

General Terms and Conditions

of Arbeitsmarktservice BetriebsgmbH & Co KG for Maintenance Services, Installation Services and the Delivery of Products in the Field of Information Technology



1 General

- 1.1 Arbeitsmarktservice BetriebsgmbH & Co KG (hereinafter referred to as "amsbg") shall provide maintenance and/or installation services and/or deliver products in the field of information technology for the customer as agreed upon in the Contract and the Contract documents, e.g. the Maintenance Description Document, the Installation Description Document and/or the Product Description Document (hereinafter referred to as "Contract Documents" and collectively as "Contract"). These General Terms and Conditions shall apply to services and deliveries by amsbg to the customer, even if there is no express reference in the particular Contract. General terms and conditions of the customer shall only apply, if they are expressly accepted by amsbg in writing.
- 1.2 amsbg shall receive from the customer all the documents, information and data (hereinafter referred to as "Information") necessary for the provision of services and the delivery of products in the form required by amsbg. The customer shall use its best efforts to support amsbg in providing the services and delivering the products. The customer shall, furthermore, take all the measures, which are required to fulfill the Contract and which are not part of the amsbg scope of services and deliveries. Products, support and assistance services of the customer shall be provided at no cost to amsbg.
- 1.3 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.
- 1.4 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 and the delivery of products 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. Furthermore, the customer shall provide access to its premises as far as required for the provision of services and the delivery of products.
- 1.5 During the term of the Contract and for another full year after the termination of the Contract, neither directly nor via third parties the customer shall 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.
- 1.6 For the provision of services and/or the delivery of products, amsbg shall be entitled to subcontract third parties or other companies of the Siemens Group. Unless otherwise agreed upon, the provision of training services shall not be included in the scope of the Contract.

2 Maintenance Services

- 2.1 The scope of the maintenance services as well as the service and response times are exclusively defined in detail in the Contract and in the Contract Documents, in particular in the Maintenance Description Documents and the Service Level Agreements (hereinafter referred to as "SLA").
- 2.2 The maintenance services shall be performed - as far as possible - via remote access, otherwise at the customer's premises. The customer shall make available the required maintenance equipment, in particular the equipment for the remote services, at no cost to amsbg. If, in the course of the maintenance services, parts or equipment owned by the customer are replaced, title to the replaced parts or equipment shall pass to amsbg, and title to the parts and equipment delivered in replacement shall pass to the customer.
- 2.3 The scope of the maintenance services shall not include the delivery and the replacement of supplies and accessories (e.g. data streamers), parts subject to wear and tear (e.g. printer heads, monitor and picture tubes) and other auxiliary equipment. Unless otherwise agreed upon, the scope of maintenance services shall not include services to be performed on a regular basis by the customer in accordance with the data sheet or the operating instructions.
- 2.4 As long as amsbg is obliged to provide maintenance services according to the Contract, the customer shall have all maintenance services and other work on the products (e.g. enhancements) performed only by amsbg or with amsbg's consent.
- 2.5 If amsbg delivers a software patch or an update/upgrade of a software product to the customer, the license terms applicable to the software product shall also apply to such software patch or update/upgrade, unless otherwise expressly agreed upon.
- 2.6 The customer shall be responsible for adequate data backup. Adequate data backup shall comprise all the technical and/or organizational measures required to restore, at short notice and with a minimum of effort, the status quo ante of the systems, data, software products and/or procedures.

3 Installation Services and other Services, Deliveries of Products and Software Development

- 3.1 The scope of and the dates for the provision of installation services and other services are defined in detail in the Contract and the Contract Documents, in particular the Installation Description Documents.
- 3.2 The scope of and the dates for the delivery of hardware and software products by amsbg are defined in detail in the Contract and the Contract Documents, in particular the Product Description Document.
- 3.3 If, according to the Contract, amsbg develops or adapts software programs for the customer, 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.

