

# General Terms and Conditions of BLS AG for the procurement, use, and maintenance of standard software

## A GENERAL PROVISIONS

### 1 Scope and application

- 1.1 These General Terms and Conditions (GTC) govern the conclusion, content, and handling of contracts for the use and maintenance of standard software<sup>1</sup>.
- 1.2 They shall be deemed to have been accepted if the service provider submits an offer.
- 1.3 Changes and additions must be confirmed in writing by the service recipient.

### 2 Offer

- 2.1 The offer including demonstration shall be provided free of charge, unless the quotation request states otherwise.
- 2.2 The service provider shall prepare the offer on the basis of the quotation request from the service recipient. If the offer differs from the quotation request from the service recipient, the service provider shall make specific reference to this.
- 2.3 The service provider shall disclose in the offer the conditions the service recipient needs to satisfy for the installation, use, and maintenance of the standard software.
- 2.4 The service provider shall show value added tax separately in the offer.
- 2.5 The offer is binding for the duration of the period stated by the service recipient. If the quotation request or offer make no reference to any other period, the service provider shall remain bound for three months from the date the offer is received.

### 3 Definitions

- 3.1 Standard software: Software produced for multiple different customers without taking account of any requirements specified by the service recipient in relation to code.
- 3.2 Releases: Further developments of the standard software including firmware, referred to as minor versions (updates) or major versions (upgrades). New releases are associated with new functionalities, fixes, and/or improved performance.
- 3.3 Incident: A fault that restricts or impairs the contractually agreed usability or availability of the software. This also extends to faults caused by third parties, particularly through interaction with hardware or other software.
- 3.4 Patch: Small change to a piece of software, mostly used to rectify an error or security problem associated with the software concerned.

### 4 Employee deployment

- 4.1 For services provided by service provider employees at service recipient sites, the service provider shall only deploy carefully selected and well-trained employees. It shall replace employees who do not have the required specialist knowledge or who otherwise impair or jeopardise fulfilment of the contract. It shall pay particular heed to the service recipient's interest in continuity.
- 4.2 For the provision of services as per point 4.1, the service provider shall only deploy employees with the approvals required for the provision of services.
- 4.3 Insofar as the service provider provides services on site, it shall comply with the service recipient's operational provisions, particularly any house rules. In particular, the service recipient's group instructions regarding permissible use of the Internet and email services and email programs, as well as regarding permissible use of IT hardware and software, are to be complied with accordingly by the service provider. In any event, the service provider has to comply with the relevant security provisions. The

service recipient shall provide the necessary information in good time. The service provider shall extend these obligations to its employees, subcontractors, sub-suppliers, and third parties used.

- 4.4 The provisions in the previous point 4 also apply to any other personnel deployed by the service provider for the fulfilment of the contract, i.e. to freelancers.

### 5 Use of third parties

- 5.1 For services provided by service provider employees at service recipient sites, the service provider may only use third parties (e.g. suppliers, subcontractors) for the provision of its services with the service recipient's prior written consent. It remains responsible for service provision, in accordance with the contract, by third parties used and for service recipient specifications.

- 5.2 Substitution is excluded, unless specifically agreed otherwise.

- 5.3 In the case of financial difficulties on the service provider's part, of fundamental differences between service provider and third parties, or of other important reasons, the service recipient, once the parties involved have been heard, may pay the subcontractor or sub-supplier directly or deposit the amount, both with discharging effect.

## B PROCUREMENT AND USE OF THE STANDARD SOFTWARE

### 6 Scope of use

- 6.1 The service provider shall grant the service recipient the right to use its standard software. The parties shall agree the type and scope of use in the contract. Unless agreed otherwise in the contract document, there are no time or geographical restrictions on use and it is not tied to any hardware.

- 6.2 The service recipient may create copies of the standard software for backup and archiving purposes without any additional remuneration.

- 6.3 As regards agreed use, the service recipient is authorised to parameterise the standard software and, insofar as legally permissible, make it interoperable with third-party software.

- 6.4 Unless the parties agree otherwise, the standard software may be used within the BLS Group in accordance with the above provisions under point 6. Group companies are enterprises that BLS directly (subsidiaries) or indirectly (sub-subsidiaries) controls at the time the contract is concluded, whereby control is defined as more than a 50 per cent share in equity. In addition, BLS Netz AG also counts as a group company.

