

# General Terms and Conditions of BLS AG for the procurement and maintenance of individual 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 procurement of individual software and its maintenance as well as other contractual services in the area of IT.
- 1.2 These GTC shall be deemed to have been accepted if the supplier submits an offer.
- 1.3 Changes or additions must be confirmed in writing by the ordering party.
- 1.4 Unless the contract document states otherwise, the provisions relating to supply, acceptance, and guarantee as per point 24 apply, separately and independently of each other in each case, to the service contract or maintenance of the individual software. The rights in relation to deficiencies under the maintenance contract do not affect those under the licence agreement.

### 2 Offer

- 2.1 The offer including demonstration shall be provided free of charge, unless the quotation request states otherwise.
- 2.2 If the offer differs from the quotation request or these GTC of the ordering party, the supplier has to make specific reference to this. The supplier shall show value added tax separately in the quotation.
- 2.3 The offer is binding for the duration of the period stated by the ordering party. If the quotation request does not mention this, a period of three months from receipt of the quotation shall apply.
- 2.4 Up until the contract document is signed, the contracting parties may withdraw from the contract negotiations without any financial consequences.

### 3 Definitions

- 3.1 Standard software: Software produced for multiple different customers without taking account of any requirements specified by the ordering party in relation to code.
- 3.2 Individual software: Software developed for a special purpose of the ordering party at its request as well as any changes to and further developments of this software.
- 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 The supplier shall only use carefully selected and well-trained employees for the provision of the service. It shall replace employees who do not have the necessary specialist knowledge or who otherwise impair or jeopardise fulfilment of the contract. It shall pay particular heed to the ordering party's interest in continuity.
- 4.2 The supplier shall only use employees who have the required approvals for the provision of the services.
- 4.3 The supplier shall comply with the ordering party's operational provisions, particularly security provisions and any house rules. In particular, the ordering party'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 supplier. The ordering party shall provide the necessary information

in good time. The supplier 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 used by the supplier for the fulfilment of the contract, i.e. to freelancers.

### 5 Use of third parties

- 5.1 The supplier may only use third parties (e.g. suppliers, subcontractors) for the provision of important services and for services at the ordering party's sites with the ordering party's prior written consent. The supplier remains responsible vis-à-vis the ordering party for the provision of services and compliance with the ordering party's specifications.
- 5.2 Substitution is excluded, unless specifically agreed otherwise.
- 5.3 In the case of financial difficulties on the supplier's part, of fundamental differences between supplier and third parties, or of other important reasons, BLS AG, once the parties involved have been heard, may pay the subcontractor or sub-supplier directly or deposit the amount, both with discharging effect.

## B CONTRACTUAL SERVICES

### 6 Documentation

- 6.1 The supplier shall provide the ordering party, before joint testing, with full, copyable documentation for operating purposes in the languages and number agreed in the contract document. The documentation includes in particular an installation and user manual as well as the source code for individual software including the information and documentation necessary for its editing. The documentation shall also be provided in electronic form (PDF or MS Office format).
- 6.2 If deficiencies need to be rectified, the supplier shall update the documentation including the source code as required.

### 7 Performance

- 7.1 The supplier shall inform the ordering party on a regular basis regarding the progress of work and obtain in particular all the specifications required. The supplier shall notify it immediately of any circumstances that jeopardise fulfilment in accordance with the contract. It shall also inform the ordering party of any further developments that indicate a change may need to be made to the services for technical or financial reasons.
- 7.2 The ordering party shall inform the supplier in good time of all specifications required for the fulfilment of the contract. Where necessary, any further obligations of the ordering party to cooperate shall be finally agreed in the contract document.
- 7.3 The supplier undertakes to produce the work in accordance with the contractual provisions and specifications, the state of the art, and statutory specifications.
- 7.4 The parties shall provide each other with written details of the name and position of the key persons used to create the individual software. The ordering party may object, for important reasons, to the use of key persons envisaged. The supplier may also only replace the key persons used with the ordering party's written consent.
- 7.5 The ordering party shall allow the supplier the necessary access to its premises and arrange, following discussions, the power supply and connections to the data network and make available the necessary space for storing materials and tools.

