

# General Terms and Conditions

## of Arbeitsmarktservice BetriebsgmbH & Co KG

### for IT Consulting and Support Services



## 1 Provision of Services

- 1.1 Arbeitsmarktservice BetriebsgmbH & Co KG, (hereinafter referred to as "amsbg") shall provide the IT Consulting and Support Services (hereinafter referred to as "Services") to the customer as agreed upon in the contract. These General Terms and Conditions shall apply to all Services provided by amsbg to the customer, even if there is no express reference in the particular contract. General terms and conditions of the customer shall apply only if they are expressly accepted by amsbg in writing.
- 1.2 The time schedule and detailed scope of the Services shall be defined in the contract. If not agreed otherwise, amsbg shall provide the Services on its own premises.
- 1.3 amsbg shall receive from the customer all the documents, information and data (hereinafter referred to as "Information") necessary for the provision of Services in the form required by amsbg. If, according to the contract, amsbg creates or adapts software programs for the customer ("Software Programs"), the customer shall provide to amsbg a complete requirement specification and all the necessary test data in the form requested by amsbg. Upon written consent by amsbg, the requirement specification shall become binding. Upon request and against additional compensation, amsbg shall provide support to the customer in creating the requirement specification.
- 1.4 The customer shall support all measures required by amsbg for the provision of Services. The customer shall, furthermore, take all the measures, which are required to fulfil the contract and which are not part of the amsbg scope of Services. The customer shall keep all the Information handed over to amsbg additionally stored to ensure that restoration is possible in case of damage or loss. Products, support and assistance services of the customer shall be provided at no cost to amsbg.
- 1.5 Each party to the contract shall name a suitably qualified contact person who shall provide the Information and make or initiate all decisions necessary for the execution of the contract. If, due to sick leave, vacation or other reasons for which the customer is not responsible, an amsbg employee is not able to provide the agreed Services, amsbg shall replace in due time such employee with another suitably qualified employee. In all other respects, amsbg shall be entitled to replace an employee at any time.
- 1.6 The employees of amsbg do not establish an employment relationship with the customer, even if they work on the customer's premises. The customer shall convey requests relevant to the provision of Services exclusively via its named contact person to the named amsbg contact person, and shall refrain from giving instructions to the employees of amsbg. As far as amsbg provides Services on the customer's premises, the customer shall provide adequately equipped workplaces.
- 1.7 During the term of the contract and for another full year after the termination of the contract, the customers shall neither directly nor via third parties entice away employees deployed by amsbg for the provision of Services. For each violation of this obligation, the customer shall pay to amsbg a penalty amounting to six times the most recent gross monthly salary the respective employee received from amsbg.
- 1.8 For the provision of Services, amsbg shall be entitled to subcontract third parties or other companies of the Amsbg Group. Unless otherwise agreed upon, the provision of training services shall not be included in the scope of the contract.

## 2 Changes of Time Schedule and of Scope of Services

- 2.1 The time schedule agreed upon shall change adequately, if amsbg is prevented from providing the agreed Services for reasons not within the responsibility of amsbg. Reasons for which amsbg is not responsible shall include inter alia any delays caused by the customer, defects of products, support and assistance services supplied by the customer, as well as mobilization of troops, war, riots, natural disasters, fire, strike, lockout, embargo, execution of sovereign jurisdiction, failure of power supply, failure of means of transport, failure of telecommunication networks or data lines, changes in laws after contract conclusion affecting the Services, or other non-availability of products, ("Force Majeure"). Any additional expenses incurred by amsbg as a result of such events shall be borne by the customer.
- 2.2 Changes in the scope of Services in terms of quality and/or quantity ("Change Requests"), especially changes in the requirement specification, shall be subject to written agreement, with the related time schedules and compensations having to be adjusted accordingly. Unless otherwise agreed upon, amsbg shall provide extra Services at the rates applicable at the time the Services are provided.

## 3 Compensation, Retention of Title

- 3.1 Unless otherwise agreed upon, amsbg shall calculate the amounts payable in compensation on the basis of hours worked at the rates specified in the contract. The amounts payable shall be charged at the end of each month on the basis of the reports on Services provided, submitted to the customer. As far as amsbg provides Services at fixed or all-in prices, amsbg shall be entitled to request an advance payment of at least 10% of the fixed or all-in price; furthermore, payment dates shall be agreed in the contract dependent on the progress of Service provision ("Milestones"). Value added tax ("VAT") at the legally applicable rates will be charged additionally.

