



## **GENERAL TERMS AND CONDITIONS OF PURCHASE INFORMATION TECHNOLOGY (GTCP-IT)**

Version February 2019

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(1) The Customer – as named in the purchase order – is a company belonging to the Telekom Austria Group.

(2) The Contractor is any company that concludes a contract with the Customer on the basis of the conditions set down in this document, hereinafter referred to as "Contractor".

(3) These General Terms and Conditions of Purchase for Information Technology (GTCP-IT) form an integral part of all contracts concluded with the Customer. The GTCP-IT shall apply irrespective of any references by the Contractor to its own general terms and conditions or any other of its own contracts or business which shall have no legal effect, even if the Customer does not expressly raise any objections to them. However, the foregoing applies even if the services provided by the Contractor are unconditionally accepted although the Customer is aware of the Contractor's conditions, which are contrary to or deviate from this GTCP-IT.

### **1. CONTRACTUAL DOCUMENTS**

The mutual rights and obligations are based on the following documents and shall apply in the following order of precedence:

- a) the purchase order,
- b) this GTCP-IT

### **2. REQUIREMENTS, SERVICE PROVISION**

#### **2.1. General**

The Contractor shall be obliged to offer a functional, complete and state-of-the-art system/subsystem. The quotation shall include all components and other services required for continuous availability of the system. The Contractor shall guarantee the completeness of the quotation concerning all services, including products of other manufacturers (such as mixed hardware), within the interfaces of the system to be defined by the Contractor as well as the compatibility with the rest of the system. The Contractor warrants the fulfilment of the agreed properties and specifications.



## 2.2 Hardware

(1) All hardware components provided by the Contractor shall meet all specifications according to the requirements of the Customer. Unless expressly agreed otherwise with the Customer, the Contractor shall provide brand-new standard hardware components which are common in the IT segment and can be replaced and/or expanded without any problem. In addition, mains supply, wiring and electromagnetic compatibility of the hardware to be provided by the Contractor shall meet the legal regulations of Austrian labour law and other generally accepted standards (especially the relevant ÖNORMEN and industrial standards).

(2) If the object of agreement has no safety symbol complying with Austrian legal regulations and/or the legal provisions of the EU, the Contractor shall be obliged to have the object of agreement checked according to the applicable provisions at its own cost by an officially authorised testing institute in Austria or in the country of origin, provided that this country is a contracting party of the Agreement on the European Economic Area (EEA). The Contractor shall be obliged to furnish a confirmation of such test. Confirmation in a foreign language shall be accompanied by a certified translation.

## 2.3. Software

(1) For the delivery of software, the Contractor guarantees that the software does not contain any copyright protection, date or programme blocks, or similar restrictions of use and that it is free of third-party rights.

(2) The Contractor guarantees that the software supplied is free from viruses, Trojan horses, malware, etc., which damages or deactivates the Customer's systems, or that assists in or enables theft or alteration of data or allows access to, or use of, any of the Customer's systems or otherwise disrupts or impairs the normal operation of such systems.

(3) The Contractor ensures that the software components delivered are the latest version or release generally available on the market.



(4) Moreover, the Contractor shall warrant that the system provided has the following characteristics:

- no current date causes defects or incorrect results;
- all date-oriented features deliver logical results;
- all interfaces, databases or functions requiring date-oriented inputs directly or indirectly recognize the change of the year, decade, century, millennium in any form of date;
- each leap year is recognized.

In addition the Contractor guarantees that i) all software shall be composed in a coherent and consistent manner and ii) the media provided by the Contractor shall be free of defective workmanship.

#### **2.4. Test Runs**

The Customer shall have the right of requesting test runs to be carried out at no extra cost and in a non-binding manner. In this case, the Contractor shall provide systems and facilities in accordance with the quotation.

#### **2.5. Prerequisites for Installation**

(1) Prior to awarding the contract, the Contractor shall inform the Customer in writing about the prerequisites for installation and setup to be established (especially rooms, mains supply, air conditioning, wiring) as well as about any other obligations to cooperate. The Contractor shall be liable for correctness and completeness and shall advise the Customer in setting up of the facilities concerned. Network maps shall be provided especially for complex systems.

(2) After coordination of deadlines with the Customer, the Contractor shall be obliged to visit the rooms and to accept them as being suitable for the installation of the object of agreement. If in the framework of the visit any inadequacies arise, these shall immediately be communicated to the Customer in writing including suggestions on how to remedy them. After remedying the inadequacies such a visit shall be repeated. If the Contractor fails to pay such a visit, the rooms shall be deemed to be accepted and any costs and damages shall be borne by the Contractor.

#### **2.6. Contractual Service Provision**

(1) In detail, contractual service provision shall comprise the following

- Provision of the object of agreement (hardware and software) and/or



- Rendering of the service / work
- Setup
- Installation
- Wiring and/or implementation
- Optimization
- Execution of successful acceptance according to Chapter 6 and
  - as far as has been contractually agreed - flawless start-up of the object of agreement

(2) According to the Customer's requirements, contractual service provision shall be rendered as to ensure on-schedule acceptance of the system. If a service is provided late, after acceptance it shall still be deemed to be a "contractual service provision" according to the relevant diction of this GTCP-IT. This shall apply without prejudice to the rights of the Customer arising from a delay.

