

# GENERAL TERMS OF BUSINESS OF SBB AG FOR THE PROCUREMENT AND MAINTENANCE OF STANDARD SOFTWARE (GTC-ISW)

## A. Common introductory provisions

### 1 Scope of application

- 1.1 These general terms of business (GTC-ISW) regulate the conclusion, content and execution of contracts for the procurement and use of standard 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 expressly provided otherwise in the contractual document, the provisions regarding delivery, acceptance and warranty in accordance with Paragraph 29 apply separately and independently to the license agreement or to the maintenance of the standard software. The warranty rights from the maintenance contract do not affect those under the license agreement.

### 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 shall only deploy carefully selected and properly trained employees for services that are to be provided by employees of the Company. 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 on-site 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, 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**

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 self-declaration annexed to the contract/order.

## **6 Definitions**

- 6.1 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).
- 6.2 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).
- 6.3 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.
- 6.4 Releases: Further developments of the standard software including firmware, which are called minor versions (updates) or major versions (upgrades). New releases offer new functionality, bug fixes and/or improved performance.
- 6.5 Incident: A fault 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.
- 6.6 Patch: Minor change to software, mostly to fix an error or security issue of the software.

## **B. Procurement of standard software**

### **7 Type and scope of the use**

- 7.1 The Company grants SBB AG the right to use its standard software. The type and scope of use depend on the individual agreement in the contract. Insofar as the parties have not agreed otherwise in the contractual document, the use is unlimited and not geographically restricted. It is not tied to any specific hardware.

- 7.2 For backup and archiving purposes, SBB AG can make the necessary copies of the standard software without additional payment in order to use them on the replacement hardware in the event of hardware failure.

- 7.3 SBB AG is authorised to parametrise the standard software with regard to its contractual use and to make it interoperable with third-party software within the framework of the law.

- 7.4 The standard software can be used within the scope of Paragraphs 7.1 to 7.3 within the own group of companies. In addition, the service recipient may transfer the right to use the standard software to a third party with the written consent of the Company.

- 7.5 SBB AG shall be entitled to operate the standard software – exclusively for its own purposes (outsourced data centre) – in a data centre of an authorized third party; it shall be obliged to transfer the obligations arising from these general terms of business to the commissioned third party in writing.

## **8 Installation**

If agreed, the Company will install the standard software on the hardware designated by SBB AG for a separate fee.

## **9 Documentation**

- 9.1 The Company shall provide SBB AG with the relevant documentation (installation and user manual) in the agreed languages and in the agreed number of items, either electronically or in paper form together with the standard software.
- 9.2 SBB AG may copy and use the documents in accordance with the terms of the contract.

## **10 Instruction of the SBB AG staff**

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

## **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.

## **C. Maintenance and support**

### **12 Maintenance and support of the standard software**

12.1 The Company maintains within the framework of the contractual agreement the standard software in order to maintain its usability. In the absence of any deviating regulation in the contract or in the terms of reference of the offer, the software maintenance includes corrective (error correction), adaptive (adaptation to changed circumstances), improving (functional extension) services and the delivery of new releases and patches.

12.2 The Company provides support in the context of the contractual agreement by providing advice and support to SBB AG regarding the use of the software to be maintained. In the absence of a deviating agreement, the support includes in particular (not exhaustively):

- Clarification of the cause of reported incidents;
- Support during the installation of patches and releases by appropriate documentation;
- Consultation and support "on site" or via remote access to the conditions defined in the contractual document.

12.3 The Company undertakes to ensure an efficient organization for maintenance and support, whereby it informs SBB AG immediately via the communication channels of the corresponding inquiries and via the responsible contact persons. The contract must state whether and how inquiries and reports can be transmitted in writing, by telephone or electronically.

### **13 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.

### **14 Instruction and information**

14.1 At the request of SBB AG, the Company will give a first instruction on new releases to be agreed according to scope, target group and remuneration.

14.2 The parties immediately inform each other in writing about any facts or circumstances that they have identified or are aware of, which may affect or jeopardize their maintenance or support. The Company regularly informs SBB AG about further developments of the software. It notifies SBB AG about any possible effects of the use of new releases on the affected hardware and any external interfaces.

### **15 Updating of documentation**

The Company shall update the documentation of the software according to Paragraph 9.1 above, as far as necessary.