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- 3.2 Service provision at the customer's premises shall be charged at a half day's rate at least. The surcharges generally applicable at amsbg shall be charged for Service provision outside normal working hours (Monday to Thursday, 07.30 a.m. to 4.15 p.m., Friday 7.30 a.m. to 01.00 p.m.), on Saturdays, Sundays or public holidays including days generally free at amsbg.
- 3.3 Payment shall be due within 8 days from the date of invoice without deductions. Payment shall be deemed effected on the day amsbg may dispose of it. If the customer defaults in payment, amsbg shall be entitled to claim interest on arrears as legally applicable and all costs incurred due to the enforcement of the claim. Should the customer's default in payment exceed 14 days, amsbg shall have the right to cease the provision of all Services without prior notice to the customer. Furthermore, amsbg shall be entitled to make the compensation for all Services provided immediately due and payable, notwithstanding any agreed upon payment dates. The hourly rates agreed upon in the contract shall change in line with the salary figures set forth in the "Kollektivvertrag eines Angestellten der Elektroindustrie Österreichs" [collective salary agreement for employees in the electrical and electronics industry in Austria] for an employee in Employment Group I, Advancement Level 2 pursuant to the "Einheitliches Entlohnungssystem für Arbeiter und Angestellte der Elektro- und Elektronikindustrie Österreichs" [standardized remuneration system for workers and employees in the electrical and electronics industry in Austria] effective when the contract is concluded.
- 3.4 Time spent travelling within Vienna by amsbg employees shall be considered as working time and shall be shown separately on the report of Services provided. In the case of provision of Services outside Vienna, travel times shall be compensated at the hourly rates agreed upon. In the case of fixed price contracts the hourly rate applicable to travel time shall be agreed upon in the contract. A flat-rate daily expense allowance per employee of EUR 52 as well as EUR 50 per night for necessary overnight stays shall be charged additionally; if the actual costs for overnight stays exceed the flat-rate amount, the customer shall reimburse the amount paid in excess of the flat rate. VAT will be charged additionally. The rates mentioned above shall be adjusted in accordance with the price adjustment provision specified under paragraph 3.3.
- 3.5 In addition, the client shall reimburse travel costs at the rate actually incurred. In the case of travel by car, the legally applicable kilometre-based flat rate shall be charged. In the case of travel by train, the price for a first-class ticket shall be charged; in the case of travel by airplane, the price for a business class ticket shall be charged. Other ancillary expenses, such as telephone costs, shall be charged as actually incurred. Travel and ancillary costs shall be reimbursed upon presentation of the corresponding receipts (copies).
- 3.6 The customer shall not have the right to withhold or offset payment on the grounds of any warranty claims or other claims, unless approved in writing by amsbg or asserted by court order. Until the compensation due to amsbg has been paid in full, including interest and cost, amsbg shall reserve the title to all products delivered by amsbg. Unless otherwise agreed upon, the customer shall not have the right to use the products and Services provided by amsbg until having fully paid all amounts due to amsbg.
- 3.7 Any customs, taxes, duties, fees, imposts, tariffs and charges related to the conclusion or the execution of the contract, including but not limited to withholding taxes ("Charges"), shall be borne by the customer. In the event amsbg is required to pay such Charges to any authority, the customer shall indemnify amsbg for any such payments.