(3) All deliveries shall be made including a delivery note containing the Customer, the item number, the order number, the material number and (if stated on the order) the exact material name as well as the exact quantity of delivery. Each delivery note may only include items of one order. If delivery forms were already enclosed with the order, the Contractor shall be obliged to use these forms unless otherwise agreed. Deliveries shall be deemed to comply with the contract only if all required documents are enclosed. Should this not be the case, the Customer shall have the right to return or store the object of agreement at its own discretion at the Contractor's cost and risk.

(4) All deadlines connected with contractual service provision shall start on the working day following contractual service provision.

(5) It shall be agreed that the place of contractual service provision shall be identical to the place of performance. Unless otherwise agreed, the place of performance shall be the destination specified by the Customer in the order, whereby the delivery will be executed at the Contractor's cost and risk. If no destination has been specified in the order, the Contractor shall ask the Customer to name a destination and the Customer shall be free to choose any place in Austria or in any country according to the contract receiving the object of agreement. Unless otherwise agreed, deliveries shall be made on working days (excluding Saturdays) between 9 a.m. and 3 p.m., however, on Fridays only until 12:00 noon. Deliveries shall be announced via phone or email. Expenses for repackaging of deliveries whose packaging fails to meet the requirements of logistics as well as for the absence of the EAN code shall be reimbursed to the Customer.



## **2.7. Follow-up Products**

The Customer shall have the right to request the delivery of follow-up products of the contractually specified components until 6 weeks prior to the agreed date of delivery. Follow-up products shall meet the scope of services defined by the Customer as well as the agreed quality criteria. They must not lead to any increase in costs and shall be compatible with components already delivered to the Customer.

## **2.8. Environment, Waste, Hazardous Substances, Code of Conduct**

### **2.8.1. Electromagnetic Compatibility, Safety Requirements**

(1) All applicable safety regulations and all other relevant European and national legal provisions (guidelines, laws, ordinances), especially the common OVE, OVE/EN, ÖVE/ÖNORMEN, IEC, EN standards, national provisions and industrial standards must be adhered to, all observing respective state-of-the-art.

(2) As far as stipulated by law (e.g. Austrian stipulations for electrical engineering, electrical engineering ordinance in the respective valid version) or by the generally accepted standards, the object of agreement shall have an ÖVE test symbol, a CE symbol of conformity or a safety symbol equivalent to the above-mentioned symbols accepted by the EU.

(3) Notwithstanding the aforementioned, all EMC relevant components, all hardware shall always comply with the latest – as released in the Official Journal of the European Union - EU directives and standards as well as with the respective national implementations such as the EU Directives 2014/30/EU and 2014/35/EC and/or 2014/53/EU Radio Equipment. This shall especially apply to the following categories for transmission networks using the telecommunication lines according to EN 50529-1 (in the respective valid version).

- Telecommunication Network Equipment

Components shall at least meet the requirements of EN300386 (in the respective valid version). The assignment by areas of deployment "Telecommunication centre" or "Other than telecommunication centres" (such as e.g. office rooms, customer sites, out-door locations) shall be made available.

- Information Technology Equipment

Components shall at least meet the requirements of EN55022 (in the respective valid version) and EN55024 (in the respective valid



version), categorisation in "Class A" and/or "Class B" shall be provided.

- Radio Equipment

Components shall at least meet the requirements of EN301489-1 (in the respective valid version) and the relevant part for the respective type of radio equipments (e.g. EN301489-17 for WLAN)

(4) The Contractor shall state the applied standards and testing methods (limit values, evaluation criteria).

(5) If technical extensions or modifications will have a negative impact on the EMC, surge and safety properties of the components already delivered (e.g. deployment of new cable adapters), the Customer shall be informed in writing.

(6) In order to check the criteria, upon request by the Customer all relevant documents (CE declaration of conformity, test reports according to safety and health, electromagnetic compatibility and the allocated radio spectrum, technical construction files and the instruction manual with safety information in German language) shall be provided within a period of 10 days.

(7) If the above-mentioned deliveries and services have none of the safety symbols named or if the Customer is in doubt about EU conformity of components, the Contractor shall be obliged to have the object of agreement checked according to the applicable provisions at its own cost by an officially authorised testing institute in Austria or in the country of origin provided that this country is a contracting party of the Agreement on the European Economic Area (EEA). The Contractor shall be obliged to furnish confirmation of such a test. Confirmation in a foreign language shall be accompanied by a certified translation.

(8) The Customer reserves the right to stipulate stricter limit values in order to maintain the network and service quality.

(9) The Customer assumes that the contractual services of the Contractor (if these are deliveries such as any kind of hardware), are environmentally friendly during their entire life span as far as this is possible, i.e. that they meet the Austrian legal regulations and the European legal regulations applicable in Austria, such as particularly the provision on waste electrical equipment (WEEE and the RoHS criteria) in the relevant valid version, and other generally accepted standards as well as limit values. The Contractor shall notify the Customer in writing about any obligation of exemption from obligation by the Customer currently applicable according to the provision on waste electrical equipment in the relevant valid version of the relevant common stipulation, and the Customer shall be held free of



charges by the Contractor with regard to all expenses related to such exemption from obligation.