4 Changes of Time Schedule, Scope of Services and Deliveries

- 4.1 The time schedule agreed upon shall change adequately, if amsbg is prevented from delivering the agreed services and/or products for reasons not within the responsibility of amsbg. Reasons for which amsbg is not responsible shall include – inter alia - specifically any delays caused by the customer, defects of products, support or assistance services supplied by the customer, as well as mobilization of troops, war, terrorism, natural disaster, 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.
- 4.2 Changes in the scope of services and/or deliveries in terms of quality and/or quantity ("Change Requests") shall be subject to written agreement, with the related time schedule and compensations having to be adjusted accordingly. Unless otherwise agreed upon, amsbg shall provide extra services at the rates specified in the amsbg price list applicable at the time the service is provided.

5 Prices for Maintenance Services

- 5.1 The prices for maintenance services are defined in detail in the Contract and the Contract Documents. The prices for maintenance services calculated on a monthly basis shall be payable in advance, from the effective date of the Contract for the remainder of the current calendar quarter and henceforth for each quarter. The prices for maintenance services calculated on an annual basis shall be payable in advance for each year from the effective date of the Contract.
- 5.2 The prices payable for hardware maintenance services under the Contract are based on the salary according to the "Kollektivvertrag für Angestellte der Elektro- und Elektronikindustrie Österreichs" (collective salary agreement for employees in the electrical and electronics industry in Austria) of 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) applicable at the time the respective Maintenance Description Document is signed and shall change accordingly at a 90:10 ratio. The prices payable for software maintenance services under the Contract shall change in line with the changes of the above mentioned collective salary agreement (100 percent). If the customer pays the total contract price in advance, there shall be no price adjustment according to this paragraph.
- 5.3 In the event of a change in working times as prescribed by law, amsbg reserves the right to adjust the agreed service times to such changed conditions. The prices for maintenance services are based on the taxes, fees, and charges applicable at the time the Contract is concluded and shall change accordingly.
- 5.4 In addition to the prices for maintenance services, amsbg shall charge additionally, in accordance with the applicable amsbg price list:
- maintenance services performed upon request of the customer outside the agreed service hours,
 - the diagnosis and clearance of faults or defects resulting from misuse or other circumstances for which amsbg is not responsible,
 - initial testing and any repair work regarding products already in operation, which is necessary at the time the maintenance is taken over by amsbg,
 - initial testing and delivery of software patches or updates/upgrades, which are necessary for software products already in operation at the time the maintenance is taken over by amsbg,
 - installation, relocation, consulting, software engineering and other support services requested by the customer as well as changes required by any competent public authorities, e.g. changes of installation site,
 - hours worked for duplicating, compiling, generating software products,
 - travel costs, expenses, per diem allowances, accommodation and residence expenses, unless expressly included in the maintenance service prices.

6 Prices for Installation Services and other Services, for Deliveries of Products and for Software Development

- 6.1 Unless otherwise agreed upon, amsbg shall calculate the prices payable in compensation for installation services, for other services and/or for the development of software programs on the basis of hours worked at the rates specified in the Contract. The prices 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").
- 6.2 Unless otherwise agreed upon, service provision at the customer's premises shall be charged according to the applicable amsbg price list. The surcharges generally applicable at amsbg shall be charged for services delivered outside normal working hours (Monday to Friday 8.00 a.m. to 5.00 p.m.), on Saturdays, Sundays or public holidays, including days generally free at amsbg. Travel costs, expenses, per diem allowances, accommodation and residence expenses shall be charged additionally, unless expressly included in the Contract,
- 6.3 After the Contract has been concluded, the hourly rates agreed upon in the Contract for installation services, other services and software development shall change in line with the salary figures set forth in the "Kollektivvertrag für Angestellte der Elektro- und Elektronikindustrie 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).
- 6.4 The prices payable for the delivery of hardware and software products agreed in the Contract shall be charged after delivery. If the scope of services includes the installation of such products, the prices payable shall be charged after delivery and installation.

7 Payment, Retention of Title

- 7.1 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 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 and delivery of all products without prior notice to the customer. Furthermore, amsbg shall be entitled to make the payment for all services provided and all products delivered immediately due and payable, notwithstanding any agreed upon payment dates.
- 7.2 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 payment 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 delivered and services provided by amsbg until having fully paid all amounts due to amsbg.
- 7.3 Value added tax ("VAT") at the legally applicable rates shall be charged additionally. All other customs, taxes, duties, imposts, tariffs and charges related to the conclusion or the execution of the Contract, including but not limited to withholding taxes and transaction fees ("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.

