



SERVICES

General Terms and Conditions

SAP (Schweiz) AG

("GTC")

APPLICABILITY

Except in the license and support of Standard Software, in any contractual relationship in which SAP (Schweiz) AG ("SAP") provides consulting services to another company or public-law entity ("Customer"), only these GTC and the provisions of SAP's Price List for Services ("LPC Consulting") apply.

With regard to the license and support of Standard Software, the SAP General Terms and Conditions Standard Software license and support apply.

1. DEFINITIONS [ANM: alphabetisch ordnen, dann Verweise prüfen]

1.1 "Contract Works" means all results and outcomes of Services provided by SAP under an individual contract. This includes Implementation Services (see Article 1.10).

1.2 "Consulting Services" means Services that do not have a defined deliverable object. They are not subject to an acceptance procedure as defined by Article 2.5.

1.3 "Consultant" means employees of SAP and SAP subcontractors which SAP deploys to provide Services for Customer.

1.4 "Services" means all services that SAP provides as defined under paragraph 1 of "Applicability", and which are subject to the provisions of these GTC. These services represent Consulting Services or Implementation Services to be defined in more detail in the individual contract.

1.5 "IP Rights" ("Intellectual Property Rights") means without limitation any patents and other rights to inventions, copyrights, trademarks, trade names and service marks and any other intangible property rights and all related rights of use or licenses.

1.6 "SAP Software" means (i) any and all standard software products (as well as relevant documentation) as developed by or for SAP or any of its affiliated companies; (ii) any new versions (especially without being limited to releases, updates, patches, corrections) thereof made available to Customer pursuant to the Software Agreement, and (iii) any complete or partial copies of any of the foregoing.

1.7 "Software Agreement" means any agreements on the license and of SAP Software entered into between SAP (or a company affiliated with SAP AG, Walldorf, or an authorized partner of SAP) that grant Customer a license to use SAP Software.

1.8 "Affiliate" means a company in which another company holds more than 50% of the capital and voting rights.

1.9 "Confidential Information" means all

information which SAP or Customer protect against unrestricted disclosure to others, or which are deemed confidential according to the circumstances of its disclosure or content. In all cases, the following information is considered to be Confidential Information of SAP: all SAP Software, programs, tools, data, and other materials that SAP provides to Customer prior to the contract or on the basis of an individual contract governed by these GTC.

1.10 "Implementation Services" means all Services to be performed by SAP being subject to the acceptance as defined by Article 2.5.

2. PERFORMANCE OF SERVICES

2.1 Customer will provide a detailed description of services to be performed. On the basis of that description, SAP and Customer together must plan the provision of Contract Works and Services. If necessary, SAP can submit a written concept for that purpose. Further details will be set out or referenced in the individual contract.

2.2 SAP is solely authorized to issue instructions to her Consultants even where the Services are provided on Customer's premises. Consultants will not be integrated into Customer's workforce. Customer may issue instructions only to SAP's project coordinator, not directly to individual SAP Consultants.

2.3 Customer assumes the risk of ordered works and services meeting Customer's expectations and needs. If in doubt, Customer must obtain advice from employees of SAP or third-party experts in due of time.

2.4 All SAP Software and other works and goods provided precontractually by SAP to Customer (for example, proposals, test programs, concepts) are the Intellectual Property of SAP (see Article 8). They must not be copied or made accessible to third parties. If no individual contract is subsequently concluded, this SAP Software and other works and goods must be returned or deleted, and must not be used. In all other respects the provisions of these GTC, in particular the exclusions and limitations of liability in Article 11, apply to all contractual and precontractual obligations.

2.5 Acceptance

2.5.1 SAP can require a written acceptance statement from Customer for all Services that are amenable to acceptance. Customer must accept such Services without delay subject to the provisions in this Article 2.5. To this end, an acceptance protocol can be created for signature by Customer.

2.5.2 If a contract for works specifies several Implementation Services that Customer can use independently from each other, those several Implementation Services will be subject to separate acceptance.

2.5.3 If a contract for works specifies subsets of the Implementation Services, SAP is entitled to submit subsets of the Implementation Services for acceptance. Subsequent acceptance procedures will address only the correct functioning of the new subset and whether the subsets accepted earlier correctly interact with the new subset.