(10) Any packaging used must be licensed according to the Packaging Ordinance 2014 (Federal Law Gazette no. 184/2014) in the relevant valid version. The Contractor shall make a legally binding confirmation that it itself or an upstream manufacturer or distributor participates in an approved collection or recycling system in accordance with the above-mentioned ordinance (e.g. presentation of an ARA licence).

(11) Furthermore, the Contractor shall make a legally binding confirmation that it has already paid the advance disposal fee according to the Battery Ordinance II Federal Law Gazette no. 2008/159 in the relevant valid version for the batteries and accumulators delivered to the Customer or that the Contractor itself and/or an upstream manufacturer or distributor will take back and dispose of the batteries and accumulators from the Customer free of charge.

(12) In principle, any waste incurred by the Contractor in the framework of service provision shall be properly disposed of at the Contractor's costs and risk.

(13) By means of enclosed safety data sheets, the Contractor shall be obliged to inform the Customer if the object of agreement contains any hazardous substances. Depending on the quality and/or the manufacturing process and the technical feasibility, the Contractor shall especially be obliged to fulfil the following requirements:

- Obligation to inform about and label all products concerning their environmental aspects, such as their disposal, recycling, content, energy consumption, emissions and noise level, especially to provide information about the code number according to ÖNORM S2100 and/or the European Waste Catalogue (EWC), as soon as it is valid in Austria;
- Serviceability
- Optimization of the material and energetic recyclability of the products at the end of their use;
- Resource-saving use of material (especially packaging material) and energy, such as the deployment of old material and/or recycling material instead of primary raw material use;
- Preference for substances not damaging to health and/or low in emissions as well as avoidance of the use of ozone damaging substances;
- Easy dismantling of products as well as enclosure of the relevant dismantling plans;
- Ensuring easy and low-cost declassifying of products containing compounds classified as hazardous.



### **2.8.2 Code of Conduct**

(1) The Customer is committed to conducting business honestly, fairly and transparently. As a matter of course the Customer complies with all applicable laws and principles of business ethics. The Customer also expects such compliance from its suppliers. Moreover, social commitment and climate and environmental protection are of great importance to the Customer.

(2) The Contractor shall ensure that in connection with the performance of this contract all regulations of the International Labour Organisation (ILO) regarding the rights of workers and their working environment (such as compliance with human rights, prohibition of child labour and forced labour, minimum standards in the area of job safety and health protection, guaranteeing appropriate remuneration, etc.) are adhered to. The Contractor shall ensure that these obligations are binding upon its suppliers.

(3) The Contractor confirms that no intermediaries gain a personal advantage and/or pecuniary benefit from concluding an agreement with the Customer.

(4) The Contractor shall avoid any conflict of interests with the Customer and commits to refrain from any actions that could harm the Customer, in particular that could cause harm to its reputation.

(5) The Contractor ensures its compliance to all legal stipulations.

(6) The Customer rejects corruption and bribery in every respect. Therefore, in particular the Contractor agrees to refrain from demanding or accepting benefits or other advantages that are illegal and/or offensive to common decency, or offering or granting such benefits.

(7) A violation against the provisions of this Code of Conduct is an important reason that would entitle the Customer to terminate the contract with immediate effect.

(8) In this case the Contractor loses any claims on the agreed reimbursement, unless services/deliveries already provided are of use to the Customer. This is without prejudice to the Customer's right to claim damages. The Contractor shall be liable to the Customer for any disadvantages and shall bear all additional costs that may be incurred in connection with a violation against the terms of this Code of Conduct and/or termination due to the default of the Contractor.





## **2.9. Country of Origin**

If requested by the Customer, the Contractor shall be obliged to furnish evidence of the origin of the object of agreement and to present all documents and receipts required for this purpose.

## **2.10. Multi-Vendor Environment Support**

(1) In addition, the Contractor shall be obliged to support the Customer in any "multi-vendor environment". This shall apply to all cases in which the hardware and/or software systems provided by the Contractor cooperate with hardware and/or software systems by other manufacturers.

Such support shall especially include the following:

- ongoing information about all equipment available or announced to support a "multi-vendor environment",
- Analysis of the interfaces and the problematic issues in the "multi-vendor environment" including documentation of the analysis results,
- Preparation of proposals for solutions for the "multi-vendor environment" and their documentation and presentation,
- Support in the testing of proposed solutions by provision of the required equipment (especially hardware and/or software), the analysis and documentation of the test results, the optimization of the tested solutions and in the introduction of selected problem solutions.

(2) Cost reimbursements can be claimed in individual cases only if the support granted requires a special expense to be made and if the Customer approved of the cost estimate to be submitted prior to the provision of the service.

