

# IT General Terms and Conditions of Purchase

## 1. Definitions

- 1.1 The **customer** (hereinafter referred to as "**customer**") is Burda Procurement GmbH or the company affiliated with Hubert Burda Media Holding Kommanditgesellschaft pursuant to Sections 15 ff. of the German Stock Corporation Act (AktG), which commissions corresponding services specified as an order.
- 1.2 The **contractor** (hereinafter referred to as "**contractor**") is the company accepting the order.
- 1.3. The **party** is either the customer or the contractor, or jointly the **parties**.
- 1.4. **Order** means a binding request for delivery and service by the customer.
- 1.5 **IT services** are such services which are based in any form on the use of information technology, in particular (i) programming services, (ii) individualisation of IT programs, (iii) supply or provision of hardware and software, (iv) provision of lines, (v) system construction, (vi) provision of consulting services on information technology, (vii) performance of analyses.
- 1.6 **Objects of use** are all work results, in particular programs in object and source code form, data collections and databases, user and program documentation and operating instructions, user manuals, configuration, parametrisation, interface creation, all script programming, designs, drafts, procedures, specifications, reports and concepts, which the contractor produces in execution of the contract.
- 1.7 **Standard objects of use** are all objects of use or parts of such objects of use not specially developed for the customer. Modifications, processing and redesigning of standard objects of use, which are carried out according to our individual specifications, shall be considered as individually created objects of use.
- 1.8 **Individually created objects of use** are those objects of use that the contractor creates specially for the customer. They do not include integrated standard objects of use from the contractor or third parties.
- 1.9 **Projects** are IT services to be provided in cooperation between the parties over a period of time to be determined by the parties.
- 1.10 **SaaS** means the provision of software over the Internet.
- 1.11 **Availability** refers to the actual possibility of accessing IT services and using them in accordance with the contract.

## 2. Scope of the IT GTCP

- 2.1 These IT GTCP apply to all orders for the use of IT services.
- 2.2 These IT GTCP of the customer apply exclusively. Any terms and conditions of the contractor that contradict or deviate from these IT GTCP are hereby expressly rejected. The IT

GTCP of the customer shall also apply if the customer accepts the contractor's deliveries and services without reservation in the knowledge of conflicting or deviating terms and conditions of the contractor. The principles concerning the commercial letter of confirmation do not apply.

## 3. Conclusion of contract

- 3.1 The parties agree that the eProcurement system used by Burda (e.g. Coupa) can be used for orders. The customer is entitled to place an order via the eProcurement system. The contractor has created the technical prerequisites for being able to accept orders via the eProcurement system.
- 3.2 The contractor is obliged to expressly declare the acceptance of an order. Orders placed by the customer via the Coupa eProcurement system must be accepted by the contractor via Coupa.
- 3.3 With the acceptance of the order, the contract is considered concluded. The unconditional implementation of an order shall be deemed to be acceptance even without an express declaration.
- 3.4 If reference is made to other documents (e.g. order/offer, framework agreement, IT GTCP), the following ranking shall apply in the interpretation of the contract:
  - Order/individual contract
  - Framework agreement
  - IT GTCP
  - Offer
- 3.5. Legally relevant declarations and notifications made by the contractor after conclusion of the contract require the customer's personally signed confirmation to be effective.

## 4. Performance of the contractual service

- 4.1 The contractor may only use a subcontractor to fulfil its contractual obligations with the prior written consent of the customer. Consent may not be refused without a factual reason. The contractor must pass on the obligations imposed on it with regard to data protection and secrecy to the subcontractor engaged in writing and provide proof of this immediately on request at any time.
- 4.2 All IT services are to be provided properly according to the state of technology at the time of performance.
- 4.3 At the customer's request, the contractor shall, at any time, provide written information on the current status of the performance of the services.
- 4.4 The contractor may only supply such objects of use that are intended by the manufacturer to be placed on the market in a member state of the European Union or a state that is a party to the Agreement on the European Economic Area.
- 4.5 The contractor shall inform the customer at regular intervals of new developments and technical advances that are of significance for the

provision or use of the services and shall propose solutions for the continuous improvement of quality and the reduction of costs. In particular, the provider shall recommend services and products to the customer that enable the achievement of a higher level of performance and an increase in efficiency, cost savings, improved security and user acceptance and/or provide the customer with other advantages. The above-mentioned IT services are provided by the contractor in the interest of a long-term customer relationship.

## **5. Delivery dates, milestones and completion dates**

- 5.1 The dates and deadlines specified in the contract shall apply to the performance of the contractual services. The stated delivery or implementation time is binding. If circumstances arise which prevent the agreed delivery or implementation time from being met, the contractor will inform the customer of this immediately. Any postponement of delivery and/or implementation deadlines must be agreed in writing with the customer to be effective.
- 5.2 In the event of a delay in performance, the customer shall be entitled to the statutory claims.
- 5.3 Even if the contractor is only temporarily unable to provide the service, the customer shall be entitled, after setting a reasonable deadline, to commission third parties to provide the service as a substitute. The payment obligation shall remain in force to the extent that the contractor proves that it is not responsible for the temporary impossibility.

