

## Conditions of purchase for services

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## 1. Subject matter and definition

- 1.1. These Terms and Conditions of Purchase for Services (EDL) shall apply in addition to our General Terms and Conditions of Purchase (GTCP) to all service orders and information technology services.
- 1.2. Information technology services in the sense of these terms and conditions are all services including consulting in connection with the development, elaboration, and implementation of computer programmes, in particular the preparation of specifications, requirements specifications, concepts, implementation, as well as modification and supplementation of programmes, adaptation of standard programmes, training courses as well as all system technology services, in particular the purchase and procurement of standard software, hardware, and their services.
- 1.3. These Terms and Conditions of Purchase for Services shall also apply if the Contractor refers to its own terms and conditions, in particular when accepting the order or in the order confirmation. Contractor's conditions or deviating agreements shall only apply if we have acknowledged them in writing. Neither our silence nor the acceptance of the service or its payment shall be deemed to be acceptance.

## 2. Conclusion of contract

- 2.1. Our order requires the text form. Text form is deemed to be transmission by letter, fax, computer fax or e-mail, whereby the issuing company and the issuing persons must be clearly identifiable. The Contractor must inform us of obvious errors (such as spelling and calculation errors) in and incompleteness of the order including the order documents for the purpose of correction or completion before acceptance; otherwise the contract shall be deemed not to have been concluded. Deviations from concluded agreements and our orders are only effective with our prior written consent.
- 2.2. Acceptance of our order is to be confirmed in writing, stating our complete order data, and in the form specified by us (see GTCP). If the Contractor does not accept the order/contract within 3 days of receipt, we shall be entitled to revoke it.
- 2.3. The performance of the contractor's cost estimates shall not be remunerated unless agreed otherwise.

## 3. Delivery time and delay in delivery

- 3.1. Agreed performance dates and deadlines are binding. The delivery or performance of the contractual service at our premises or at the premises of the recipient specified by us shall be decisive for the compliance with the performance date or the performance period. Exceeding the agreed performance dates or deadlines puts the Contractor behind schedule without the need for a reminder.

- 3.2. The Contractor shall notify us immediately in text form of any recognisable delay in its performance or delivery, stating the reasons and the expected duration of the delay.
- 3.3. If the Contractor exceeds agreed delivery dates or deadlines by more than three working days, 0.2 % of the delayed delivery or service will be charged for each additional working day of delay, but at least € 50.00, unless otherwise agreed. The maximum contractual penalty is limited to 10 % of the total order value. ACTIA IME reserves the right to claim further damages for delay, whereby the contractual penalty shall be credited against such claim. If ACTIA IME does not assert the contractual penalty immediately after the occurrence of the default, this shall not constitute a waiver of the assertion of the contractual penalty, but ACTIA IME shall have the right to assert the contractual penalty at or until the final payment, or to offset it against the final payment, if and to the extent a final payment has been agreed upon.

#### 4. Co-operation duty by ACTIA IME

- 4.1. We shall provide the Contractor with all information and documents required for the performance of the contract, and take the decisions required for the performance of the contract as soon as possible.
- 4.2. Insofar as services are to be carried out in our company for project-related reasons, we shall provide the necessary work rooms, computer time, and programmes free of charge.
- 4.3. The Contractor shall request us in text form and in detail to comply with our obligations to co-operate, insofar as we do not comply with these obligations on our own initiative, and the Contractor is thereby hindered in the timely performance of its services.

#### 5. Prices, terms of payment, invoices

- 5.1. The agreed prices and rates of remuneration are fixed prices and include any travel costs and times, costs for materials, and the use of the Contractor's test facilities, unless otherwise agreed. They are exclusive of the statutory value added tax.
- 5.2. If a total price has been agreed and if, after conclusion of the contract, a change in performance is agreed which leads to a reduced scope of performance, a changed total price shall be agreed on the price basis on which the contract price is based, taking into account the reduced costs. The same shall apply in the event of an increased scope of services agreed after the conclusion of the contract, and if the Contractor has pointed out the requirement for a price change in text form before agreeing the change leading to the increase. An appropriately transparent calculation must be submitted.
- 5.3. Invoices are to be issued stating our complete order information (order number, date, delivery note number). If necessary, a copy of the acceptance protocol or the report shall

be attached to the invoice. These must be enclosed signed and marked by legible names. If this condition is not met, the Contractor shall be responsible for any resulting delays in invoice processing and payment settlement. Invoices are to be issued and sent to the invoice address stated on the order, depending on the orderer. We reserve the right to return invoices with incomplete or incorrect order details, or incorrect or incomplete invoice address to the contractor.

