

1 Object

These General Terms and Conditions (GTC's) regulate the general features of the rendering of performances in the area of information and communication technology by Swisscom (Switzerland) Ltd (hereinafter referred to as "Swisscom") to the customer in the context of one or several contracts.

These GTC's may be referred to in a general contract or in specific contracts. These GTC's are considered to be an integral component of the respective contracts. Individual contracts are understood as those contracts that form the basis of specific obligations to render performances between the parties to the contract. Insofar as reference is made below to "contracts", this is taken as meaning any general contract and the individual contracts.

Other general contract conditions that the customer makes reference to in declarations, specifically orders, offers or invitations to tender, are only valid when Swisscom has expressly accepted these in writing. Even in this case, they only apply to the respective individual transaction.

2 Performances

2.1 Performances by Swisscom

2.1.1 Rendering of performances

Swisscom renders the performances specified in the individual contracts. A performance of work or labour is only due if the individual contract expressly stipulates this.

The customer, in cases where Swisscom is not obliged to produce specific results, is entitled to issue instructions. The customer undertakes to issue such instructions clearly, appropriately and on request from Swisscom in writing. Swisscom is not obliged to comply with inappropriate instructions from the customer. If such instructions lead to additional costs for Swisscom, then the latter is entitled to pass these on to the customer.

Swisscom may draw upon the assistance of auxiliaries, third parties (particularly subcontractors) or employees of such third parties to fulfil its obligations.

Insofar as Swisscom has expressly undertaken to act with respect to the customer as general contractor, it accepts liability for its subcontractors as for itself. Otherwise Swisscom is only liable for the selection, instruction and supervision of subcontracted third parties. If the customer of Swisscom demands that a particular company be engaged as a subcontractor, the customer must bear alone the risk of non-fulfilment by the relevant subcontractor or of unsatisfactory fulfilment.

2.1.2 Resources

The planning, acquisition, operation, protection, upkeep, maintenance, replacement or retrofitting and other deployments required for the performance of services by Swisscom, unless otherwise arranged, are the responsibility of Swisscom. This also applies for any hardware and software used, with the exception of resources (hardware and software) to be provided the customer as per individual contracts.

2.2 Obligations of the customer

2.2.1 Payment and expenses

The customer shall make the payments provided for in the individual contracts for the performances rendered by Swisscom. All amounts are to be understood as exclusive of VAT and any other charges.

The payments are due in accordance with the agreed payment plan. If no such plan is provided, then non-recurring payments are to be made in advance, recurring payments monthly and retrospectively. Swisscom shall claim any due demands by means of invoice. Invoices are payable within 30 days net.

If Swisscom lowers the prices for services and products, it may also adjust any applicable discounts accordingly.

The customer is in arrears on lapse of the payment period without any further reminder. An interest on arrears of 5% p.a. as arranged shall be levied. If the customer is in arrears with a payment, then Swisscom can make the rendering of further performances under the individual contracts dependent on the complete payment of unsettled invoices and, at its discretion, on advance payments or other securities.

Performances requested by the customer, the prices of which have not been specifically agreed, will be invoiced at the respectively applicable standard rates of Swisscom, according to the effective outlay.

Travel, catering and accommodation costs shall be charged to the customer and separate invoices shall be submitted, unless otherwise agreed.

2.2.2 Obligations to provide support and assistance

The customer shall ensure that all necessary duties of assistance are performed in due time, in the required scope and at no cost to Swisscom. The duties of assistance form essential duties of the customer.

In addition to the specific duties of assistance detailed in the individual contracts, the following applies:

The customer shall actively and promptly support Swisscom and its employees and third parties

subcontracted by Swisscom to fulfil the contract in any reasonable way, shall provide assistance, undertake the necessary preparations and make the necessary provisions (including the procurement of all required rights and authorisations) and grant the required access to its buildings and resources.

Furthermore, the customer is obliged to promptly place at the disposal of Swisscom all data, information and documents that may be relevant for the execution of the individual contracts and services of Swisscom. Data that must be processed and exists in electronic form shall be transferred to Swisscom in a generally accepted, machine-readable form.

If the customer does not perform its duties or its responsibilities or does not perform them properly, then the consequences (e.g. delays, additional costs etc.) shall be borne by the customer. The customer shall reimburse Swisscom for the additional outlay at the respectively applicable standard rates of Swisscom, unless Swisscom is solely responsible for the infringement of its duties. If Swisscom is co-responsible then the additional costs shall be borne proportionately by both parties.