## **6. Prices and terms of payment**

- 6.1 The agreed remuneration shall cover all services to be provided by the contractor, including any rights granted. Automatic price adjustments shall not take place.
- 6.2 Travel times, travel, accommodation and catering costs will not be reimbursed unless individual contractual agreements to this effect have been made.
- 6.3 All prices and costs are exclusive of the statutory value added tax applicable at the time of invoicing.
- 6.4 The contractor shall bear all customs duties, taxes, levies and costs of importation arising from the order. The contractor's cost of materials is only refundable if this has been agreed in writing beforehand.
- 6.5 If, contrary to Section 6.1, something else has been agreed upon and the invoicing is based on time and/or material expenditure on the basis of proof to be acknowledged and signed by the customer on a daily basis and based on the agreed charge rates, this must be verifiably stated on the invoice.
- 6.6 Unless otherwise agreed, the claim to payment of the agreed remuneration shall arise after complete, defect-free performance of the ser-

vice and, in the event of a requirement for acceptance, upon issue of the acceptance certificate.

- 6.7 The payment period shall commence upon receipt of a proper invoice in accordance with Section 14 of the Value Added Tax Act (UStG). The due date is 30 days after the beginning of the payment period. Section 286 (3) of the German Civil Code (BGB) shall not apply. If payment is made within 14 calendar days, the contractor shall grant a 3% discount on the net amount of the invoice. Payments shall be deemed to be on time if the payment order is made within the time limit.
- 6.8 Invoices are to be sent by e-mail in PDF format to [kreditoren.rechnung@burda.com](mailto:kreditoren.rechnung@burda.com). Invoices by the contractor which refer to a Coupa order (43rd order) must be issued and transmitted via the Coupa Supplier Portal. For a correct assignment, they must contain the organisational indicators of the order, such as order number, delivery location, and so on. The customer shall receive correspondingly marked partial invoices for agreed partial payments.
- 6.9 In case of default of payment, the contractor may demand default interest at an annual rate of 5 percentage points above the base rate of the European Central Bank. The contractor is at liberty to prove higher damages, while the customer is at liberty to prove lower damages. The customer shall only be in default after a written reminder from the contractor after the due date has been reached.
- 6.10 The contractor's claims arising from the contract may not be assigned to third parties, either in whole or in part, without the written consent of the customer.
- 6.11 Payments by the customer do not constitute recognition of a performance by the contractor in accordance with the contract.
- 6.12 The customer shall be entitled to set-off and retention rights to the extent permitted by law.

## **7. Participation of the customer**

- 7.1 The customer shall assist in the execution of the contract in the sense of an obligation, insofar as this is contractually agreed and necessary.
- 7.2 The contractor is obliged to request the customer to cooperate within a reasonable period of time and by stating the specific act of cooperation. If the request is omitted, the customer shall not be in default of cooperation and the contractor may not invoke improper cooperation. The customer is only liable for insufficient or delayed cooperation if the customer is responsible for it.

## **8. Transfer of ownership and transfer of risk**

- 8.1 Insofar as the contractor owes a transfer of object ownership, this is generally transferred to the customer without reservation of title upon delivery of the object. If the customer is already in possession of the object, the ownership is transferred to the customer upon conclusion of

the contract. If the contractor is to remain in possession of the object, the transfer of ownership shall take place upon conclusion of a corresponding ownership agreement.

- 8.2 The risk shall pass to the customer, at the earliest, upon transfer of ownership. Section 447 BGB shall not apply.

## 9. Granting of rights

9.1 The contractor shall grant the customer the exclusive right to all individually created IT services respectively individually created objects of use, in particular also to the source code, to use the objects of use in the original or in an amended, translated, processed or redesigned form; this right shall be sublicensable for non-commercial and commercial purposes, unrestricted in terms of time, place and content, exercisable in any hardware and software environment, transferable, permanent, irrevocable and non-cancellable. The use includes, in particular, the right

- to store and load them permanently or temporarily, to display and run them (also to the extent that reproductions become necessary for this purpose), to modify, translate, edit or otherwise redesign them, to store, reproduce, exhibit or publish them for commercial or non-commercial purposes on any known medium or in any other way,
- to distribute them in physical or non-physical form, and in particular to reproduce them publically or non-publically, also by means of image, sound and other information carriers, to use them in databases, data networks and online services,
- including the right to make the IT services available to users of the aforementioned databases, networks and online services for research and retrieval using tools selected by the customer and for commercial or non-commercial downloading,
- to enable third parties to use them or operate them for the customer, not only for its own purposes, but also to use them to provide services to third parties, and to distribute them, regardless of whether this is done commercially or not.

9.2 Section 9.1 shall apply to standard objects of use acquired within the scope of the provision of services, with the proviso that a simple right of use is agreed instead of an exclusive one.

9.3 The customer shall acquire rights of use to all further developments of software, for example within the scope of warranty or maintenance or on the basis of other commissioning, to the same extent as to the underlying objects of use themselves.

