

Standard business terms

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(Named Cybertec resp. contractor below)

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1. General remarks

- 1.1 As contractor Cybertec provides comprehensive services in information technology for the customer. These SBT are an integrated ingredient of all offers, contracts or service level agreements (SLA) of the contractor and are valid in its latest version in case of an establishment of cooperation between contractor and customer.
- 1.2 These general conditions are in force for all current and prospective services provided by the contractor towards the customer, also if in individual cases it is not explicitly referred to the general conditions at the conclusion of the contract. Business conditions of the customer are valid only if they are acknowledged in writing by the contractor.

2. Scope of services

- 2.1 The exact scope of services of the contractor is determined in the respective offer / contract / SLA with the customer. Unless otherwise agreed, the contractor provides the services during normal business hours of the customer.
- 2.2 Basis of the facilities and technologies deployed for the service provision by the contractor is the qualitative and quantitative service required by the customer as determined on the basis of the information provided by the customer. Are changes of the services resp. the used technology needed in response to new requirements of the customer, the contractor will submit a corresponding offer.
- 2.3 The contractor is authorized to change the established facilities needed to render services at its own discretion, if no interference of the services are expected.
- 2.4 Performances of the contractor taken by the customer which exceed the agreed scope, are reimbursed by the customer based on hours actually worked and equipment used at the applicable rates of the contractor. Training services are in principle excluded in the services and require a separate agreement.
- 2.5 As far as the contractor mediates services to third parties upon request of the customer, these contracts are exclusively negotiated between the customer and the third party to the relevant conditions. The contractor is only responsible for the services made by his own.

3. The customer's rights of participation and cooperation

- 3.1 The customer undertakes to support all measures which are needed for the performance of the services through the contractor. Furthermore the customer undertakes to take all necessary measures which are needed for the fulfillment of the contract and which are not included in the scope of services of the contractor.
- 3.2 As far as the services are provided on site at the customer's, the customer shall make available the network components, connections, power supply, place for equipment, workplaces and infrastructure free of charge and in the quantity and quality (e.g. air conditioning) required by the contractor to provide the services. In any case, the customer shall be responsible for the operational requirements of hardware as defined by the respective hardware manufacturer. Furthermore, the customer is liable for the safety of buildings and facilities, especially with regard to fire and water protection or unauthorized access. The customer is solely responsible for specific safety procedures (e.g. safety cells) in his premises. The customer is not entitled to give instructions to employees of the contractor – whatever kind – and shall convey all requests regarding the service provision only to the contact person named by the contractor.
- 3.3 The customer shall, at the agreed dates, in the form required and at its own expense, make available to the contractor all the information, data and documents necessary to enable the contractor to fulfill the contract and at request support the contractor in analyzing problems and rectifying any faults, in coordinating Data Processing Orders and in the alignment of services. Changes in the operational procedures of the customer, which might cause changes in the services to be provided for the customer by the contractor, shall require prior consultation with the contractor with regard to the technical and commercial consequences.
- 3.4 The customer is obligated to treat confidentially all passwords and log-ins required to use the services.
- 3.5 The customer shall keep the data and information provided to the contractor safe so that they may be reconstructed at any time in case of loss or damage.
- 3.6 The customer shall meet all obligations to cooperate in such a timely manner that the contractor is not impeded in the provision of the services. The customer shall ensure that the contractor and/or third parties commissioned by the contractor are granted the necessary access to the premises of the customer for the purpose of providing the services. It shall be the responsibility of the customer to ensure that all employees of the customer's associated companies or its subcontractors will contribute accordingly to fulfilling this contract.
- 3.7 If the customer fails to perform its obligations to cooperate at the agreed dates or in the agreed scope, the services provided by the contractor shall be deemed to have been rendered as agreed even in case of limitations. In such case, the time schedules for the provision of the services by the contractor shall be delayed to a reasonable extend. The customer shall reimburse the contractor for any additional expenses and/or costs incurred at the applicable rates of the contractor.
- 3.8 The customer shall ensure that its employees and third parties attributable to the customer treat with care all equipment and technologies used by the contractor as well as any objects entrusted to the customer; the customer shall be liable to the contractor for any damage.