Moreover, the customer is not empowered to arrange or undertake purchases or expenditure in the name of or at the expense of Swisscom, nor is it empowered to act in any other way on behalf of Swisscom.

2.3 Duties of notification

The parties shall inform each other about developments, incidents and insights that may be significant for the other party in the context of fulfilling the individual contracts or for the contractual relationship in general, insofar as this obligation is not superseded by a legal or contractual duty of confidentiality.

3 Proprietary, trademark and usage rights

3.1 Ownership of material objects

Insofar as not otherwise arranged in writing, the individual contracts do not provide for the transfer of ownership. Any adverse possession during the term of the contract is excluded.

3.2 Trademark and usage rights

Swisscom cedes to the customer for its own use the non-transferrable, non-exclusive usufruct over the services of Swisscom agreed in the individual contracts. The contents and scope of this right ensue from the individual contracts. In the case of performances that under the individual contract are only to be rendered for a specific term, this right is restricted to the term of the individual contract.

If products from third parties that are identifiable as such by the customer form part of the performances of Swisscom, the customer also recognises the usufruct and licence conditions of this third party in respect of these products and cedes to the latter the right to assert such usufruct and licence conditions against the customer.

All rights to existing intellectual property or such that results from contract fulfilment (copyrights, patents, know-how etc.) in respect of performances rendered by Swisscom are retained by Swisscom or by the eligible third party. Neither are they limited in the further valuation and other use of this intellectual property nor are they under any obligation in this respect to the customer. Insofar as the parties have jointly or severally created intellectual property, they cede to each other for the duration of the warrant, the usage and valuation of these rights as desired under compliance with the duty to confidentiality independently of one another and without geographical restriction. With respect to software, the customer, in the absence of a written agreement to the contrary, has no claim over the source code and may not use the latter nor seek to acquire it. The customer recognises the existence of intellectual property rights of Swisscom and of any third parties over the performances rendered by Swisscom and shall take no actions that could compromise their value. The customer shall do all in its power to prevent unauthorised use. This paragraph shall also be respected after the contracts have lapsed.

4 Arrears

Unless otherwise agreed in writing, the contractual performances by Swisscom do not count as transactions with expiry dates. Due dates count as respected when the performance by Swisscom has been made available to the customer. If Swisscom falls in arrears, the customer shall grant the former a reasonable period of grace in writing on two separate occasions.

If Swisscom does not fulfil its contractual obligation even after the second period of grace has lapsed, the customer is entitled to withdraw from the respective individual contract. Those performances (or parts thereof) that have already essentially been performed in accordance with the contract and can be used by the customer in an objectively reasonable manner are to be paid for in full. Any withdrawal from contract by the customer does not affect such performances; the corresponding contractual provisions continue to apply to such. Furthermore, in the event of withdrawal from a contract the arrangements in Clause 8 are to be observed.

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If the customer should fall into payment arrears, Swisscom may charge the customer for all resulting costs. For the rest, the applicable legal provisions apply.

5 Guarantee

5.1 Guarantee in general

Swisscom shall render its performances professionally and with due care.

5.2 Guarantee for operational, maintenance and care services

Swisscom guarantees that the service levels agreed under the individual contracts shall be respected.

However Swisscom cannot guarantee completely fault-free, disruption-free or uninterrupted operation or this only in the context of the service levels agreed in the individual contracts.

These contractual warranties do not apply in the even of events or circumstances whose origins are the responsibility of the customer, when the latter is jointly responsible for these or when they are wholly or partially the customer's fault (e.g. the manipulation of software or customer software, installation of agreed software adaptations, faults that originate in the customer's network) as well as in the case of Acts of God. Any further guarantee is excluded. Swisscom is not responsible for resources that are provided by the customer.

Swisscom measures the observance of the agreed service levels and reports its findings to the customer. This report is valid until proof to the contrary is submitted. The customer can demand to view the measurements and recordings pertaining to the customer.

5.3 Guarantee for performances under contracts for work and labour

Swisscom guarantees that its performance shall correspond to the contractually agreed specifications, assurances and properties.

The duration of the guaranty for non-recurring performances under contracts for work and labour is 6 months after completed handover.

Swisscom provides no guarantee that the products that it creates or delivers (in particular customised software) will run without interruption and error in all combinations desired by the customers, or can be used with all data, IT systems or programs.