## **2.11 Documentation**

(1) Provision of the necessary and appropriate documentation for the use of the object of agreement shall also be obligatory. The Contractor shall be obliged to update such documentation for the duration of the entire project and/or the term of a respective maintenance obligation. The documentation shall be made available to the Customer in machine-readable form complying with the following formats:

- MS Word,
- Plain ASCII or EBCDIC texts,
- PDF,
- or according to a special agreement.



(2) Furthermore, all documents for the hardware components required for reconfiguration shall be submitted.

(3) For software components, the documentation shall consist of user documentation, a short description and technical documentation. In particular, it shall be stated which effects the offered software will have on the storage capacity and the performance of the system. If software has to be newly developed by the Contractor within the framework of the order, the documentation shall be prepared according to the development of the object of agreement and shall be submitted to the Customer for each individual step forward in the work in progress.

(4) Like the short description, the user documentation for installation and administration shall be delivered in the German language unless otherwise agreed and all necessary processes shall be described so as to be easily understood by trained persons. Furthermore, the documentation shall also include and describe typical and foreseeable error situations.

(5) The technical documentation shall fulfil the standards common at the time of installation of the object of agreement.

(6) The Customer shall be entitled to freely copy and use the documentation submitted for contractual use and training purposes.

## **2.12 Permits**

If, for the fulfilment of the contract, import, export or other official permits or approvals or the consent of third parties is required, the Contractor shall be obliged to procure them.

Contractor shall abide by all applicable laws, regulations and ordinances of the identified countries, e.g. applicable taxes, labor and other statutory obligations applicable to its activities hereunder, and shall obtain from competent authorities all necessary permits, licenses and authorizations related to its respective obligations under this contract at its own costs. Contractor indemnify and hold harmless the Customer against all costs and infringement.

## **3. Training**

(1) The Contractor shall instruct the staff of the Customer at no extra cost with regard to the application-specific functions of the object of agreement. In particular, the Contractor shall ensure the best possible independent initial operation, use and maintenance work by



the Customer and its employees. Unless otherwise agreed, training shall be carried out at the place of installation.

(2) In addition, the Contractor shall provide exact information about its other training programmes, including further training, training costs, training dates and the training location.

#### **4. Scope of Use, Intellectual Property Rights**

##### **4.1 Standard Software**

(1) The Customer shall be entitled to perpetual use the object of agreement for its business purposes in all current and future systems restricted to the number of licences granted to it and to bring them to another place, to alienate them, to rent them, to adapt them by means of configuration tools, to copy them for the purpose of security and archiving or to connect them to system components of other manufacturers. Such use shall be independent of the expiry date/or termination of the agreement and shall not be related to any other obligation (e.g. maintenance contract in place or not etc.)

In all cases of transfer, the Customer shall also transfer all of its obligations arising from the licence. In addition, the software can also be used on a hot standby system.

(2) It shall be required to prove that the documented source code has been deposited at a neutral place in the relevant updated version sealed by the Contractor and accessible to the Customer at any time. The Customer may break the seal and use the source code for safeguarding its contractual rights if

- insolvency proceedings are opened against the Contractor and if operation is not continued by the reorganisation and/or bankruptcy administrator; or
- the Contractor liquidates its business and fails to immediately name a legal successor or third party who accepts the maintenance obligation with regard to the software to the extent set down in the contract; or
- the Contractor fails to fulfil its warranty / maintenance obligations as stipulated in this GTCP-IT, after an appropriate period of grace has been set.

(3) In case of legal dissolution of the Contractor, all transferable rights that it is entitled to with regard to the contractual software components shall automatically be passed on to the Customer to the extent agreed in the contract, which the Contractor shall provide for in due time. With the opening of bankruptcy proceedings over the assets of the Contractor or the rejection of a bankruptcy petition due to a lack of assets, all rights that the Contractor is entitled to with regard to the contractual software components, especially in relation



to the source code, shall be passed on to the Customer as non-exclusive rights, as far as it has not already acquired further-reaching rights due to regulations in the present terms and conditions of purchase.

#### **4.2. Individual Software**

The Customer exclusively acquires from the Contractor a licence to exploit the work which is unrestricted to time, space and content, including the documented source code to be handed over as well, with such licence also referring to exploitation of the work independent of the contractual purpose, and especially the right to change it and to connect it to the system components of other manufacturers. This shall especially apply to all documents, files and data carriers concerning this software. This right of use also comprises the right to process and to fully or partly publish, copy and otherwise exploit the software. All of these rights are fully transferable by the Customer.

#### **4.3. Purchase of Further Licences, Extension of Service**

The Customer shall be entitled to acquire additional software licences at any time. In this case, additional software licences shall only be charged a maximum of 25% of the initial licence price, with regard to a single licence.

#### **4.4. General**

(1) The rights of use shall in all cases comprise the operation of the software on systems of the Customer, any universal or partial successors of the Customer as well as on systems of companies directly or indirectly controlled by the Customer or directly or indirectly controlling the Customer and all companies controlled by the latter.

(2) The Customer shall be held harmless by the Contractor with regard to all disputes arising under patent, trademark, copyright in design, semi-conductor protection and/or copyright law in connection with contractual use and shall ensure proper use of the object of agreement without any restrictions.

