Schweizerische Informatikkonferenz
Conférence Suisse sur l'Informatique
Conferenza Svizzera sull'Informatica

SIK/CSI

General Terms and Conditions of Business for Licences

January 2004 edition

1 Scope of application and validity

1.1 These General Terms and Conditions of Business (Terms and Conditions) provide for the conclusion, content and execution of contracts for the use[1] of standard software.

1.2 The Licensee refers to the applicable Terms and Conditions in the quote request. They are deemed accepted when the Licensor submits a written offer.

1.3 Any deviation from the Terms and Conditions shall be expressly named as such in the specifications requirement or in the offer and must appear in the contractual document to be valid.

2 Offer

2.1 The offer including demonstrations is free of charge.

2.2 Should the offer deviate from the quote request of the Licensee, the Licensor shall make express reference to said deviation.

2.3 The Licensor shall state in the offer the necessary requirements on the part of the Licensee for the installation, use and maintenance of the standard software.

2.4 Unless otherwise stated in the offer, the Licensor shall be bound for a period of 3 months from the date of the offer.

2.5 Until the contractual document has been signed or the offer accepted in writing (order) either party may withdraw from contract negotiations without financial consequences. Point 2.4 remains subject to further notice.

3 Rights to standard software

3.1 Industrial property rights to standard software remain with the Licensor or third party. Insofar as third parties are entitled to rights, the Licensor shall guarantee that he is in possession of the necessary rights of use and sale.

3.2 The Licensee purchases the non-transferable and non-exclusive right of application and use of the standard software to the extent agreed upon in the contractual document.

3.3 The Licensee can create copies of the standard software for security and storage purposes.

3.4 During a hardware failure, the Licensee is entitled to use the standard software on the replacement hardware without additional payment.

4 Documentation

4.1 The Licensor provides the Licensee along with the standard software all installation and operating instructions necessary for operation in a format which can be copied and read by the Licensee. Documentation is provided for users in German and for information scientists in German or English.

4.2 The Licensee's auditor shall be granted access to system documentation for standard software concerning accounting.

4.3 The Licensee may copy and use the documentation as specified in the contract.

4.4 Should the Licensor rectify any defects he agrees to update the documentation as necessary.

5 Industrial property rights

5.1 The Licensor guarantees that his offer and services do not violate the recognised industrial property rights of any third party in Switzerland.

5.2 The Licensor shall defend against third party claims of violation of industrial property rights at his own risk and cost. The Licensee shall notify the Licensor of such claims in writing and without delay and shall leave conduct of any action or any in or out of court settlement of a lawsuit solely up to him. Under these conditions the Licensor shall assume any ensuing costs or payment of damages incurred by the Licensee.

5.3 If an action is filed on account of violation of industrial property rights or a precautionary measure taken, the Licensor can, at his own expense, choose either to grant the Licensee the right to use the software free of any liability due to violation of in-

---

[1] If licensing is combined with an additional service provided by the Licensor such as installation, parametering or optimising, the Terms and Conditions for the Purchase of Complete Informatics Systems and Manufacture of Individual Software shall apply.
The conditions of the Terms and Conditions for the Maintenance of Hardware and Software shall apply for the maintenance of software.

dustrial property rights or to modify or replace the software with another which fulfils the essential contractual requirements, or he shall be liable to pay damages.

6   Installation, acceptance, training and maintenance

6.1   Unless otherwise agreed, the Licensor shall install the software in accordance with the installation instructions.

6.2   The Licensee shall inspect the standard software during the acceptance period. Unless otherwise agreed, this period begins on the seventh calendar day following installation by the Licensor and lasts 30 days. Upon expiration of this period the standard software is deemed approved, unless the Licensee rejects it on grounds of considerable defect. The right to implement warranties remains intact.

A defect is deemed considerable when, as a result of same, an essential function of the solution cannot be used.

6.3   The Licensor shall instruct the Licensee staff to the extent agreed.

6.4   The Licensor agrees to maintain the software at the Licensee's request for a minimum of four years following expiration of the one-year warranty period on the basis of the Terms and Conditions for Maintenance of Hardware and Software.

6.5   Maintenance by the Licensor following expiration of the warranty period shall be subject to payment at generally accepted market conditions.

7   Payment

7.1   Payment for licencing is one-off or recurrent. Recurrent payment shall include maintenance. Maintenance shall comply with the Terms and Conditions for Maintenance of Hardware and Software.

7.2   Insofar as no fixed price is agreed, the Licensor can request, subject to a notice period of three months to the beginning of the next calendar year, a reasonable adjustment of the recurrent payment, however, not beyond the scope of the development of the Swiss consumer price index.

7.3   The payment covers all services necessary for fulfilment of the contract.

Payment covers in particular installation and documentation costs, costs for instruction, packaging, transport, travel and insurance costs, expenses and any official taxes applicable at the time the contract was signed (e.g. VAT), which can be set out separately.

7.4   Use of the standard software shall be subject to payment following acceptance.

7.5   In the case of recurrent payments invoices shall be issued, unless otherwise agreed, one quarter in advance, commencing on the first day of the month following expiration of the acceptance period.

Invoices for one-off payments shall be issued following successful final acceptance. Invoices are payable within 30 days of receipt.