9.4 The customer shall be entitled to continue to use expertise acquired in the course of the performance of the services, irrespective of whether it was conveyed to the customer by the contractor expressly or in any other way. Insofar as intellectual or industrial property rights exist in this respect, the contractor shall grant the customer a simple right of use and exploitation which is irrevocable, unlimited in terms of time,

place and content, and transferable and sublicensable to companies affiliated with the customer in accordance with Sections 15 ff. AktG.

- 9.5 The customer reserves all rights, in particular property rights and copyrights, to technical requirement profiles, illustrations, drawings, calculations, samples and other documents made available to the contractor by the customer; they may not be made available to third parties without the express prior written consent of the customer. Such documents and information are to be used exclusively for the provision of the contractual services and are to be returned to the customer without being asked after completion of the contractual services, or destroyed.

## 10. Claims for defects

10.1 Any defects shall be remedied by the contractor within the warranty period without delay and in accordance with the statutory provisions.

10.2 The type of supplementary performance shall be chosen by the customer. The contractor may refuse the type of supplementary performance chosen by the customer if it is only possible at a disproportionate cost.

10.3 If the contractor does not comply with the request for supplementary performance or does not comply with it in due time or if the supplementary performance fails twice, the customer is entitled to remedy the defect itself or have it remedied by a third party and to demand the necessary expenses for this from the contractor or to reduce the agreed remuneration appropriately or to withdraw from the contract and demand the return of any remuneration already paid and to demand compensation for the damage incurred by the customer due to the defect, as well as compensation for the expenses which the customer has incurred in reliance on receipt of the defect-free contractual performance. In the event of a partial rescission or termination, the contractor shall only receive remuneration for the contractual services accepted as being free of defects and not covered by the partial rescission or for the contractual services performed after the termination, provided that these are economically useful for the customer. The right to claim damages or reimbursement of expenses is reserved. In addition, the customer is entitled to the statutory warranty claims in full.

10.4 All costs incurred within the scope of a warranty shall be borne by the contractor.

10.5 The return or collection of rejected goods is at the expense and risk of the contractor.

10.6 Section 377 of the German Commercial Code (HGB) is waived. The customer shall notify the contractor of obvious and hidden defects within a period of 2 weeks after their discovery.

10.7 Insofar as the customer has given its consent to technical documents and/or calculations, this shall not affect the liability for defects on the part of the contractor.

10.8 Within the scope of temporary provision of software, Section 536b BGB shall not apply.

## **11. Warranty / Limitation period**

- 11.1 Claims due to defects shall generally expire after 24 months. If the statutory warranty period is longer, the longer limitation period shall apply instead.
- 11.2 In the case of services requiring acceptance, the limitation period shall commence upon acceptance; in the case of services requiring transfer, the limitation period shall commence upon transfer to the customer.
- 11.3 In the event of defects of title, the limitation period shall not commence until the customer becomes aware of the defect.
- 11.4 In all other respects, the statutory periods of limitation and regulations on the commencement of the period of limitation shall apply.

## **12. Liability**

- 12.1 The contractor shall be liable exclusively in accordance with the statutory provisions for all damage caused intentionally or negligently by it, its employees or third parties commissioned by it (vicarious agents and/or assistants, sub-contractors).
- 12.2 The contractor undertakes to indemnify the customer from any product liability to the extent that the contractor is responsible for the defect that triggers the liability.
- 12.3 The contractor undertakes to maintain a business and product liability insurance with a coverage of at least €5 million per personal injury/property damage and to provide the customer with copies of this insurance upon request. A higher minimum insurance sum can also be agreed in individual contracts.
- 12.4 Contractual penalties or lump-sum damage claims against the customer are excluded.
- 12.5 In the case of simple and slight negligence, the customer shall only be liable in the event of a breach of an essential contractual obligation and only to the extent of the foreseeable damage. Essential contractual obligations are those whose fulfilment is essential for the proper execution of the contract and on whose compliance the contractual partner may regularly rely.
- 12.6 The customer shall not be liable for indirect damages, in particular lost profits.
- 12.7 Insofar as liability of the customer is excluded, the exclusion shall also apply to the liability of the customer's employees, legal representatives and vicarious agents.
- 12.8. Sections 12.5, 12.6 and 12.7 shall not apply in the case of intent and gross negligence and in the case of damages resulting from injury to life, body or health.

## **13. Third-party rights**

- 13.1 The contractor guarantees that all services and objects of use are free of third-party intellectual or industrial property rights and that there are no other third-party rights to them which restrict

or exclude their use in accordance with the contract.