- 6.5 The service recipient is authorised to have the standard software operated, exclusively for its own purposes, at a data centre of a duly commissioned third party as part of an outsourced data centre arrangement, whereby it must extend in writing the obligations under these GTC to the commissioned third party.

### 7 Installation

On the hardware designated by the service recipient, the service provider shall install the standard software in exchange, where agreed, for separate remuneration.

### 8 Documentation

- 8.1 The service provider shall provide the service recipient, together with the standard software, with complete documentation for operating the software (installation and user manual) in electronic or paper form in the languages and number agreed in the contract document.

- 8.2 The service recipient may, for the purposes of the contract, copy and use the documentation and pass it on to third parties insofar as this is necessary for their services for the service recipient.

- 8.3 If deficiencies need to be rectified, the service provider shall update the documentation as required.

## 9 Instruction

Unless agreed otherwise in the contract, the service provider shall provide the service recipient's personnel with some initial instruction, in exchange for separate remuneration, with the scope and target group to be determined.

## 10 Import provisions

The service provider guarantees compliance with any export restrictions and import provisions from the place of origin to the place of delivery in accordance with the contract. The service provider shall inform the service recipient in writing of any export restrictions applicable to the country of origin.

## C MAINTENANCE

### 11 Scope of maintenance

11.1 The service provider shall maintain the standard software in accordance with the contractual agreement for the purpose of preserving its usability.

11.2 Unless agreed otherwise, maintenance of the standard software covers corrective (troubleshooting), adaptive (adapting to changed circumstances), and perfective (expansion of function) services and the supply of new releases and patches.

11.3 The service provider shall provide support in accordance with the contractual agreement by advising and supporting the service recipient in regard to using the software to be maintained. Unless agreed otherwise, support covers in particular (the list is not exhaustive):

- clarifying the cause of incidents reported;
- support with installation of patches and releases via relevant documentation;
- advice and support 'on site' or via remote access in accordance with the conditions defined in the contract document.

11.4 The parties shall inform each other immediately in writing of all facts and circumstances they have identified or become aware of that impair or jeopardise maintenance or support. The service provider shall keep the service recipient up to date on further developments involving the software on a regular basis. It shall make the service recipient aware of any effects of the use of new releases on the hardware concerned and on any interfaces with the outside.

11.5 Upon request, the service provider shall become involved in the search for the cause of incidents and their rectification, even if one or more incidents might be caused by the interaction of several systems or components. If the service provider proves the fault has not been caused by the software it has maintained, separate remuneration shall be provided for the services.

### 12 Performance

12.1 The service provider undertakes to ensure efficient organisation for maintenance and support purposes by informing the service recipient without delay in each case via the communication channels for related queries and via the contact persons responsible. The contract must set out whether and how queries and reports may be relayed in writing, by phone, or electronically.

12.2 If the service provider provides services via remote access, it has to take all economically reasonable precautions as well as all possible technical and organisational precautions to ensure that data traffic is protected against unauthorised access by third parties and to ensure compliance with the obligations as per points 20 and 26.

12.3 The service recipient shall allow the service provider the necessary access to its premises and arrange, following discussions, the power supply and connections to the data network.

12.4 The service provider shall comply with the service recipient's operational provisions, in particular security provisions and any house rules.

## 13 Updating of documentation

The service provider shall update the documentation as required.

## 14 Standby, response, and troubleshooting time

14.1 During the standby time for maintenance agreed in the contract document, the service provider shall receive reports of incidents and queries via the agreed communication channels. The type and scope of the services to be provided during the standby time are to be contractually agreed.

14.2 The response time (also referred to as the intervention time) covers the period the service provider has to start analysing and dealing with an incident from receipt of the report. The service provider shall start analysing and dealing with incidents as quickly as possible during the standby time and no later than the time agreed in the contract document. At the service recipient's request and in exchange for separate remuneration, the service provider shall also continue its work beyond the standby time.

14.3 The troubleshooting time covers the maximum period from receipt of the report of an incident by the service provider until its successful rectification. It is defined in the contract.

14.4 The service provider shall inform the service recipient that the incident has been rectified.

**14.5 If the service provider breaches the standby, response, and troubleshooting times as per the above provisions 14.1 – 14.4, it shall owe the service recipient a contractual penalty unless it proves it is not at fault. Unless otherwise agreed in the contract, the contractual penalty amounts to CHD 500.00 per case for every hour of delay, subject to maximum annual remuneration of CHF 50,000.00 per case based on the time of the breach. Payment of the contractual penalty does not mean exemption from compliance with the provisions as per points 14.1 – 14.4; the contractual penalty is, however, offset against the compensation payable.**

## 15 Scope of use for releases

15.1 Unless the parties have agreed anything to the contrary in the contract, the use of releases is not subject to any time or geographical restrictions. It is not bound to any specific hardware. The service recipient may create the necessary copies of releases for backup and archiving purposes without any additional remuneration.

