

GENERAL TERMS AND CONDITIONS

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1. SCOPE OF APPLICATION; DEFINITIONS

- 1.1 These terms and condition shall be applied to the sale, licensing and other assignment of rights of use of information technology products and the supply of information technology and professional services.
- 1.2 Product shall mean equipment, computer program, media and any written material related thereto which constitute the object of the agreement.
- 1.3 Services shall mean installation, maintenance, product support, consultancy, training and other professional services specified in the agreement.

2. PRICES

- 2.1 Unless otherwise agreed in writing, the prices specified in the agreement shall include all public charges determined by the authorities and effective on the date of the signing of the agreement, with the exception of value added tax. Value added tax shall be added to the prices in accordance with the then current regulations. Should the amount of public charges determined by the authorities or their collection basis change due to changes in the regulations or taxation practice, the prices of the products and services shall be revised correspondingly.
- 2.2 If a price for a product or service has not been agreed in the agreement or otherwise, the price in the supplier's price list effective on the date of order shall apply.
- 2.3 If the price of a product or service is wholly or partly tied to a specific price revision criteria, the price shall be adjusted in proportion of the change, if the change is at least two (2) percent. Unless otherwise agreed, the base value or quotation at the date of the signing of the agreement shall be applied. With respect to prices tied to a currency exchange rate, the prices shall be determined using the mid-rate quoted by the European Central Bank at the date of delivery with the exception of, however, services charged periodically, for which the price shall be determined using the mid-rate quoted by the European Central Bank at the date of invoicing.
- 2.4 Unless otherwise agreed in writing, the supplier shall be entitled to adjust the price of a product or service invoiced periodically by notifying the customer of the change in writing at least sixty (60) days before the effective date of the change. The change shall not affect the charges for invoicing periods commenced before the effective date of the change. In case of a price change the customer shall be entitled to terminate the agreement for the product and/or service in question on the effective date of the price change by notifying the supplier thereof in writing at least thirty (30) days before the effective date of the change. The customer shall also be entitled to terminate the agreement simultaneously with respect to all other products and services, which due to the above-mentioned termination can no longer be used essentially for the intended purpose.
- 2.5 The supplier shall be entitled to charge the travel costs as well as the accommodation and daily allowances separately. Other than customary travel arrangements shall be agreed separately in writing.

3. TERMS OF PAYMENT

- 3.1 Unless otherwise agreed in writing, the supplier shall invoice for the products upon delivery and for the services after they are performed.
- 3.2 The supplier will invoice the recurring charges and other periodical charges in advance in accordance with agreed intervals.
- 3.3 The terms of payment are 14 days net from the date of delivery or the date of invoice, whichever is later. Interest on delayed payments accrues in accordance with the Interest Act.
- 3.4. Unless otherwise agreed in writing each party is entitled to net and set-off debit and credit items (rights and obligations) owed to, or owing to it from, the other party or any entity or person that is a member of the same group of companies as such other party against credit and debit items that are owed to it by, or that it owes to, the other party or any such entity or person. Members of the same group are all parties as to which the majority of interests is directly or indirectly held by the same person or entity. The netting and set-off shall be effected by a respective notice to the other party. By the set-off the nominal amounts of rights and obligations shall be netted up to the amounts that are identical, converted into euros if necessary, or as otherwise specified in the notice. The other party which credits

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(rights) exist against the notifying party shall be responsible for any compensation of its group companies that may become necessary as a result of the set-off and netting. It shall ensure that any necessary declarations by such group company are made.

4. SUBCONTRACTING

- 4.1 Each party shall have the right to subcontract its obligations under this agreement. Each party shall ensure that his subcontractor shall comply with the confidentiality provisions specified in section 5. Each party shall be liable for the work of his subcontractor as for his own.

