

# GENERAL TERMS AND CONDITIONS FOR IT SERVICES (WORKS CONTRACT)

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## **1. OBJECT AND VALIDITY**

- 1.1 The collaboration between SWISS TXT AG based in Biel (hereinafter "STXT") and the Client with regard to the contractual object will be governed conclusively by the Offer accepted by the Client (hereinafter "Offer") and these General Terms and Conditions (hereinafter "GTC"). Should the Client require any support or maintenance services, these will be defined in a separate contract.
- 1.2 Additions or modifications to the Contractual Agreement (hereinafter "Contractual Agreement") between STXT and the Client that is based on the Offer and the GTC may only be made if agreed in writing by STXT and the Client. The Client's general terms and conditions or similar provisions are hereby expressly excluded.
- 1.3 In the event of any contradictions between these GTC and the Offer, the provisions in the GTC will take precedence over the Offer, unless expressly stipulated otherwise in the Offer.
- 1.4 All information provided by STXT outside the Contractual Agreement, particularly in brochures and other publications, is non-binding, without obligation and to be regarded as an invitation to provide an offer, unless expressly stated otherwise by STXT in writing.

## **2. DUTIES OF STXT**

- 2.1 STXT is obliged to provide the services described in the Offer and in these GTC. These services must be provided with due care.
- 2.2 STXT must endeavour to observe any deadlines set out in the Offer. In the event of delays, Section 4 below will apply exclusively. All further claims by the Client relating to delays, especially any compensation claims, are excluded unless expressly agreed otherwise in the Contractual Agreement.
- 2.3 STXT itself is not obliged to perform the services it owes under the contractual agreement but may appoint third parties instead without the Client's consent.

## **3. DUTIES OF THE CLIENT**

- 3.1 The Client is obliged to support STXT to the extent necessary for STXT to provide the service as contractually agreed. In particular, the Client is obliged to furnish STXT with the required information and documents in good time and to appoint qualified staff with the necessary expertise to the respective project. Further duties of cooperation on the part of the Client may be stipulated in the Offer.
- 3.2 The Client is obliged to perform its duties properly, on time and at the required level of quality at all times.

## **4. ACCEPTANCE**

- 4.1 STXT is obliged to notify the Client when the agreed work results are completed (hereinafter "Readiness for Acceptance"). The Client must accept the work results listed in the Readiness for Acceptance notice within 10 days of receiving the respective notification from STXT in writing, provided that the Client does not identify any significant deficiencies. Otherwise, the work results will be deemed to have been accepted by the Client.
- 4.2 Acceptance will also be deemed to have been issued if the Client does not discover any significant deficiencies. If significant deficiencies are identified, the Client can refuse acceptance. Significant deficiencies are deviations from the contractual requirements and functions that prevent or seriously impair use of the work results by the Client as intended. Any deficiencies that do not constitute significant deficiencies are classed as minor deficiencies.
- 4.3 Any work results that are put to productive use by the Client will be deemed to have been accepted.
- 4.4 If the Client notifies STXT in writing of deficiencies it has identified during an acceptance test, STXT must resolve them at its own cost within a suitable period to be agreed by both parties. Minor deficiencies can also be resolved after acceptance.
- 4.5 If significant deficiencies are also found in the second acceptance test, the provisions above will apply mutatis mutandis. Should the third acceptance test still show up significant deficiencies, the Client can, within 30 calendar days of the acceptance readiness notification from STXT, either i) give STXT another opportunity to address the significant deficiencies or (ii) withdraw from the contract with STXT. In this case, Section 7.2 below will apply mutatis mutandis. All further claims by the Client, especially any compensation claims, are excluded.
- 4.6 The Client's judicial remedies in the event of deficiencies as set out in Section 4 are final. All further rights of the Client are excluded.

## **5. CHANGES TO THE SCOPE OF SERVICES**

- 5.1 Each party to the Contractual Agreement may request changes to the scope of services in writing at any time.
- 5.2 If the Client wishes to request a change, it must notify STXT in writing. STXT will respond to the Client in writing within 10 working days of receiving this notification, stating whether the change is possible and the effects it will have on the services to be provided, as well as the fee and schedule. The Client will decide within 10 further working days from receipt of this response whether the change is to be implemented.
- 5.3 If STXT wishes to propose a change, the Client may accept or reject this proposal within 10 working days of receiving notification.
- 5.4 All changes must be agreed in writing before they are implemented.
- 5.5 STXT will continue to work as contractually agreed while the change requests are being investigated, unless otherwise agreed between the contractual parties in writing.