2.5.4 Customer must verify the deliverables as part of the acceptance process within one month after the provision of the Implementation Services. The contact person of Customer must then either confirm acceptance in writing or notify SAP of any defects including a precise description of the error symptoms. If Customer does not give notice of acceptance or of defects within this period, or uses Implementation Services without giving defect notice, the Implementation Services will be deemed accepted. Immaterial defects are not grounds for withholding acceptance. In every case, Customer is deemed to have accepted any Implementation Service it uses, in whole or any in part, in productive operation or has been set productive..

2.5.5 SAP must remedy defects notified in accordance with Article 2.5.4 within a period commensurate with the severity of the defect. Customer must verify the deliverables within five working days after having received notice that the defect has been eliminated.

2.5.6 If, despite repeated attempts, SAP is unable to remedy correctly reported defects in the Implementation Services, and if, as a result, the usefulness of the defective deliverables is entirely or substantially impaired compared to the specifications as set out in the individual contract, the Customer shall set SAP two reasonable grace periods in writing. If both these periods expire without result, the Customer shall be entitled to withdraw from the individual contract concerning this deliverable. In the case of other defects, instead of withdrawal the Customer shall be entitled to a reduction in or a partial reimbursement of the remuneration for the deliverable concerned, such reduction or partial reimbursement corresponding to the reduced value of the deliverable. All other claims against SAP are hereby expressly excluded, particularly replacement deliveries and the reimbursement of costs for elimination of faults by third parties.

2.6 Consulting Services shall be deemed to have been provided as soon as SAP has performed the activities stipulated in the relevant individual contract. Documents and analyses, such as the Business Blueprint, the "as-is" analysis, requirements definition or detailed concept, shall be deemed to have been approved if they are presented to the Customer and the Customer does not submit a written demand for the completion of omissions and/or the removal of faults within 14 calendar days, or if the Customer proceeds to another implementation phase. If certain documents or analyses prove to be still incomplete, SAP shall amend or correct them on an incurred cost basis.

3. COOPERATION OF CUSTOMER

3.1 Customer must provide the operating environment ("IT systems") necessary for the provision of Services, in accordance with SAP's guidance where given. It is the responsibility of Customer to secure proper operation of the IT systems by entering into maintenance contracts with third parties if necessary. In particular, Customer must follow SAP's instructions.

3.2 Customer agrees to cooperate free of charge as required and to the extent neces-

sary in the performance of the contract, for example by providing resources such as employees, IT systems, data, and telecommunications equipment. Customer must grant SAP direct and remote access to the Software and the IT systems. Customer must answer questions and verify the Contract Works.

3.3 Customer must nominate in writing a contact person for SAP, with an address and e-mail address at which the contact person can be reached. The contact person must be in a position to make necessary decisions for Customer or ensure that these decisions are made without delay. Customer's contact person must maintain effective cooperation with SAP's contact. Any employees of Customer who are required in the performance of the contract must be freed from other activities as necessary.

3.4 Before commencing productive operation with any Contract Works, Customer must test these thoroughly in the situation for which they are intended to ensure they are free of defects and fit for purpose. The foregoing also applies to other services, in particular such services that were provided as remedy work.

3.5 Customer must take appropriate precautions to guard against the possibility that the deliverables may be faulty; such precautions include, for example, data backups, error diagnosis, and regular results monitoring. Except where otherwise expressly indicated in writing in individual cases, SAP consultants are always entitled to act on the assumption that all data with which they come into contact is backed up.

3.6 Where SAP engages subcontractors, Customer shall not enter into any direct agreements with employees of such subcontractors without the express prior approval of the nominated contact at SAP. In the event of authorized, direct agreements between Customer and the subcontractor, the nominated SAP contact must be informed immediately in writing by way of a written document signed by both parties. The validity of such an agreement is subject to the prior authorization of the SAP contact.

3.7 Customer undertakes to provide all further collaborative goods, works, and services needed for the performance of the contract. If necessary, the individual contract will specify any supplementary provisions.

3.8 Performance by Customer of its collaborative duties is a primary contractual duty and necessary precondition for the timely and correct performance by SAP of its Services. Customer bears all consequences and costs resulting from breach of its duties.