### **5. Remuneration, Invoicing, Terms of Payment, Liability Retention**

(1) All prices shall be understood to be in Euro. Value added tax shall be stated separately.

(2) Prices shall be deemed to be guaranteed fixed prices with regard to the contractually agreed service and, if requested by the Customer,



shall be offered as either purchase and leasing. Any avoidance on the grounds of error or reduction by more than half shall not be accepted by the Contractor. Remuneration shall also include the costs for all supplementary work, such as de-installation and removal of devices after their use, the costs for the disposal of packaging, batteries and accumulators (chapter 2.8.) as well as the costs for issuing maintenance certificates.

(3) The prices shall be broken down into hardware, software, services and work performance. Moreover, each individual item and each alternative shall be priced separately (unit price). Services and work performance shall be structured in programming service, training and consulting. If the Contractor renders a service without prior written agreement of the remuneration, the service shall be deemed to have been rendered free of charge.

(4) If software is delivered in connection with hardware, the conditions for providing the software for the term of the hardware agreement cannot be changed (for rent/leasing until the end of rent/leasing, for purchasing for a period of at least 10 years).

(5) General price reductions made between the day of contract conclusion and the day of contractual service provision shall be passed on to the Customer; this shall apply mutatis mutandis for a possible rent and/or leasing remuneration.

(6) Any costs connected with the conclusion of a contract and its administration, such as for example transport costs (e.g. freight expenses, customs duty, insurance fee, commission), expenses of the Contractor's employees and any subcontractors (e.g. travel and accommodation costs, daily allowances, lump sum costs for travel, travel time), costs for the procurement of permits, fees or other duties and taxes shall be borne by the Contractor and the Contractor shall indemnify the Customer.

The Contractor shall be obliged to provide the Customer with any information required due to tax regulations.

(7) The period agreed for payment of the remuneration shall start upon proper and objection-free invoicing, however, at the earliest as of contractual service provision and not before the working day following the agreed date of delivery. All invoices shall be paid net within 30 days as of start of the term of payment with a 3% discount, within 45 days with a 2% discount or within 60 days. Whether payments are deemed to have been made in time is determined by the date of the credit transfer order or, if any other common method of payment is used, the date of the payment. Unless otherwise agreed, the Customer reserves the right to 3% liability retention with



no interest incurred for the term of three years as of contractual service provision.

With regard to rent/leasing, the first rent/leasing remuneration shall be paid on the first day of the month following contractual service provision but not before the agreed date of delivery. Another payment condition is that the first rent/leasing remuneration shall be invoiced, whereas all other remunerations shall always be payable on the first day of each following calendar month.

(8) Invoices shall be deemed to be properly issued only if they contain the order number, the item number, the type and series numbers labelled onto the devices, the relevant department of the Customer and the person in charge appointed by the Customer as well as the date of the order, if they adhere to the stipulations of the value added tax law and if they are submitted in one copy to the respectively named invoicing department. All invoices shall include possible discounts and/or price reductions. For default interest a maximum of 4% p.a. may be demanded from the Customer. In case of deliveries/services within the EU, each invoice shall contain the statistic goods numbers, the value added tax ID number as well as the dead weight of the object of agreement, if applicable, and shall be accompanied by a delivery note. Invoices not properly issued, especially invoices with incorrect addresses or invoices with defects and/or mistakes in content or calculation, shall not be payable until their agreed correction and may be returned by the Customer at any time.

(9) Payments made by the Customer shall not be deemed to be an acceptance of proper fulfilment by the Contractor. In particular, it shall not constitute a waiver by the Customer with regard to any claims for warranty, guarantee and damages.

## **6. Acceptance**

(1) Unless otherwise agreed, the Contractor shall carry out an acceptance test, the costs of which are included in the price, after delivery of the object of agreement and/or provision of the service / work. The acceptance test described below in detail serves to verify contractual service provision, including the fulfilment of further agreements concluded with the Contractor. Any defects shall be documented in the acceptance report and shall be remedied by the Contractor immediately. Upon remedy of defects, the acceptance test shall be repeated. The acceptance report, the preparation of which shall be obligatory, shall be signed by the Customer and the Contractor if the acceptance test is successfully completed.

(2) Depending on the object of agreement, the acceptance test shall basically comprise a function test and a performance test.



### **6.1. Function Test**

The function test serves to check whether the object of agreement meets the functions defined (e.g. in the job specification) and possibly promised by the Contractor.

### **6.2. Performance Test**

In the framework of the performance test, the existence of the performance criteria agreed and/or possibly promised by the Contractor (e.g. capacity, stability) will be tested. Unless otherwise agreed, the reliability and availability of the contractual service shall be evaluated within a period of 30 successive days. The availability referring to this period of time shall be defined in percent considering the time of operation / availability intended by the Customer for the object of agreement (basically 24 hours/day). A deviation of at least 5% of the expected result is deemed to be a considerable defect. In case of a considerable defect, the performance test shall be repeated after remedy of such defect.

## **7. Duty to Furnish Information**

(1) If circumstances become known to the Contractor that would jeopardize contractual service provision, the Contractor shall immediately inform the Customer about such circumstances in writing.

