General Terms and Conditions of Business for the Maintenance of Hardware and Software

January 2004 edition

1 Scope of application and validity

1.1 These General Terms and Conditions (Terms and Conditions) provide for the conclusion, content and execution of contracts for the maintenance of hardware and software.

1.2 The Purchaser refers to the applicable Terms and Conditions in the quote request. They are deemed accepted when the Supplier 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 Purchaser, the Supplier shall make express reference to said deviation.

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

2.4 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 2.3 remains subject to further notice.

3 Services

3.1 The type and scope of maintenance correspond to the accepted offer or are provided for in the contractual document, which also states the contact points. The contractual document can make reference to further documents.

3.2 The maintenance of hardware includes its repair (repair of faults and errors to restore operational efficiency) by repairing and replacing defective parts and installing technical improvements. Servicing (preventative maintenance to maintain operational efficiency) shall be carried out, insofar as is advisable in terms of technological developments and experience according to the work regulations of the manufacturer. Replaced parts shall become the property of the Supplier.

3.3 The maintenance of software includes the correction of errors, optimisation and the further development of the program (new releases). Functional upgrades can also be subject to payment.

3.4 By request the Supplier shall participate in the search for the cause of the fault, even when the fault occurs during interaction of several systems or components. If the Supplier proves that the breakdown was not caused by the hardware or software maintained by him, his services shall be subject to separate payment.

3.5 As far as he is able, the Supplier agrees by request and against separate payment to rectify breakdowns which can be attributed to circumstances for which the Purchaser or third party is responsible.

3.6 The Supplier agrees to inform the Purchaser of technical improvements and further advancements of the products he maintains. In particular he shall inform the Purchaser of the consequences a new product would have on the existing infrastructure and the readability of the data.

3.7 The installation of technical updates and delivery or installation of further developments of the products by the Supplier is subject to the consent of the Purchaser, with the exception of technical updates for personal and material saftey. The Purchaser can choose not to have technical updates or further developed products installed.

3.8 The Supplier shall keep sufficient quantities of functional replacement, work and measuring material on hand for the purposes of repair.

3.9 Prior to requesting maintenance the Purchaser shall use the tools provided by the Supplier for problem limiting and error diagnosis in all cases.

4 Availability time, response time and troubleshooting time

4.1 While on call the Supplier shall accept fault reports and provide maintenance. Within the hours of availability, response time is calculated from the moment the fault report is received to the commencement of the repair. Troubleshooting time is the time period from receipt of the error notification to the conclusion of repair.

4.2   Unless otherwise agreed, availability time shall be Monday to Friday from 8:00 -17:00 (not including public and local holidays) and response time shall be 4 hours.

4.3   The Supplier shall begin to repair the hardware or software within the response time and shall complete the repair within the troubleshooting time to be stipulated in all cases. At the request of the Purchaser, the Supplier provides his services against separate payment, also outside of availability time.

5   Documentation, log and report

5.1   The Supplier agrees to update the documentation for hardware and software as necessary.

5.2   The Supplier shall keep a maintenance log which he shall make available to the Purchaser upon request. It contains all information essential to continued operation

5.3   If repairs are paid for on a cost basis, the Purchaser shall receive a report. The report shall state the date, type and length of assignment and shall be inspected by both parties.

6   Execution

6.1   The Supplier guarantees careful and successful performance of his services. He shall inform the Purchaser of any circumstances which would considerably simplify, reduce the cost of, complicate or render impossible maintenance.

6.2   Insofar as the Purchaser is entitled, he shall provide the Supplier, as necessary, with the source code, system documentation and other documents related to the system.

6.3   The Purchaser agrees to grant the Supplier required access to his premises and shall provide the power supply and other connections as agreed.

6.4   The Supplier shall employ only well-trained professional staff familiar with the respective hardware and software for maintenance. He shall oblige this staff to comply with the company rules of the Purchaser, in particular guidelines governing access, insofar as the Supplier has been notified in writing prior to conclusion of the contract or such guidelines are agreed upon at a later date.

6.5   Prior to starting the work the Supplier shall ensure that the data has been backed up appropriately.

7 Payment

7.1   The Supplier shall provide services for a one-off or recurrent fixed payment or on a cost basis.

He shall state the type of costs and rate of charges in his offer.

7.2   Payment covers all services necessary for fulfilment of the contract. Payment covers in particular the cost of spare parts and documentation, packaging, transport, travel and insurance costs, expenses, costs of the disposal of removed parts and any official taxes applicable at the time the contract was signed (e.g. VAT) and the prepaid recycling fee, which can be set out separately.

7.3   If the Supplier grants discounts on his services and if several organisational units of the Purchaser conclude similar contracts, all services shall be counted together when calculating the discount.

