

GENERAL TERMS OF BUSINESS OF SBB AG FOR WORK CONTRACTS IN THE IT SECTOR AND MAINTENANCE OF INDIVIDUAL SOFTWARE (GTC-IWV)

A. Common introductory provisions

1 Scope of application

- 1.1 These general terms of business (GTC-IWV) regulate the conclusion, content and handling of contracts for work and services in the field of information technology as well as the maintenance of individual software.
- 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 in the contractual document, the provisions on delivery, acceptance and warranty referred to in Paragraph 28 each separately and independently of each other refer to the contract for work and services or the maintenance of the individual software. The warranty rights from the maintenance contract do not affect those from the contract for work and services.

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 the provision

of services. 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 The Company only employs employees who have the necessary approvals to provide the services.
- 3.3 The Company shall comply with the Company regulations of SBB AG, in particular the health and safety regulations and the house rules. SBB AG will provide the necessary information in a timely manner. The Company shall commit its employees, subcontractors, subcontractors and contracted third parties to adhere to these obligations.
- 3.4 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 selfdeclaration 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 Definitions

- 7.1 Contract or framework contract: Means all documents belonging to the agreement (that is, main document including all related components such as general terms of business and annexes).
- 7.2 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).
- 7.3 Individual software: Software developed for a specific purpose of SBB AG on their behalf, as well as changes and further developments of this software.
- 7.4 Standard software: Software that is produced for a large number of different customers without taking into account the requirements of SBB AG at the code level.
- 7.5 Incident: A failure that restricts or impairs the contractually agreed usability or availability of the software. This also includes faults caused by third parties, in particular through interaction with hardware or other software.
- 7.6 Patch: Minor change to software, mostly to fix an error or security issue of the software.

B. Creation of the work

8 Execution and documentation

- 8.1 In the contract, SBB AG defines the work to be manufactured by the Company (for example, individual software). It shall provide the Company with all information required for the performance of the contract in good time. Any further obligations to cooperate on the part of SBB AG shall be finally agreed in the contractual document.
- 8.2 The Company undertakes to manufacture the work in accordance with the contractual provisions and specifications, the current state of the art and the legal requirements.
- 8.3 When handing over the work result, the Company shall also provide SBB AG – electronically or in paper form – with a complete, copyable documentation in the agreed languages and in the agreed number of items. This includes in particular an installation and user manual as well as the source code for individual software including the information and documentation necessary for its processing.
- 8.4 The parties shall disclose to each other in writing the name and function of the key persons used to create the work result.
- 8.5 The Company replaces key persons only with the written consent of SBB AG. SBB AG will only refuse to give its consent for important reasons.

9 Changes to services

- 9.1 The parties may apply for a change of service in writing at any time.
- 9.2 If SBB AG wishes to make a change, the Company shall inform it in writing within 10 working days whether the change is possible and what effects it has on the services to be rendered as well as on remuneration and deadlines. The Company may not refuse to approve an amendment by SBB AG if the change is objectively possible and the overall character of the services to be provided is maintained. SBB AG shall decide within ten working days of receipt of the notification whether the change is to be carried out.
- 9.3 If the Company wishes to make a change, SBB AG may accept or reject such a request within ten working days of receipt of the notification.

- 9.4 Changes, in particular those concerning the scope of services, remuneration and deadlines, must be recorded in writing in a supplement to the contract before execution.
- 9.5 The Company shall continue its work in accordance with the contract during the test of amendments unless SBB AG gives instructions to the contrary.

10 Instruction and information

- 10.1 If agreed upon, the Company will give a first instruction to be determined in terms of scope and addressee group against separate remuneration.
- 10.2 The Company informs SBB AG regularly about the progress of the work and immediately informs SBB AG of any circumstances that endanger the contractual compliance.

11 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.

