

## General Terms and Conditions of BLS AG for complex IT services

### A JOINT INTRODUCTORY PROVISIONS

#### 1 Scope and application

- 1.1 These General Terms and Conditions (GTC) govern the conclusion, content, and handling of contracts for IT services such as provision of IT personnel, advice, support, and training.
- 1.2 They shall be deemed to have been accepted if the contractor submits an offer.
- 1.3 Any changes or additions must be confirmed in writing by the customer.

#### 2 Offer

- 2.1 The offer including demonstration shall be provided free of charge, unless the quotation request states otherwise.
- 2.2 The contractor shall prepare the offer on the basis of the quotation request. If the offer differs from the quotation request or the GTC of the customer, the contractor shall make specific reference to this.
- 2.3 The contractor shall show value added tax separately in the offer.
- 2.4 The offer is binding for the duration of the period stated by the customer. If the quotation request or offer make no reference to any other period, the contractor shall remain bound for three months from the date the offer is received.

#### 3 Performance

- 3.1 The contractor shall inform the customer on a regular basis of the progress made with work and notify it immediately of any circumstances that jeopardise fulfilment in accordance with the contract.
- 3.2 The customer shall allow the contractor the necessary access to its premises. It shall make available the required documentation and suitable workstations as required. Where necessary, any further obligations of the customer to cooperate are described in more detail in the contract document.

#### 4 Employee deployment

- 4.1 The contractor shall only deploy carefully selected and well-trained employees. It shall replace, within a reasonable period of time, 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 customer's interest in continuity.
- 4.2 The contractor shall only deploy employees who have the required approvals for the provision of the services.
- 4.3 The contracting parties shall provide each other with written details of the name and position of the employees deployed for fulfilment of the contract. They shall deploy these in a way that reflects the organisation of the project.
- 4.4 The contractor shall also only replace the employees deployed with the customer's written consent. The customer shall only refuse consent for important reasons.
- 4.5 The contractor undertakes to ensure it and its employees comply with the customer's operational provisions, particularly security provisions and any house rules. In particular, the customer'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 contractor. The customer shall provide the necessary information in good time. The contractor shall extend these obligations to its employees, subcontractors, sub-suppliers, and third parties used.

#### 5 Use of third parties

- 5.1 For services provided by contractor employees at customer sites, the contractor may only use third parties (e.g. suppliers, subcontractors) for the provision of its services with the customer's prior written consent. It remains responsible for service provision, in accordance with the contract, by third parties used and for compliance with customer specifications.
- 5.2 Substitution is excluded, unless specifically agreed otherwise.
- 5.3 In the case of financial difficulties on the contractor's part, of fundamental differences between contractor and third parties, or of other important reasons, the customer, once the parties involved have been heard, may pay the subcontractor or sub-supplier directly or deposit the amount, both with discharging effect.

### B PROVISION OF SERVICES

#### 6. Performance and information

- 6.1 The contractor undertakes to ensure faithful, diligent, and competent fulfilment of the contract and guarantees that all services provided comply with the contractual conditions and specifications, the state of the art, and statutory specifications.
- 6.2 The customer shall inform the contractor in good time of all specifications required for the fulfilment of the contract. Any further obligations of the customer to cooperate shall be finally agreed in the contract.
- 6.3 The contractor shall inform the customer on a regular basis of the progress made with work and notify it immediately in writing of all facts and circumstances it has identified or become aware of that impair or jeopardise fulfilment in accordance with the contract.
- 6.4 The customer has the right to check the position regarding fulfilment of the contract and ask for information on this.

### C SUPPLEMENTARY PROVISIONS FOR SERVICE ELEMENTS OF A CONTRACTUAL NATURE

#### 7 Documentation and instruction

- 7.1 The contractor shall provide the customer, together with the service agreed, with full, copyable documentation in electronic or paper form in the languages and number agreed.
- 7.2 The customer 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 in favour of the customer.
- 7.3 Where agreed, the contractor shall provide some initial instruction, in exchange for separate remuneration, with the scope and target group to be determined.

#### 8 Changes to services

- 8.1 The parties may request changes to services in writing at any time.
- 8.2 If the customer desires a change, the contractor shall inform it 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 contractor may not refuse a request for a change from the customer if the change is objectively possible and the overall character of the services to be provided remains the same. The customer shall decide within ten working days of receipt of notification whether the change should be implemented.
- 8.3 If the contractor desires a change, the customer may accept or decline a corresponding request within ten working days of receiving notification.