4. CHANGE PROCESS

4.1 During the term of an individual contract, the parties may request changes in writing to the agreed Services, methods, dates and times.

4.2 In the event of a change request by Customer, SAP must inform Customer within 30 calendar days whether the change is possible, and what impact the change would have on the contract with particular reference to the timeline and remuneration. Customer must then inform SAP in writing within 14 calendar days whether the change request is to be

applied or whether the individual contract is to be continued on the existing terms. If the analysis of a change request itself requires substantial work, SAP is entitled to invoice the related costs of the analysis separately.

4.3 If SAP submits a change request, Customer must notify SAP in writing within 30 calendar days whether it accepts the change or not.

4.4 Until there is agreement about the change, Services will continue in accordance with the existing individual contract.

Customer and SAP may instead agree for the Services to be wholly or partially suspended.

With effect from the first working day of suspension, remuneration is payable at the agreed rate, or, in default of an agreed rate, at the daily rate in the LPC Consulting, in respect of each SAP consultant whose work is suspended and each day of the suspension.

5. DEPLOYMENT AND REPLACEMENT OF CONSULTANTS

SAP will decide which Consultants to deploy, and reserves the right to replace any Consultant at any time. SAP may also deploy self-employed Consultants or other companies to perform its contractual duties. In assigning the Consultants, however, SAP endeavors to comply as far as possible with the Customer's requests. SAP is liable for faults committed by another (vicarious agent) in performance of a contractual duty of SAP on SAP's behalf to the same extent as SAP is liable for its own such faults.

6. REMUNERATION AND PAYMENT TERMS

6.1 SAP invoices its Services on a time and material basis unless otherwise agreed in the respective individual contract. Any information regarding time and expenses is based on underlying information as provided prior to the conclusion of the individual contract, and represents the best estimate of SAP for planning purposes. This information will be refined in more detailed once the detailed concept has been submitted. Unless otherwise agreed in the individual contract, the remuneration rates will reflect the rates listed in the most recent version of the LPC Consulting.

6.2 Unless otherwise agreed in the individual contract, the remuneration rates are subject to extra costs and surcharges as defined in the most recent version of the LPC Consulting. Other extra costs of SAP, such as machine costs, cost of materials, insurance, taxes (in particular value-added tax), customs duties, fees, and so on shall be invoiced to Customer separately. This also applies to the creation of user documentation for customer-specific program enhancements to the SAP Software.

6.3 Services billed on a time and material basis, extra costs, surcharges, and costs incurred as a result of specific Customer requests will generally be invoiced to Customer at the end of each calendar month. Where Services are provided at a fixed price, the corresponding payment schedule will be set out in the individual contract.

6.4 Payments are due within 30 calendar days of the agreed date; if no payment due date has been agreed, the period will begin on the invoicing date. No cash discount will be granted. Once the due date has elapsed, SAP may charge interest on arrears in the amount of the applicable statutory interest rate without demand note.

6.5 The customer may only offset payments due to SAP against claims of its own provided that SAP gives its express written consent thereto or the customer's claim is adjudicated by final judgment of a court of law. The customer may not assign any claims in respect of SAP to a third party. Customer is still liable to make these payments even if warranty claims have been submitted by Customer in respect of services provided by SAP. Disputes between the contracting parties regarding the interpretation or fulfillment of a provided Service under an individual contract shall not entitle the Customer to postpone payments or change the terms of payment. Customer may only offset outstanding claims of SAP with its own claims if SAP expressly agrees to such a process in writing or the Customer's claim is adjudicated by final judgment of a court of law. Customer may not assign any claims in respect of SAP to a third party.

6.6 SAP retains all title to and rights (Article 8) in the Contract Works until full satisfaction of its claims under the contract. Customer must immediately notify SAP in writing if any third party gains access to the property to or in which SAP retains title or rights, and must also inform the third party of SAP's rights.

7. TERM / TERMINATION.

7.1 Term of the Individual Contract. Unless otherwise agreed in the respective individual contract, each individual contract comes into force following the final signature, and remains effective for the term defined therein.

