

GENERAL TERMS OF BUSINESS OF SBB AG FOR THE PROCUREMENT AND MAINTENANCE OF HARDWARE (GTC-IKW)

A. Common introductory provisions

1 Scope of application

- 1.1 These general terms of business (GTC-IKW) regulate the conclusion, content and handling of contracts for the purchase of hardware (including the associated operating software) and its maintenance.
- 1.2 Any Company submitting an offer to SBB AG thus accepts the present general terms of business, insofar as no deviations are provided for in the request for offers. Changes and additions to these general terms of business require written agreement.
- 1.3 Unless otherwise expressly provided for otherwise in the contractual document, the provisions regarding delivery, acceptance and warranty in accordance with Paragraph 29 each refer separately and independently of each other to the purchase of hardware or the maintenance of hardware. The warranty rights from the maintenance contract do not affect those from the purchase contract.

2 Offer

- 2.1 The offer, including demonstration, shall be submitted free of charge unless specified otherwise in the request for offers.
- 2.2 The offer is drawn up on the basis of SBB AG's request for offers. If the offer deviates from the request for offers or the general terms of business of SBB AG, this will be expressly indicated in the offer.
- 2.3 The Company shall state the value-added tax separately in the offer.
- 2.4 The offer shall be binding for the duration specified in the request for offers. If no corresponding information is given, a period of four months after the receipt of the offer shall apply.

3 Use of employees

- 3.1 The Company uses only carefully selected and welltrained employees for services performed by its employees at SBB AG locations. It replaces employees who do not have the necessary specialist knowledge or who otherwise impair or endanger the fulfilment of

the contract. In doing so, it pays particular attention to SBB AG's interest in continuity.

- 3.2 For the rendering of services in accordance with Paragraph 3.1, the Company only used employees who have the necessary approvals for the rendering of services.
- 3.3 Insofar as the Company renders onsite services, it complies with the Company regulations, in particular the SBB AG house rules. The Company must always comply with the relevant safety regulations. SBB AG will provide the necessary information in a timely manner. The Company shall commit its employees, subcontractors, sub-contractors and contracted third parties to adhere to these obligations.

The provisions of this Paragraph 3 shall also apply to other personnel employed by the Company for the performance of the contract, namely freelancers.

4 Involvement of third parties

- 4.1 Involvement of third parties (freelance staff, specialists, etc.) in the performance of the Contract requires the prior written consent of SBB AG.
- 4.2 In its agreements with third parties, the Company shall adopt all provisions of the present Contract that are required for the protection of the interests of SBB AG.
- 4.3 The third parties commissioned by the Company for the performance of this Contract shall qualify as auxiliary persons within the meaning of Art. 101 of the Swiss Code of Obligations (CO). Consent or acknowledgement given by SBB AG with regard to the involvement of such third parties shall not affect the Company's liability arising from or in connection with the Contract. Art. 399 para. 2 CO is explicitly excluded.

5 Compliance with rules on health and safety at work, terms of employment, equal pay and environmental law

- 5.1 The Company undertakes to comply with rules on health and safety at work, terms of employment, equal pay and the legal provisions applicable at the place of performance

concerning environmental protection and the conservation of natural resources in accordance with the validly signed self-declaration as annexed to the contract.

6 Social welfare

The Company shall make all the necessary applications to the social welfare institutions for itself and its employees. If the Company is a sole proprietorship ("Einzelfirma"), it must present SBB AG with a document from the responsible compensation fund ("Ausgleichskasse") confirming that it works on a self-employed basis. SBB AG is not liable to the Company or its employees for any payments into social welfare schemes (AHV, IV, EO, ALV etc.) or for any other compensation payments, particularly in the event of sickness, invalidity or death.

7 Delivery of spare parts

The Company guarantees SBB AG the supply of hardware spare parts for at least five years from the handover or installation of the hardware.

8 Definitions

- 8.1 Contract: Means all documents associated with the agreement (that is, main document including all related components such as general terms of business and annexes).
- 8.2 Contractual document: Means the main document belonging to the agreement (that is, without any other related components such as general terms of business and annexes).
- 8.3 Incident: A fault that restricts or impairs the contractually agreed usability or availability of the hardware (including operating software). This also includes faults caused by third parties, in particular through interaction with software or other hardware.