15.2 The releases as per point 15.1 may be used in accordance with point 6.

## 16 Start and duration of maintenance and support services

16.1 The contract shall take effect when both parties sign it, unless another start time is stated in the contract document. It is concluded for either a specified or an unspecified time.

16.2 If a contract is concluded for an unspecified time, it may only, in the absence of other agreement, be cancelled in writing by the service recipient at the end of a calendar month, with the service provider only able to cancel it after a period of five years. Cancellation may also only apply to individual parts of the contract. The notice period, in the absence of other agreement, is twelve months for the service provider and three months for the service recipient.

16.3 Both parties reserve the right to cancel without notice at any time for important reasons. Important reasons include the following, in particular:

- the occurrence of events or situations that make continuation of the contractual relationship unreasonable for the cancelling party, in particular, for example, the ongoing or repeated breach of important contractual obligations;
- official notice regarding opening of insolvency proceedings or a moratorium on debt enforcement regarding a party.

## 17 Consequences of termination

The parties to the contract shall set out in the contract which of the operating resources, data, and documents made available in

connection with the contractual relationship are to be returned to the other party or destroyed upon termination of the contractual relationship and by when.

## D JOINT PROVISIONS

### 18 Place and time of fulfilment and transfer of benefits and risk

18.1 The place and time of fulfilment are to be agreed in the contract. Unless agreed otherwise, in the case of delivery of the standard software on a data carrier, the place and time of fulfilment are based on receipt of the data carrier at the installation site for the software. In the case of online delivery, the place and time of fulfilment are based on the software being available for the service recipient to download on the service provider's server.

18.2 Benefits and risk are transferred to the service recipient at the place and time of fulfilment.

### 19 Remuneration

19.1 Unless agreed otherwise in the contract, the service provider shall provide the agreed services at set prices. Remuneration is one-off or recurrent.

19.2 The remuneration agreed applies to all services necessary for fulfilment of the contract. Remuneration covers in particular the granting of all agreed rights of use, any agreed maintenance and support services, all documentation costs, packaging, transport, travel, and insurance costs, expenses, and official charges (e.g. VAT, customs). The individual cost elements are to be shown separately on quotations.

19.3 Remuneration is payable upon handover of the standard software or its installation. This is subject to any contractually agreed payment plan.

19.4 Due dates for remuneration and the frequency of invoicing for maintenance are based on the contract.

19.5 If remuneration is due, the service provider shall claim it with an invoice. Value added tax is to be shown separately.

19.6 Invoices are payable, unless agreed otherwise, within 30 days from the date of the invoice.

19.7 Subject to another contractual agreement, the service provider may request a justified adjustment to the recurrent remuneration amount, while complying with a three-month notice period, at the start of the next calendar year, which may not, however, exceed corresponding changes in the Swiss national index for consumer prices.

### 20 Maintenance of confidentiality

20.1 The parties shall treat as confidential all facts and information that are neither obvious nor generally accessible. If there is any doubt, facts and information are to be treated as confidential. The parties undertake to take all economically reasonable precautions as well as all possible technical and organisational precautions to ensure effective protection against unauthorised parties accessing or gaining knowledge of confidential facts and information.

20.2 This duty of confidentiality applies even before the contract is concluded and continues to apply after the termination of the contractual relationship.

20.3 There is no breach of the duty of secrecy in the case of the service recipient forwarding confidential information within its own group as per point 6.4 or to third parties used. This applies to the service provider insofar as forwarding is required for fulfilment of the contract or provisions of the contract are forwarded within the group.

20.4 Without the service recipient's written consent, the service provider may not advertise the fact that a collaboration exists or has existed with the service recipient and may not cite the service recipient by way of a reference either.

20.5 The parties shall extend the duty of secrecy to their employees, subcontractors, suppliers, and other third parties used.