If a defect established that falls within the scope of the guarantee, the customer can initially only demand a free-of-charge rectification. If the defect cannot be rectified within a period that is reasonable given the cause of error,

then the customer shall set another reasonable period of grace for rectification of the defect. If all attempts at rectification fail, the customer can:

- a) demand an appropriate price reduction, or
- b) in the event of a major defect that prevents the customer using the artefact or product as a whole, the customer can withdraw from the corresponding individual contract. Those performances (or parts thereof) that have already essentially been rendered in accordance with the contract and can be used by the customer in an objectively reasonable manner are to be paid for in full. Any withdrawal from contract by the customer does not affect such performances; the corresponding contractual provisions continue to apply to such. Furthermore, in the event of withdrawal from a contract the arrangement in Section 8 are to be observed.

5.4 Acceptance, delivery and complaints

The customer is obliged to accept all performances by Swisscom as soon as they are made available and to inspect them for deficiencies. Swisscom is to be notified in writing by the customer of any deficiencies as soon as they are discovered.

Performances under contracts for work and labour must be accepted by the customer. Swisscom is entitled to a written declaration of acceptance. Swisscom can demand the acceptance of part-performances provided that the customer may reasonably be expected to accept them.

The handover is to be proceeded by acceptance tests. A written acceptance report about the acceptance inspection and its result shall be drawn up and undersigned by both parties. Minor deficiencies do not entitle the customer to refuse to accept the performance, however such deficiencies shall be rectified by Swisscom within a reasonable period.

If major defects are established during the acceptance inspection, then the acceptance shall be postponed. Swisscom shall rectify the established deficiencies within a reasonable period and shall invite the customer to participate in a new acceptance inspection. The customer must grant Swisscom at least two acceptance inspections per performance. The performances automatically count as accepted if the customer does not declare its rejection in writing within 30 days of provision to the customer of the performance, thereby specifically detailing the reprovved deficiencies. Performances count as accepted as soon as the customer uses the objects of delivery operationally or commercially or lets them so be used.

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If the acceptance procedure definitively fails, then the rules for finally rejected rectifications under the guarantee Clause 5.3 apply correspondingly.

5.5 Guarantee for third party products

For products (e.g. hardware/software) of third parties, Swisscom indemnifies and accepts liability only to the extent that the third party does so in respect of Swisscom. Swisscom thereby undertakes to negotiate the best possible conditions with the third party both for itself and for the customer.

5.6 Legal guarantee

Swisscom guarantees that it has all rights at its disposal that it requires to render its performances in accordance with the contract.

If a third party should attempt to prevent the customer from using the performances under the contract by Swisscom based on what it claims are prior-ranking rights, then the customer shall notify Swisscom thereof in writing within five days. Assuming that it receives timely notification and the temporally unrestricted guarantee of all reasonable support, Swisscom shall be provide legal defence for the customer at its own cost against such third party claims. If necessary, Swisscom will modify its performances (including software) so that while all the key requirements of the customer are fulfilled third party rights are not infringed, or it will acquire for the customer at its own expense a licence from the third party. If neither approach should succeed, and the third party claims are backed by a legal judgment, then Swisscom under the limitation of liability as per Clause 6, will indemnify the customer for all direct damage suffered by the customer as a consequence of the enforced third party claim.

On the other hand, Swisscom excludes any legal guarantee for claims that have been enforced by court judgment in the territory of the United States of America or for claims that are based on the use of software or services on the territory of the United States of America.

5.7 Guarantee by the customer

The customer shall indemnify Swisscom in the event of legal claims by third parties or authorities that relate to data, contents or resources provided by the customer (in particular software licences) and shall ensure and pay for a reasonable protection against such claims.

If Swisscom should have reasonable doubts about the legality of a planned or actual application of performances that it provides, including of the systems that it operates or provides, then it may, without being obliged to afford a replacement, suspend the affected performance or take

other suitable steps, even if this contravenes its duty of performance under the individual contracts. It shall immediately inform the customer of such actions.

6 Liability

In the case of contractual infringements, Swisscom is liable for any established damage, unless it can prove that it shares none of the blame. The liability of Swisscom for damages due to intent or gross negligence is unlimited. In the case of minor negligence, Swisscom accepts unlimited liability for personal injuries, liability of up to CHF 500,000 for material damage per incident and for financial loss up to a limit of CHF 50,000 per incident. In no event does Swisscom accept liability for consequential damage, especially for lost profits or the loss of data or damage to reputation.

Swisscom shall not be held liable if performance of the services is interrupted, restricted to varying degrees or rendered impossible by force majeure. Force majeure is defined as natural events of particular intensity (avalanches, flooding, landslide, etc.), war and terrorism, riots, restrictions unexpectedly imposed by public authorities etc.. If Swisscom is unable to fulfil its contractual obligations, the contract performance or date for contract performance shall be postponed as necessary in consideration of the event. Swisscom shall accept no responsibility for any damages to the customer as a result of postponement of contract performance.

