

## General Terms and Conditions

### **Cybertec Schönig & Schönig GmbH**

Gröhrmühlgasse 26  
2700 Wiener Neustadt  
(hereinafter referred to as "Cybertec", "contractor" or "CN")

#### **These terms and conditions also apply in full to the subsidiaries:**

- *Cybertec PG Database Services Switzerland GmbH*, Bahnhofstrasse 10, 8001 Zurich, SWITZERLAND
- *Cybertec Nordic OÜ*, Tartu mnt 84a-M302, 10112 Tallinn, ESTONIA

### **1. General information**

1.1. As contractor (CN), Cybertec provides services to the client (CL) in the field of information technology. These General Terms & Conditions are to be viewed as an integrated part of all offers, contracts or Service Level Agreements (SLA) by the CN and shall be valid in their most current form if cooperation between the CN and the CL is established.

1.2. These General Terms & Conditions (T&Cs) apply to all current and future services provided by the CN to the CL, even in the event that the T&Cs are not explicitly referred to when the contract is concluded. The CL's terms and conditions shall only apply if they have been acknowledged by the CN in writing.

### **2. Scope of performance**

2.1. The exact scope of the services provided by the CN is defined in the respective offer / contract / SLA with the CL. Unless otherwise agreed, the CN shall provide the services during the CN's standard business hours.

2.2. The equipment and technology used by the CN for service provision shall be governed by the CL's quantitative and qualitative requirements, as identified based on the information made available by the CL. If any changes in services or the technology used are needed due to new requirements on the part of the CL, the CN shall submit an appropriate offer.

2.3. The CN is entitled to modify the facilities used for provision of services at their own discretion if no resulting impairment of the services may be expected.

2.4. Services provided by the CN and utilised by the CL beyond the agreed scope of performance shall be charged to the CL on the basis of actual staff and material costs according to the rates specified by the CN. As a rule, training measures are not included in the services and a separate agreement for these is required.

2.5. If the CN assigns third-party services at the CL's request, any such contracts shall be concluded solely between the CL and the third party in accordance with their respective terms and conditions. The CN is responsible only for the services they themselves have provided.

### **3. The CL's participation and cooperation obligations**

3.1. The CL undertakes to support all measures necessary for provision of services by the CN. The CL shall further undertake to take all measures necessary for the fulfilment of the contract that are not within the CN'S scope of performance.

3.2. In the event that the services are provided on the premises of the CL, the CL shall provide access to all the network components, connections, supply current, floor space, work spaces and infrastructure necessary for the provision of services to the extent and quality required (e.g. air conditioning) and free of charge. In every case, the CL is responsible for ensuring compliance with the manufacturer's operational requirements for the respective hardware. The CL is also responsible for ensuring the security of the rooms and building, including protection from water, fire and unauthorised entry. The CL is solely responsible for any special security measures (e.g. security cells) on their premises. The CL is not entitled to issue instructions of any kind to the CN's employees and shall submit all requests regarding the provision of services exclusively to the key contact specified by the CN.

3.3. The CL shall provide the CN with all the information, data and documentation required to fulfil the order in the form specified by the CN by the agreed times and at their own expense, and shall support the CN in analysing problems, eliminating faults, and coordinating processing orders and services upon request. Any changes in the CL's workflow that may lead to changes in the services provided by the CN to the CL shall require prior consultation with the CN concerning their technical and commercial impact.

3.4. The CL shall undertake to keep confidential any passwords and log-ins required for the use of the CN's services.

3.5. The CL shall keep an additional copy of all the data and information submitted to the CN to allow these to be reconstructed at any time in the event of damage or loss.

3.6. The CL shall fulfil all of their cooperation obligations in a timely manner so as to not impede the CN in the provision of services. The CL shall ensure that the CN and/or third party assigned by the CN to provide services is given the necessary access to the CL's premises. The CL is responsible for ensuring that all employees of their affiliated companies or contracted third parties cooperate to facilitate performance of the contract.