- 13.2 If contractual services violate the rights of third parties (including industrial property rights and copyrights), the contractor shall do everything reasonable within the scope of supplementary performance to create contractual conditions by acquiring rights. If the acquisition of rights is not successful, the contractor shall provide the customer with equivalent contractual services and delivery items (in particular, the documentation) for the customer that do not infringe the rights of third parties (by-pass solution). The by-pass solution is only equivalent if it does not restrict, or only insignificantly restricts, the agreed usability of the contractual services and delivery items by the customer. The contractor shall bear the costs of the by-pass solution, as well as any necessary adaptation of the environment of the contractual services, unless it is not responsible for the infringement of the rights of third parties. If the contractor does not succeed in eliminating impairments caused by the rights of third parties, the customer is entitled to cancel the contract in whole or in part or to demand a reduction of the remuneration. Further rights and claims of the customer remain unaffected.
- 13.3 The contractor shall indemnify the customer without limitation in terms of amount from all claims by third parties and associated costs due to the infringement of the rights of third parties. This does not apply if the customer is exclusively responsible for the violation of the rights of third parties.
- 13.4 In the event that claims are asserted against the customer due to the infringement of third party rights by the contractual services, the contractor shall be obliged to independently conduct the legal defence for the customer at its own expense. The customer shall support the contractor in defending itself against asserted third-party claims, if necessary, to a reasonable extent at the contractor's expense. The customer is entitled to carry out the legal defence itself, but will coordinate with the contractor in this respect. In this case, the contractor is still obliged to bear the necessary costs.

## **14. Protection of secrets**

- 14.1 The parties undertake to treat as confidential all confidential information belonging to the other contracting party obtained in the course of the performance of the contract and to use it only for the purpose of the contract. This includes, in particular, technical as well as non-technical information, data, ideas, inventions, trade secrets and/or expertise, as well as other information that is designated as confidential or is recognisable as such.
- 14.2 The parties undertake not to use confidential information received, and in particular not to apply for intellectual property rights. No ownership, usage and utilisation rights to confidential information, the associated expertise or any property rights registered or granted thereon

- shall be granted. The provision of the confidential information does not constitute a right of prior use for the receiving party.
- 14.3 Internal disclosure of the confidential information shall only be permitted to the extent necessary for the purpose of the contract (need-to-know) and it is ensured that only those employees receive the confidential information who have or have had obligations comparable to those contained in these IT GTCP imposed on them within the scope of legal possibilities.
- 14.4 The parties undertake not to make any confidential information available to third parties and to protect it by appropriate secrecy protection measures. The reproduction of such confidential information, insofar as it does not exclusively serve the fulfilment of the contract, is not permitted. All confidential information received and copies made thereof must be returned to the respective party immediately upon request or destroyed / deleted. This obligation does not apply to routinely made back-up copies of electronic data traffic, nor to confidential information and copies thereof which the receiving party is required to keep under applicable law. However, such copies and retained confidential information shall otherwise continue to be subject to the provisions of these IT GTCP.
- 14.5 The parties undertake, in particular, not to reverse engineer confidential information received without the express written consent of the other party and not to examine it for composition and/or manufacture (prohibition of reverse engineering).
- 14.6 The above-mentioned obligations shall not apply to confidential information (i) which was already in the public domain at the time of disclosure or which enters the public domain thereafter without any failure to comply with the foregoing provisions being a contributory cause thereof, (ii) which was already in the possession of the receiving party prior to disclosure, (iii) which is subsequently disclosed to the receiving party by a third party without an obligation to maintain confidentiality, unless the disclosure by such a third party violates an obligation to maintain confidentiality to the knowledge of the receiving party, or (iv) which was independently developed by an employee of the receiving party without knowledge of the disclosed confidential information. If, and to the extent that, the receiving party is required by court or governmental order to disclose confidential information, the receiving party shall be entitled to disclose such confidential information to the extent required by such an order, provided that it promptly notifies the disclosing party to the extent permitted by law so that the latter may exercise its rights.
- 14.7 The above obligations shall apply indefinitely and, in particular, also after termination of the cooperation.
- 15. Data protection**
- 15.1 If the contractor obtains access to personal data in the course of providing the contractual services, it shall observe the applicable data protection regulations and, in particular, process personal data exclusively for the purpose of providing the contractual services (intended purpose), oblige its employees in writing to comply with the data protection requirements according to the GDPR and instruct them on the data protection regulations to be observed and prove this to the customer on request.
- 15.2 If order processing takes place on the part of the contractor, the contractor is obliged to conclude an order processing agreement with the customer.
- 18.3. The customer is entitled to store and process the data provided to it by the contractor on conclusion and implementation of the contract in compliance with the applicable statutory provisions on data protection, insofar as this is necessary for the contractual purposes. The privacy policy is available at [www.burda-procurement.com](http://www.burda-procurement.com).
- 16. Reference**
- The contractor is only permitted to use the customer as a reference with the express written and revocable consent of the customer. In particular, the customer reserves the right to use its names, company logos, registered trademarks or samples.
- 17. Termination of contract**
- 17.1 The provisions of these IT GTCP, in particular with regard to the rights of third parties (Section 13), protection of secrets (Section 14) and data protection (Section 15), shall continue to apply even after termination of the contractual relationship.
- 17.2 In the event of termination of the contract, irrespective of the legal grounds, the contractor shall hand over, free of charge, the data, records, documents and other information belonging to the customer or created individually for the customer, as well as the software (including the source code and the associated documentation) provided by the customer or created individually by the contractor for the customer, or, at the customer's discretion, make it available either at an interface to be defined by the contracting parties or on data carriers and disclose the data structures. Statutory storage obligations remain unaffected by this. The contractor is not entitled to assert rights of retention on such data, documents and information.
- 17.3 Regardless of the reason for the termination of the contract, the parties shall cooperate for the purpose of a proper termination or handover of the contract. The customer may demand that the contractor supports the customer in the transfer of the contractual services concerned to a subsequent provider. The support comprises all services that are necessary or useful for a proper transfer of the services to the sub-