7.2 Termination for Convenience. The parties may agree in the individual contract whether and to what extent an individual contract may be terminated for convenience. Unless otherwise agreed, the following applies with regards to the termination for convenience:

Individual contracts for Consulting Services may be terminated by either party with a notice period of 30 calendar days. Any termination without observing this notice period will be deemed invalid. If Customer terminates the individual contract, Customer agrees to compensate SAP for all Services provided under the individual contract and all planned costs of SAP by the end of the notice period. Termination by Customer of individual contracts for Implementation Services will follow Article 377 Swiss Code of Obligations.

7.3 Termination for Just Cause. Either party may terminate the individual contract for just cause. The provisions of Article 14.1 concerning notices setting limited extra time also apply. Just cause is present where, for example

7.3.1 Customer has not performed a key contractual obligation within 30 calendar days of a written reminder of SAP; such an obligation may be, for example, a payment under

the individual contract that is more than 30 calendar days in arrears; or

7.3.2 the petition for insolvency proceedings is filed on the assets of Customer.

7.4 Effect of Termination. Following the termination of an individual contract, all Confidential Information must be returned immediately to the respective disclosing party, or, if required by the disclosing party, the information must be verifiably destroyed.

8. Intellectual Property

8.1 Between Customer and SAP all title to and rights in the Contract Works and any other services provided by SAP vest in SAP exclusively, notably copyright and rights of authorship, rights to inventions, and other industrial property rights, and including without limitation Contract Works created to address the requirements of or in cooperation with Customer. Unless otherwise agreed in writing, following full payment of the partial amounts due up to and including acceptance, Customer is granted the nonexclusive license to use the Contract Works for the purposes of processing its internal business transactions and those of its Affiliates to the same extent as applies in the Software Agreement for the SAP Software. Prior to acceptance or approval, Customer may use the Contract Works only to the extent necessary for test purposes. Customer is permitted to create necessary backup copies of the Contract Works. Backup copies must be marked as such and bear the same copyright and authorship notice as the original.

9. CONFIDENTIALITY

9.1. Use of Confidential Information. Each party undertakes forever to treat as confidential all Confidential Information of the other party acquired in connection with contract performance, and to use such information only to perform the contract. Confidential Information shall not be reproduced in any form except as required to accomplish the intent of the individual contract. Any copies or reproductions of the Confidential Information of the other party must include all notes and references to the confidential or secret nature as contained in the original.

With respect to the Confidential Information of the other, each party: (a) shall take all Reasonable Steps (defined below) to keep all Confidential Information strictly confidential; and (b) shall not disclose any Confidential Information of the other to any person other than its individuals whose access is necessary to enable it to perform the contract. As used herein "Reasonable Steps" means those steps the receiving party takes to protect its own similar proprietary and confidential information, which shall not be less than a reasonable duty of care; on Customer's side, this includes the careful safeguarding of the Confidential Information and the prevention of infringement.

9.2 Exceptions. Article 9.1 above does not apply to any Confidential Information that: (a) is independently developed by the receiving party without reference to the disclosing party's Confidential Information, or is lawfully received free of restriction from a third party

having the right to provide such Confidential Information; (b) has become generally available to the public without a contractual breach by the receiving party; (c) at the time of disclosure, was known to the receiving party free of restriction; or (d) the disclosing party agrees in writing that such information is free of such restrictions.

Unless where agreed otherwise, Article 9.1 also does not apply to knowledge related to Customer's idea's, concepts, know-how, methods, processes or technologies that remain in the Unaided Memory of a person deployed by SAP, subject to any IP Rights of Customer. "Unaided Memory" means knowledge that the consultant retains in his or her memory without reference to the documents or other tangible information obtained from Customer, or copies transcripts thereof and only when the person has not intentionally learned the Confidential Information by heart with the aim of remembering it, using it later, or revealing it.

9.3 Confidential Terms and Conditions: Publicity. Customer will treat as confidential the terms and conditions of the individual contract, in particular the pricing contained therein. Neither party will use the name of the other party in publicity, advertising, or similar activity, without the prior written consent of the other. However SAP may use Customer's name in reference listings or to analyze details from the contract (for example, to forecast demand), as well as – subject to mutual agreement – as part of SAP's other marketing efforts.

