

General Terms and Conditions

of Arbeitsmarktservice BetriebsgmbH & Co KG

for Provider Services



1 General

- 1.1 Arbeitsmarktservice BetriebsgmbH & Co KG [hereinafter referred to as "amsbg"] provides services to the customer in the field of data processing and the operation of hardware and software components [hereinafter referred to as "Services"].
- 1.2 The present General Terms and Conditions apply to all Services amsbg provides to the customer, even if the General Terms and Conditions are not explicitly referred to in the specific contract. Any terms and conditions of the customer shall apply only if expressly accepted by amsbg in writing.

2 Scope and Provision of Services

- 2.1 The exact scope of Services to be provided by amsbg shall be defined in the contract with the customer. Unless otherwise agreed upon, amsbg shall provide the Services during usual amsbg business hours [Monday to Thursday, 7.30 a.m. to 4.15 p.m., Friday 7.30 a.m. to 1.00 p.m. excluding Saturdays, Sundays, public holidays and days generally free at amsbg]. If a Service Level Agreement [hereinafter referred to as "SLA"] has been agreed upon with the customer, amsbg shall ensure provision and availability of the Services as stipulated in the applicable SLA.
- 2.2 amsbg shall be entitled to change the equipment used for Service provision at its sole discretion, provided it can be expected that Service provision will not be negatively affected.
- 2.3 Equipment and technology used by amsbg for Service provision shall exclusively be governed by the customer's quantitative and qualitative needs and requirements, as identified based on the information made available by the customer according to paragraph 3.3.
- 2.4 Services consumed by the customer beyond the specific scope agreed upon shall be reimbursed by the customer based on hours actually worked and the equipment used, both at the rates applicable at amsbg at the time. This shall apply in particular to Services provided outside usual amsbg business hours, the analysis and clearance of faults resulting from misuse or incorrect operation on the customer's part or other circumstances for which amsbg is not responsible. Unless otherwise agreed, trainings are not included in the scope of Services.
- 2.5 Upon request by the customer, amsbg shall find third parties to provide certain Services to the customer. Such contracts shall be concluded solely between the customer and the respective third party, subject to the terms and conditions of said third party. amsbg shall only be responsible for Services it provides itself.

3 Obligations of the Customer to Cooperate and to Supply Products and Services

- 3.1 The customer shall tolerate and support all reasonable measures required for amsbg to provide the Services. The customer shall furthermore engage to take all the measures which are required to fulfil the contract and which are not part of the scope of Services.
- 3.2 As far as the Services are provided on site at the customer's, the customer shall make available the network components, connections, power supply, including peak voltage equalization, emergency power supply, space for equipment, workplaces and infrastructure free of charge and in the quantity and quality [e.g. health and safety protection, air conditioning] required by amsbg to provide the Services. In any case, the customer shall be responsible for the operational requirements of hardware as defined by the respective hardware manufacturer. Furthermore, the customer is liable for the safety of buildings and facilities, especially with regard to fire and water protection or unauthorized access. Special safety precautions in customer's facilities [e.g. safety cells] are customer's sole responsibility. The customer shall not be entitled to give instructions of any kind to amsbg employees and shall convey all requests relevant to Service provision exclusively to the contact person appointed by amsbg.
- 3.3 The customer shall, at the agreed dates, in the form required and at its own expense, make available to amsbg all the information, data, and documents necessary to enable amsbg to fulfil the contract. Furthermore, the customer shall support amsbg, if so requested, in problem analysis and fault clearance, the coordination of processing jobs, and the harmonization of Services. Changes in the customer's workflows, which might cause changes to become necessary in the Services, shall require prior consultation with amsbg with regard to the technical and commercial consequences.
- 3.4 Unless explicitly included in the scope of Services, the customer shall provide, at its own expense and risk an appropriate net-connection.
- 3.5 The customer shall keep the passwords and Log-Ins required for using the Services confidential and shall not disclose them to third parties.
- 3.6 The customer shall keep all information handed over to amsbg additionally stored on the customer's own premises to ensure that restoration will be possible in the case of loss or damage.

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- 3.7 The customer shall meet all the obligations to cooperate and assist in such a timely fashion that amsbg will not be obstructed in providing the Services. The customer shall make sure that amsbg and/or third parties commissioned by amsbg have access to the customer's premises as required for providing the Services. The customer shall be responsible that all employees of the customer's associated companies or its subcontractors will contribute accordingly to fulfilling this contract.
- 3.8 If the customer does not meet the aforementioned obligations to cooperate and assist at the agreed dates or to the agreed extent, the Services provided by amsbg in spite of possible restrictions and limitations shall nevertheless be considered as provided according to the contract. Time schedules for the Services shall be modified accordingly. The customer shall separately reimburse any extra effort and/or cost arising to amsbg through such circumstances at the rates applicable at the time.
- 3.9 The customer shall be responsible that the customer's employees and any third parties for which the customer is accountable will treat the equipment and technologies used by amsbg as well as any assets surrendered to the customer with care; the customer shall be liable to amsbg for any loss or damage if amsbg has not caused such loss or damage negligently.
- 3.10 Unless otherwise agreed, products and services as well as cooperation and assistance efforts shall be provided by the customer free of charge.