(2) In addition, the Contractor shall inform the Customer about any new versions of the object of agreement available, and about any errors known to it without further request, and the Contractor shall make it possible for the Customer to obtain insight into information databases accessible for customers for a period of at least 5 years as of contractual service provision, but in case of a continuing obligation for the entire term of the contract. The Contractor shall also be obliged to inform the Customer in good time whether the production of spare parts will stop and/or about the maintenance of system components, but at least 6 months prior to the actual date of stopping production. Afterwards it shall offer improvements that are generally available.

The Contractor shall immediately inform the Customer about any change of compatibility of the object of agreement if there is a change of the market standard.

(3) Should the Contractor fail to fulfil its duty to inform the Customer although such information was known to it or to insiders, irrespective of fault it shall indemnify the Customer for any damage arising from such failure.



## **8. Impairment of Service**

### **8.1. Delay in Delivery**

(1) Should there be a delay in delivery or performance of services for reasons which are not under the Customer's control, the Customer shall be entitled, at its option, to either insist on the performance of the contract and to claim liquidated damages (penalty) or to rescind the contract, without prejudice to any claim to a penalty, at any time without setting an additional time period. As penalty for a delay in delivery or performance of services a payment amounting to three percent (3%) of the purchasing value of the contract for each week of delay commenced or non performance shall be agreed.

(2) The Contractor shall be obliged to pay the penalty even if the object of the agreement or any part thereof is accepted without reservation. This provision shall be without prejudice to the Customer claiming any damages exceeding said amount.

### **8.2. Warranty**

(1) The period of warranty shall be at least 36 months starting as of contractual service provision. In case of replacement and remedy of possible defects, the period of warranty shall start anew for the components concerned.

(2) In case of doubt, the warranty obligation shall also include the costs for remedying defects on site.

(3) Any remedy of defects shall always be carried out immediately. Without prejudice to the right of claiming a price reduction, the Customer shall have the right of rescinding from the contract without granting a grace period for replacement, should the Contractor not remedy the defect immediately.

(4) For each provision of defective service, the Contractor shall be obliged to pay a penalty of 1% of the purchasing value of the contract to the Customer to cover its administrative costs, except in case of minor defects; this shall apply without prejudice to warranty and other replacement claims of the Customer.

(5) Any secret/hidden defects may also be claimed upon expiration of the warranty period within 6 months as of having gained knowledge of the defect. In case the object of agreement normally remains in its original packaging until use or reselling, defects that only become visible when it is first unpacked shall be deemed to be secret defects.





(6) The Contractor undertakes to reimburse the Customer for all costs and expenses arising for the Customer towards its own customers incurred from the warranty. Any such claims shall be put forward by the Customer in writing within 3 months as of fulfilment of its own warranty obligation. A judicial claim shall not be required.

(7) The Contractor shall expressly waive the objection of timely notification of defects according to § 377 of the UGB [Austrian Commercial Code].

(8) The Contractor shall bear the burden of proof for the non-existence of defects or the existence of minor defects only. The Contractor shall also bear the costs and expenses arising in this connection.

(9) A defect shall be deemed a significant defect if

- a function stipulated in the job specification or elsewhere has not been provided or fails; or
- if the reliability and availability described in Chapter 6.2 is not adhered to; or
- if the availability or functionality of already installed components is impaired.

(10) If the Contractor is not the manufacturer of components, it shall state the extent to which the manufacturer will additionally assume warranty towards the Customer.

(11) For rent/leasing, the relevant warranty terms and conditions shall apply mutatis mutandis.

## **9. Liability Provisions**

(1) The legal liability regulations shall apply.

(2) Should the Customer be sued due to an alleged fault in the object of agreement according to the stipulations of the product liability law or other legal stipulations, the Contractor shall indemnify the Customer in whole or in part – regardless of any fault or cause.

## **10. Maintenance**

(1) If nothing is agreed that is expressly deviating, during the agreed warranty period the Contractor shall maintain the object of agreement at no extra cost; as this is part of its warranty obligation.

(2) Any maintenance services used in the time after expiration of the warranty period shall be carried out as a separate principal service against separate billing of maintenance fees, whereby the annual



maintenance fees may amount to a maximum of 5% for hardware and a maximum of 10% of the purchase price (basis of calculation) for software. Accounts can be rendered on a quarterly basis always at the end of the quarter concerned. An increase in the basis of calculation due to further licences or a licence extension at extra cost shall have a proportionate increase effect on the maintenance fees for software; however, such increase is limited to a maximum of 20%.

(3) Regardless of whether the maintenance work concerned constitutes a warranty obligation or a principal service, the following special stipulation shall apply:

(4) For centrally installed maintenance objects (e.g. CPU, peripheral units for large computers, network components, UNIX computers and servers, as well as software implemented on them) on-call maintenance of 24 hours, 7 days a week shall be agreed. For all other maintenance objects, on-call maintenance is available every day from 7 a.m. to 5 p.m. (except for Saturdays, Sundays and bank holidays). Unless otherwise agreed, maintenance shall be rendered on site except for notebooks.