10. WARRANTY IN DEFECTS OF QUALITY AND TITLE

10.1 In respect of any Contract Works that are subject to statutory warranties of quality and title, SAP warrants in accordance with Article 10.1 to Article 10.7 that the Contract Works have the expressly agreed qualities, and that no third-party rights are infringed by the grant of rights to Customer pursuant to Article 8. Where no qualities have been agreed, SAP warrants that Contract Works are suitable for the use envisioned in the contract or, in the absence of an envisioned use, for ordinary use, and that it has the qualities that are usual and that Customer may expect from services of its kind.

10.2 Customer must notify SAP in writing without delay if it identifies defects, and must include a precise description of the problem and information that is useful for eliminating the defect. Customer's rights are secured if the notification was sent in time. Notice of a defect as described above is effective only if given by the contact person (see Article 3.3).

10.3 To discharge its liability for quality defects with regards to Contract Works that are subject to statutory warranties of quality and title, SAP will remedy defects shown in the Contract Works either by providing Customer with a new service that is free of defects or, at SAP's discretion, by eliminating the defect. One of the ways in which SAP may eliminate a defect is to indicate to Customer a reasonable way to avoid the effect of the defect. To discharge its liability for defects in title, SAP will remedy shown defects either by

procuring for Customer the legally incontestable right under license to use the delivered Contract Works or, at SAP's election, by providing equivalent replacement or altered services.

10.4 If Customer sets a reasonable grace period for SAP to remedy the defect, and SAP fails to do so in that time, Customer has the right to withdraw from the individual contract or reduce the remuneration. The requirements in Article 14.1 must be met with regard to fixing a reasonable grace period. Any further warranty on the part of SAP is hereby explicitly excluded. SAP will compensate for loss or wasted anticipatory expenditure caused by a defect subject to the exclusions and limitations in Article 11.

10.5 The time bar for claims arising under Articles 10.1 to 10.4 is 60 calendar days following acceptance of the Service in accordance with Article 2.5. This also applies to claims arising as a result of Customer's withdrawal from the contract or payment of a reduced fee in accordance with Article 10.4 clause 1.

10.6 Where services are delivered to remedy a defect, the time bar for claims for defects in those services comes into effect at the time specified in Article 10.5. However, the warranty period is suspended while, with Customer's consent, SAP checks for the existence of a defect or remedies a defect until such a time that SAP informs Customer of the results of its check, gives notice that the remedy is complete, or refuses to remedy the defect. The time bar comes into effect 30 calendar days after the end of the suspension.

10.7 If SAP provides services in the course of investigating or eliminating a defect that it was not obliged to provide, SAP is entitled to charge remuneration in accordance with Article 14.8. This is particularly the case where a reported defect in quality cannot be verified or attributed to SAP, or if the SAP Software is not used in the manner as set out in the documentation. Without prejudice to the generality of the foregoing, SAP is entitled to remuneration for additional services it does to eliminate any defect that arises out of Customer's failure to properly discharge its duty to collaborate, inappropriate operation of the SAP Software, or failure to take the SAP services that SAP recommends.

10.8 If a third party claims that the exercise of the license granted under this contract infringes its rights, Customer must fully inform SAP in writing without delay. If to mitigate loss or for other good reason Customer ceases to use the Contract Works, Customer must notify the third party that such cessation does not imply any recognition of the claimed infringement. Customer will enter into legal proceedings with the third party only with the consent of SAP, or will grant SAP authorization to lead the proceedings.

10.9 If SAP fails to properly perform any of its duties herein that is not within the ambit of defect liability, or is otherwise in breach, Customer must give notice of the failure or breach to SAP in writing and fix a grace period during which SAP has the opportunity to properly perform its duty or otherwise rectify the situation. Article 14.1 applies. SAP will compensate for loss or wasted anticipatory expenditure

subject to the exclusions and limitations in Article 11.

11. LIABILITY

SAP is liable to Customer for damages incurred in connection with these GTC and the associated individual contracts only in the event of intent or gross negligence. This limit does not apply to liability for willfully caused personal injury. To the extent permitted by law, SAP excludes liability for indirect and consequential loss such as loss of profit, unachieved savings, interruptions to business, third-party claims, or loss of data. Contributory fault (for example, breach of Article 3) and contributory negligence may be claimed.