sequent provider, including support in the development and implementation of an appropriate transfer plan and the provision of necessary information and data to enable a smooth transition to a data processing system selected and/or operated by the customer or a third party designated by the customer. Subsequent providers can be either the customer itself or a third party commissioned by it. The proper provision of IT services according to the contract which the customer still obtains from the contractor may not be impaired. Any costs incurred will only be reimbursed according to actual expenditure on the basis of agreed prices. Any other claims for remuneration by the contractor are hereby excluded.

## **18. Compliance**

- 18.1 The contractor undertakes not to offer, grant, demand or accept advantages within the business relationship, either in business dealings or in dealings with public officials, which violate applicable anti-corruption regulations.
- 18.2 The contractor undertakes not to enter into any agreements or concerted practices with other companies within the business relationship which have as their object or effect the prevention, restriction or distortion of competition in accordance with the applicable antitrust laws.
- 18.3. The contractor assures that it will comply with the respective applicable laws governing the general minimum wage and oblige subcontractors commissioned by it to the same extent. Upon request, the contractor shall provide evidence of compliance with the above assurance. In the event of a breach of the above assurance, the contractor shall indemnify the customer from claims by third parties and shall be obliged to reimburse any fines imposed on the customer in connection with this.
- 18.4 The contractor shall comply with the respective statutory regulations on the treatment of employees, environmental protection and occupational safety.
- 18.5 If there is a suspicion of a violation of the obligations under Sections 18.1 to 18.4, the contractor shall immediately investigate possible violations and inform the customer of the investigation measures taken. If the suspicion turns out to be justified, the contractor must inform the customer within a reasonable period of time about the internal measures it has taken to prevent future violations. If the contractor does not fulfil these obligations within a reasonable period of time, the customer reserves the right to withdraw from contracts with the contractor or to terminate them with immediate effect.
- 18.6 In the event of serious violations of the law by the contractor and violations of the provisions in Sections 18.1 to 18.4, the customer reserves the right to withdraw from existing contracts or to terminate them without notice.

## **19. Final provision**

- 19.1 The written form within the meaning of these IT GTCP shall also be maintained by using a documented electronic signature tool (the technical requirements for the electronic signature within the meaning of the eIDAS Regulation must be fulfilled), whereby a simple electronic signature is sufficient for this purpose. The use of an eProcurement tool (in particular, Coupa or SAP) used by Burda is also considered sufficient. E-mail, however, does not maintain this form.
- 19.2 The law of the Federal Republic of Germany shall apply, excluding the UN Convention on Contracts for the International Sale of Goods (CISG) and the provisions of international private law (IPR).
- 19.3 Should individual provisions of these IT GTCP be invalid or unenforceable or become invalid or unenforceable after conclusion of the contract, the validity of the rest of the contract shall remain unaffected. The invalid or unenforceable provision shall be replaced by a valid and enforceable provision whose effects come as close as possible to the economic objective which the parties had pursued with the invalid or unenforceable provision. The above provisions shall apply accordingly in the event that the contract proves to be incomplete.
- 19.4 The place of jurisdiction for all legal disputes arising out of or in connection with this contractual relationship shall be Munich (Local Court or Regional Court Munich I), subject to mandatory deviating statutory places of jurisdiction. The customer reserves the right to take legal action at other courts with statutory jurisdiction. Arbitration procedures have not been agreed.

# IT Special Terms and Conditions of Purchase

## Appendix A: Services and work, software rental agreements

### 1. Changes to services

- 1.1 The customer shall be entitled, at any time, to demand changes in performance in writing or in text form.
- 1.2 In the event of a demand for a change in performance, the contractor shall inform the customer in writing or in text form within 5 working days as to whether the change in performance is possible and what effects it would have on the contract, in particular taking into account the time schedule, additional expenditure, the amount of remuneration and the obligations to cooperate. If it is not possible to prepare an offer within 5 working days due to the complexity or the extent of the change request, the contractor shall notify the customer of this immediately and the parties shall subsequently agree on a reasonable period of time.
- 1.3 Within a further period of 10 working days, the customer shall inform the contractor in writing as to whether the customer wishes to maintain the claim for a change in performance or whether it wishes to continue the contract under the old conditions.
- 1.4 If the customer accepts the contractor's offer to change services, this shall be recorded in a change log and attached to the contract as an appendix.
- 1.5 The contractor shall only be entitled to make changes to services with the customer's written consent. In particular, a change in performance by one of the contractor's suppliers does not constitute a right to provide a changed service.