B. Purchasing hardware

9 Handover and installation

- 9.1 The hardware (including the associated operating software) shall be handed over at the place of performance against signing of the delivery note by a person designated by SBB AG.

- 9.2 At the request of SBB AG and for a separate fee, the Company undertakes the installation of the hardware (including the associated operating software). Any obligations to cooperate or any duties on the part of SBB AG shall be conclusively agreed in the contractual document.

10 Use of the operating software

The type and scope of use of the operating software which is inseparably linked to the hardware depend on the intended use of the hardware. SBB AG may resell the hardware (including the associated operating software) to third parties if it gives up its own use.

11 Documentation

- 11.1 The Company shall provide SBB AG with the associated documentation (in particular installation and user manuals) in the agreed languages and in the agreed number of items, either electronically or in paper form, together with the hardware (including the associated operating software).
- 11.2 SBB AG may copy and use the documents in accordance with the terms of the contract.

12 Instruction

If agreed upon, the Company will give a first instruction to be determined in terms of scope and addressee group against separate remuneration.

13 Import regulations

The Company guarantees that it will comply with any export restrictions and import regulations from the place of origin to the place of delivery, according to the Agreement. The Company shall inform SBB AG in writing about export restrictions of the country of origin.

C. Maintenance and Support

14 Content and scope of maintenance

- 14.1 The services to be rendered are agreed in the contract.
- 14.2 The maintenance of the hardware includes – subject to a different contractual agreement – its maintenance (preventive maintenance to maintain operational efficiency) and repair

(repair of faults and faults to restore operational capability) by repair and replacement of defective parts.

- 14.3 The Company shall be obliged to keep faultless replacement material available during the term of the contract or to deliver it within a reasonable period of time.

15 Support

- 15.1 The support services to be provided are agreed upon in the contract.
- 15.2 Subject to any other contractual agreement to the contrary, support includes advice and support for SBB AG with regard to the use of the hardware forming the subject of the agreement (including the associated operating software).
- 15.3 If the Company is required to provide support services, it undertakes to set up and maintain an efficient organisation, informing SBB AG immediately of the communication channels of the support requests and the relevant contact persons. The contract must state whether and how inquiries and reports can be transmitted in writing, by telephone or electronically.

16 Information duties

The Company shall inform SBB AG immediately in writing of all facts and circumstances ascertained by SBB AG or identifiable to it which impair or endanger the maintenance of the hardware (including the associated operating software). The Company regularly informs SBB AG about technical improvements of the hardware (including the corresponding operating software).

17 Service hours, availability, response time and fault clearance

- 17.1 On-call time: During the maintenance on-call time specified in the contract, the Company receives notifications of malfunctions and inquiries via the agreed communication channels. The type and scope of the services to be rendered during the on-call time must be contractually agreed.
- 17.2 Resonse time: Response time covers the period in which the Company must start analysing and eliminating a malfunction as soon as it receives the notification of a malfunction. It is to be agreed in the contract. The parties agree on the allocation of the respective

priority on the basis of the technical and economic needs of SBB AG.

- 17.3 Troubleshooting time: Troubleshooting time covers the maximum period from receipt of the notification of a fault by the Company to its successful resolution. It is specified in the contract.
- 17.4 The Company informs SBB AG that the fault has been rectified.
- 17.5 Failure to comply with the agreed deadlines

18 Reports

Upon request of SBB AG, the Company shall prepare a report after completion of the individual maintenance work and shall hand over a copy to SBB AG.

19 Start and duration

- 19.1 The contract shall come into force upon signature by both parties, unless otherwise stated in the contractual document. It is concluded either for a specific or an indefinite period of time.
- 19.2 If the maintenance is concluded for an indefinite period of time, it may be terminated in writing by SBB AG per the end of a calendar month unless otherwise agreed, but it may only be terminated by the Company for the first time after a contractually agreed term. The notice of termination may also only apply to individual services. Unless otherwise agreed, the notice period is 12 months for the Company and 3 months for SBB AG.
- 19.3 Both parties reserve the right to terminate the contract without notice for important reasons at any time. Important reasons include in particular:
- The occurrence of events or circumstances which make the continuation of the contractual relationship unreasonable for the terminating party, in particular the continuing or repeated breach of essential contractual obligations;
 - The official publication of the opening of bankruptcy proceedings or moratorium on a party.