As for the secondment of personnel, Swisscom only accepts liability for the careful selection of the seconded personnel.

If the individual contracts (including their annexes) contain contractual penalties against Swisscom and if these are asserted by the customer, then the customer is not entitled to any further claims, including compensation for damage or a refund or reduction in price.

Other liability provisions contained in contractual components that are subordinate to this contract document at the expense of Swisscom shall not apply.

7 Term of contract and amendment of contract

7.1 Duration and termination

The contracts are enacted on being undersigned by both parties. If the contracts are open ended, then they count in respect of the contained permanent debt performance as indefinite. In the absence of another arrangement, they can be terminated at the end of the respective calendar year in observance of a period of notice of six months. If a minimum term has been arranged, then notice of

termination cannot be given until the minimum term has expired.

If a general contract is terminated, then individual contracts signed under this general contract that are terminable or with a minimum term shall run in accordance with contractual provisions until the end of the contractual term or until the minimum contractual term; the provisions of the corresponding general contract shall to this extent continue to apply. All other individual contracts concluded under the annulled general contract are also considered automatically annulled with the annulment of the general contract without any further action.

The right to exceptionally terminate the contract for important reasons is always reserved. The following are in particular considered to be important reasons:

a) the occurrence of events or circumstances that make the continuation of the cooperation foreseen in the respective contract unreasonable for the terminating party and in particular repeated severe infringement of the major contractual obligations, whereby the general contract as a whole can only be terminated if the contractual infringements extend to all individual contracts or to specific duties ensuing from the respective general contract that nonetheless affect all individual contracts. If the general contract is exceptionally terminated, then all the individual contracts count as terminated, too;

b) official notice of the opening of bankruptcy proceedings of a party or that the party is in default. In this case, the exceptional right of termination is only available to the other party.

If the infringement of the contract by one party can be rectified then the other party shall issue written notice of contractual infringement and grant 30 days grace for its rectification before issuing final notice of termination.

7.2 Changes to the contract

Swisscom can modify the conditions of its performances in the context of changed operational or commercial circumstances pertaining to the individual contracts respectively on 1 January of each year, insofar as such modifications correspond to a protectable interest (e.g. new standards or regulatory requirements, new technologies, changes in suppliers, modifications of hard- and software, new or modified customer services, changes in license models, inflation) and the resulting modifications, in particular price increases, are reasonable for the customer.

The customer shall be notified by Swisscom in writing of such contractual modifications by 15 November at the latest of the previous year. If these modifications are objectively fundamental, the customer has an exceptional right to terminate the affected contracts on the following 31 December. This right must be exercised within 30 days of the date of notification of the change. Adjustments to prices because of inflation do not count as a fundamental modification.

8 Consequences of termination

8.1 General items

If the customer withdraws from an individual contract or if he extraordinarily terminates such a contract, this does not automatically mean that he withdraws or terminates other individual contracts or from this general contract unless these are dependent on the annulled individual contract.

The provisions of Clause 9.2, Clause 9.3 as well as of Clause 3.2 in respect of the trademark rights and usufruct over jointly created intellectual property continue to apply after ending of the contracts.

8.2 Negotiations for ending the contract

At the end of a contract, regardless of the reasons for the ending of the contract, both parties will work together to ensure an orderly operational handover.

If Swisscom renders performances that extend beyond the date of termination, Swisscom shall levy the customary charges under the conditions of the currently applicable version of the individual contracts. Any performances that are not included in the scope of the individual contracts or any services that go beyond this scope shall be provided by Swisscom at the respectively applicable Swisscom hourly rates.

8.3 Indemnification duties of the customer in the event of extraordinary termination of contracts

In the event of the extraordinary termination of a contract, the customer is obliged to buy the dedicated IT hardware assigned to him at the date of cessation or termination of the contract, if this is demanded by Swisscom. Every material guarantee is exclusive of liability; insofar as material guarantee claims can be directly asserted by Swisscom against the suppliers, Swisscom shall support the customer in the assertion of these claims.

The price for the dedicated IT hardware is based on the book value at the date of ending of the contracted, which in turn is based on its linear depreciation over the usual contract term.

Insofar as legally possible and demanded by Swisscom, the customer will also sign contracts (e.g. licences, care, maintenance) that Swisscom has signed with third parties specifically with a view to the rendering of performances for the customer.

The rights of both parties to claim compensation are reserved.