8 Rights to Results, Standard Software and Confidentiality

- 8.1 Unless otherwise agreed upon, the non-exclusive license to use and exploit the results created individually by amsbg for the customer (in particular "individual" software) within the framework of the Contract as well as the ownership of the agreed documentation shall be transferred to the customer, once the payment 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 Contract.
- 8.2 As far as the scope of the Contract includes the delivery of standard software products supplied by third parties, the special terms and conditions (in particular license conditions) of the respective manufacturer or vendor of such standard software products shall prevail.
- 8.3 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.
- 8.4 Other companies of the Siemens 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 8.3.

9 Collection and treatment of waste electrical and electronic equipment

- 9.1 The customer of electrical/electronic equipment for commercial purposes, incorporated in Austria, is responsible for the financing of the collection and treatment of waste electrical and electronic equipment as defined by the Elektroaltgeräteverordnung [Austrian Ordinance Regulating the Handling of Waste Electrical Equipment], if he is himself the user of the electrical/electronic equipment. If the customer is not the end user, he shall transfer the full financial commitment to his customer by agreement and furnish proof thereof to amsbg.
- 9.2 The customer incorporated in Austria shall ensure that amsbg is provided with all Information necessary to meet amsbg obligations as manufacturer/ importer, particularly according to §§ 11 and 24 of the Elektroaltgeräteverordnung [Austrian Ordinance Regulating the Handling of Waste Electrical Equipment] and the Abfallwirtschaftsgesetz [Austrian Waste Management Act].
- 9.3 The customer incorporated in Austria is liable vis-à-vis amsbg for any damage and other financial disadvantages incurred by amsbg due to customer's failure to meet or fully meet his financing commitment or any other obligations according to this paragraph 9. The customer shall bear the burden of proof of performance of this obligation.

10 Acceptance, Warranty, Liability

- 10.1 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 test. 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 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.
- 10.2 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.
- 10.3 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.
- 10.4 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.
- 10.5 This paragraph 10 shall apply accordingly to other services and deliveries provided by amsbg. If no acceptance procedure has been agreed upon in the Contract for these services and products, the warranty period shall start upon handing over to the customer. If and so far standard software products of third parties are included in the scope of the Contract, the warranty conditions of the respective manufacturer or vendor shall prevail.
- 10.6 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 damage, loss or damage of Information, damages due to business interruption, loss of earnings, loss of profits and other consequential damages. Under no circumstances shall amsbg' total aggregate liabilities towards the customer exceed the lesser of either the contract price or the amount of EUR 1.000.000, --. The contract price shall be the total net amount to be paid by customer to amsbg. Remuneration for maintenance, installations and other services shall be taken into account until the first possibility of ordinary termination of the Contract with notice.
- 10.7 If contract penalties have been agreed upon in the Contract, any exceeding claims shall be precluded. Any warranty or 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.
- 10.8 These limitations of liability shall also apply for the benefit of amsbg boards and its members, subcontractors, suppliers, agents, advisors and employees.
- 10.9 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 extend 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.

11 Duration of Contract

- 11.1 amsbg shall deliver the products and provide 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 or products under the 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. Maintenance services, however, shall not be terminated before the end of the minimum duration agreed upon in the Contract. 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.
- 11.2 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, (a) when 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 (b) when the other party violates material obligations under the Contract, in particular payment obligations, in spite of having been granted an adequate period of grace, 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 and deliveries 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.

12 Concluding Clauses

- 12.1 Any amendments or alterations to the Contract shall have to be made in writing in order to be effective.
- 12.2 amsbg shall have the right to transfer and assign the Contract with all its rights and obligations to another company of the Siemens Group
- 12.3 The customer consents to the transfer of data from this business case to other companies of the Siemens Group for the purposes of intra-group reporting. Furthermore, 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.
- 12.4 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.
- 12.5 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 Sale of Goods shall be excluded.
- 12.6 The fulfillment 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. When utilizing the Services of amsbg the customer shall be responsible for the compliance of said Austrian or any other applicable export regulations, in particular but not limited to German and US export regulations. Specifications relevant for export and custom regulations shall be included in the invoice.