

## General Terms and Conditions of BLS AG for the purchase and maintenance of hardware

### 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 purchase and maintenance of hardware products (including associated operating software)<sup>1</sup>.
- 1.2 They shall be deemed to have been accepted if the seller submits an offer.
- 1.3 Any changes or additions must be confirmed in writing by the seller.

#### 2 Offer

- 2.1 The offer including demonstration shall be provided free of charge, unless the quotation request states otherwise.
- 2.2 The seller shall prepare the offer on the basis of the quotation request from the buyer. If the offer differs from the quotation request from the buyer, the seller shall make specific reference to this.
- 2.3 The offer is binding for the duration of the period stated by the seller. If this information is lacking, the seller shall be bound for three months from submission of the quotation.
- 2.4 The seller shall show value added tax separately in the offer.

#### 3. Definitions

Incident: A fault that restricts or impairs the contractually agreed usability or availability of hardware (including operating software). This also extends to faults caused by third parties, particularly through interaction with software or other hardware.

#### 4 Employee deployment

- 4.1 For services provided by seller employees at buyer sites, the seller shall only use 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 buyer's interest in continuity.
- 4.2 For the provision of services as per point 4.1, the seller shall only deploy employees with the approvals required for the provision of services.
- 4.3 If the seller provides services on site, it shall comply with the buyer's operational provisions, in particular any house rules. In particular, the buyer'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 seller. In any event, the seller must comply with the relevant security provisions. The buyer shall provide the necessary information in good time. The seller shall extend these obligations to its employees, subcontractors, subsuppliers, and third parties used.
- 4.4 The provisions in the previous point 4 also apply to any other personnel deployed by the seller for the fulfilment of the contract, i.e. to freelancers.

#### 5 Use of third parties

- 5.1 For services provided by seller employees at buyer sites, the seller may only use third parties (e.g. suppliers, subcontractors) for the provision of its services with the buyer's prior written consent. It remains responsible for service provision, in accordance with the contract, by third parties used and for compliance with buyer specifications.
- 5.2 Substitution is excluded, unless specifically agreed otherwise.

#### 6 Replacement part deliveries

The seller guarantees the buyer delivery of replacement hardware parts for at least five years from handover or installation of the hardware.

### B PURCHASE OF HARDWARE

#### 7 Handover and installation

- 7.1 Handover of hardware (including associated operating software) shall occur once the delivery slip has been signed by a person, designated by the buyer, at the place of fulfilment.
- 7.2 The seller, at the buyer's request, shall install the hardware (including associated operating software) in exchange for separate remuneration. Any cooperation obligations/duties of the buyer shall be finally agreed in the contract document.

#### 8 Use of operating software

The type and scope of the use of operating software inextricably linked with the hardware are based on the intended use of the hardware. The buyer may sell on the hardware (including associated operating software) to third parties, provided it gives up its own use.

#### 9 Documentation

- 9.1 The seller shall provide the buyer, together with the hardware, with complete documentation for operation purposes (in particular installation and user manual) in electronic or paper form in the languages and number agreed in the contract document.
- 9.2 The buyer 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 buyer.

#### 10 Instruction

Where agreed, the seller shall provide some initial instruction, in exchange for separate remuneration, for buyer personnel.

#### 11 Import provisions

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

### C MAINTENANCE AND SUPPORT

#### 12 Content and scope of maintenance

- 12.1 The services to be provided are agreed in the contract.
- 12.2 The maintenance of hardware covers – subject to any other contractual agreement – its upkeep (preventive maintenance to preserve operability) and restoration (rectification of faults and defects to restore operability) through the repair and replacement of damaged parts as well as the integration of technical improvements. Replaced parts shall become the property of the buyer.
- 12.3 The seller is obliged to make faultless replacement material available for the duration of the contract or to supply this within a reasonable period of time.

#### 13 Support

- 13.1 The services to be provided are agreed in the contract.
- 13.2 Support covers – subject to any other contractual agreement – advice and support for the buyer in regard to using the hardware that is the object of the contract (including associated operating software).
- 13.3 If the seller has to provide support services, it undertakes to set up and maintain an efficient organisation that allows it to keep

the buyer informed in each case without delay via the communication channels for support requests 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.