### **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.

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 Usage scope for releases**

- 18.1 Unless the parties have agreed otherwise in the contract, the use of releases is unlimited and geographically unrestricted. It is not tied to any specific hardware. For backup and archiving purposes, SBB AG can make the necessary copies of the releases without additional remuneration.
- 18.2 The releases can be used within the scope of the above subparagraph within the own group as well as in connection with an outsourced data centre.

## **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 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.
- 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 Place and time of performance shall be specified in the contract. Unless otherwise agreed, in the case of delivery of the standard software on a data carrier, the receipt of the data carrier at the place where the software is installed shall be deemed to be the time and place of performance; in the case of online delivery, the availability of the software for download by SBB AG on the Company's server shall be deemed to be the time and place of performance.
- 21.2 Benefit and risk are transferred to SBB AG at the place and time of performance.

### **22 Default**

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.

### **23 Contractual penalty**

- 23.1 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.
- 23.2 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.

23.3 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.

23.4 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.

23.5 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.

23.6 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.

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

## **24 Remuneration**

24.1 The Company renders services at fixed prices. Remuneration shall be in the form of a onetime payment or a recurring fee.

24.2 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 agreed 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. A distinction can be made between development, testing, integration and production systems.

24.3 Payment is due upon delivery of the standard 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.

24.4 Payments due shall be made by SBB AG within 30 days of receipt of the invoice.

24.5 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.

## **25 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.

## **26 Confidentiality**

26.1 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.

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

26.3 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.

## **27 Data protection**

- 27.1 The parties undertake to comply with the provisions of Swiss data protection law.
- 27.2 Personal data may only be processed for the purpose and to the extent necessary for fulfilling and executing the Agreement.
- 27.3 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.
- 27.4 Unless approved by SBB AG in writing, the Company must not disclose personal data of SBB AG to third parties.
- 27.5 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.
- 27.6 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.

## **28 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.

## **29 Warranty**

- 29.1 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.
- 29.2 A defect is any deviation from the contract, irrespective of whether the company is at fault.
- 29.3 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.
- 29.4 If the company fails to carry out the requested rectification within the specified period, 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;
  - or withdraw from the contract.
- 29.5 Warranty rights shall expire within 2 years of acceptance  
For products that are stored as inventory by SBB AG, warranty rights shall expire within 2 years starting from the date of installation, and no later than 3 years after the date of contractual delivery to SBB AG.
- 29.6 If a defect is fraudulently concealed, warranty rights may be asserted in the 10-year period following the start of the warranty period.
- 29.7 Once a reported defect has been rectified, the warranty period shall start anew for the repaired component.
- 29.8 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.
- 29.9 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.

### **30 Intellectual property rights**

The protective rights to the standard software remain with the Company or with third parties. During use, the rights of use of SBB AG pursuant to Paragraph 7 must be preserved.

### **31 Infringement of intellectual property rights**

31.1 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.

31.2 If SBB AG becomes unable to use the contractual standard software or the use of services in whole or in part on the basis of asserted property rights claims, the Company has the choice either to replace the standard software by others or to modify its services in such a way that they do not infringe third-party rights and nonetheless conform to the contractually owed scope of services, or obtain a license from the third party at their 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 the SBB AG is responsible for the infringement of industrial property rights, claims against the Company are excluded.

### **32 Integrity**

32.1 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 ([SBB Company -](#)

[Code of Conduct SBB](#)). 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.

32.2 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.

32.3 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.

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.

32.5 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.

### **33 Audit**

33.1 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.

33.2 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.

33.3 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.

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

### **34 Liability**

- 34.1 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.
- 34.2 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.
- 34.3 Any contractual penalties shall be credited against the damages payable.
- 34.4 The parties shall support each other in the event of claims by third parties, or when asserting damages claims against third parties.
- 34.5 If a party has to pay damages to a third party, it shall be fully indemnified by the party liable in the internal relationship.
- 34.6 Any recourse against employees of the liable party is mutually excluded.

### **35 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.

### **36 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.

### **37 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.

### **38 Applicable law**

The contract shall be governed exclusively by Swiss law. The provisions of the Vienna Convention (United Nations Convention on Contracts for the International Sale of Goods, concluded in Vienna on 11 April 1980, CISG) and any applicable rules of private international law that refer to other legal systems are explicitly excluded.

### **39 Place of jurisdiction**

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