**20.6 If a contracting party breaches the above duty of secrecy, it shall owe the other a contractual penalty unless it proves it is not at fault. This amounts for each breach to 10 per cent of the annual remuneration or the total remuneration where one-off remuneration is agreed, subject to a maximum of CHF 50,000.00 per case. Payment of the contractual penalty does not mean exemption from compliance with duties of secrecy; the contractual penalty is, however, offset against any compensation.**

### 21 Default

21.1 The contracting parties shall automatically be in default in the case of non-compliance with agreed deadlines (transactions based on delivery by a fixed date) or in other cases following a reminder.

**21.2 If the service provider is in default, it shall owe a contractual penalty unless it proves it is not at fault. This amounts to 1 per mille for each day overdue, subject to an overall maximum per contract of 10 per cent of total remuneration in the case of one-off services or of the remuneration for twelve months in the case of recurrent services. It is also due if the services are subject to some corresponding proviso. Payment of the contractual penalty does not exempt the service provider from compliance with contractual obligations. The contractual penalty is offset against any compensation.**

### 22 Guarantee

22.1 The service provider guarantees it is handing over the standard software with all agreed and warranted properties, as well as those that might, in good faith, be taken for granted for the intended use, and that it satisfies the relevant statutory provisions.

22.2 The service provider also guarantees that the services provided show the agreed and warranted properties, as well as those properties the service recipient might feel entitled to take for granted, in good faith, including without any specific agreement.

22.3 The service provider provides a 24-month guarantee from the time of handover or installation of the standard software or receipt of the contractually stipulated services, duly provided in full. Complaints regarding deficiencies may be raised at any time during the guarantee period. The service provider is obliged, including after the guarantee period has expired, to satisfy claims associated with the service recipient's rights below in relation to deficiencies, provided complaints about deficiencies have been raised in writing within the guarantee period.

22.4 The service provider guarantees it has all the rights to provide its services in accordance with the contract. It is entitled in particular to grant the service recipient rights of use for the standard software to the extent agreed in the contract.

22.5 In the event of a deficiency, the service recipient has the choice to request remedial action or to have the remuneration as per point 19 reduced by an amount commensurate with the reduction in value. In the event of significant deficiencies, the service recipient may withdraw from the contract. If the deficiency relates to the data carriers or documentation provided by the service provider, the service recipient is also entitled to fault-free replacement.

22.6 If the service recipient requests remedial action or replacement, the service provider shall rectify the deficiencies within the stipulated period and bear the associated costs.

22.7 If the service provider fails to arrange the remedial action or replacement requested or fails to do so successfully, the service recipient has the choice of

- having the remuneration reduced by an amount commensurate with the reduction in value;
- or withdrawing from the contract;
- or requesting the required documents (namely the source code) – insofar as no statutory or contractual provisions preclude this – and carrying out the relevant measures, at the

cost and risk of the service provider, either itself or having them carried out by a third party, although this only applies in the case of significant deficiencies.

- 22.8 Maintenance services provided by the service provider during the limitation period shall be deemed to constitute rectification of deficiencies unless the service provider proves the contrary.
- 22.9 If loss or damage has occurred as a result of a deficiency, the service provider shall be liable for compensation in addition as per point 25.
- 22.10 Unless the contract document states otherwise, the above provisions under point 22 apply, separately and independently of each other in each case, to the licence agreement or maintenance of the standard software. The rights in relation to deficiencies under the maintenance contract do not affect those under the licence agreement.

## 23 Property rights

Property rights relating to the standard software remain with the service provider or third parties. In the event of any exercise of these rights, the service recipient's rights of use as per point 6 are to be safeguarded.

## 24 Breach of property rights

- 24.1 The service provider shall contest without delay, at its own cost and risk, any third-party claims for breach of property rights. If a third party initiates proceedings against the service provider, the latter has to inform the service recipient without delay in writing.
- 24.2 If the third party asserts the claims against the service recipient directly, the service provider shall become party to the dispute at the first time of asking by the service recipient insofar as this is possible under the relevant rules of procedure. The service provider undertakes to assume all costs (including compensation payments) incurred by the service recipient in the conduct of proceedings and any out-of-court settlement of the legal dispute. In the event of an out-of-court settlement, the service provider only has to assume the agreed payment to the third party if it has agreed to this in advance.
- 24.3 If the service recipient is wholly or partially unable to use the contractually stipulated standard software or take advantage of services on account of property rights claims asserted, the service provider has the choice of either replacing the standard software with another or modifying its services in such a way that these do not breach any third-party rights and still correspond to the contractually stipulated scope of services or procuring a licence from the third party at its own cost. If the service provider does not avail itself of any these options within a reasonable time, the service recipient may withdraw from the contract with immediate effect. The service provider has to indemnify the service recipient in accordance with point 25. If the service recipient is itself responsible for the breach of property rights, claims against the service provider shall be excluded.