3.9 Unless otherwise agreed, products and services as well as cooperation and assistance efforts shall be provided by the customer free of charge.

4. Staff

As far as, according to an agreement made between the parties, customer employees are taken over by the contractor a separate written agreement shall be required.

5. Change Requests

Either contracting party can apply for changes to the agreed services at any time (“Change Request”). However, any such change request must include a detailed description of the change requested, the reasons for requesting the change, the impact the change will have on time schedules, and the costs of the change, in order to enable the addresses of the change request to adequately evaluate and assess it. A change request shall become binding only if signed by both parties.

6. Default

6.1 The contractor undertakes to provide the services as specified in the contract. If the contractor does not provide the services at the scheduled dates or provides the services in a defective manner, i.e. deviating significantly from the quality standards agreed, the contractor shall be obliged to provide the services in an orderly and defect-free fashion within a reasonable period of time by either repeating the services in question or performing any required improvement work.

6.2 If the defectiveness is due to services and products or cooperation and assistance efforts supplied by the customer or due to the non-compliance of the customer’s obligations according to paragraph 3, any obligation to remedy defects free of charge shall be excluded. In these cases the services provided by the contractor shall be deemed contractual rendered despite possible limitations. At the customer’s request the contractor shall remove the defect for a charge.

6.3 The customer shall support the contractor with remedying the defect and ensures that all necessary information is provided to the contractor. The client shall immediately notify occurred defects in writing or via E-Mail to the contractor. Extra effort attributable to a belated notification shall be borne by the customer.

6.4 The regulations of this point apply for possible deliveries of products by analogy from the contractor to the consumer. The warranty period for those deliveries is six months from transfer. §924 ABGB “Presumption of defectiveness” is excluded by mutual agreement. For products of third parties which are provided to the consumer by the contractor, the guarantee regulations of the respective manufacturer of these products apply priority according to the provisions of this clause. The contractor shall retain ownership of the delivered goods until complete payment.

7. Contractual penalty

Conspicuous contractual penalties are regulated in the SLA between contractor and consumer. In the absence of a written agreement, this point comes into effect.

Any contractual penalties are limited to the maximum of 20% of the total annual charge per year. The right to assert claims for damage beyond this provision – unless these are due to wilful action or gross negligence on our part – is excluded.

If penalty effective exceedances occur, the contractor has to be informed immediately in writing.

8. Liability

- 8.1 The liability of the contractor in case of the excess resp. non-compliance of the service levels exists only when the contractor is solely responsible for the excess resp. non-compliance. In particular, this applies not for failures for which the contractor is not directly responsible (e.g. external DNS-routing problems, attacks on infrastructure of the consumer, internet outages, etc.).
- 8.2 The liability for indirect damages – such as for escaped profit, costs, which are connected with an operating interrupt, data losses or third party claims, is explicitly excluded.
- 8.3 Damage claims shall become statute barred according to the legal regulations, at the latest however by the end of a one-year period as from the point in time of acquiring knowledge of the damage and of the person causing the damage.
- 8.4 If the contractor provides the contractual service with the assistance of third parties and warranty and/or liability claims against third parties arise in this connection, the contractor assigns such claims to the customer.
- 8.5 If data protection is explicitly included in the scope of services, the exclusion of liability for loss of data according to paragraph 8.2 shall not apply, however for retrieval of data limited to maximum 10% of the order total per claim, but maximum 15.000 €. Warranty and damage claims on the part of the consumer that go beyond those explicitly cited in this contract – whatever their legal justification – are excluded.