### 8 Instruction

The supplier shall provide initial instruction for the ordering party's personnel. The scope of initial instruction is described in greater detail in the quotation request or the contract document. If this information is lacking, an operation and installation man-

ual is sufficient. It guarantees it can offer training on the optimal use of the hardware and software.

## 9 Changes to services

- 9.1 Both contracting parties may request changes to the agreed services in writing at any time. If the ordering party desires a change, the supplier shall state in writing within 20 working days whether the change is possible and what effects it will have on the services to be provided as well as on remuneration and deadlines. The ordering party shall decide within the same period whether the change should be implemented. If the supplier desires a change, the ordering party shall accept the duly substantiated request within the same period or reject it.
- 9.2 The supplier may not refuse a change request from the ordering party if the change is objectively possible and the overall character of the services to be provided remains the same.
- 9.3 The change to the service and any adjustments in terms of remuneration, deadlines, and other contractual matters shall be defined in writing before performance in an addendum to the contract document. The adjustment to remuneration shall be calculated in accordance with the approaches used for the original cost basis plus inflation, if adjustment for inflation is envisaged in the contract document.
- 9.4 Unless anything is agreed to the contrary, the supplier shall continue with its work as scheduled during the testing of proposals for changes.

## 10 Import provisions

The supplier 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 supplier shall inform the ordering party in writing of any export restrictions applicable to the country of origin.

## 11 Testing and acceptance

- 11.1 The supplier undertakes to release only tested individual software for acceptance. The ordering party may see the test protocols on request.
- 11.2 Joint testing shall take place prior to acceptance. The supplier shall invite the ordering party to this in good time. A protocol, to be signed by both parties, shall be drawn up regarding testing and its results. By mutual agreement, partial acceptances are also possible, subject to successful total acceptance.
- 11.3 If testing identifies insignificant deficiencies, acceptance shall take place upon conclusion of testing. The supplier shall rectify immediately the deficiencies identified and inform the ordering party they have been rectified.
- 11.4 If testing identifies significant deficiencies, acceptance shall be deferred. The supplier shall rectify immediately the deficiencies identified and invite the ordering party to new testing in good time. If acceptance is deferred and the contractual acceptance deadline is missed as a result, the supplier will automatically be in default.

## C MAINTENANCE AND SUPPORT

### 12 Scope of maintenance and support for the individual software

The supplier shall maintain the individual software in accordance with the contractual agreement for the purpose of preserving its usability. Insofar as contractually agreed, the supplier shall also provide support by advising and supporting the ordering party in regard to using the relevant individual software. The type and scope of the maintenance or support are to be defined in the contract.

### 13 Remote access

If the supplier provides services via remote access, it has to take all economically reasonable precautions as well as all possible and necessary technical and organisational precautions to

ensure that data traffic is protected against unauthorised access by third parties and to ensure compliance with obligations in respect of secrecy and data protection.

### 14 Documentation

The supplier shall update the documentation for the individual software as per point 6.1 above as required.

### 15 Rectification of incidents caused by third parties

Upon request by the ordering party, the supplier 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 it is proven that the fault has not been caused by the software maintained by the supplier, the parties shall agree in advance how these services shall be compensated.

### 16 Standby, response, and troubleshooting time

- 16.1 During the standby time defined in the contract, the supplier shall receive reports of incidents and queries from the ordering party via the agreed communication channels. The type and scope of the services to be provided during the standby time are to be contractually agreed.
- 16.2 The response time (also referred to as the intervention time) covers the period the supplier has to start analysing and dealing with an incident from receipt of the report. It depends on the priority assigned to an incident and is to be agreed in the contract. The parties shall jointly agree the assignment of the respective priority based on the technical and financial needs of the ordering party.
- 16.3 The troubleshooting time covers the maximum period from receipt of the report of an incident by the supplier until its successful rectification. It is defined in the contract. The supplier shall inform the ordering party without delay of the rectification of an incident.
- 16.4 **If the supplier breaches the standby, response, and troubleshooting times as per the above provisions (points 16.1 – 16.3), it shall owe the ordering party a contractual penalty unless it proves it is not at fault. Unless otherwise agreed in the contract, the contractual penalty amounts to CHF 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 16.1 to 16.3; the contractual penalty is, however, offset against any compensation payable.**