#### 14 Information obligations

The seller shall inform the buyer in writing without delay of all facts and circumstances it has identified or is aware of that impair or jeopardise maintenance of hardware (including associated operating software). The seller shall inform the buyer on a regular basis of any technical improvements to hardware (including associated operating software).

#### 15 Performance

- 15.1 The seller shall inform the buyer of facts and circumstances that make maintenance and care significantly easier, cheaper, more difficult, or even impossible.
- 15.2 The buyer shall allow the seller the necessary access to its premises and arrange, following discussions, the power supply and connections to the data network.
- 15.3 The seller shall comply with the buyer's operational provisions, particularly security provisions and any house rules.

#### 16 Documentation and protocols

- 16.1 The seller shall update the documentation for the hardware (including associated operating software) as required.
- 16.2 The seller shall draft a report, upon conclusion of maintenance work, to be signed by both parties. The report shall state the precise time and date that maintenance started, the hardware maintained or the parts/components replaced, and the duration of the deployment. The restoration report shall provide, in addition, information on the time and date the fault was reported, the time operability was restored, and the fault or its cause. This provision does not apply to remote maintenance.

#### 17 Standby, response, and troubleshooting time

- 17.1 During the standby time for maintenance defined in the contract, the seller shall receive reports of faults 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.
- 17.2 The response time (also referred to as the intervention time) covers the period during which the seller has to start to analyse and deal with a fault starting from receipt of the report. The seller shall start analysing and dealing with faults as quickly as possible during the standby time and no later than within the time agreed in the contract document. At the buyer's request and in exchange for separate remuneration, the seller shall also continue its work beyond the standby time.
- 17.3 The troubleshooting time covers the maximum period from receipt of the report of a fault at the buyer until its successful rectification. It is defined in the contract.
- 17.4 The seller shall inform the buyer that the fault has been rectified.

**17.5 If the seller breaches the standby, response, and troubleshooting times as per the above provisions 17.1 – 17.4, it shall owe the buyer 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 17.1 – 17.4; the contractual penalty is, however, offset against the compensation payable.**

#### 18 Start and duration of maintenance and support services

- 18.1 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.

18.2 If the maintenance contract is concluded for an unspecified time, it may only, in the absence of other agreement, be cancelled in writing by the buyer at the end of a calendar month, with the seller 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 seller and three months for the buyer.

18.3 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.

#### 19 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

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

- 20.1 The buyer shall designate the place of fulfilment. Unless otherwise agreed, the place of delivery for the hardware (including associated operating software) shall be deemed to be the place of fulfilment.
- 20.2 Benefits and risk shall be transferred to the buyer upon handover or installation.

#### 21 Remuneration

- 21.1 If nothing is agreed otherwise in the contract, the seller shall provide the services at set prices. Remuneration is one-off or recurrent.
- 21.2 The remuneration agreed applies to all services necessary for fulfilment of the contract. Remuneration also covers in particular the transfer of ownership rights to hardware, any agreed maintenance and support services, the granting of rights of use for associated operating software, documentation costs, costs for initial instruction, expenses, packaging, transport, insurance, and unloading costs, prepaid disposal fees, 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 hardware with associated operating software or its installation. 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 seller 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 If partial payments (down payments and interim payments) are agreed, the buyer may request security from the seller.
- 21.8 If the seller reduces the list price prior to delivery, remuneration shall be adjusted accordingly.
- 21.9 Subject to another contractual agreement, the seller 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 secrecy in the case of the buyer forwarding confidential information within its own group or to third parties used. This applies to the seller 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 buyer 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.
- 22.4 Without the buyer's written consent, the seller may not advertise the fact that a collaboration exists or has existed with the buyer and may not cite the buyer by way of a reference either.
- 22.5 The parties shall extend the duty of secrecy to their employees, subcontractors, suppliers, 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 the duty of secrecy; the contractual penalty is, however, offset against any compensation.**

## 23 Default

- 23.1 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.
- 23.2 **If the seller is in default, it shall owe a contractual penalty unless it proves it is not at fault. This amounts to 1 per mille of remuneration for each day overdue, subject to a maximum 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 seller from its contractual obligations. The contractual penalty is offset against any compensation.**

## 24 Guarantee

- 24.1 The seller guarantees it is handing over the hardware (including associated operating software) 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.
- 24.2 The seller also guarantees that the services provided show the agreed and warranted properties, as well as those properties the buyer might feel entitled to take for granted, in good faith, including without any specific agreement.
- 24.3 The seller provides a 24-month guarantee from the time of handover or installation of the hardware (including associated operating 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 seller is obliged, including after the guarantee period has expired, to satisfy claims associated with the buyer's rights below in relation to deficiencies, provided complaints about defi-

ciencies have been raised in writing within the guarantee period.