12 Acceptance cycle

- 12.1 The Company undertakes to release only tested work or individual software for acceptance. SBB AG can view the test protocols on request.
- 12.2 The contracting parties agree on the acceptance criteria, the schedule of the acceptance procedure and the date of acceptance.
- 12.3 The Company invites SBB AG to the acceptance test in a timely manner. The result of this is used to create a protocol signed by both parties.
- 12.4 If agreed in writing, partial acceptances are also possible. These are subject to successful overall acceptance.
- 12.5 If no deficiencies show up in the test, the work result will be accepted upon signature of the protocol.
- 12.6 If only insignificant defects are found in the test, the performance will nonetheless be accepted upon signature of the protocol. The

Company fixes the identified defects within the warranty.

- 12.7 If there are significant defects, the acceptance is postponed. The Company immediately remedies the identified deficiencies and invites SBB AG to a new test in a timely manner. If this test also shows significant deficiencies and the contracting parties do not agree on a continuation, this contract ends and all services will be refunded. Claims for damages remain reserved.
- 12.8 If SBB AG does not carry out the acceptance test within a reasonable period of time despite a reminder, the work result shall be deemed to have been accepted.

C. Maintenance and support

13 Maintenance and support of the individual software

- 13.1 As far as contractually agreed, the Company maintains the individual software in order to maintain its usability. The nature and extent of the service must be specified in the contract.
- 13.2 Insofar as contractually agreed, the Company provides support through advice and support of SBB AG regarding the use of individual software to be maintained. The type and extent of support must be specified in the contract.

14 Remote access

If the Company provides services via remote access, it must take all economically justifiable and technically and organizationally possible measures to ensure that the data traffic is protected against unauthorized access by third parties and that the obligations according to the "Confidentiality" paragraph are observed.

15 Documentation

The Company updates the documentation of the individual software according to Paragraph 8.3 above to the necessary extent.

16 Remediation of externally caused incidents

At the request of SBB AG, the Company participates in the search for the cause of the

incidents and their rectification, even if one or more incidents could be caused by the interaction of several systems or components. The parties will determine in advance how these services will be compensated in the event that it is proven that the disruption was not caused by the software maintained by the Company.

17 Service hours, availability, response time and fault clearance

17.1 Standby time: During the maintenance readiness period stipulated in the contract, the Company receives reports regarding incidents and inquiries from SBB AG via the agreed communication channels. The type and scope of the services to be rendered during the standby period must be contractually agreed.

17.2 Response time: Response time covers the period in which the Company has to start analysing and eliminating the incident from the time an incident is reported. It depends on the priority assigned to an incident and 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 an incident by the Company to its successful resolution. It is specified in the contract.

17.4 The Company informs SBB AG that the incident has been rectified.

18 Start and duration

18.1 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.

18.2 If a contract has been concluded for an indefinite period of time, it may be terminated in writing by SBB AG at the end of a calendar month unless otherwise agreed, but it may be terminated by the Company only after a term of five years. This termination may also only apply to individual parts of the contract. Unless otherwise agreed, the notice period is 12 months for the Company and 3 months for SBB AG.

18.3 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.

19 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

20 Place of performance and transfer of benefits and risks

20.1 SBB AG shall designate the place of performance. Unless otherwise agreed, the place of installation of the work result is the place of performance.

20.2 Benefit and risk are transferred to SBB AG with the successful acceptance.

21 Default

21.1 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.

22 Contractual penalty

22.1 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.

22.2 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 onetime 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.

22.3 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.

22.4 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.

22.5 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.

22.6 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.

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

23 Remuneration

23.1 The Company provides their services:

- a. At fixed prices; or
- b. At cost with an upper limit on the remuneration (cost ceiling).

23.2 The contractually defined remuneration covers all activities that are required for appropriate fulfilment of the Agreement. The remuneration covers, in particular, the granting of all agreed rights of use, any contractual maintenance and support services, all documentation and insurance costs as well as expenses and public charges (for example, value-added tax, customs duties). The individual cost components must be shown separately when submitting an offer.

23.3 The remuneration shall be due according to the payment plan or after the handover of the work or its installation. 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.