5. CONFIDENTIALITY

- 5.1 Each party shall keep in confidence all material and information received from the other party and marked as confidential or which should be understood to be confidential, and may not use such material or information for any other purposes than those set forth in the agreement. The confidentiality obligation shall, however, not be applied to material and information, (a) which is generally available or otherwise public; or (b) which the party has received from a third party without any obligation of confidentiality; or (c) which was in the possession of the receiving party prior to receipt of the same from the other party without any obligation of confidentiality related thereto; or (d) which a party has independently developed without using material or information received from the other party.
- 5.2 Each party shall promptly upon termination of the agreement or when the party no longer needs the material or information in question for the purpose stated in the agreement cease using confidential material and information received from the other party and, unless the parties separately agree on destruction of such material, return the material in question (including all copies thereof). Each party shall, however, be entitled to retain the copies required by law or regulations.
- 5.3 Each party shall be entitled to use the professional skills and experience acquired in connection with the delivery.
- 5.4 The rights and responsibilities under this section 5 shall survive the termination or cancellation of the agreement.

6. FORCE MAJEURE

- 6.1 Neither party shall be liable for delays and damages caused by an impediment beyond his control, which he could not have reasonably taken into account at the time of the conclusion of the agreement, and whose consequences he could not reasonably have avoided or overcome. Strike, lockout, boycott and other industrial action shall constitute a force majeure event also when the party concerned is the target or a party to such an action.
- 6.2 A force majeure event suffered by a subcontractor of a party shall also discharge such party from liability, if subcontracting from other source cannot be made without unreasonable costs or significant loss of time.
- 6.3 Either party shall without delay inform the other party of a force majeure event in writing. The party shall correspondingly inform the other party of the termination of the force majeure event.

7. INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS

- 7.1 The supplier warrants that the products supplied by it do not infringe an intellectual property right enforceable in the agreed country of delivery or use.
- 7.2 The supplier shall at its own expense defend the customer against claims that a product infringes any of the above-mentioned rights of a third party provided that the customer promptly notifies the supplier in writing of such claims and permits the supplier to defend or settle the claims and gives to the supplier all necessary information and assistance available and the necessary authorizations. The supplier shall pay all damages awarded in a trial to a third party, if the customer has acted in accordance with the foregoing.
- 7.3 If in the justified opinion of the supplier a product infringes any of the above-mentioned rights of a third party, the supplier may at its own expense either (a) obtain the right of continued use of the product for the customer or (b) replace the product or (c) modify the product in order to eliminate the infringement. If none of the above-mentioned alternatives is available to the supplier on reasonable terms, the

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customer shall, at the request of the supplier, stop using the product and shall return it, and the supplier shall credit the price paid by the customer for the product less the proportion of the price corresponding to the actual time of use.

- 7.4 The supplier shall, however, not be liable if the claim (a) is asserted by a company, which exercises control over the customer or which is controlled by the customer in the way control is defined in the Accounting Act; (b) results from alteration of the product by the customer or from compliance with the customer's instructions; (c) results from the use of the product in combination with any product not supplied by the supplier or (d) could have been avoided by the use of a released and equivalent product offered for use to the customer without separate charge.
- 7.5 The liability of the supplier for infringement of intellectual property rights shall be limited to this section 7.