### 2. Acceptance of work services

- 2.1 The contractor shall produce the work results in compliance with the requirements of the respective contract or the service description/the respectively agreed specifications.
- 2.2 The contractor shall notify the customer in writing of the completion of the contractual services for acceptance. The customer shall check the services within eight weeks of notification; for this purpose, if necessary, a continuous functional test shall be carried out over ten consecutive working days under (simulated) operating conditions. Any defects occurring during the functional test will be recorded. If there are no defects or only insignificant defects which only insignificantly impair the intended use of the contractual services, the customer shall declare acceptance. The acceptance of partial performances does not limit the customer in the assertion of defects in already accepted partial performances during the overall acceptance, insofar as such defects only become apparent through the interaction of system parts.

- 2.3 The contractor shall immediately remedy any defects that prevent acceptance and resubmit its services for acceptance. The above provision of Section 2.2 shall apply accordingly to a renewed acceptance.
- 2.4 Insignificant defects shall be recorded in the acceptance log and rectified immediately. If a maintenance and support contract has been concluded with the contractor, the periods for fault rectification regulated therein shall apply.
- 2.5 If the final acceptance fails twice, the customer is entitled to withdraw from the individual order concerned.
- 2.6 If the contractor is in default, the customer may demand a contractual penalty of 0.25% of the invoiced amount per completed calendar day of default, but not more than 5% of the invoiced amount in total. The right to assert further damages in accordance with the statutory provisions is reserved. If a contractual penalty has been incurred, the customer has the right to declare the reservation of the contractual penalty until the final invoice has been paid.
- 2.7 Irrespective of the assertion of the contractual penalty or a claim for damages in excess thereof, the customer may withdraw from the individual order concerned if the latest acceptance date is exceeded by more than two months.
- 2.8 Acceptance of partial performance shall only be considered if this has been expressly agreed in writing between the parties.

### 3. Term and termination

- 3.1 Insofar as the order contains a fixed term, the contract ends at the end of this term without the need for termination. A tacit extension only occurs if this has been expressly agreed.
- 3.2 If a contract term of several years has been agreed upon, the customer may terminate the contract at the end of each contract year with a notice period of 2 months.
- 3.3 If a term has not been explicitly agreed between the parties, the contract is concluded for an indefinite period of time and can be terminated at any time by the parties with a notice period of 14 days to the end of the month.
- 3.4 The right of the parties to terminate service or work contracts extraordinarily for good cause remains unaffected.
- 3.5 If the customer exercises its right of termination pursuant to Section 648 BGB, Section 648 sentence 3 BGB shall not apply. The contractor may demand remuneration for the service rendered.
- 3.6 All notices of termination and declarations of withdrawal must be made in writing.

# IT Special Terms and Conditions of Purchase

## Appendix B: Software

### 1. Purchase of software

- 1.1 Software shall always be delivered to the customer with user documentation and – unless standard software is involved – including source code and programming documentation on customary data carriers.
- 1.2 If the customer acquires software in source code form, any measures carried out on the software within the scope of the warranty must be included by the contractor in the source code and the manufacturer's documentation without delay; a copy of the respective updated version must be made available to the customer without delay.
- 1.3 The source code shall include a professional commentary on it and a description of the necessary system parameters, as well as other necessary information enabling the customer to work on the source code with qualified personnel in order to independently develop the IT services at source code level. The transfer shall be in electronic form on a data carrier and shall be recorded.

### 2. Further development of the software

- 2.1 Insofar as the services owed also include the further development of the software (e.g. through upgrades, updates etc.), there is no obligation for the customer to always use the latest version of the software. This applies, in particular, in cases where newer versions no longer contain functions from the service description.
- 2.2 The installation of a newer version of a software on our system shall only be carried out after our prior written consent. If a support agreement exists with regard to the software, support is always to be provided for the version of the software currently used by the customer at no extra charge.

### 3. Temporary software licensing (SaaS)

- 3.1 If software is made available to the customer within the framework of a SaaS contract, the contractor guarantees a monthly average availability of the software of 99%.
- 3.2 In the event of termination of the contract, the contractor shall be obliged to return to the customer all data which has been introduced by the customer in the course of using the software (such as customer information, contact data, contracts etc.) or which has been generated in the course of using the software (such as business data, communications, memos etc.) in a common format, unless otherwise agreed in XML format, without delay and at the contractor's expense.

### 4. Open source software

- 4.1 In the event that the IT services are open source products or third-party software or the IT services include open source products or third-party software, the following shall apply: The license terms of the open source or third-party products used will be handed over to the customer upon conclusion of the respective individual order. Within the scope of the use of the open source or third-party products, the customer shall not incur any costs or fees owed beyond the agreed remuneration, unless otherwise stipulated in the individual order. Changes to the open source or third-party products used for the performance of the contract shall be named in the documentation of subsequent versions (release notes).
- 4.2 The contractor shall discuss the use of open source products or third-party products with the customer and obtain prior written consent before using such open source products or third-party products. This requires, in particular, that the customer be informed about any effects of the use of open source products or third-party products with regard to the entire service provision and the rights of use granted.
- 4.3 The contractor shall only use such open source products whose license model allows software based on these products to be proprietary software (closed source) (this shall not apply, in particular, to any open source license models with a strict copyleft license, such as the GNU GPL). In addition, when using open source or third-party products, the contractor shall ensure that their license provisions are fully complied with and implemented.