3.7. If the CL does not fulfil their cooperation obligations by the agreed date or to the agreed extent, the services provided by the CN shall be deemed rendered as contractually agreed, potential limitations notwithstanding. The schedules for the services to be provided by the CN shall be postponed to an appropriate extent. The CL shall remunerate the CN for any resulting additional expenditures and/or costs separately at the CN's respective applicable rates.

3.8. The CL shall ensure that their employees and any third parties for which the CL is accountable treat all facilities and technology used by the CN and any assets entrusted to the CL with care; the CL shall be liable to the CN for all damages.

3.9. Unless otherwise agreed, all supplies and cooperation provided by the CL shall be free of charge.

## **4. Staff**

4.1. If both contracting parties agree that employees of the CL are to be taken on by the CN, this must be stated in a separate written agreement.

## **5. Change Requests**

5.1. Both contracting parties can request a change to the scope of performance at any time ("Change Request"). A Change Request must however include an exact description of the requested change, the reasons for the change, and its impact on scheduling and costs in order to allow the addressees of the Change Request to conduct an appropriate assessment. A Change Request shall only become binding once both contracting parties have accepted it.

## **6. Service defects**

6.1. The CN shall undertake to provide the services as specified in the contract. If the CN does not provide the services by the scheduled dates or the services are

defective, i.e. deviate significantly from the agreed standards of quality, the CN is obliged to provide their services in a correct and defect-free fashion by - at their own discretion - either providing them again or carrying out the necessary works to remedy the defects within a reasonable period of time.

6.2. If the defects are caused by a defect in the supplies or cooperation provided by the CL or a violation of the CL's obligations as stated under point 3, any obligation to eliminate defects free of charge shall be excluded. In these cases, the services provided by the CN shall be deemed provided as specified in the contract, any potential limitations notwithstanding. The CN shall undertake to remedy the defect for a fee if requested to do so by the CL.

6.3. The CL shall support the CN in remedying the defects and provide all the necessary information. Any defects that occur must be reported by the CL to the CN immediately, in writing or via email. The CL shall bear any additional costs for remedying the defect incurred by delayed notification.

6.4. The provisions set out in this point also apply correspondingly to all products delivered by the CN to the CL. The warranty period for any such deliveries is 6 months following receipt. Sect. 924 of the ABGB (Austrian Civil Code) "Presumption of defectiveness" is excluded by mutual agreement. For all third-party products delivered to the CL by the CN, the manufacturer's warranty conditions for the respective product shall take priority over the provisions set out in this point. The CN shall retain title to all goods delivered by the CN until full payment.

## **7. Contractual penalty**

7.1. All potential contractual penalties shall be provided for in the SLA between the CN and the CL. If no corresponding written arrangements have been made, this point shall not apply.

All potential contractual penalties per annum are limited to 20% of the total annual fees paid by the CL to the CN. The assertion of any claims for damages above and beyond this is excluded, unless these are due to wilful intent or gross negligence.

## **8. Liability**

8.1. The CN shall only be liable for exceeding or failing to comply with a possibly contractually agreed Service Level if the CN is solely responsible for the excess or failure to comply. This does not apply in particular to disruptions for which the CN is not directly responsible (e.g. external DNS routing problems, attacks on the CL's infrastructure, lack of Internet service, etc.).

8.2. Liability for indirect damages - such as loss of profits, costs related to interrupted operations, loss of data or third-party claims - is expressly excluded.

8.3. The statute of limitations for claims for damages is governed by the statutory provisions; the limitation period shall however expire after one year following identification of the damage and damaging party at the latest.

8.4. If the CN is aided by third parties in providing the services and warranty and/or liability claims arise against these third parties in this context, the CN shall assign these claims to the CL. In this case, the CL shall refer exclusively to this third party.

8.5. If the creation of a physical data backup is expressly agreed upon as a service, liability for the loss of data is - in derogation from point 8.2 - not excluded, however, for the restoration of the data, it is limited to a maximum of 10% of the order amount per event of loss. The maximum amount shall however be EUR 15 000.00. All warranty and damage claims on the part of the CL exceeding those stated in the respective contract - irrespective of legal grounds - are excluded.