8   Privacy and data protection

8.1   The contracting parties shall keep private, facts and data which have not yet been published or which are not generally accessible. This obligation shall also be imposed on third parties involved. In case of doubt, facts and information shall be treated confidentially. The obligation to maintain secrecy is in effect prior to conclusion of the contract and remains in effect after the contractual relationship has ended or the agreed service has been provided. This is subject to any legal duty of disclosure.

8.2   The Licensor may inform potential cooperating third parties of the fact and essential content of the quote request.

8.3   Advertising and publications about services specific to the contract require the written consent of the other contracting party.

8.4   If one of the contracting parties or a third party commissioned by him violates the above obligation to maintain secrecy, the offending party shall pay the other party a contract penalty unless he can prove that neither he nor the third party involved was at fault. This amounts to 10% of the one-off payment in each case or an annual payment, however not more than CHF 50,000 per case. Payment of the contract penalty does not discharge from the obligation to maintain secrecy; the right to assert damage claims remains intact, the contract penalty shall be deducted from damages owing.

8.5   Valid data protection rules must be observed. If needs be, special data protection and security provisions shall be stipulated in all cases.

9   Default

9.1   The contracting parties default immediately upon non-compliance with the dates stipulated in the contract as default-incurring, for other deadlines following warning and after a reasonable extension has been granted.

9.2   A contract penalty shall be due if one has been stipulated in the contractual document. In this case the contract penalty is still due when services are accepted without reservation. Payment of the contract penalty does not discharge the party from his

other contractual obligations; the right to assert damage claims remains intact. The contract penalty shall be deducted from damages owing.

10   Warranties

10.1   The Licensor warrants that his products and services exhibit the agreed qualities, he further warrants those qualities the Licensee may   require without special agreement in keeping with state-of-the-art technology and in good faith.

10.2   In the event of a defect the Licensee can initially only request a free repair. The Licensor shall repair the defect within a reasonable period of time and shall bear all costs incurred.

10.3   If the Licensor does not perform the requested repair, does not perform it on time or does not perform it successfully, the Licensee can deduct from payment an amount corresponding to the reduced value. In the case of considerable defects he can opt to withdraw from the contract or demand the required documents (in particular the source code) - provided the Licensor is in possession of same and there are no legal or contractual terms against said documents - and take appropriate measures himself or have them taken by a third party.
A defect is deemed considerable when, as a result of same, an essential function of the solution cannot be used.

10.4   Warranty rights (as per 10.1 to 10.3) become invalid within one year of acceptance of the standard software or the receipt of maintenance. Defects must be reported immediately upon discovery. Claims of fraudulent concealment can be asserted ten years after acceptance.

10.5   Alternative warranties for third-party products are to be provided for in the contractual document.

11   Liability for damages

11.1   Each contracting party is liable for damages caused by him or by a third party commissioned by him arising from the contractual relationship if he cannot prove that neither he nor the third party called on by him was at fault. He shall be liable at most for the resulting damages.

11.2   In the case of slight negligence, personal damage liability is unlimited. For property damage, liability is limited to a maximum of CHF 1,000,000 per claim

11.3   For pure financial losses, liability in the case of slight negligence equals not more than the resulting damages. In the case of a one-off payment or an annual payment up to CHF 250,000, liability shall

not exceed CHF 50,000 per claim. When a one-off payment or an annual payment exceeds CHF 250,000, liability shall amount to 20% of the total payment to a maximum, however, of CHF 500,000 per claim. Payment is calculated on the basis of the software responsible for causing the damaging event. Liability for loss of profits is excluded.

11.4   Special agreements must be made for aggravated risk.

12   Termination of contractual relationship

12.1   Unless otherwise stated in the contractual document the contract term is indefinite.

12.2   Notice may be given to terminate a contract with recurrent payment at the end of a month. The period of notice is twelve months for the Licensor and two months for the Licensee. Payments made in advance shall be refunded pro rata temporis.

12.3   In the case of severe breach of contract by the other contracting party, the contract can be terminated at any time without notice. In this case payment shall be calculated pro rata temporis, one-off payments shall be calculated proportionately on the basis of sixty months. The right to assert damage claims remains intact.

12.4   The Licensee shall return the original and any copies or partial copies of the standard software and documentation to the Licensor, or confirm in writing that it has been destroyed, within 30 days of termination of the contractual relationship. The Licensee can keep a copy of the standard software and documentation for archiving purposes.

13   Place of fulfilment
The place of fulfilment for the Licensor's services is the place of installation.

14   Assignment, transfer and pledge
14.1   Rights and obligations arising from the contractual relationship may not be assigned, transferred or pledged to third parties without the prior written consent of the other contracting party. This consent may not be denied without grounds. Individual companies within a Group are not considered to be third parties.

14.2   The Licensee assumes upon delivery the obligations of the Licensor arising from import certificates, provided and insofar as the Supplier has mentioned same in the offer.

15   Elements of contract and precedence
In the event of inconsistencies between the contract elements, the contractual document shall take precedence over the conditions of these Terms and Condi-

tions. These Terms and Conditions take precedence over the offer and the offer takes precedence over the specifications requirement.

16   Applicable law and place of jurisdiction

16.1 In other respects, Swiss law shall apply to the contractual relationship.

16.2   Place of jurisdiction is the registered office of the Licensee or the registered office of the Licensor if located in the same canton. The place of jurisdiction shall be stipulated in the contractual document.

If the interpretation of the General Terms and Conditions of Business for Licences results in a difference due to the versions in various languages, the German version shall be authoritative.