8. DELAY OF DELIVERY, BREACH OF CONTRACT AND CANCELLATION OF CONTRACT

- 8.1 If a party finds that a delay will occur or is likely, he shall without delay inform the other party in writing of the delay and of the effects of the delay on the delivery time schedule.
- 8.2 If it becomes evident that the fulfilment of the agreement will be delayed for more than four (4) months due to a force majeure event, each party shall be entitled to cancel this agreement to the extent it is reasonable, by notifying the other party thereof in writing without either party having the right to claim damages. In assessing reasonableness, the consequences of cancellation and other factors affecting the matter shall be taken into account.
- 8.3 If any payment by the customer is delayed by more than thirty (30) days from the due date despite a written reminder, the supplier shall be entitled to suspend his performance without any liability until the customer has paid all amounts due to the supplier.
- 8.4 If the delivery is delayed due to a reason attributable to a party and does not take place within a reasonable extension of time set by the non-breaching party in writing, the non-breaching party shall be entitled to cancel the agreement with respect to the products and services whose delivery is delayed, provided that the delay is of a substantial importance to him and the delayed party knew or should have known it. If the parties have, however, agreed that liquidated damages shall be paid in case of delay, the non-breaching party has the right of cancellation only after he has become entitled to the maximum amount of liquidated damages and the delivery does not take place within a reasonable extension of time set by the non-breaching party in writing.
- 8.5 Either party shall be entitled to cancel the agreement to the extent it is reasonable also if the other party is otherwise materially in breach of the terms of the agreement. If the breach of contract is capable of being remedied, the agreement can be cancelled only provided that the party in breach has not rectified its breach within a reasonable period of time set by the other party in writing which shall be at least thirty (30) days.
- 8.6 The supplier shall be entitled to cancel the agreement to the extent it is reasonable also if the customer has not paid a due payment within thirty (30) days from a written reminder sent after the due date and the customer has not provided the supplier with an acceptable guarantee for the payment of the charges under the agreement.
- 8.7 If the customer cancels the agreement with respect to a product or service, he shall have the right to cancel the agreement at the same time also with respect to other products and services which have been purchased simultaneously under the same agreement and which have expressly been agreed to be used in connection with the product or service which was delayed or proved to be defective and which due to the abovementioned cancellation can no longer be used essentially as intended.
- 8.8 Either party may cancel the agreement already prior to the date of its fulfilment, if it becomes evident that the other party will commit a breach of contract entitling to cancellation of agreement. Such cancellation of agreement shall, however, be without effect, if the party in breach either provides an acceptable guarantee for the fulfilment of the agreement or presents other reliable clarification of the fulfilment of the agreement within thirty (30) days of written notice of cancellation.

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9. DAMAGES; LIMITATIONS OF LIABILITY

- 9.1 The liability of a party towards the other party based on this agreement for direct expenses and damages caused by a breach of contract and including possible liquidated damages payable due to delay or another reason shall not exceed fifteen (15) percent of the price of the products and services in whose delivery the breach of contract occurred. If the breach of contract cannot be attributed to certain products and services, the liability including possible liquidated damages payable due to delay or another reason shall not exceed fifteen (15) percent of the total contract price. In case of a fixed term product or service or a product or service charged periodically and agreed until further notice, the maximum amount of damages for such product or service shall be the calculated monthly price at the moment of the breach of contract multiplied by six. The damages shall be paid for the part of the loss exceeding liquidated damages payable on account of delay or for another reason due to the breach of contract.
- 9.2 Neither party shall be liable for any indirect or consequential damage.
- 9.3 The customer shall be responsible for taking back-up copies of its data and data files and for verifying the functionality of such back-up copies. Neither party shall be liable for the loss of, damage to, or alteration of data or data files of the other party due to any cause and the resulting damages and expenses incurred, such as expenses based on the re-creation of data files.
- 9.4 The limitations of liability shall not apply to damages caused by wilful conduct or gross negligence.
- 9.5 The limitations of liability shall also not apply to claims covered by section 7 or to damages caused by the transfer, copying or use of software contrary to law or the terms of the agreement, or damages caused by a breach of the export restrictions relating to the products or technical information.

10. APPLICABLE LAW; SETTLEMENT OF DISPUTES

- 10.1 This agreement shall be governed by the laws of Switzerland excluding the United Nations Convention on Contracts for the International Sales of Goods of April 11, 1980.
- 10.2 All disputes arising out of this agreement shall be resolved in the district court of Zug, Switzerland.
- 10.3 If any disputes arising out of, or in connection with this Agreement cannot be settled amicably, exclusive jurisdiction over such disputes shall be with the Commercial Court of the Canton of Zug. Disputes arising from this agreement may also be brought primarily for settlement by mediation in accordance with the mediation rules of the Swiss Association of Commerce.

11. EXPORT RESTRICTIONS

- 11.1 The customer agrees to comply with the laws and regulations of Switzerland and the country of origin of the product, applicable to the export of products and technical information from Switzerland, and also otherwise not to provide any products or technical information to any party, if delivery to such party violates or may violate directly or indirectly the laws and regulations of Switzerland or the country of origin of the product.

12. ASSIGNMENT OF THE AGREEMENT

- 12.1 Neither party may assign this agreement, either wholly or in part, without the written consent of the other party. The supplier shall, however, be entitled to assign its receivables under this agreement to a third party.

13. AMENDMENTS OF THE AGREEMENT

- 13.1 All changes and amendments to this agreement shall be agreed in writing in order to be valid.