### 17 Start and duration

- 17.1 The contract shall take effect when both parties sign it, unless the contract document states otherwise. It is concluded for either a specified or an unspecified time.
- 17.2 If a contract is concluded for an unspecified time, it may only, in the absence of other agreement, be cancelled in writing by the ordering party at the end of a calendar month, with the supplier only able to cancel it after a period of five years. The notice period, in the absence of other contractual agreement, is twelve months for the supplier and three months for the ordering party.
- 17.3 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.

### 18 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 re-

turned to the other party or destroyed upon termination of the contractual relationship and by when.

## D JOINT PROVISIONS

### 19 Place of fulfilment and transfer of benefits and risk

19.1 The ordering party shall designate the place of fulfilment. Unless otherwise agreed, the installation site for the work shall be deemed to be the place of fulfilment.

19.2 Benefits and risk shall be transferred to the ordering party upon successful acceptance.

### 20 Default

20.1 The 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.

**20.2 If the supplier 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 supplier from compliance with contractual obligations. The contractual penalty is offset against any compensation to be provided.**

### 21 Remuneration

21.1 The supplier shall provide the services at set prices or at cost subject to an upper remuneration limit (cost ceiling). Increases in the cost ceiling are to be agreed by means of a written addendum between the parties. The supplier shall notify the ordering party that the limit may potentially be exceeded when 2/3 of the cost ceiling has been reached. If it does not meet this obligation, it shall bear the cost of any exceeding of the cost ceiling.

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

21.3 Remuneration is payable upon handover of the individual software or its installation following successful acceptance. This is subject to any contractually agreed payment plan.

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

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

21.6 Invoices are payable, unless agreed otherwise, within 30 days subject to a 2 per cent discount / 60 days net from the date of invoice.

21.7 Subject to another contractual agreement, the supplier 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.

### 22 Maintenance of confidentiality

22.1 The contracting 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.

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

22.3 There is no breach of the duty of confidentiality in the case of the ordering party forwarding confidential information within its own group or to third parties used. This applies to the supplier insofar as forwarding is required for fulfilment of the contract or provisions of the contract are forwarded within the group.

22.4 Advertising, publications, and reference information relating to project-specific services require the other contracting party's written consent.

22.5 The parties shall extend the duties of confidentiality to their employees, subcontractors, subsuppliers, and other third parties used.

**22.6 If a contracting party breaches the above duty of confidentiality, 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 duties of confidentiality; the contractual penalty is, however, offset against any compensation to be provided.**

### 23 Data protection and data security

23.1 The parties undertake to comply with the provisions of Swiss data protection legislation. They undertake to take 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.

23.2 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.

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

### 24 Guarantee

24.1 The supplier guarantees it is handing over the work 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.

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

24.3 The supplier shall provide a 24-month guarantee from the time of overall acceptance of the work created. Complaints regarding deficiencies may be raised at any time during the guarantee period. The supplier is obliged, including after the guarantee period has expired, to satisfy claims associated with the ordering party's rights below in relation to deficiencies, provided complaints about deficiencies have been raised in writing within the guarantee period.

24.4 The supplier guarantees that it and third parties it uses have all the rights to provide their services in accordance with the contract. It is entitled in particular to grant the ordering party rights to the work to the extent agreed in the contract.

24.5 In the event of a deficiency, the ordering party has the choice to request remedial action or to have the remuneration as per point 21 reduced by an amount commensurate with the reduction in value. In the event of significant deficiencies, the ordering party may withdraw from the contract. If the deficiency relates to the data carriers or documentation provided by the



supplier, the ordering party is also entitled to fault-free replacement.