(5) In addition to the general obligation to support the operation of a "multi-vendor environment" (Point 2.10.), the Contractor shall be obliged to locate defects or failures in the environment of the components installed and maintained by the Contractor as well as defects occurring in the interaction with components of other manufacturers. If the consultation of maintenance services of other manufacturers is required for remedying defects, the Contractor shall be responsible for its coordination.

(6) For hardware, the maintenance services shall include

- preventive maintenance according to the specification or as required,
- the execution of standard changes, especially the relevant adaptations and implementations which may affect compatibility, according to the technical and economic options,
- measures to remedy defects upon request of the Customer including adjustment and installation of spare parts,
- the execution of repair work,
- working time of the technicians in charge,
- travel time and costs,
- provision of the tools and devices required,
- provision of spare parts required,
- maintenance of the system software components.

(7) The Contractor shall be obliged to provide availability of maintenance services, including spare parts, for all maintenance



objects for a minimum period of 7 years starting at the time of contractual service provision. The period for used maintenance objects shall be 5 years.

(8) All maintenance services shall be carried out subject to the Customer's consent. Unless otherwise expressly agreed spare parts will be delivered by way of exchange and standard parts, the performance of which shall be equivalent to new parts, shall be used. Replaced parts shall become the property of the Contractor.

(9) A postponement of agreed maintenance dates in the framework of preventive maintenance shall be accepted by the Contractor provided that the Customer announces such postponement three days prior to the scheduled maintenance date. An alternative date shall be mutually agreed.

(10) In addition to troubleshooting, maintenance of software shall also comprise the adaptation to the specific hardware and software requirements of the Customer. In detail, such maintenance shall comprise

- preventive maintenance work,
- provision of new updates, modifications, releases and versions,
- provision of error correction (e.g. patches) in the programmes and programmes sections,
- provision of programme improvements,
- provision of adaptations of the maintenance object to other standard / follow-up products (e.g. operating system versions, databases), the deployment of which the CU has announced in writing, as well as to individual software especially developed by the CO for the CU,
- adaptations of the maintenance object to new hardware and software options (e.g. new computer systems including operating systems).

(11) Furthermore, the Contractor shall provide the Customer with on-call support according to the respective maintenance availability times.

## **11. Troubleshooting**

(1) If the Customer requests troubleshooting, the response time (as of reporting the problem) shall be a maximum of 2 hours for remote maintenance and a maximum of 4 hours for on-site maintenance. The Contractor assures 24 hour availability for maintenance issues.

(2) Overall downtime of the (entire) system affected until final Fault repair may not exceed 24 hours for centrally installed hardware and



the software implemented on it or 30 hours in all other cases as of the moment of reporting a fault. The time of interruption starts at the moment when the fault is reported and ends with the handover of the operational system to the Customer.

(3) If the times mentioned above are not adhered to, the Contractor shall pay a penalty according to the provisions below, without prejudice to all other rights of the Customer. Reported faults may only be accepted by the Contractor from qualified staff of the Customer (trained operators).

(4) The amount of the penalty shall be 5% if the response time is exceeded, 15% if the agreed maximum downtime is exceeded, but limited to 15% of the monthly maintenance fee for the maintenance objects affected by a fault as per all 24 hours started as of the moment such periods are exceeded. During the warranty period, the amount of the penalty depending on the maintenance object shall be derived from the maintenance remuneration according to Chapter 10 to be calculated fictitiously. This shall not affect the claim for further damages.

## **12. Term and Termination of the Contract**

### **12.1 Term and Termination**

(1) The contractual relationship shall expire in accordance with the respective delivery dates or timelines mutually agreed in the purchase order, without this requiring separate notice.

(2) The Customer shall be entitled to terminate the contractual relationship at any time, also with regard to individual components of the object of agreement, for any reason or for no reason, subject to 30 days' prior notice. In case of termination according to this point, remuneration shall be the amount due for the achieved results up until termination in relation to the amount due for the aspired final result, but at the maximum limited to the amount due for services that have been actually performed up until termination, and which have been evidenced accordingly, and finally, that are of use to the Customer.

(3) A notice of termination will only be valid if expressed in writing.



## 12.2 Extraordinary Termination

(1) The Customer shall be entitled to terminate this agreement immediately with immediate effect and without prejudice to any other provisions of this agreement (unless stated otherwise in the following), as well as all other orders issued, in particular if

- circumstances arise which obviously make the timely performance of the contract impossible,
- if the Customer itself is not responsible for this,
- the Contractor violates secrecy obligations or other important terms of the contract,
- the Contractor violates clause 2.8.2 ("Code of Conduct"),
- the Contractor – if there are several, also if there is only one of them - dies or loses its legal capacity and/or there is a change in ownership with regard to the Contractor, a head company or holding company; this change of ownership shall go into effect at the time set down in the written notice by the Customer,
- the Contractor concludes a sub-contractor contract without the required consent of the Customer.