## 25 Liability

- 25.1 The parties are liable for any loss or damage they cause the other party to suffer unless they prove they are not at fault. Liability for physical injury is unlimited. In each case, liability is limited to loss or damage that is proven to have actually occurred. Unless agreed otherwise in the contract, liability for minor negligence amounts to a maximum of CHF 1 million per contract. Liability for loss of profit is excluded.
- 25.2 The parties are liable in accordance with point 25.1 for the behaviour of their employees and other auxiliaries as well as that of third parties used by them with a view to fulfilling the contract (e.g. suppliers, subcontractors, substitutes) as if it were their own.
- 25.3 The service provider shall take out, as a minimum, a liability insurance policy in the amount of CHF 5 million per claim event and per year for physical injury, damage to property, and any resulting financial loss.

## 26 Data protection and data security

- 26.1 The parties undertake to comply with the provisions of Swiss data protection legislation. They undertake to take economically reasonable precautions as well as any possible technical and organisational precautions to ensure effective protection against third parties gaining unauthorised knowledge of the data associated with the processing of the contract.

- 26.2 Personal data may only be processed for the purpose and to the extent necessary for the fulfilment and implementation of the contract. To this extent and for this purpose, personal data may also be forwarded to a domestic or foreign company affiliated with one of the contracting parties, provided the conditions associated with the provisions of Swiss data protection legislation are fulfilled.

- 26.3 The parties shall extend these obligations to their employees, subcontractors, suppliers, and other third parties used for fulfilment of the contract.

## 27 Assignment and pledging of claims

The service provider's claims may neither be assigned nor pledged beyond the group without the service recipient's written consent.

## 28 Occupational safety provisions, working conditions, equal treatment of women and men in terms of equal pay and Corporate Social Responsibility

- 28.1 For services in Switzerland, the supplier undertakes to guarantee occupational safety provisions and working conditions at the place of performance as well as equal treatment of women and men in terms of equal pay. For services abroad, the supplier undertakes to comply with the fundamental conventions of the International Labour Organisation (ILO).

- 28.2 BLS Ltd. is under an obligation to report on non-financial matters pursuant to Art. 964a et seq. of the Swiss Code of Obligations (OR). It and its subsidiaries (incl. BLS Netz AG) are subject to the due diligence and reporting obligation regarding minerals and metals from conflict areas and child labour pursuant to Art. 964j et seq. OR. The service provider undertakes to provide the information requested by BLS for the fulfilment of these obligations in full and in writing within the set deadline and to comply with these obligations itself, insofar as it is subject to them.

- 28.3 The supplier undertakes to extend these requirements to the third parties it commissions.

- 28.4 In the event of a breach of these obligations, the supplier shall owe the ordering party a contractual penalty. This amounts to 10 per cent of the annual remuneration or the total remuneration where one-off remuneration is agreed per case, subject to a minimum of CHF 3,000.00 and a maximum of CHF 100,000.00.**

## 29 Guaranteeing integrity

- 29.1 The parties undertake to take all necessary measures for the avoidance of corruption so that, in particular, no gratuities or other benefits are offered or accepted.

- 29.2 In the event of failure to comply with this obligation, the service provider has to pay the service recipient a contractual penalty. This amounts to 10 per cent of the total remuneration per infringement, subject to a minimum of CHF 3,000.00.**

- 29.3 The service provider acknowledges that an infringement will generally lead to the cancelling of any surcharge and to an early dissolution of the contract for important reasons by the service recipient.

## 30 Modifications to the contract, inconsistencies, and partial invalidity

- 30.1 Modifications and additions to the contract, as well as its cancellation, require the written form.

- 30.2 In the event of inconsistencies between provisions, the following order of priority applies: contract document, GTC, quotation request, offer.

30.3 If any individual provisions of the contract prove to be invalid or illegal, this shall not affect the validity of the contract. The provision concerned should be replaced in this case with an effective provision that comes as close as possible from an economic perspective.

**31 Applicable law and place of jurisdiction**

31.1 Swiss law is the only applicable law.

31.2 The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (Vienna Sales Convention SR 0.221.211.1) is expressly excluded.

31.3 The exclusive place of jurisdiction is Bern.