12. TRANSFERRAL OF CONTRACT

Customer is not entitled to transfer the individual contract or individual rights and obligations contained therein to third parties.

13. LOYALTY

The parties agree to engage in mutual loyalty. Unless otherwise agreed, neither party is permitted to hire or otherwise employ employees or subcontractors of the other party that were engaged in the performance of a Service under an individual contract prior to the expiry of twelve months following the completion of the respective Service under the individual contract.

14. FINAL PROVISIONS

14.1 Except in emergencies, a limited time fixed by Customer pursuant to the law or contract must not be less than ten working days. Failure to comply with any fixed time limit entitles Customer to be released from the Contract (for example, by rescission, termination, or claim for damages in lieu of performance) or to a price reduction for breach only if this was threatened in writing in the notice fixing the limited time as a consequence of failure to comply with that time limit. After a limited time fixed in accordance with sentence 2 expires, SAP is entitled to give notice to

Customer requiring that any rights arising out of the expiration be exercised within two weeks of receipt of the notice.

14.2 SAP has four weeks to accept offers made by Customer. Offers from SAP are nonbinding unless otherwise agreed in writing. In cases of conflict, the contract terms and details that apply are those in SAP's offer or confirmation.

14.3. Time of Performance

14.3.1 Dates and times are nonbinding except where expressly agreed in writing that they are binding. SAP's duty to realize a design or concept does not commence until Customer accepts the design or concept.

14.3.2 If SAP has to wait for collaboration or information from Customer or is otherwise hindered in the performance of the contract by any strike, lockout, official intervention, or any other circumstance where it is not at fault, times for delivery of goods and provision of Services are extended by a period equaling the duration of the hindrance plus a reasonable start-up period after the end of the hindrance. SAP must notify Customer of the hindrance.

14.3.3 Working days are weekdays from Monday to Friday (8 A.M. to 5 P.M. CET) except statutory public holidays in Switzerland, and December 24 and 31.

14.4 The Services of SAP including the relevant SAP Software are subject to the export control laws of various countries, including without limit the laws of the United States of America and Switzerland. Customer agrees that it will not submit the Services to any government agency for licensing consideration or other regulatory approval without the prior written consent of SAP, and will not export the Services to countries, persons or entities prohibited by such laws. Customer will also be responsible for complying with all applicable legal regulations of the country where Customer is registered, and any foreign countries with respect to the use of the Services by Customer and its Affiliates.

14.5 If any disputes arise, the parties agree to first seek an amicable resolution before appealing to the courts. If a legal ruling cannot

be avoided, the parties agree that **the sole place of jurisdiction for all differences arising out of or in connection with any contractual relationship governed by these GTC shall be Zurich-1, Switzerland.** Swiss Law applies exclusively to all contractual and non-contractual claims, and the UN Convention on Contracts for the International Sale of Goods shall not apply. Conflict-of-law provisions do not apply.

14.6 The conclusion of contract, any subsequent amendment or addition and contractually relevant declarations as well as declarations directly influencing a legal relationship, especially without being limited to termination notices, demand notes or notices to set time limits, require the written form. The foregoing also applies to any waiver of the written form requirement. The use of facsimile or an exchange of letters also satisfies the requirement of a written form as stipulated in this article and elsewhere in this contract.

14.7 No conditions that conflict with or supplement these GTC – notably Customer's General Terms and Conditions – form any part of the contract, even where SAP has performed an individual contract without expressly rejecting such provisions. If, for example owing to Customer's technical circumstances, the purchasing terms and conditions or similar provisions of Customer are included when concluding an individual contract (for example, as attachments to purchase orders), these conditions will have no validity even where SAP does not expressly object to them. Any deviation in an individual contract from the provisions in these present GTC must be made expressly in writing, and refer to the relevant provision of these GTC.

14.8 Services that are not covered by the express service description of the respective individual contract have to be agreed in a separate individual contract. In the absence of a separate contract, such services will be governed by these GTC and will be remunerated in accordance with the most recent version of the LPC Consulting.