- 24.6 If the ordering party requests remedial action or replacement, the supplier shall rectify the deficiencies within the stipulated period and bear the associated costs. If rectification of the deficiency is only possible by manufacturing something anew, the right to remedial action shall also include the right to have something manufactured anew.
- 24.7 If the supplier fails to arrange the remedial action or replacement requested or fails to do so successfully, the ordering party 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 as well as the necessary information and documentation for its editing) – insofar as no statutory or contractual provisions preclude this – and carrying out the relevant measures, at the cost and risk of the supplier, either itself or having them carried out by a third party, although this only applies in the case of significant deficiencies.
- 24.8 If loss or damage has occurred as a result of a deficiency, the supplier shall be liable for compensation in addition as per point 27.

## 25 Property rights

- 25.1 All property rights (intellectual property rights and ancillary copyright as well as entitlements to these) arising in relation to the work in connection with creation and maintenance (in particular to the source code, to documentation) belong to the ordering party unless agreed otherwise in the contract. This does not apply to personal rights associated with intellectual property that are not transferable by law. Both parties are entitled to use and access ideas, processes, and methods not protected by copyright.
- 25.2 The ordering party may access the work without restrictions relating to time, place, or subject matter. The power of disposal covers all current and future potential user rights, namely use, publication, disposal, and modification. Modification includes in particular any change, further processing, and use to produce new work results. The ordering party may grant the supplier rights of use for work results in the contract.
- 25.3 The ordering party shall receive, without restrictions relating to time, place, or subject matter, a non-exclusive, transferable right of use for the above property rights, which apply to parts of the work, that gives it options to use and access the work as per point 25.2 above. The supplier undertakes not to establish any rights for the above property rights that may be invoked against the options to use granted here. In particular, it undertakes only to transfer or license these property rights subject to the ordering party's rights of use.

## 26 Breach of property rights

- 26.1 The supplier 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 supplier, the latter has to inform the ordering party without delay in writing.
- 26.2 If the third party asserts the claims against the ordering party directly, the supplier shall become party to the dispute at the first time of asking by the ordering party insofar as this is possible according to the relevant rules of procedure. The supplier undertakes to assume all costs (including compensation payments) incurred by the ordering party 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 supplier only has to assume the agreed payment to the third party if it has agreed to this in advance.
- 26.3 If the ordering party is wholly or partially unable to use the contractually stipulated services on account of property rights claims asserted, the supplier has the choice of either 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 supplier does not avail itself of these options within a reasonable time, the ordering party may withdraw from the contract with immediate effect. The supplier has to indemnify the ordering party in accordance with point 27. If the ordering party is itself responsible for the breach of property rights, claims against the supplier shall be excluded.

## 27 Liability

- 27.1 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.
- 27.2 The parties are liable in accordance with point 27.1 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.
- 27.3 The supplier 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.

## 28 Assignment and pledging of claims

The supplier's claims may neither be assigned nor pledged beyond the group without the ordering party's written consent.

## 29 Occupational safety provisions, working conditions, and equal treatment of women and men in terms of equal pay

- 29.1 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).
- 29.2 The supplier undertakes to extend these requirements to the third parties it commissions.
- 29.3 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.**

## 30. Guaranteeing integrity

- 30.1 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.
- 30.2 In the event of failure to comply with this obligation, the supplier has to pay the ordering party a contractual penalty. This amounts to 10 per cent of the annual remuneration or the total remuneration in the case of an agreed one-off remuneration per infringement, subject to a minimum of CHF 3,000.00.**

- 30.3 The supplier 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 ordering party.

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

- 31.1 Modifications and additions to the contract, as well as its cancellation, require the written form.
- 31.2 In the event of inconsistencies between provisions, the following order of priority applies: contract document, GTC, quotation request, offer.

31.3 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.

**32 Applicable law and place of jurisdiction**

32.1 Swiss law is the only applicable law.

32.2 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.

32.3 The exclusive place of jurisdiction is Bern.