8.4 Return, vacation of accommodation

The return or restoration as well as the vacation of any accommodation and return of keys by Swisscom shall be completed within 30 days of the termination of the respective contract.

8.5 Surrender of databases

Swisscom shall surrender to the customer the latter's databases. The customer shall confirm receipt of the complete database in writing. Swisscom shall retain databases until the 30th day after termination of the respective contracts without special payment. It may not destroy them for a term of three months without the agreement of the customer.

9 Data protection, confidentiality

9.1 Data protection

Both parties undertake on behalf of themselves, their employees, other auxiliaries and subcontracted third parties to observe the provisions of the Swiss Federal Data Protection Act at all times. This also includes the performance of the required technical and organisational security measures. The customer shall ensure that the relevant provisions are observed by its employees and by third parties that use its products and systems. The customer is responsible for informing the affected persons about the processing of data relating to them and if appropriate for obtaining the necessary assents (including permission to transfer data processing to Swisscom, if such processing is foreseen).

Swisscom shall observe the relevant laws in its handling of the data. Swisscom shall only collect, save and process data that is required for the rendering of contractual performances, for the maintenance and care of the customer relationship, specifically for the assurance of a high level of service, securing the operations and infrastructure as well as for invoicing.

The customer however authorises Swisscom to obtain data about the customer in conjunction with the signing and conduct of the contract and to pass on data about the customer's conduct in relation to payment, so that Swisscom can use the customer's data for the design and development of Swisscom's products and services as well

as for tailor-made offers and the customer's data can be processed for the same purposes within the Swisscom Group. If a performance by Swisscom is rendered jointly with a third party or the customer in the context of the contracts obtains the performances of third parties, then Swisscom can pass on data to the third party, provided that this is required for the rendering of such performances or collection is associated therewith. The customer thereby authorises the transmission of data to foreign countries, if Swisscom regards this as necessary.

9.2 Confidentiality

Both parties undertake on behalf of themselves, their employees, other auxiliaries and subcontracted third parties to treat as strictly confidential any information that has not been published, that they obtain in the rendering of their contractual performances or under the contractual relationship from the other party or about their customers and business relationships, to not make such available to third parties in whole or in part, nor to publish it, insofar as the other party has not expressly permitted this, this is required by a court order or legal obligation or unless Swisscom is authorised so to do in the contracts.

Swisscom is however entitled to use the name and brands of the customer as well as the agreed services of Swisscom for reference purposes. Other promotions and publications relating to project-based performances require the agreement of the other party.

9.3 Ban on enticement

Each party undertakes neither to entice employees and auxiliaries of the other party that were or are directly involved at the conclusion or during the processing of individual contracts for the term of the contract and for a year thereafter nor to encourage them to resign from their working relationship in any other way.

10 Further provisions

The contracts (including these GTC's) respectively replace all previous verbal agreements, correspondence, declarations, negotiations or arrangements between the parties about the object of the respective contracts, unless specific reference is made thereto in the respective contracts. This likewise applies for offers, invitations to tender or specifications.

The validity of the respective contracts is subject to the reservation that the official authorisations required to perform the respective contracts have been received. The responsibility for this and the damages resulting from the lapse of the respective contracts is borne by the customer.

All modifications and deviations from the respective contracts require the written form, unless the parties have agreed another procedure in writing. Clause 7.2 remains in force.

The invoicing of demands by the customer is only allowed with the agreement of Swisscom.

The rights and duties arising from the individual contracts can only be surrendered and transferred to third parties with the written agreement of the counterparty. Swisscom is entitled however to surrender or transfer its rights and duties at any time to another company in the Swisscom Group, thereby exempting itself from such duties.

The parties are agreed that they do not intend to perform a simple business transaction through the general contract or the individual contracts (Art. 530 ff. OR/Swiss code of obligations). If such a simple transaction is unexpectedly accepted, then the dissolution of the contract with which it is associated shall also result in the dissolution of the simple transaction.

If parts of the respective contracts (including these GTC's) prove to be invalid or ineffective, this circumstance shall have no influence on the validity of the remaining provisions nor on the continuance of the respective and other contracts. The invalid or ineffective provision shall be replaced by one that most closely proximates the commercial objective of the parties.

The contractual relationship of the parties, including the general contract and all individual contracts, is exclusively subject to Swiss law. The parties declare the UN Agreement on Contracts on the International Purchase of Goods of 11 April 1980 to be inapplicable.

The sole legal venue for any disputes from or in conjunction with the contractual relationship of the parties, of a general contract and all individual contracts is Berne, Switzerland. Swisscom may however sue the customer at its headquarters/domicile.