### 5. General requirements for software

- 5.1 The contractor shall ensure that a German language version is also supplied, unless otherwise agreed.
- 5.2 Furthermore, the contractor shall ensure that the delivered software is free of malware (e.g. Trojans, viruses, spyware etc.) and corresponds to the current state of technology.



# IT Special Terms and Conditions of Purchase

## Appendix C: Contracts for support, maintenance and servicing

### 1. Support, support hours

- 1.1 If a support contract is concluded, the customer must name a contact person.
- 1.2 The contractor shall implement either a support hotline or a ticket system to which support requests can be made around the clock.
- 1.3 The operating time for the support is 24 h / 365 days and consists of attended operation and unattended operation (on-call duty). Attended operation of business-critical applications or software must be carried out 24 hours a day / 365 days a year, while attended operation for non-business-critical applications or software must be provided from Monday to Friday from 9:00 am to 6:00 pm. The on-call standby for unattended operation applies for the remaining times. National public holidays count as unattended operation.

### 2. Maintenance work

- 2.1 Planned maintenance work is foreseeable, operation-maintaining work on the software and the server/storage systems and the interfaces between the server/storage systems and other technical systems. These can be patches, new software versions, the installation of new hardware, new network components or similar.
- 2.2 The customer shall be informed of planned maintenance work by the contractor by e-mail as long as possible, but at least 5 days (working days), in advance. The contractor shall be entitled to carry out the announced maintenance work, unless the customer objects to its execution within 3 working days of receipt of the information.

### 3. Fault management

- 3.1 If a fault occurs, the customer shall inform the contractor of this and classify the fault according to the following error classes:

Error class 1:	It is not possible to use the system/application/IT service in a way that makes sense from an economic point of view.
Error class 2:	The core functionality is guaranteed, but there is a significant error in a sub-module that prevents working with this module.
Error class 3:	The core and main functionality is guaranteed, but an error occurs in non-essential sub-functions.
Error class 4:	Errors which only marginally affect the functionality of the overall system (for example, spelling errors on the screen template).

- 3.2 The contractor shall remedy the fault within the following periods of action after proper notification:

Error class	Confirm receipt of fault	Start of fault rectification	Max. time for fault rectification
Error class 1 during attended operation:	15 minutes	45 minutes	6 hours
Error class 1 outside attended operation:	1 hour	2 hours	10 hours
Error class 2 during attended operation:	30 minutes	1 1/2 hours	8 hours
Error class 2 outside attended operation:	1 hour	2 hours	12 hours
Error class 3 during attended operation:	2 hours	6 hours	24 hours
Error class 3 outside attended operation:	2 hours	6 hours	24 hours
Error class 4:	24 hours	Will be corrected during planned maintenance work.	

- 3.3 After the fault has been rectified, the customer shall receive a fault rectification message from the contractor. It shall contain, at least, the following information:
  - o Day, date, time of the service request/fault message
  - o Error class
  - o Reason for the fault/error
  - o Duration and end of fault rectification

If the maximum time agreed upon for fault rectification of errors in error class 1 or 2 is not adhered to by the contractor, the contractor promises to pay an appropriate contractual penalty.

#### **4. Monitoring of services**

- 4.1 Every two months on the first day of the month, the contractor shall prepare an operation and maintenance report (hereinafter referred to as "report"), which it shall send to the customer by e-mail.
- 4.2 At least the following reports or contents shall be provided by the contractor within the scope of the report:
  - Number of service requests / fault reports
  - Errors according to classification
  - Average time until error identification
  - Maximum time until error identification
  - Average time until error rectification
  - Maximum time until error rectification

#### **5. Agreement on the availability of IT services**

- 5.1 If an availability regulation exists between the parties with regard to an IT service, the contractor shall check the availability by means of state-of-the-art monitoring software every 2 minutes.
- 5.2 When calculating the availability, downtimes due to admissible scheduled maintenance work are excluded.
- 5.3 The contractor shall provide information on compliance with the agreed availability on the fifth working day of each month in the form of a report. The contractor must state the actual monthly availability in percent.
- 5.4 If agreed availability is not maintained, the contractor promises to pay an appropriate contractual penalty.

# IT Special Terms and Conditions of Purchase

## Appendix D: Assignment of IT projects and agile IT projects

### 1. Project management

The project and project location, as well as the services to be provided, including the work results to be produced and the acceptance criteria, are defined in the individual contract or in the service description, if necessary. Apart from that, the contractor is free to determine the place of work and the working hours both with regard to its own performance and that of the persons employed by it. In this respect, the activity of the contractor is carried out autonomously and independently of the activity of the customer.