9. Compensation

- 9.1 The amounts of compensation to be paid by the customer are defined in the contract. The applicable value added tax (VAT) is charged additionally.
- 9.2 The agreed monthly flat rates are indexed. The guaranteed value is performed on the base of the Index of Consumer Prices 2005 which is monthly announced by the statistic Austria, whereby this itself is the starting point = 100. The increasing of the lump-sum will automatically become effective each year from January on and is calculated based on the October index of last year in comparison to the October index of the previous year. If the Index of Consumer Price 2005 = 100 is no longer published, the index, which succeed the index 2005 = 100 or which correspond the most, is applied as future basis of value. If no index calculation is used anymore, the index-adjusted interest is charged according to analog principles as being determinative of the latest index calculations.
- 9.3 Travel times made by employees of the contractor shall be considered as working time. Travel times shall be compensated at the hourly rates agreed upon. In addition, travelling costs and costs of overnight stay shall be reimbursed by the consumer to actual expenditures. Travel and ancillary costs shall be reimbursed upon presentation of the corresponding receipts (copies). This point may become ineffective, if a corresponding lump-sum is agreed in the contract.
- 9.4 The contractor shall have the right, at any time, to make the provision of services dependent on adequate advance payments or the provision of other collaterals by the consumer.

- 9.5 Unless otherwise agreed in the contract, one-off compensations shall be charged after provision of the respective service, while ongoing compensation shall be charged monthly in advance. The invoices submitted by the contractor, inclusive of sales tax, are payable at the latest 14 days from receipt of the invoice without any deductions and free of charges. For partial invoices, the terms of payment for the entire order obtain analogously. Payment shall be deemed effected on the day the contractor may dispose of it. If the customer is delayed with his payments, the contractor is entitled to charge default interest at the statutory rate and all necessary recovery costs. Should the customer's default in payment exceed 14 days, the contractor shall have the right to cease the provision of all services. Moreover the contractor has the right to cease the provision of all services in spite of agreed terms of payment.
- 9.6 The consumer shall bear all duties of contribution arising from the contract, like e.g. stamp duties or withholding taxes. To the extent that claims are leveled against the contractor for such fees, the customer will release the contractor from these claims harmless and non-actionable.

10. Force majeure

As far as long obligations under this contract are not met in time or in an orderly fashion due to force majeure, such as mobilization of troops, war, terrorism, natural disaster, fire, strike, lockout, embargo, execution of sovereign jurisdiction, failure of power supply, failure of means of transport, failure of telecommunication resp. data lines, changes in laws after contract conclusion affecting the service, or other non-availability of products, this shall not constitute a breach of contract.

11. Usage rights of software products and documents

- 11.1 If, and to the extent, the customer receives or is permitted to use software products within the framework of the services by the contractor, the customer shall have the non exclusive, non transferable, non licensable right, limited to the duration of the contract, to use the software products in unchanged form.
- 11.2 The usage of software products in a network shall require a license for each simultaneously user. The usage of software products on stand-alone-PCs shall require a license for each PC.
- 11.3 In case of software products of third parties, which are provided for the consumer by the contractor, respective license terms of the software manufacturer shall have precedence over the following provisions.
- 11.4 In the absence of a separate agreement, the consumer shall not be granted any further rights on the software products. The consumer's rights according to articles 40(d), 40(e) UrhG are not affected by this.
- 11.5 The consumer reserves documents, especially the documentations of software products, may not either be reproduced or distributed in any form for valuable consideration or free of charge. This applies primarily to training materials.

12. Duration

- 12.1 The contract will be in force from contract signature by both parties and shall be valid, unless otherwise agreed, for an indefinite time. The contract can be terminated in writing by either party under compliance with a cancellation notice period of 12 months, but at the earliest by the end of the minimum term determined in the contract.