23.4 SBB AG makes payments due within 30 days of receipt of the invoice.

23.5 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.

24 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.

25 Confidentiality

25.1 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.

- 25.2 The parties are obliged to observe this confidentiality clause before the Contract is signed and after the contractual relationship ends.
- 25.3 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.

26 Data protection

- 26.1 The parties undertake to comply with the provisions of Swiss data protection law.
- 26.2 Personal data may only be processed for the purpose and to the extent necessary for fulfilling and executing the Agreement.
- 26.3 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.
- 26.4 Unless approved by SBB AG in writing, the Company must not disclose personal data of SBB AG to third parties.
- 26.5 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.
- 26.6 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.

27 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.

28 Warranty

- 28.1 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.
- 28.2 A defect is any deviation from the contract, irrespective of whether the company is at fault.
- 28.3 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.
- 28.4 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.
- 28.5 The warranty rights expire within 2 years of acceptance. 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 delivery to SBB AG.

- 28.6 If a defect is fraudulently concealed, warranty rights may be asserted in the 10-year period following the start of the warranty period.
- 28.7 Once a reported defect has been rectified, the warranty period shall start anew for the repaired component.
- 28.8 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.
- 28.9 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.

29 Intellectual property rights

- 29.1 All property rights (intellectual property rights and ancillary copyrights as well as entitlements to such) that arise concerning the work within the scope of the creation and maintenance (in particular regarding the source code and the documentation) are owned by SBB AG, unless otherwise agreed in the contract. Intellectual property rights in the sense of personal rights are reserved, insofar as they are not transferable by law.
- 29.2 SBB AG has unrestricted access to the work in terms of time, space and subject matter. The power of disposal covers all current and future possible usage rights, namely the use, publication, sale and modification. The change includes in particular the modification, further processing and use to create new work results. In the contract, SBB AG may grant the Company rights of use to the work results.
- 29.3 SBB AG shall be granted a non-exclusive, transferable right of use of pre-existing industrial property rights in parts of the agreed work results, which is unrestricted in terms of time, space and subject matter and which allows SBB AG to use and dispose of the work results within the meaning of Paragraph 29.2. The Company undertakes not to establish any rights to these pre-existing industrial property rights which can be held against the possibilities of use granted here. In particular, it undertakes to transfer or license these property rights only subject to the rights of use of SBB AG.

- 29.4 Ideas, methods and techniques which are not protected by law or otherwise may be used and disposed of by both parties.

30 Infringement of intellectual property rights

- 30.1 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.
- 30.2 If SBB AG is prevented from using all or part of the contractual services due to claims for industrial property rights asserted, SBB AG has the choice of either modifying its services in such a way that they do not infringe any third-party rights and still correspond to the scope of the contractually owed services, or procuring a license from the third party at its own expense. If the Company does not implement any of these options within a reasonable period of time, SBB AG may rescind the contract with immediate effect. The Company shall indemnify SBB AG within the scope of the "Liability" paragraph. Insofar as SBB AG is responsible for the infringement of industrial property rights, claims against the Company are excluded.

31 Integrity

- 31.1 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.
- 31.2 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.

- 31.3 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.
- 31.4 The Company shall contractually impose the obligations according to this clause upon the third parties it involves in order to fulfil the Contract.
- 31.5 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.

32 Audit

- 32.1 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.
- 32.2 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.
- 32.3 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.
- 32.4 The Company shall contractually impose the obligations according to this clause upon the third parties it involves in order to fulfil the Contract.

33 Liability

- 33.1 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.

- 33.2 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.
- 33.3 Any contractual penalties shall be credited against the damages payable.
- 33.4 The parties shall support each other in the event of claims by third parties, or when asserting damages claims against third parties.
- 33.5 If a party has to pay damages to a third party, it shall be fully indemnified by the party liable in the internal relationship.
- 33.6 Any recourse against employees of the liable party is mutually excluded.

34 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.

35 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.

36 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.

37 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.

38 Place of jurisdiction

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