## **9. Payment**

9.1. The fees to be paid by the CL and the conditions are defined in the contract. Value Added Tax will be charged in addition, at the legally applicable rates. VAT may not apply if the Reverse Charge procedure is used.

9.2. Time spent travelling by CN employees shall generally be considered working time. Travelling times shall be compensated at an agreed flat rate or by the hour.

9.3. The CN is entitled to make the provision of services conditional on the payment of deposits or the provision of other guarantees at an appropriate level on the part of the CL at any time.

9.4. Unless otherwise agreed in the contract, one-time payments shall be charged after the services have been provided, while current payments shall generally be charged in advance and on a monthly basis. The invoices submitted by the CN, including VAT, are payable within 14 days from receipt of the invoice at the latest, without deductions and free of charges. The payment conditions defined in the total order shall apply analogously to partial invoices. A payment shall be deemed to have been effected on the date on which the payment amount is at the CN's disposal. If the CL defaults on payment, the CN is entitled to demand payment of statutory default interest rates and all collection-related costs. If the CL is in default of payment for over 14 days, the CN is entitled to

stop all services. Furthermore, the CN is entitled to demand immediate payment for all services provided, irrespective of any other terms of payment.

9.5. All taxes and duties arising from the contractual relationship, such as stamp duty on legal transactions or source tax, shall be borne by the CL. If charges for any such taxes and duties are levelled against the CN, the CL shall indemnify and hold the CN harmless in this respect.

## **10. Force majeure**

10.1. To the extent that and as long as obligations cannot be met on time or cannot be met correctly due to force majeure, e.g. war, terrorism, natural disasters, fire, strikes, lockouts, embargos, government intervention, power outages, transport failures, telecommunication network or data cable failures, changes in legislation affecting the services after conclusion of the contract or other non-availability of products, this shall not represent a breach of contract.

## **11. Rights of use for software products and documents**

11.1. If the CN places software products at the CL's disposal or enables the CL to use the software products in the context of the services provided, the CL has the non-exclusive, non-transferable, non-sublicensable right to use the software products in unmodified form. This right is restricted to the term of the contract.

11.2. If the software products are used in a network, a separate licence is required for every simultaneous user. If the software products are used on standalone computers, a separate licence is required for every computer.

11.3. For all third-party software products placed at the CL's disposal by the CN, the manufacturer's license terms for the respective software product shall take priority over the provisions set out in this point.

11.4. In the absence of a separate agreement, no further rights to the software products shall be assigned to the CL. This does not affect the CL's rights under Sect. 40 (d), 40(e) of the Austrian Copyright Act (UrhG)

11.5. The documents placed at the CL's disposal by the CN, in particular documentation relating to software products, may not be reproduced or disseminated in any form, whether free of charge or for a fee. This applies in particular to training documents.

## **12. Term**

12.1. The contract shall become effective once it is signed by the CL and confirmed by the CN and is entered into, unless otherwise agreed, for an indefinite period. The contract can be terminated by either partner in writing within a notice period of 12 months, at the earliest however by the end of the contractually agreed minimum term.

12.2. Each contracting party is entitled to terminate the contact prematurely or without previous notice if a compelling reason exists. A compelling reason shall be deemed to exist in particular if the other contracting partner, despite having been issued a written warning and threatened with termination, violates significant contractual duties or initiates or opens bankruptcy or other insolvency proceedings against the other contracting partner, or is rejected due to a lack of assets, or the services of the other contracting partner are hindered or prevented due to force majeure for a period exceeding six months.

12.3. The CN is further entitled to terminate the contract prematurely for a compelling reason if significant parameters concerning the provision of services have changed and for this reason the CN cannot in economic terms be reasonably expected to continue providing the services.

12.4. Upon termination of the contract, the CL must immediately return all the documents and records placed at their disposal by the CN.