7.4   The Supplier can request, subject to a notice period of three months to the beginning of the next calendar year, a reasonable adjustment of payment, however, not beyond the development of the Swiss consumer price index.

7.5   Unless otherwise agreed, invoices are issued
- quarterly in advance in the case of recurrent payments,
- when the contract comes into effect in the case of one-off payments,
- following provision of services in the case of payments on a cost basis.

Invoices are payable within 30 days of receipt.

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

8   Contract modifications

8.1   The Purchaser can request the modification of the agreed services. The Supplier shall inform the Purchaser in writing within one month if and under what conditions he can carry out the modification. The Purchaser shall decide, also within one month, if the modification is to be implemented.

8.2   Unless otherwise agreed, the Supplier shall continue his work in accordance with the contract during the inspection of modification proposals.

8.3   Changes in service and any other modifications as regards payment, deadlines and other contract points shall be recorded in writing and appended to the contract prior to execution.

9   Privacy and data protection

9.1   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.

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

9.3 Advertising and publications about services specific to the contract require the written consent of the contracting parties.

9.4   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 shall amount per case to an annual payment at the time of the violation of a maximum of 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.

9.5   Valid data protection rules must be observed. If needs be, special data protection and security provisions shall be stipulated.

10   Default
10.1   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.

10.2   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 from the obligation to maintain secrecy; the right to assert damage claims remains intact, the contract penalty shall be deducted from damages owing.

11   Warranties
11.1   The Supplier warrants that his products and services exhibit the agreed qualities, and those qualities the Purchaser may require in good faith without special agreement in keeping with state-of-the-art technology.

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

11.3   If the Supplier does not perform the requested repair, does not perform it on time or does not perform it successfully, the Purchaser 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 request the necessary documents (in particular the source code) - provided the Supplier is in possession of same and there are no legal or contractual provisions to the contrary - 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.

11.4   Warranty rights (as per 11.1 to 11.3) become invalid within one year from receipt of maintenance. Defects must be reported immediately upon discovery. Claims of fraudulent concealment can be asserted ten years after execution.

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

12   Industrial property rights
12.1   Industrial property rights shall be fully transferred from the time they come into existence to the person who is deemed entitled pursuant to the purchase contract. The Supplier shall ensure by contract that personnel employed by him and by third parties commissioned by him are not entitled to any copyrights for the work results.

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

12.3   The Supplier shall defend against third party claims of violation of industrial property rights at his own risk and cost. The Purchaser shall notify the Supplier of same 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 Supplier assumes any ensuing costs or payment of damages incurred by the Purchaser.

12.4   If an action is filed on account of violation of industrial property rights or if a precautionary measure is taken, the Supplier can, at his own expense, choose either to grant the Purchaser this right or replace it by another which fulfils the essential contractual requirements, or he shall be liable to pay damages.

13   Liability for damages
13.1   Each contracting party shall be 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.

13.2   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

13.3   For pure financial losses, liability in the case of slight negligence equals not more than the resulting damages. For a one-off payment up to CHF 250,000, liability shall not exceed CHF 50,000 per claim. When a one-off payment exceeds CHF 250,000, liability shall amount to 20% of total payment to a maximum, however, of CHF 500,000 per claim. Liability for loss of profits is excluded.

13.4   Special agreements must be made for aggravated risk.

14   Place of fulfilment

Place of fulfilment for the Supplier's services is the place of installation of the hardware and software.

15   Termination of contractual relationship

15.1   If the term of the maintenance contract is undefined, notice can be given at any time subject to existing maintenance obligations arising from contracts for the purchase of hardware and software. Termination can also extend to individual parts of the contract subject to an agreement regarding the adjustment of payment. The period of notice is six months for the Supplier and two months for the Purchaser. Payments made in advance shall be refunded pro rata temporis.

15.2   Maintenance contracts can be terminated at any time without notice in the case of severe breach of contract by the other contracting party. 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.

15.3   Upon termination of the contractual relationship the Supplier shall submit programs, documents and equipment provided by the Purchaser and agreed work results without prompting. In particular the Purchaser shall obtain the current source code insofar as he is entitled to same.

15.4   Further contract terms shall be stipulated as required.

16   Assignment, transfer and pledge

Rights and obligations arising from the contractual relationship may not be assigned, transferred or pledged to third parties without the prior written con-sent 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.

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

18   Applicable law and place of jurisdiction

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

18.2   The provisions of the Wiener Kaufrecht (United Nations Convention on Contracts for the International Sale of Goods, concluded in Vienna on 11/4/1980) do not apply.

18.3   Place of jurisdiction is the registered office of the Purchaser or the registered office of the Supplier 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 the Maintenance of Hardware and Software results in a difference due to the versions in various languages, the German version shall be authoritative.