#### **4 Rights to Results, Standard Software, Confidentiality**

- 4.1 Unless otherwise agreed upon, the non-exclusive licence to use and exploit the results created individually by amsbg for the customer (in particular "individual" software) within the framework of Service provision as well as the ownership of the agreed documentation shall be transferred to the customer, once the compensation due to amsbg has been paid in full. amsbg shall in any case remain entitled to use its ideas, concepts, experiences, tools, development modules and technologies used or developed within the scope of the Service provision.
- 4.2 As far as the provision of Services by amsbg includes the delivery of standard software components supplied by third parties, the special terms and conditions (in particular license and warranty conditions) of the respective manufacturer or vendor of such standard software components shall prevail.
- 4.3 Each party shall maintain confidentiality vis-à-vis third parties concerning all Information disclosed to it in the context of the contract and marked as confidential. The obligation to maintain confidentiality shall not apply to Information (i) which are already general state of the art at the time they are handed over to the respective other party or (ii) which later become general state of the art without any fault on the part of the receiving party or (iii) in respect of which the receiving party can prove that they either (a) were already internal state of the art at the receiving party's when they were handed over, or (b) later became internal state of the art at the receiving party's independently of any communication with the other party to the contract, or (c) were disclosed to the receiving party by third parties, e.g. under a license agreement. The obligation to maintain confidentiality shall remain in effect even after the termination of the contract.
- 4.4 Other companies of the Amsbg Group and subcontractors of amsbg shall not be considered as third parties, if and so far they are bound by a confidentiality obligation corresponding to paragraph 4.3.
- 4.5 The customer consents, that amsbg may name the customer and the respective project as reference vis-à-vis third parties. Other information, as but not limited to press releases, shall be coordinated mutually by the parties.

#### **5 Acceptance, Warranty, Liability**

- 5.1 Immediately after the notification of amsbg that the software programs created or adapted by amsbg have been made available for acceptance, the customer shall start the acceptance tests. If defects are identified during acceptance testing, amsbg shall remedy the defects within a reasonable period of time at no cost to the customer and then make the software

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program again available for acceptance testing. If the customer fails to declare acceptance for any reason other than a material defect that significantly impedes or prevents the use of the software program, the software program shall be deemed accepted 4 weeks after having been made available for acceptance testing, but in any case as soon as it is being used or passed on to a third party by the customer. These provisions shall apply mutatis mutandis to the creation of documents, such as detailed specifications or requirement specifications, by amsbg as required under the contract. After acceptance by the customer, such documents shall be regarded as the exclusive basis for Service provision by amsbg.

- 5.2 Defects in terms of acceptance and warranty shall be reproducible deviations of the software programs' functionality from the agreed functionality, already existing at the time of acceptance testing, provided such deviations impede the use of the software programs. Errors caused by errors in the environment (hardware, operating system, customer or third party software) or by incorrect use shall not be regarded as defects.
- 5.3 Defects that occur within a warranty period of 6 months after acceptance of the software program and are duly given notice of by the customer in writing shall be remedied by amsbg at its choice within a reasonable period of time at no cost to the customer. The application of paragraph 924 ABGB (Austrian Civil Code) shall be excluded. amsbg shall receive from the customer all the Information required for defect correction purposes.
- 5.4 As regards software programs, which the customer has extended by means of interfaces designed for that purpose, amsbg shall provide warranty up to the respective interface. In all other respects, warranty for software programs modified by the customer without the prior consent of amsbg shall be precluded, even if a defect occurs in a non-modified part, unless the customer proves that there is no causal relationship between the defect and the modifications made by the customer.
- 5.5 This paragraph 5 shall apply accordingly to other supplies and services provided by amsbg. If no acceptance procedure has been agreed upon in the contract for these supplies and services the warranty period shall start upon handing over to the customer. If and insofar standard software components of third parties are included in amsbg' scope of Services the warranty conditions of the respective manufacturer or vendor supplier shall prevail.
- 5.6 amsbg shall be fully liable for any personal injury, for which amsbg is responsible. amsbg shall be liable for damages to the customer's property up to an amount of EUR 360,000 in each case, if and so far amsbg is demonstrably responsible for such damage. amsbg shall in no case be liable for indirect damages, loss or damage of Information, damages due to business interruption, loss of earnings, loss of profits and any other consequential damages. Under no circumstances shall amsbg' total aggregate liabilities towards the customer exceed the lesser amount of the contract price or EUR 1,000,000. The contract price shall be the total net amount to be paid by the customer to amsbg excluding any remuneration for maintenance services.
- 5.7 Any warranty and damage claims from the customer other than the ones expressly mentioned in these General Terms and Conditions, irrespective on which legal grounds they might be based, shall be excluded unless there exists a mandatory liability, as for instance for damages caused intentionally or by gross negligence, proved by the customer.
- 5.8 These limitations of liability shall also apply for the benefit of amsbg boards and its members, subcontractors, suppliers, agents, advisors and employees.
- 5.9 Except as set forth, and subject to the conditions and limitations stated below in this paragraph, amsbg shall assist the customer if any eligible claim, suit, action or proceeding ("Claim") is brought against the customer by a third party. Such assistance shall be to the extent the Claim is based on any infringement of intellectual property rights, as but not limited to patents protected under the laws of Austria or copyrights, which is caused by the provision of products or licensed software by amsbg or use of such products or licensed software for their contractually intended purpose by the customer.