12.5. After termination of the contract, the CN shall support the CL in returning the services to the CL or a third party designated by the CL upon request and for the CN's respective applicable rates.

## **13. Personal data**

13.1. When handling personal data, the CN shall observe the provisions set forth in the Data Protection Act, the General Data Protection Regulation and the Telecommunications Act and adopt all the technical and organisational measures necessary for the protection of data within the CN's scope of responsibility.

13.2. The CN shall require their employees to comply with the provisions of Sect. 6 of the Data Protection Act, including company regulations, and Sect. 11 of the Fair Trade Practices Act: Trade and Business Secrets.

13.3. The CN shall conclude a processor contract of the kind described in Article 28 GDPR to ensure that all processors comply with these provisions.

13.4. The CN shall undertake to store and process only those personal data that are necessary to implement pre-contractual measures and, in the event that a contract is concluded, for the performance of the contract. These include the following data:

- Name of the key contact within the client company
- Telephone and email address of the key contact
- Position of the of the key contact within the client company

The data provided by the CL are necessary for contract performance or the implementation of pre-contractual measures. The CN cannot enter into a contact with the CL without this data. The data will not be transmitted to third parties. Disclosure to the CN's tax advisor in fulfilment of their fiscal obligations and transmission of the data to the CN's subsidiaries who use said data for the aforementioned purposes both represent an exception to this rule.

All data resulting from the contractual relationship will be stored until expiry of the fiscal retention period.

The data shall be processed on the basis of the statutory provisions of Sect. 96 Para 3 of the Telecommunications Act and Article 6(1)a (consent) and/or b (necessary for performance of a contract) of the GDPR.

13.5. All persons affected by the processing of personal data have the right of information, correction, deletion, limitation, data portability, withdrawal and objection. If an affected person believes that the processing of their data violates the Data Protection Act or that their data protection interests are being violated in any other way, the affected person may lodge a complaint with the regulatory authorities. In Austria, this is the Data Protection Authority.

## **14. Confidentiality**

14.1. Each contracting partner assures the other that all trade secrets disclosed in association with the contract and its implementation will be treated confidentially and not made accessible to third parties, insofar as these are not generally known, or were not known to the recipient beforehand with no confidentiality obligation, or were not disclosed to the recipient or placed at their disposal by a third party with no confidentiality obligation, or were not demonstrably developed independently by the recipient or are not to be disclosed due to a legally effective administrative or judicial decision.



## **15. Miscellaneous**

15.1. In connection with the conclusion of a contract, the CL shall designate a knowledgeable and competent key contact who is authorised to make or authorise all necessary decisions.

15.2. If it is necessary for the CN's employees or contracted third parties to enter the place of performance, the CN shall undertake to comply with the CL's safety guidelines.

15.3. The CL shall neither on their own account nor via third parties solicit employees / sub-processors employed by the CN to provide the services. In the event of a violation of this provision, the CL shall undertake to pay the CN a contractual penalty of twelve times the monthly gross salary of the respective employee / sub-processor, at least being equivalent to the collective agreement salary of an employee with an experience level suitable for special activities (ST2) at a company providing services in the field of automated data processing and information technologies.

15.4. Any changes and amendments to the contract must be made in writing. This also applies to the annulment of this formal requirement

15.5. Should one or more provisions of the contract be or become partially or wholly invalid or impracticable, this shall not affect the validity of the remaining provisions. The invalid or impracticable provision shall be replaced by an appropriate valid provision that has, to the greatest extent possible, a similar commercial effect to the invalid or impracticable provision.

15.6. Every assignment of the rights and obligations arising from the contract shall require the other contracting party's prior written consent. The CN is however entitled to assign the contract to a corporate affiliate without the consent of the CL.

15.7. The CN is entitled to engage a third party in order to fulfil its obligations wholly or in part.

15.8. Unless otherwise agreed, the statutory provisions applicable to fully-qualified traders shall exclusively apply according to Austrian law, even if the order is carried out in another country. All potential disputes shall be settled exclusively by the materially competent court of the CN's place of business.

