the relevant Data Protection Laws. The contractor must ensure that all individuals he entrusts with completing contractual tasks observe the provisions of the relevant Data Protection Laws. The contractor must guarantee the data security measures as per the relevant Data Protection Laws and shall provide the customer at his request with any information and verification needed for the supervision of orders in accordance with the relevant Data Protection Laws.

16. Confidentiality

16.1 The contractor must keep confidential and use only for purposes of contractual tasks all information he becomes aware of through contact with the customer (e.g. commercial and company secrets, data and their processing and results, other technical or sales information of any kind). In no way may third parties gain knowledge about this information; not included in this restriction are employees and other auxiliary workers insofar as they require this information to complete contractual tasks.

16.2 This confidentiality obligation shall remain in effect for five years after the contract has been terminated.

16.3 The confidentiality obligation is not applicable with regard to such information that

- is public knowledge or
- the contractor becomes aware of through a third party without violating a confidentiality obligation.

16.4 As long as the contractor holds or stores information in electronic format that is subject to a confidentiality obligation, the contractor must protect it against unauthorized access as though it were personal data in accordance with the relevant Data Protection Laws.

16.5 The contractor must compel its employees and other individuals that he employs to fulfill contractual obligations to maintain confidentiality according to the mentioned regulations and must ensure that this duty is upheld.

17. Data Security

The contractor must constantly safeguard electronically produced services as partial results corresponding to the project stage while including the program environment needed for this. The back-up copies must be swapped out and properly stored.

18. The Customer's Documents and Programs

18.1 Documents of any kind, including programs that the customer has provided to the contractor shall remain the property of the customer. Copies may only be made to complete contractual tasks. Originals and copies must be carefully protected for the customer and returned after the contract has been completed.

18.2 The contractor may only use the programs loaned by the customer in the manner and scope required to complete contractual tasks.

19. Right of Use

19.1 For the software or parts of the software developed for the customer and all other performance results, the customer acquires irrevocably an exclusive right of use (license), unlimited in terms of time and place, comprising every known type of use including the right to revise, copy, change, expand, and grant licenses to third parties, provided that there is no limitation in the following paragraphs.

19.2 If third parties have rights to software received as part of services or other external results of service that contradict the acquisition of a license according to the previous paragraph, then the extent of the right of use by the customer must be accordingly agreed to in the contract.

19.3 The contractor is entitled to continue to use standard software, software components, and tools used by him in rendering services and know-how he has incorporated, even for commissions by third parties. The contractor is not permitted to copy, edit, or make other use of the results of services and solutions, in part or in whole, that have been rendered for the customer.

19.4 The contractor is authorized to publish any type of results of service created for the customer - even in parts - only with the prior written consent of the customer.

20. Program Code

20.1 Software shall be given to the customer in machine-readable code.

20.2 Software developed for the customer must also be given to the customer in source code with documentation of its creation. Copies of source code and producer documentation must be delivered to the customer upon approval and must correspond to the program status at the end of the test phase.

20.3 As part of the guarantee for programs, the contractor must immediately record the measures taken in the source code and the producer documentation; a copy of each updated version must be sent immediately to the customer.

21. Intellectual Property Rights of Third parties

21.1 The contractor guarantees that the use of its services in compliance with the contract does not violate intellectual property rights of third parties.

21.2 In case of infringement, the contractor shall hold the customer harmless from any claims that third parties make against the customer due to such infringement of intellectual property rights. In case of infringement, the contractor is also obligated to provide the customer with the right for use of the services concerned in compliance with the contract free of charge or to change the services insofar that the infringement is eliminated, but the service remains in compliance with the contract.

21.3 A condition of liability according to 21.2 is that the customer notifies the contractor of the claims of third parties as soon as possible, does not acknowledge the claimed infringement, and either transfers to the contractor or takes charge consensual with the contractor any dispute, including any extrajudicial regulations. The contractor shall bear the expense of any costs incurred for legal defense of the customer.

21.4 If the infringement is the fault of the customer, then claims against the contractor are excluded.

21.5 The statute of limitations for these claims is ten years.

22. Payment

22.1 The customer will make payments only upon invoicing in accordance with legal tax provisions within 30 days following receipt of invoice. All payments made by the customer must be listed in the final accounting.

22.2 Payments by the customer do not signify any recognition of billing.

22.3 The customer is entitled to rights of setoff and retention to the extent permitted by law.

22.4 With written consent by the customer, claims by the contractor arising from this contract may be assigned to third parties.

23. Contractor's Corporate Responsibility

23.1 The contractor shall observe and comply with the principles stipulated in the MAN Code of Conduct for Suppliers & Business Partners enclosed (handed out to contractor and/ or can be downloaded from the internet under the following link: http://www.man.eu/man/media/content_medien/doc/global_corporate_website_1/unternehmen_1/MAN_Code_of_Conduct_Suppliers_and_Business_Partners_EN.pdf).

23.2 If the contractor engages third parties to fulfill its duties, it shall ensure that any third party complies with the MAN Code of Conduct for Suppliers & Business Partners. Any such engagement of any third party is in all events subject to the express prior written approval of customer, cfr. 10.3 above.

23.3 If the contractor does not comply with the principles stipulated in the MAN Code of Conduct for Suppliers & Business Partners, customer has the right to terminate the contract for good cause with immediate effect.

Place of Fulfillment, Partial Ineffectiveness, Jurisdiction, Applicable Law

24.1 Place of fulfillment for services by the contractor shall be the place of use; for payments by the customer, the customer's headquarters.

24.2 In the event that individual contractual provisions are ineffective, then the remaining provisions shall remain in effect. The contractual parties are obligated to replace the ineffective provision with one that approximates the intention of its predecessor to the extent possible.

24.3 The Contract and these Conditions shall be in all aspects construed in accordance with and governed by the laws of Switzerland, however, excluding the rules of conflicts of law and excluding the Convention of the United Nations of 11.4.1980 on Contracts for the International Sale of Goods.

24.4 If a dispute cannot be settled by the Parties themselves, the dispute shall be finally decided by arbitration in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce in Paris (ICC), by three arbitrators, appointed under such Rules. The arbitration proceedings shall take place in Geneva, Switzerland in English language. However, the customer shall not be prevented from choosing, at customer's own discretion, to bring an action against the contractor in any ordinary courts of law having jurisdiction over such action.