## **6. REMUNERATION**

- 6.1 STXT will invoice the Client for the services provided under the Contractual Agreement on an hourly basis unless agreed otherwise by the parties in the Offer (hereinafter "Fee"). Any travel time will also be billed. The hourly rates are set out in the Offer.
- 6.2 All prices in the Offer are exclusive of VAT. The Fee to be paid by the Client excludes any costs and expenses relating to the provision of the services (e.g. staff travel and accommodation expenses, postage, storage media and data transmission costs) unless otherwise agreed in the Offer.
- 6.3 Should the Offer mention a total fee, it should not be regarded as a fixed price, but as a guide price, unless expressly stated otherwise in the Offer. Should STXT discover in the course of fulfilling its Contractual Agreement that it cannot meet the guide price, it will notify the Client as soon as possible.
- 6.4 If the parties have agreed on a fixed price, the Client may nevertheless be billed a higher fee if the type or scope of the services originally defined is modified, or if the services are based on incorrect information provided by the Client or if the Client does not fulfil its duties of cooperation on time.
- 6.5 STXT is entitled to raise its hourly rates by a maximum of 5% on 1 January of each year with a notice period of at least 60 days.
- 6.6 The Fee to be paid by the Client for the services provided by STXT will be billed to the Client monthly and must be paid within 30 days of the invoice date. Default interest of 5% p.a. will apply after this date. No reminder is required. Provisions to other effect in the Offer remain reserved.
- 6.7 STXT is not obliged to provide the services agreed in the Contractual Agreement if it is not paid in full for all Fees, costs and expenses invoiced by STXT.

## **7. RIGHTS TO THE WORK RESULTS**

- 7.1 All rights to the work resulting from the fulfilment of the Contractual Agreement (hereinafter "IP Rights"), remain the property of STXT. The Contractual Agreement does not include the transfer of IP Rights to the Client in any way. Any provisions in the Offer to different effect are reserved.
- 7.2 STXT will grant a non-exclusive, irrevocable, irredeemable global licence to the Client permitting it to use the work results created by STXT within the scope of the products and services of STXT provided that all Fees, costs and expenses billed by STXT have been paid to STXT in full.

## **8. WARRANTY AND LIABILITY**

- 8.1 STXT will provide the services as contractually agreed with suitably qualified staff and the required level of care. Any guarantees by STXT beyond this are hereby expressly excluded unless specifically set out in the Offer or these GTC.
- 8.2 The contractual parties are liable to each other only for damage caused with intent and gross negligence in connection with the Contractual Agreement. They are not liable for the actions of auxiliaries. All further liability for damages relating directly or indirectly to the Contractual Agreement is

excluded to the extent permitted by law. This disclaimer applies regardless of the legal grounds of the claims.

## **9. TERM AND TERMINATION**

9.1 The Contractual Agreement will enter into force when the Client accepts the Offer presented by STXT and will remain valid until terminated by one of the parties.

9.2 Either party can terminate the Contractual Agreement by the end of any calendar month with a notice period of 30 days unless otherwise agreed in the Offer.

9.3 Either party can terminate the Contractual Agreement with immediate effect for a compelling reason provided that it is not responsible for the compelling reason. Immediate termination of the Contractual Agreement for a compelling reason is possible in the event of one of the following situations in particular:

- futile seizure, insolvency, debt restructuring moratorium or bankruptcy of the other party;
- if the other contractual party is in default over the fulfilment of a contractual duty and a 30-day grace period from receipt of a written warning has lapsed unsuccessfully.

9.4 Notice given in accordance with this Section 9 must be in writing.

9.5 In the event of the dissolution of the Contractual Agreement, the Client must compensate STXT for all fees, charges and expenses that have accrued until the point of dissolution. The Client must pay the corresponding invoice from STXT within 30 days of the invoice date.

## **10. CONFIDENTIALITY AND DATA PROTECTION**

10.1 The contractual parties must instruct their employees and any appointed third parties to treat any documents marked as confidential relating to their business operations and which are made available to them in the course of contract fulfilment or come to their attention in some other way, with the same care and discretion as their own confidential information. This duty of confidentiality applies for the duration of the Contractual Agreement and also thereafter.

10.2 The duty of confidentiality does not apply to information that is publicly available, verifiably already known to the contract parties, was independently developed by them or purchased from authorized third parties.

10.3 Each party undertakes to observe the applicable provisions in the Swiss data protection laws.

## **11. NON-SOLICITATION AGREEMENT**

11.1 The Client undertakes not to take any action that could amount to the solicitation of employees or auxiliaries of STXT.

11.2 In the event of a breach of this Non-Solicitation Agreement, the Client must pay STXT a contractual penalty of CHF 100,000 per incident. Payment of the contractual penalty does not release the party from its obligation to

observe the Non-Solicitation Agreement. Claims for compensation in excess of the contractual penalty amount remain reserved.

- 11.3 The Non-Solicitation Agreement applies for the duration of the Contractual Agreement and for two years thereafter.

## **12. FINAL PROVISIONS**

- 12.1 STXT is permitted to use the Client's name and logo and the resulting work or parts thereof on the STXT website, in advertising materials and elsewhere, in particular for reference purposes.
- 12.2 The Client is only permitted to withhold payments or to offset them with counter-claims insofar as its counter-claims are uncontested or upheld by a court of law.
- 12.3 Faxes and emails are deemed to comply with the written form in terms of the Contractual Agreement.
- 12.4 Should one or more of the provisions of the Contractual Agreement be or become void or invalid, the remaining provisions of the Contractual Agreement will not be affected. Should a provision be void or invalid, it must be replaced by a valid one that is as close as possible to the commercial intention of the ineffective one.
- 12.5 The Contractual Agreement is subject to substantive Swiss law and excludes the conflict of law rules and international agreements.
- 12.6 The parties will endeavour to resolve any conflicts, disagreements or claims arising from or in connection with the Contractual Agreement out of court. Should the parties be unable to reach agreement out of court, the ordinary courts of law situated at the domicile of STXT are the exclusive place of jurisdiction.