amsbg shall at its discretion provide the customer with a non-infringing replacement product or modify the licensed software so that it becomes non-infringing, provided that the replacement product/modified licensed software meets substantially the same functional specifications as the licensed software or procure for customer the right to use the licensed software; if such options would cause unreasonable expenses amsbg shall inform the customer. Within 4 weeks after such notice customer may terminate the contract to the extent it is affected by the infringing products or licensed software. For the purpose of this paragraph Claims shall be defined as eligible only, if amsbg has acknowledged such Claim in writing or the Claim is affirmed by a legally binding adjudication.

amsbg shall only be liable if the customer (a) gives amsbg prompt written notice of any alleged or threatened Claims, (b) allows amsbg to control the defence and/or settlement of such Claim, (c) in case of a legal proceeding gives amsbg a third party notice according to § 21 ZPO [Austrian code of civil procedure].

amsbg shall not be liable with respect to any Claims if (a) amsbg did not cause the infringement of intellectual property rights wilfully or negligently, (b) customer's use of the products or licensed software is other than as permitted under the contract, (c) the product or licensed software is modified by the customer or any third party after delivery without amsbg prior written consent, (d) the product or licensed software is supplied according to specific customer's design or instructions or (e) the product or licensed software is combined by customer or its contractors with items not furnished or approved by amsbg.

## **6 Applicable Law, Place of Jurisdiction**

- 6.1 The exclusive place of jurisdiction for all disputes arising from the contract shall be the competent court for the parish of the Bezirksgericht Innere Stadt Wien (District Court Inner City Vienna, Austria). The contract shall be governed exclusively by Austrian law without its conflict-of-laws provisions. The application of the UN Convention on Contracts for the International Sales of Goods shall be excluded.

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## **7 Duration of Contract**

- 7.1 amsbg shall deliver the Services either for the duration of the project agreed upon with the customer or for the duration agreed upon in the contract. As far as Services under this contract are provided on an ongoing basis, each party shall have the right to terminate the contract in writing by registered mail at the end of each quarter, giving 6-months' prior notice. Any software programs not yet accepted at the time the contract is terminated shall in any case be completed and compensated under the terms and conditions of the contract.
- 7.2 In all other respects each party shall have the right to prematurely terminate for good cause, in writing by registered mail, a contract concluded on an ongoing basis. Good cause shall be deemed to exist, in particular, when (a) the other party's property and assets are subjected to insolvency proceedings or when the opening of such proceedings is rejected due to a lack of assets, or when (b) the other party violates material obligations under the contract, in particular, payment obligations, so that the terminating party can no longer be reasonably expected to continue the contract or (c) the provision of Services is obstructed or prevented due to force majeure for a period in excess of six months. If the Services are not provided on an ongoing basis, the provisions of this paragraph shall apply correspondingly, provided that the customer may only terminate the contract due to a gross negligent breach of contract by amsbg.

## **8 Concluding Clauses**

- 8.1 Any amendments or alterations to the contract shall have to be made in writing in order to be effective.
- 8.2 amsbg shall have the right to transfer and assign the contract with all its rights and obligations to another company of the amsbg Group.
- 8.3 The customer shall consent to the transfer of data from this business case to other companies of the Amsbg Group for the purposes of intra-group reporting.
- 8.4 If any of the provisions of the contract is or becomes invalid, this shall not serve to invalidate the remaining provisions thereof. In such cases, the parties shall make every effort to find provisions whose business result would match those of the invalid provision as closely as possible.
- 8.5 The fulfilment of the contract on amsbg' part is subject to the proviso that this shall not be prevented by impediments on the grounds of national and/or international legal requirements, in particular export control provisions. Regarding the use of the results of the Services provided by amsbg, the customer is additionally responsible for the compliance with Austrian or any other applicable export regulations, especially German or US export regulations. Specifications relevant for export and custom regulations shall be included in the invoice.