8.4 Changes, in particular those involving the scope of services, remuneration, and deadlines, must be defined in writing before performance in an addendum to the contract.

8.5 The contractor shall continue with its work in accordance with the contract during the testing of proposals for changes unless the customer instructs otherwise.

## 9 Acceptance

9.1 The contractor shall notify the customer in good time when the agreed services have been performed.

9.2 The customer shall test the services, as soon as this is practical in the normal course of business, and notify the contractor of any deficiencies.

9.3 If there is an insignificant deficiency, acceptance shall take place upon conclusion of testing. If the deficiency is significant, the services provided shall not be accepted. The claims available to the customer in both cases are set out in point 10.

9.4 If the customer does not perform acceptance testing within a reasonable period of grace, despite being reminded, the service shall be deemed to have been accepted.

## 10 Guarantee

10.1 The contractor guarantees that its services show the agreed and warranted properties, as well as those properties the customer might feel entitled to take for granted, in good faith, including without any specific agreement. The contractor is not liable insofar as the customer is at fault.

10.2 The contractor also guarantees it is handing over any work created in connection with the contract with all agreed and warranted properties, as well as those that would, in good faith, be required for the intended use, and that it satisfies the relevant statutory provisions.

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

10.4 The contractor guarantees that it and third parties it uses have all the rights to provide its services in accordance with the contract. It is entitled in particular to grant the customer rights to the work results to the extent agreed in the contract.

10.5 All documents the customer makes available to the contractor, including those in electronic form, may only be used and copied for the purposes of service provision. To this extent, the customer guarantees the use of documentation by the contractor does not infringe any third-party property rights.

10.6 In the event of a deficiency, the customer has the choice to request remedial action or to have the remuneration 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 contractor, the customer is also entitled to fault-free replacement.

10.7 If the customer requests remedial action or replacement, the contractor 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.

10.8 If the contractor fails to take the remedial action requested or fails to do so successfully, the customer has the choice of:

- having the remuneration reduced by an amount commensurate with the reduction in value;

- requesting the required documents (namely the source code) – insofar as no statutory or contractual provisions preclude this – and carrying out the required measures, at the cost and risk of the contractor, either itself or having them carried out by a third party; or

- withdrawing from the contract.

10.9 If loss or damage has occurred as a result of a deficiency, the contractor shall be liable for compensation in addition as per point 18.

## D JOINT PROVISIONS

### 11 Place of fulfilment

The customer shall designate the place of fulfilment. Unless otherwise agreed, the place of delivery shall be deemed to be the place of fulfilment.

### 12 Remuneration

12.1 The contractor shall provide the services at set prices or at cost subject to an upper remuneration limit (cost ceiling). It shall state the cost types and rates in its offer. Increases in the cost ceiling are to be agreed by means of a written addendum between the parties. The contractor shall notify the customer 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.

12.2 The remuneration agreed applies to all services necessary for fulfilment of the contract. Remuneration also covers in particular the transfer of rights, all costs of documentation and materials, all social benefits or other compensation for sickness, disability, and death, official charges (e.g. value added tax), and expenses.

12.3 Remuneration is payable in accordance with the payment plan – or where none exists – following provision of services. If remuneration is due, the contractor shall claim it with an invoice. Value added tax is to be shown separately. Invoices are payable, unless agreed otherwise, within 30 days from the date of the invoice.

12.4 If partial payments (interim payments) are agreed, the customer may request security from the contractor.

12.5 Remuneration shall only be adjusted for inflation insofar as this is envisaged in the contract document.

### 13 Default

13.1 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.

13.2 **If the contractor is in default, it shall owe a contractual penalty unless it proves it is not at fault. The contractual penalty amounts, for each day overdue, to 1 per mille subject to a maximum of 10 per cent of total remuneration. It is also due if the services are accepted without reservations. Payment of the contractual penalty does not exempt the contractor from the other contractual obligations; the contractual penalty is, however, offset against any compensation.**

### 14 Maintenance of confidentiality

14.1 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.