- 12.2 Either party to the contract shall be entitled to terminate the contract earlier and without notice in writing. An important reason shall particularly exist if the other contracting party, despite a written warning and under penalty of cancellation, violates essential obligations in the contract or in the event of a procedure for liquidation or any procedure for insolvency being applied, initiated or rejected due to lack of assets against the other party or if the services of the other party are being interfered or prevented as a result of force majeure for a period greater than six months.
- 12.3 In addition, the contractor shall be entitled to terminate the contract for an important reason before completion of the period, when significant parameters in the provisioning of the services have changed and if the contractor for that reason is not expected to put up with continuing the services under aspects of economic viability.
- 12.4 In case of termination of the contract the consumer shall return immediately all documents and documentations submitted to him by the contractor.
- 12.5 On request the contractor supports the consumer sending back the services to the consumer or to a third party appointed by him to the hourly rates of the contractor at the end of the contract.

13. Data protection

- 13.1 The contractor shall regard the legal provisions of the Data Protection Act and the Telecommunications Act when handling personal data and shall take all necessary technical and organizational measures within the contractor's area of responsibility for data protection. The contractor obligates his employees / subcontractors to observe the provisions of article 15 of the Data Privacy Law.
- 13.2 The contractor is not obliged to prove the legitimacy of the data processing in accordance with data protection laws ordered by the consumer. The consumer shall ensure the legitimacy of transferring personal data to the contractor as well as processing those data from the contractor.
- 13.3 The contractor shall take all reasonable measures to protect the consumer's data and information stored at the contractor's sites against unauthorized third party's access. Should third parties nevertheless succeed in illegally obtaining access to the data and information, the contractor shall not be responsible.
- 13.4 Within the conclusion of the contract the consumer gives his approval that data related to the business transaction may be transferred to subcontractor employed in the processing of the assignment.

14. Secrecy

- 14.1 Either contract party gives an assurance to handle all trade secrets communicated in the context of this contract and its implementation received from the contract partner suchlike and not to disclose it to third parties to the extent that such information and data are not becoming generally accessible or already known to the recipient without any confidentiality obligation or

which are legally communicated resp. handed over to the recipient by a third party without any obligation to observe confidentiality or which have been developed independently by the receiving party, as can be shown, or to reveal due to a valid regulatory or judicial decision.

14.2 The subcontractors related to the contractor are not regarded as third parties, as far as they are liable to an obligation of confidentiality with contextual regard to this point.

15. Other matters

15.1 The contract parties shall nominate professional and competent employees in the contract to be authorized to make all necessary decisions.

15.2 In the necessity of an access to the datacenter by employees of the contractor or by third parties designated by him, the contractor commits himself to adhere to the consumer's safety guidelines.

15.3 During the term of the contract and until the expiration of two years after the end of the contract, the consumer shall not headhunt employees / subcontractors engaged by the contractor neither of his own account nor by third parties. In case of infringing these regulations the consumer shall be obliged to contractual penalty of twelve monthly gross salaries of the contractor's concerned employee / subcontractor, at least the collective labor agreement salary of companies in the service sector in the fields of automated data processing and information technology in the experience step of specific activities (ST2).

15.4 Changes and amendments to the contract must be in writing. This also applies for the cancellation in this formal requirement.

15.5 If any stipulation of this agreement should be or become invalid or impracticable, in whole or in part, this shall not affect the validity of the remaining stipulations. The invalid or impracticable provisions shall be replaced by relative provisions corresponding to or coming as close as possible to the economic purpose of the invalid and impracticable provisions.

15.6 Any salary about the rights and obligations which result from the contract requires the prior written agreement of the respective party. The contractor is entitled to transfer the contract to a company corporate affiliated to the contractor without the consumer's permission.

15.7 The contractor is authorized to rely, full or in part, to third parties to fulfill his obligations.

15.8 Unless otherwise agreed, the statutory provisions applicable to full merchants shall exclusively apply according to Austrian law, even in the case of execution of the order abroad. For potential disputes applies only the local competency of the objective responsible court for the place of business of the contractor as agreed.