20 Consequences of termination

The contracting parties shall set out in the contract which operating resources, data and documents made available within the scope

of the contractual relationship are to be returned or destroyed by the other party at the end of the contractual relationship and within which period.

D. Common final provisions

21 Place of performance and transfer of risk

21.1 SBB AG shall designate the place of performance. Unless otherwise agreed, the place of delivery of the hardware (including the associated operating software) shall be deemed to be the place of performance.

21.2 Benefits and risk are transferred to SBB AG upon handover or installation.

1 Default

1.1 If the company fails to meet a defined deadline or schedule (expiry-date business) stipulated in the contractual document as giving rise to a default situation, it shall automatically be in default; in other cases it shall be in default following dunning and after a reasonable extension period has been granted.

2 Contractual penalty

2.1 If the company does not fulfil its obligation to meet a deadline, or fails to comply with workplace safety provisions (provision "Compliance with workplace safety provisions, working conditions, equal pay and environmental law"), or with integrity provisions (para. 2 or 3 of the provision "Integrity"), a contractual penalty shall be payable, unless it proves that it is not at fault.

2.2 Amounts:

- in the event of breach of contract with regard to time of performance, 1 o/oo (per mill) for each day of delay, but at most 10% of the overall compensation for a one-time service, or 10% of the compensation for 12 months in case of recurring services, unless otherwise stated in the contractual document. If a deadline which triggers a contractual penalty is postponed by mutual agreement, such deadline also applies to the contractual penalty.
- Any contractual penalty for the failure to comply with the time limits specified in sections 17.1 to 17.3 inclusive shall be

specified in the contract with reference to the specific individual circumstances.

- in the event of a breach of workplace safety provisions, 10% of the contract amount per case, with a minimum of CHF 3,000 and a maximum of CHF 100,000.
- in the event of infringement of integrity provisions: for each violation, 15% of the presumed amount payable under the contract affected by the breach.

2.3 If a party is in breach of confidentiality provisions, a contractual penalty shall be payable to the other party, unless it proves that it is not at fault. The contractual penalty shall be 10% of the contract amount per case, with a minimum of CHF 3,000 and a maximum of CHF 100,000.

2.4 If a framework agreement is in place, the amount payable for the yearly needs in the previous year shall be used as the basis for calculating the contractual penalty. In the first year of the contract or if nothing was paid in the previous year, the amount payable for planned yearly needs shall be used as the basis instead.

2.5 Payment of a contractual penalty does not exempt the company from its other contractual obligations, and is still payable even if performance is accepted without reservation.

2.6 SBB AG may also assert claims for damages which it incurs, unless the company proves that it is not at fault. The contractual penalty shall be credited against any damages payable.

2.7 SBB AG is entitled to offset the contractual penalty against the amount payable under the contract.

3 Remuneration

3.1 The Company renders services at fixed prices. Remuneration shall be in the form of a one-time payment or a recurring fee.

3.2 The contractually defined remuneration covers all activities that are required for appropriate fulfilment of the Agreement. In particular, the remuneration shall also cover the transfer of ownership rights to the hardware, any agreed maintenance and support services, the granting of usage rights to the associated operating software, all documentation, packaging, transport, insurance and unloading costs, advance disposal fees as well

as expenses and public charges (for example, value-added tax).

- 3.3 The payment is due upon delivery of the hardware with the associated operating software or its installation. A contractually agreed payment plan remains reserved. The Company claims the due remuneration with an invoice. The due date of the remuneration and the periodicity of the invoicing for maintenance are determined in the contract. Value-added tax must be shown separately.
- 3.4 Payments due shall be made by SBB AG within 30 days of receipt of the invoice.
- 3.5 Subject to any other contractual agreement to the contrary, the Company may demand a justified adjustment of the recurring remuneration at the beginning of the next calendar year, subject to observance of a three-month period of notice, but at most within the framework of the development of the Swiss national consumer price index.

4 Right of SBB AG to make direct payments

Should the Company encounter payment difficulties or should serious differences arise between the Company and the third parties it has commissioned or SBB AG, the latter may - after consulting the parties concerned and subject to the issue of a valid invoice - pay the commissioned parties directly or deposit the amount concerned. This will in both cases release it from its payment obligation.