- 5.4. As far as possible and necessary, the Contractor shall enclose a delivery note with each delivery of goods. It shall contain the following information:
- a.) ACTIA Order number
  - b.) ACTIA Order date
  - c.) ACTIA Article number
  - d.) ACTIA Article description
  - e.) Number of items
  - f.) Delivery note number
  - g.) Delivery note date
- 5.5. If we have distributed an article to several positions in the order, this distribution shall be taken over accordingly in the delivery note and the invoice. If the delivery note is missing or incomplete, we shall not be responsible for any delays in processing and payment resulting therefrom. Separately from the delivery note, a corresponding despatch note with the same content must be sent to us.
- 5.6. Unless a special agreement has been made, payment shall be settled by bank transfer after 60 days net from receipt of the invoice by ACTIA IME. If payment is made within 20 days, the customer shall be entitled to a discount of 3 %.
- 5.7. Payments made by us do not constitute recognition of proper contract performance by the Contractor.

## 6. Confidentiality, copyright, data protection

- 6.1. The Contractor shall be obliged to treat all information (such as business and trade secrets, data and their sequence and results, other technical or commercial information of any kind) as confidential which is coming to its knowledge through us (Client), and to use it only for the execution of the contract. Third parties may not be made aware of the information in any way, with the exception of employees and other fulfilment assistants, insofar as they require the information for the execution of the contract.
- 6.2. We reserve the property rights and copyrights to illustrations, plans, drawings, calculations, execution instructions, product descriptions, and other documents. Such documents are to be used exclusively for the contractual performance and returned to

us after completion of the contract. The obligation to maintain secrecy shall only expire if and to the extent that the provided knowledge contained in the documents has become general knowledge.

- 6.3. We shall acquire ownership of the contract's subject matter upon completion of the final acceptance, unless otherwise agreed in individual contracts.
- 6.4. The Contractor shall oblige its employees, and other persons whom it uses to fulfil its contractual obligations, to maintain confidentiality in accordance with the above provisions, and shall ensure that this obligation is complied with.
- 6.5. If the service contractually agreed with the Contractor consists of a development or project planning order, the Client shall be the owner of the work result, all protectable inventions, and the know-how. The Contractor undertakes that it and its fulfilment assistants, as well as other third parties acting at its instigation, shall do everything in their power to transfer such intellectual property to us (the Client) and to have it legally protected in the best possible way by patent or other industrial property rights in favour of the Client.
- 6.6. The Contractor shall be obliged to comply with the provisions of data protection law in his deliveries and services. In particular, it will oblige its employees to maintain data secrecy in accordance with the Data Protection Regulation (GDPR), insofar as these employees come into contact with personal data. If personal data are collected, processed or used by the contractor/service provider on behalf of ACTIA IME, or if there is the possibility of accessing personal data within the scope of an IT service/maintenance contract, a contract fulfilling the requirements of Art. 28 GDPR shall be concluded.
- 6.7. Contractors may only advertise their business relationship with the Client with prior written consent.

## 7. Liability for material defects/ Claims in the event of defects

- 7.1. The services and deliveries must comply with the agreed standards (specifications, service description), both the quality specifications and agreements, and must be free of defects of title. In particular, this shall apply to quality specifications in the service description and the functions mentioned in brochures and product descriptions by the Contractor, manufacturer, or licensor.
- 7.2. In the event of defects in the delivery and services, including the absence of an agreed quality, the Contractor shall be obliged, irrespective of the other statutory provisions, at our discretion either to remedy the defect immediately and free of charge (rectification), or to deliver an item free of defects (subsequent delivery). In the event of impossibility or

failure of subsequent performance, we may reduce the agreed purchase price or withdraw from the contract. Our right to claim damages remains unaffected.

- 7.3. Claims for defects shall expire 24 months after acceptance of the service or delivery.
- 7.4. Programming errors in software projects, which cannot be eliminated within a short and reasonable period of time considering the effects of the error, shall be temporarily eliminated by means of a workaround reasonable for us. The obligation to final elimination remains unaffected by this.
- 7.5. We (Client) shall support the Contractor in the elimination of the defect by providing the documents and information required for the analysis of the defect.
- 7.6. Defects in delivered hardware shall be notified to the Contractor in writing immediately after they occur.
- 7.7. If the contractor is responsible for product damage, it shall indemnify us against claims by third parties to the extent that the cause lies within its sphere of control and organisation, and it itself is liable in relation to third parties.

## 8. Employees of the Contractor, subcontractors, co-operation

- 8.1. The Contractor shall have the right to issue professional and disciplinary instructions to its employees. This shall also apply if contractual services are to be performed in our company for project-related reasons. The Contractor shall follow the instructions by the company security.
- 8.2. We (Client) shall be entitled at any time to expel Contractor's employees and fulfilment assistants factory premises, or to deny them access if this seems appropriate to us for safety reasons, in particular due to the behaviour of the person concerned. The contractor shall replace the person concerned at his own expense.
- 8.3. The personnel employed by the contractor should only be changed on an exceptional basis. This change shall be notified to us in writing in advance. In the event of a change of personnel, the Contractor shall ensure that no disadvantages arise for us in the support tasks.
- 8.4. If a Contractor's employee for the performance of the contract has to be replaced by another employee for reasons for which we are not responsible, the training period shall be borne by the Contractor.
- 8.5. The Contractor may only use subcontractors after our written consent.