- 24.4 The seller guarantees that the hardware complies with the statutory provisions and the relevant EU standards.
- 24.5 The seller guarantees it has all the rights to provide its services in accordance with the contract. It is authorised in particular to sell the operating software provided with the hardware and grant the buyer the rights of use for it.
- 24.6 In the event of a deficiency, the buyer has the choice to request remedial action or delivery of deficiency-free hardware (including associated operating software) or to have the remuneration reduced by an amount commensurate with the reduction in value. In the event of significant deficiencies, the buyer may withdraw from the contract.
- 24.7 If the buyer demands remedial action or replacement, the seller shall rectify the deficiencies within the stipulated period and bear the associated costs.
- 24.8 If the seller fails to arrange the remedial action or replacement requested or fails to do so successfully, the buyer has the choice of
- having the remuneration reduced by an amount commensurate with the reduction in value;
  - or requesting the required documents – insofar as the seller is entitled to issue them – and carrying out the required measures, at the cost and risk of the seller, either itself or having them carried out by a third party;
  - or withdrawing from the contract.
- 24.9 Maintenance services provided by the seller during the limitation period shall be deemed to constitute rectification of the deficiencies unless the seller proves the contrary.
- 24.10 If loss or damage has occurred as a result of a deficiency, the seller shall be liable for compensation in addition as per point 26.

## 25. Breach of property rights

- 25.1 The seller 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 seller, the latter has to inform the buyer without delay in writing.
- 25.2 If the third party asserts the claims against the buyer directly, the seller shall become party to the dispute at the first time of asking by the buyer insofar as this is possible according to the relevant rules of procedure. The seller undertakes to assume all costs (including compensation payments) incurred by the buyer 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 seller only has to assume the agreed payment to the third party if it has agreed to this in advance.
- 25.3 If the buyer is wholly or partially unable to use the contractually stipulated hardware (including associated operating software) or take advantage of services on account of property rights claims asserted, the seller 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 seller does not avail itself of these options within a reasonable time, the buyer may withdraw from the contract with immediate effect. The seller has to indemnify the buyer in accordance with point 26. If the buyer is itself responsible for the breach of property rights, the claims against the seller shall be excluded.

## 26 Liability

- 26.1 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 negli-

gence amounts to a maximum of CHF 1 million per contract. Liability for loss of profit is excluded.

- 26.2 The parties are liable in accordance with point 26.1 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.
- 26.3 The seller 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.

## 27 Data protection and data security

- 27.1 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.
- 27.2 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.
- 27.3 The parties shall extend these obligations to their employees, subcontractors, sub-suppliers, and other third parties used for fulfilment of the contract.

## 28 Assignment and pledging of claims

The seller's claims may neither be assigned nor pledged beyond the group without the buyer'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 seller undertakes to guarantee occupational safety provisions and working conditions at the place of performance as well as the equal treatment of women and men in terms of equal pay. For services abroad, the seller undertakes to comply with the fundamental conventions of the International Labour Organisation (ILO).
- 29.2 **In the event of a breach of these obligations, the seller shall owe the buyer 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 seller has to pay the buyer a contractual penalty. This amounts to 10 per cent of the total remuneration per infringement, subject to a minimum of CHF 3,000.00.**
- 30.3 The seller acknowledges that an infringement will generally lead to the cancelling of the surcharge and to an early dissolution of the contract for important reasons by the buyer.

## 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 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.
- 32.3 The exclusive place of jurisdiction is Bern.

<sup>1</sup> The GTC for the procurement and maintenance of individual software apply to the manufacture of individual software.