5 Confidentiality

- 5.1 The parties shall treat as confidential all information and data relating to the contractual relationship that is not already common knowledge or in the public domain, even if it is not specifically designated as confidential. In case of doubt, this confidentiality clause shall apply to all information and data. All legal obligations of disclosure remain reserved.
- 5.2 The parties are obliged to observe this confidentiality clause before the Contract is signed and after the contractual relationship ends.
- 5.3 The confidentiality obligation extends to third parties. The communication of confidential information within the Company's own group of companies or to involved third parties, such as an insurer, does not constitute a violation of the confidentiality obligation. This applies to the Company to the extent that the

communication is required for the fulfilment of the contract.

6 Data protection

- 6.1 The parties undertake to comply with the provisions of Swiss data protection law.
- 6.2 Personal data may only be processed for the purpose and to the extent necessary for fulfilling and executing the Agreement.
- 6.3 SBB AG shall remain the exclusive owner of its personal data that is supplied by SBB AG or on behalf of SBB AG in connection with this Agreement.
- 6.4 Unless approved by SBB AG in writing, the Company must not disclose personal data of SBB AG to third parties.
- 6.5 The Company undertakes to take and continuously implement all financially reasonable and appropriate technical and organisational measures and precautions (in particular regarding its staff) in order to protect (personal) data and to safeguard it against unauthorised or unlawful processing, unintentional loss, unintentional destruction or inadvertent damage.
- 6.6 At the request of SBB AG, in particular in cases when personal data is transferred outside Switzerland or the European General Data Protection Regulation (EU GDPR) applies, the Company shall process personal data on the basis of a supplemental agreement on data protection.

7 Statements to the media (incl. social media, references) and use of the SBB logo

Statements to the media regarding the Contract and use of the SBB name and/or logo are permissible only with the express agreement of SBB AG. Any statements to third parties that are within the public domain (in particular references) shall be placed on the same footing as statements to the media.

8 Warranty

- 8.1 The company warrants to SBB AG that its goods/services
 - have the agreed properties for known and bona fide foreseeable purposes,
 - shall be rendered in a professional manner and

- comply with the relevant statutory and official regulations and are state-of-the-art.
- 8.2 A defect is any deviation from the contract, irrespective of whether the company is at fault.
- 8.3 In the event of a defect, SBB AG may initially only demand rectification free of charge. The company shall remedy the defect within the specified appropriate period and shall bear all resulting costs. In cases where the defect can only be rectified by remanufacturing the system, the right to demand rectification shall also include the right to remanufacturing.
- 8.4 If the company fails to carry out the requested rectification within the specified deadline, or does not do so successfully, SBB AG may, at its own discretion:
- continue to demand rectification or replacement delivery;
 - deduct a proportionate amount corresponding to the loss of value;
 - claim possession of the necessary documents and information (in particular the source code) insofar as no legal or contractual provisions prevent this, and take the necessary measures itself or have them carried out by a third party at the company's expense and risk, though this only applies in the case of significant defects;
 - or withdraw from the contract, though this only applies in the case of significant defects.
- 8.5 Warranty rights expire within 2 years of handover or performance.
For products that are stored as inventory by SBB AG, warranty rights shall expire within 2 years of installation, and no later than 3 years after the date of contractual handover to SBB AG.
- 8.6 If a defect is fraudulently concealed, warranty rights may be asserted in the 10-year period following the start of the warranty period.
- 8.7 Once a reported defect has been rectified, the warranty period shall start anew for the repaired component.
- 8.8 Defects may be reported at any time during the warranty period. If there is a dispute as to whether an alleged defect actually constitutes a deviation from the contract and is therefore a defect as defined in the contract, the burden of proof shall lie with the company.

- 8.9 Any spare part deliveries and associated costs during the warranty period shall be deemed to be a rectification of defects unless the company can prove the contrary.

9 Infringement of intellectual property rights

- 9.1 The Company shall immediately defend any claims by third parties relating to infringement of proprietary rights at its own expense and risk. If a third party initiates legal proceedings against the Company, it must inform SBB AG immediately in writing. If the third-party asserts the claims directly against SBB AG, the Company participates in the dispute at the first request of SBB AG in accordance with the possibilities of the relevant procedural regulations. The Company undertakes to bear all costs (including damages) incurred by SBB AG as a result of litigation and any out-of-court settlement of the legal dispute. In the event of an out-of-court settlement, the Company shall only be obliged to make the agreed payment to the third party if the Company has given its prior consent.
- 9.2 If SBB AG is unable to use the contractually owed hardware (including associated operating software) or the use of services in whole or in part on the basis of asserted claims, the Company has the choice of either changing the hardware (including associated operating software) with another replace or modify their services in such a way that they do not infringe any third-party rights and still comply with the scope of the contract, or at their own expense obtain a license from the third party. If the Company does not implement any of these options within a reasonable period of time, SBB AG shall be entitled to withdraw from the contract with immediate effect. The Company shall indemnify SBB AG under the "Liability" paragraph. If SBB AG itself is responsible for the infringement of property rights, the claims against the Company are excluded.