- 8.6. The Contractor shall be obliged to use only employees for whom it complies with the tax and social security regulations. The Contractor may only use employees who are subject to work permit requirements if they are his own employees and have a residence and work permit which is valid for the spatial and temporal range of the services to be provided. Appropriate evidence must be provided upon request.
- 8.7. The Contractor shall ensure that only trained and sufficiently qualified specialist personnel are employed for the performance of all services. For all employees working for us, sufficient specialist professional experience is a prerequisite and must be verified upon request.
- 8.8. The Contractor shall ensure that its employees have the necessary knowledge of the system and the location as well as the required qualifications for the performance of the task.
- 8.9. Employees shall be compensated at least in accordance with minimum wage regulations. Compliance must be confirmed by us upon request.
- 8.10. The contractor and we (Client) shall each appoint a competent person and its deputy who shall be available as contact persons during the performance of the contract, and who shall be authorised to make the necessary decisions, or to bring about such decisions without delay. A change of these persons shall only be possible for an important reason; the other contracting party must be informed immediately.
- 8.11. We (Client) are entitled to demand an insight into the performance of the services at any time.
- 8.12. Depending on the nature and scope of the project, the contractors will meet at regular intervals to review the progress of the project and discuss any outstanding issues. If necessary and agreed, the content and outcome of the meetings shall be recorded in minutes of meeting to be signed by both contracting parties.

## 9. Change of service

- 9.1. If we (Client) request a change to the agreed service after conclusion of the contract, the Contractor shall be obliged to take the requested change into account in the provision of its service unless this is unreasonable with regard to its operational capacity, and it notifies us of this in text form without delay, at the latest within 10 calendar days of receipt of the request for change.
- 9.2. If an extensive examination is required on the question of feasibility of a desired change or on its effect, in particular on the agreed remuneration and execution period, the Contractor shall notify this in writing within the period specified in Section 9.1, stating



the reasons and the expected duration of the examination. The performance of such an audit requires a separate agreement.

## 10. Legal requirements, regulations

The Contractor itself shall ensure compliance with the respectively applicable statutory provisions and official regulations; in particular the respectively applicable safety and prevention regulations. Furthermore, the Contractor shall, when necessary, obtain the permits required for the services on its own responsibility and at its own expense.

## 11. Code of Conduct

The Contractor shall observe the Client Code of Conduct in the performance of its deliveries and services. The Contractor is committed to upholding human rights, observing labour standards, and not tolerating discrimination, forced labour, or child labour. The Contractor confirms not to tolerate any form of corruption and bribery. The Contractor shall also demand compliance with the Code of Conduct from its subcontractors. The Client's Code of Conduct can be found at [www.ime-actia.de/download/actia\\_code\\_anti-corruption\\_en.pdf](http://www.ime-actia.de/download/actia_code_anti-corruption_en.pdf). If the Contractor culpably violates these obligations, the Client shall be entitled to withdraw from the contract, or to terminate the contract without prejudice to further claims.

## 12. Data backup, documents, and programmes

- 12.1. Electronically created services shall be continuously saved by the Contractor in partial results corresponding to the progress of the project, including the programme environment required for this purpose. Backup copies must be outsourced from storage and kept in a professional manner.
- 12.2. Documents of any kind provided to the Contractor by the Client remain our property. Copies may only be made for the execution of the contract. Originals and copies must be carefully stored and returned to us after execution of the contract. The complete handover of all copies, records, and originals after the end of the contract shall be certified in lieu of oath by the Contractor's management at the request of the Client. A confirmation of deletion (including copies) must be submitted to us on request.
- 12.3. The Contractor may only use the programmes provided to it by the Client to the extent necessary for the performance of the contract.

## 13. Source code

Individually developed programmes for the Client are to be provided to it in source code with documentation. Measures carried out on the programmes in the course of

remedying defects shall be included by the Contractor in the source code and documentation without delay; a copy of the respective updated status shall be sent to us without delay.

## 14. Third-party indemnification

The Contractor guarantees that no rights of third parties are infringed in connection with the provision of his services. In particular, it warrants that the use of the items and services supplied by it does not infringe any rights of third parties. If a claim is made against us (Client) by a third party due to an infringement of its rights, the Contractor shall be obliged to indemnify us against such claims. The indemnification obligation relates to all expenses necessarily incurred in connection with the claim by a third party.

These Terms and Conditions of Purchase for Services form the basis of the existing supply relationship with you. In conjunction with the General Terms and Conditions of Purchase, they shall apply with immediate effect to all your deliveries and services. Please confirm these conditions by returning the signed document to us.

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We have taken note of your current General Terms and Conditions of Purchase and the Terms and Conditions of Purchase for Services. We hereby confirm that we have taken note.

If you have any queries, please contact your Client's responsible purchaser.

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Place, date

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Signature, company stamp