### 2. Workforce deployed by the customer for in-house projects

- 2.1 The contractor undertakes, in every case, to inform the project manager and the purchasing department in writing or by e-mail whether the persons employed within the scope of this contract are freelancers / self-employed workers or employees of the contractor subject to social security law. The customer may check the employee status at any time; the contractor is obliged to cooperate in the investigation.
- 2.2 In addition, the contractor is obliged to document the following documents at the start of the project for the contractor's own employees, as well as freelancers / self-employed workers and/or other subcontractors employed in the performance of the contract, regardless of their legal form, and to submit them to the customer at any time upon request:
  - Required work permits and residence permits
  - Identity cards/pass (copy) of the managing directors (will be destroyed immediately after the successful identity check)
  - Identity cards/pass (copy) of the acting persons, insofar as they act in the customer's business premises (will be destroyed immediately after the successful identity check)
- 2.3 If the contractor employs foreign employees or commissions foreign third parties, the contractor shall ensure that the respective employees or commissioned third parties are in possession of a valid work permit and all other permits that allow them to perform the activities owed to the customer. In the event that the customer waived the presentation of individual documents in individual cases at the start of the project, the contractor shall provide the necessary documents immediately afterwards.
- 2.4 In the event that, in the course of the performance of the services, it becomes apparent that a work permit/permission for one or more employees or commissioned third parties is not

available on the part of the contractor, the contractor shall be obliged to bear all additional costs arising from the lack of a work permit/permission for a deployed employee or third party and to procure personnel of equivalent value at its own expense.

- 2.5 The contractor shall indemnify the customer from all claims by third parties or damages incurred by the customer which arise in individual cases due to a lack of a work permit/permission at the customer's premises.

### 3. Project implementation

- 3.1 The parties shall each appoint a project manager as contact person for all questions concerning the respective project. Should this person be prevented from acting in this capacity, the respective party shall in turn provide a qualified substitute with decision-making powers.
- 3.2 The contractor shall report every two weeks in text form on the current status of the provision of services. The contractor's project manager shall inform our project manager immediately upon becoming aware of any imminent exceeding of the agreed expenditure or time requirements and of any imminent non-compliance with the agreed milestones, deadlines and completion dates.
- 3.3 The project managers are not entitled to change agreed requirements, milestone dates and requirements or other essential parts of the contract.

### 4. Roles in agile IT projects

- 4.1 The product owner is to be appointed by the customer. The product owner is responsible for maintaining and prioritising the product backlog. He professionally represents the interests of the customer and is available to the team for questions. The product owner should attend the daily scrums if possible.
- 4.2 The scrum master must be appointed by the contractor. He is responsible for the scrum process and for correct implementation. The scrum master removes obstacles and ensures the information flow between the product owner and the scrum team.
- 4.3 The scrum team is appointed by the contractor and consists of five to ten people. A scrum team is interdisciplinary in its composition and is self-organised. It decides independently on the breakdown of requirements into tasks and their distribution to individual members. It creates the sprint backlog from the currently pending part of the backlog. The scrum team meets daily for the daily scrum.
- 4.4 If the parties cannot agree on a scrum master and a scrum team within two (2) weeks after the contract has been concluded, the customer has the right to terminate the individual contract extraordinarily.

### 5. Story point procedure

- 5.1 The parties may use the so-called story point procedure when estimating the individual tasks contained in the product backlog. In this procedure, a written agreement assigns a certain amount of work to a story point. The amount of work is a mixture of time, complexity, necessary qualifications and possible other factors.
- 5.2 The number of story points billed within a project may exceed the sum of the estimated story points by a maximum of ten percent (10%).

## **6. Product backlog**

- 6.1 A product backlog describes a list of requirements of the customer for the IT project to be created. Requirements are worked out jointly by the parties and entered in detail into the product backlog, and are continuously re-prioritised.
- 6.2 The product owner is responsible for maintaining the product backlog.
- 6.3 It is the task of the scrum master to agree upon a 'definition of done' between the parties already at the beginning of the project, which determines when a target achievement can be assumed.

## **7. Sprint**

- 7.1 Sprints are iterations of a fixed length in which stories from the backlog are converted into possible deliverable increments. Each sprint will be granted a specific time period, between one (1) week and four (4) weeks.
- 7.2 The work results agreed upon in a sprint shall be commissioned by the customer as a lot and processed by the contractor under its own responsibility and in a self-organised manner within the period of time scheduled for the sprint.
- 7.3 If, during a sprint, it becomes apparent that the plan cannot be implemented, or if problems arise that make it uneconomical to continue the sprint, the current sprint is cancelled. If the parties decide by mutual agreement to abandon the project, they shall each bear half of the costs. If the contractor cancels the sprint without consulting the customer and without the customer's written consent, the contractor shall bear the costs arising from the cancellation alone, unless the customer is responsible for the cancellation. In that case, the customer shall bear the costs alone.

## **8. Acceptance**

- 8.1 At the end of the project, the work results produced in the project shall be subject to acceptance on the basis of the 'definition of done' and any acceptance criteria that may have been defined in advance. Only after this acceptance can the services rendered during the respective sprint be invoiced.
- 8.2 At the end of the entire project, the work results produced in the project shall be subjected to an overall acceptance test, in which it shall be checked, in particular, whether the work results of the individual sprints work together.

## **9. Termination**

- 9.1 The customer has the right to ordinary termination of the individual contract after each sprint.
- 9.2 If the customer terminates the individual contract, the contractor shall hand over the work results produced up to that point (including the source code and copies of working materials) in the most current version. The customer is obliged to reimburse the contractor for the expenses estimated in advance for the last sprint.