10 Integrity

- 10.1 The contract parties shall take appropriate measures to ensure conformity with laws and regulations. In particular, they agree to adhere to the guidelines and rules contained in the SBB Code of Conduct (www.sbb.ch – [SBB Code of Conduct](#)). Provided that these guidelines and rules are defined in a code of conduct of the Company in a substantially

equivalent manner, then compliance with the latter shall suffice.

- 10.2 The contract parties undertake to take any such measures as are required to avoid corruption so as to ensure that no impermissible payments or other benefits are offered or accepted.
- 10.3 The Company agrees to take all measures necessary to prevent impermissible bid-rigging agreements to the detriment of SBB AG (e.g. price, market sharing, bid-rotation agreements) and to refrain from such agreements.
- 10.4 The Company shall contractually impose the obligations according to this clause upon the third parties it involves in order to fulfil the Contract.
- 10.5 The Company additionally acknowledges that any infringement of the obligations contained in paragraphs 2 and 3 will generally result in it being excluded from the tender process or cancellation of any orders awarded as well as the early termination of the Contract by SBB AG for important reasons.

11 Audit

- 11.1 SBB AG is entitled to conduct an audit in order to check the Company's compliance with the obligations contained in the "Integrity" clause as well as compliance with further significant obligations either themselves or through an independent auditing company of its choice. SBB AG cannot request such audit more than once per calendar year without due cause. SBB AG shall inform the Company of the execution of the audit in writing, unless SBB AG perceives imminent danger.
- 11.2 The Company can request that the audit be carried out by an independent third party. In this case, too, the Company shall bear the costs of the audit if it is determined in the audit that the Company has violated the obligations pursuant to the "Integrity" clause or other significant contractual obligations to SBB AG.
- 11.3 If the audit is not carried out by SBB AG itself, then in the audit report SBB AG is only informed of whether the Company has complied with its contractual obligations, unless a violation has occurred. In this case, SBB AG has a comprehensive right to inspection of the information relevant to the violation.

- 11.4 The Company shall contractually impose the obligations according to this clause upon the third parties it involves in order to fulfil the Contract.

12 Liability

- 12.1 The company is liable for all damages, including damages as a result of
- missed deadlines,
 - defects, including, in particular, consequential damages,
 - other breaches of contract,

unless it proves that it is not at fault.

- 12.2 The company is liable for the actions of auxiliary persons (e.g. its employees, substitutes, subcontractors, suppliers, or subsuppliers) as if such actions were its own.
- 12.3 Any contractual penalties shall be credited against the damages payable.
- 12.4 The parties shall support each other in the event of claims by third parties, or when asserting damages claims against third parties.
- 12.5 If a party has to pay damages to a third party, it shall be fully indemnified by the party liable in the internal relationship.
- 12.6 Any recourse against employees of the liable party is mutually excluded.

13 No waiver

If a party defers or postpones the enforcement of claims or does not exercise or only partially exercise its rights, this does not constitute a waiver of these or future claims. A valid waiver requires a written declaration from the waiving party.

14 Written form

The initial drawing up of the Contract and any amendments and additions to the Contract and to integral elements of it must be in writing and be signed by both parties, for the purposes of which an electronic signature shall be deemed to be equivalent to a handwritten signature.

15 Prohibition on assignment and pledge

Claims due to the Company may neither be assigned nor pledged to third parties without the written consent of SBB AG.

16 **Applicable law**

The Contract shall be governed exclusively by Swiss law. The provisions of the Vienna Convention (the United Nations Convention on Contracts for the International Sale of Goods/CISG, concluded in Vienna on 11.4.1980) are explicitly excluded.

17 **Place of jurisdiction**

The courts in **Berne** shall have sole jurisdiction in disputes arising from or in connection with this Agreement.