- 14.2 This duty of confidentiality applies even before the contract is concluded and also after the termination of the contractual relationship.
- 14.3 There is no breach of the duty of secrecy in the case of the customer forwarding confidential information within its own group or to third parties used. This applies to the contractor insofar as forwarding is required for fulfilment of the contract or provisions of the contract are forwarded within the group. Group companies are enterprises that the customer 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.
- 14.4 Without the customer's written consent, the contractor may not advertise the fact that a collaboration exists or has existed with the customer and may not cite the customer by way of a reference either.
- 14.5 The parties shall extend the duty of secrecy to their employees, subcontractors, sub-suppliers, and other third parties used.
- 14.6 **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 total remuneration, subject to a maximum of CHF 50,000.00 per case. Payment of the contractual penalty does not mean exemption from the duty of secrecy; the contractual penalty is, however, offset against any compensation.**

## 15 Data protection and data security

- 15.1 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.
- 15.2 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.
- 15.3 The parties shall extend these obligations to their employees, subcontractors, sub-suppliers, and other third parties used for fulfilment of the contract.

## 16 Property rights

- 16.1 All property rights to work results (intellectual property rights and ancillary copyright as well as entitlements to these) arising upon fulfilment of the contract belong to the customer 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.
- 16.2 The customer may access all work results without restrictions relating to time, place, or subject matter. The power of disposal covers all current and future potential rights of use, namely use, publication, disposal, and modification. Modification includes in particular any change, further processing, and use to produce new work results. The customer may grant the contractor rights of use to work results in the contract.
- 16.3 The customer 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 agreed work results, that gives it options to use and access the work results as per point 16.2. The contractor 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 customer's rights of use.

## 17 Breach of property rights

- 17.1 The contractor shall contest without delay and at its own cost and risk any third-party claims for breach of property rights. If a third party initiates proceedings against the contractor, the latter has to inform the customer without delay in writing.
- 17.2 If the third party asserts the claims against the customer directly, the contractor shall become party to the dispute at the first time of asking by the customer insofar as this is possible according to the relevant rules of procedure. The contractor undertakes to assume all costs (including compensation payments) incurred by the customer 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 contractor only has to assume the agreed payment to the third party if it has agreed to this in advance.
- 17.3 If the customer is wholly or partially unable to use the contractually stipulated services on account of property rights claims asserted, the contractor has the choice of either replacing the hardware stipulated (including the associated operating 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 contractor does not avail itself of these options within a reasonable time, the customer may withdraw from the contract with immediate effect. The contractor has to indemnify the customer in accordance with point 12. If the customer is itself responsible for the breach of property rights, claims against the contractor shall be excluded.

## 18 Liability

- 18.1 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.
- 18.2 The parties are liable in accordance with point 18.1 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.
- 18.3 The contractor 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.

## 19 Cancellation

- 19.1 The contracting parties may cancel the contractual relationship at any time.
- 19.2 Claims for compensation due to dissolution of the contract at an inopportune time remain reserved. Compensation for loss of profit is excluded.

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

- 20.1 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).
- 20.2 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 supplier 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.

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

**20.4 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.**

## **21 Social insurance**

21.1 The contractor is not in an employment relationship with the customer and is responsible itself for settlement of social insurance contributions due.

21.2 The customer does not at any time owe social benefits (old-age and survivors' insurance, invalidity insurance, unemployment insurance, etc.) or other compensation in particular in the case of holidays, accident, sickness, disability, or death.

21.3 If the customer is approached subsequently regarding social benefits as per point 21.2 – in particular by a compensation office – the contractor has to indemnify the customer in full. The customer reserves the right at any time to ask the contractor for confirmation of the relevant compensation office accordingly.

## **22 Assignment and pledging**

22.1 The contractor's claims may neither be assigned nor pledged beyond the group without the customer's written consent.

## **23 Guaranteeing integrity**

23.1 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.

**23.2 In the event of failure to comply with this obligation, the contractor has to pay the customer a contractual penalty. This amounts to 10 per cent of the total remuneration per infringement, subject to a minimum of CHF 3,000.00.**

23.3 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.

## **24 Modifications to the contract, inconsistencies, and partial invalidity**

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

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

24.3 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.

## **25 Applicable law and place of jurisdiction**

25.1 Swiss law is the only applicable law.

25.2 The provisions of the Vienna Sales Convention (United Nations Convention on Contracts for the International Sale of Goods, concluded in Vienna on 11 April 1980) are excluded.

25.3 The exclusive place of jurisdiction is Bern.