(2) If the Customer makes use of its right to rescind from the contract, the Contractor shall lose any right of remuneration unless partial services have already been rendered which can be used by the Customer. If it is the fault of the Contractor for immediate termination of the contractual relationship, it shall reimburse the Customer for any consequential damages and all supplementary costs resulting from the order being passed on to third parties.

(3) The Contractor is entitled to terminate the contractual relationship if the Customer does not fulfil its payment obligations in accordance with this agreement and does not have a reason for non-fulfilment of the payment (e.g. there has not been a violation of contractual obligations) and if this delay in payment is not sustainably solved within 30 days of the respective written reminder.

(4) A notice of termination will only be valid if expressed in writing.

(5) In case of insolvency the statutory provisions shall apply.



## 13. Miscellaneous

### 13.1 Confidentiality/Data Protection

(1) The Contractor shall be obliged to keep secret all information and data becoming known to it during the execution of the purchase order/contract unless it was exempted from such obligation by the Customer on a case-by-case basis in writing. Furthermore, the Contractor shall be obliged to use data that becomes known to it only for the purpose of contract fulfilment.

(2) The Contractor agrees that its data which is made available in connection with the order is processed by the Customer and disclosed to companies associated with the Customer.

(3) The Contractor shall use only those employees and vicarious agents who have been expressly instructed in writing to maintain secrecy; the obligation of maintaining secrecy shall meet the requirements of the legal data protection regulations.

(4) In addition, the Contractor undertakes to adhere to the applicable security and safety regulations of the Customer (<http://einkauf.a1telekom.at>) and all other legally stipulated data protection provisions, especially those of the Austrian Telecommunications Act. If agreed with the Customer, such components shall be destroyed by the Contractor under the Customer's supervision.

(5) In case that any personnel data is processed by Contractor, Contractor is obliged to conduct the A1 Standard Data Processing Agreement (<http://einkauf.a1telekom.at>), so that A1 can comply with its legal obligations.

(6) In case of a violation of the legal data protection regulations or other agreed obligations of secrecy by the Contractor, the payment of a penalty per violation amounting to 20% of the purchase value of the contract shall be agreed. Regardless of the payment of the penalty, the Customer shall be entitled to claim further damages exceeding said amount.

(7) The provisions concerning confidentiality and data protection shall also apply after the order has been completely fulfilled by the Contractor and after completion of all contractual relationships.



### **13.2. Most Favoured Nation Clause**

If the Contractor grants better conditions to a third party for comparable orders, it shall be obliged to adapt the contract with the Customer accordingly.

### **13.3. Retention, Settlement**

(1) The Contractor shall not be entitled to retain and/or cease services in case of a dispute.

(2) The Contractor shall have the right to offset claims against claims by the Customer only if such claims have been recognised by court or by the Customer.

### **13.4 Sub-Contractors / ARGE**

(1) After prior written consent by the Customer, the Contractor shall be entitled to hire sub-contractors, as long as they can prove to be qualified. It is prohibited to fully pass on the order. Liability of the Contractor to the Customer, in particular for the choice of a sub-contractor, shall not be affected by this.

### **13.5 Written Form, Language of the Contract, Start of Deadlines**

(1) Any contracts, amendments, supplements as well as other contract-relevant declarations shall only become effective if in writing and if signed by both parties, provided that there are two parties. This shall also apply to the abolition of the requirement on written form.

(2) Furthermore, orders, delivery call-offs as well as amendments and supplements – being approved by the Customer - may also be submitted by means of electronic communication (e.g. via email). The transmission made in this way shall be deemed to be a legally valid declaration, according to the will of the parties.

(4) Declarations shall be deemed to have been received by the other contractual party if they arrived at the (business) address last stated by it or if they could not be delivered because the other contractual party is no longer registered under this address. With regard to adherence to deadlines and effectiveness of declarations, according to this provision the date of receipt shall be relevant.

(5) The exclusive language of the contract shall be English; this shall also apply to all communications concerning the contract.



### **13.6 Place of Jurisdiction, Applicable Law**

(1) For any disputes arising from the contractual relationships between the Contractor and the Customer, exclusive application of Austrian law, excluding its conflict of laws principles, shall be agreed. Moreover, the competent court shall be the relevant court for A-1010 Vienna which has subject-matter jurisdiction.

(2) At its own discretion, the Customer shall be entitled to take legal action against the Contractor before any court competent for the place and matter according to the applicable legal regulations of the country in which the Contractor has its registered seat.

(3) The United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 shall not apply to relations between the parties.

### **13.7. Transfer of Rights and Obligations**

Unless otherwise stipulated, the contractual parties shall not be entitled to transfer rights and obligations arising from the contractual relationship including claims for remuneration (in particular factoring and the sale of receivables) and possible damages to third parties without the consent of the respective other party. If rights and obligations are transferred to universal or partial successors of the Customer and to companies directly or indirectly controlled by the Customer or directly or indirectly controlling the Customer and to all companies controlled by the latter, the consent of the Contractor shall be deemed to have been given.

### **13.8. Severability**

Should one of the provisions contained in this GTCP-IT be invalid, the validity of the remaining provisions shall remain unaffected. The invalid provision shall be replaced by a provision best suited to fulfil the purpose of the invalid provision.