4 Human Resources

- 4.1 As far as, according to an agreement made between the parties or according to applicable legal rules and regulations, customer employees are taken over by amsbg, the names and all the key data relating to these employees shall be listed in the contract in the form and extent required by amsbg. The parties shall use their best efforts to support each other in all issues concerning the taking over of such personnel.
- 4.2 The customer shall guarantee that the rights and duties resulting from the employment relationships of the employees listed in the contract are derived solely from the individual employment contracts, from collective salary agreements, works and corporate agreements and regulations, all of which shall be listed in the contract.
- 4.3 The customer shall ensure, through organizational measures that only the employment relationships of the employees listed in the contract are transferred to amsbg. The customer shall indemnify and hold harmless amsbg against all claims by employees not listed in the contract.
- 4.4 The customer shall pay to amsbg a compensatory amount equal to the provisions and accruals formed by the customer in compliance with proper accounting principles [in particular retirement pension and severance payment provisions, provisions for other liabilities vis-à-vis the employees in question] for the employees transferring their employment relationship to amsbg. In case of doubts as to the adequacy of such provisions and accruals, amsbg shall have the right to have the compensatory amount to be paid by the customer determined, with legally binding effect for all the parties concerned, through an actuarial expert opinion established based on scientifically recognized methodology. The costs of such an actuarial expert opinion shall be divided among the parties.

5 Change Requests

- 5.1 Both parties may, at any time, request changes in the scope of Services. However, any such change request must include a detailed description of the change requested, the reasons for requesting the change, the impact the change will have on time schedules, and the costs of the change, in order to enable the addressee of the change request to adequately evaluate and assess it. A change request shall become binding only if signed by both parties.

6 Defaults in Performance

- 6.1 amsbg undertakes to provide the Services as specified in the contract. If amsbg does not provide the Services at the scheduled dates or provides the Services in a defective manner, i.e. deviating significantly from the quality standards agreed upon e.g. in Service Level Agreements (SLA), amsbg shall be obliged to immediately start remedying the defects and provide the Services in an orderly and defect-free fashion within a reasonable period of time by either repeating the Services in question or performing any required improvement work, at amsbg' discretion.
- 6.2 If the defectiveness is due to Services and products or cooperation and assistance efforts supplied by the customer or due to the non-compliance of customer's obligations according to paragraph 3.9 of these General Terms and Conditions, any obligation to remedy defects free of charge shall be excluded on the part of amsbg. In such a case, the Services provisions by amsbg shall be considered as fulfilling the contract in spite of possible restrictions or limitations. Upon request by the customer, amsbg shall remedy in such cases the defect against separate compensation.
- 6.3 The customer shall support amsbg in remedying defects and make all the necessary information available. The customer shall notify amsbg immediately, in writing or via e-mail, if defects occur. If notification is done otherwise, the notification shall be regarded as being provided only, if it is confirmed by amsbg in writing or via e-mail immediately. Extra effort attributable to a belated notification shall be borne by the customer.
- 6.4 The provisions of this paragraph 6 shall apply correspondingly to any delivery of hard- or software products by amsbg. The warranty period for such hard- and software-products shall be 6 months. Paragraph 924 ABGB [Austrian Civil Code] shall be excluded. However, in case amsbg delivers any third party products to the customer the standard warranties provided by

such third parties shall be applicable. Title to all hard- and software products delivered by amsbg shall remain with amsbg until full payment is made.

7 Liability

- 7.1 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 be liable in no case for indirect damages, loss or damage of information or data, 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 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 until the first possibility of ordinary termination of the contract with notice.
- 7.2 If data storage is explicitly included in the scope of Services, the exclusion of liability for loss of data according to paragraph 7.1 shall not apply. However, in the case of loss of data liability for retrieval of data is limited to EUR 50.000, -- per case. If penalties are agreed, any exceeding claims of the customer are excluded. 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 damage caused intentionally or by gross negligence, proved by the customer.
- 7.3 These limitations of liability shall also apply for the benefit of amsbg boards and its members, subcontractors, suppliers, agents, advisors and employees.

8 Compensation

- 8.1 The amounts of compensation to be paid by the customer are defined in the contract. Value added tax ["VAT"] at the legally applicable rates would be charged additionally.
- 8.2 Time spent travelling within Vienna by amsbg employees shall be considered as working time. In the case of provision of Services outside Vienna, travel times shall be compensated upon at the hourly rates agreed. The rates mentioned above shall be adjusted in accordance with the price adjustment provision specified under paragraph 8.5. The actual costs for daily expenses and overnight stays shall be charged additionally. 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].
- 8.3 amsbg shall have the right, at any time, to make the provision of Services dependent on adequate advance payments or the provision of other collaterals by the customer.
- 8.4 Unless otherwise agreed in the contract, one-off compensations shall be charged after provision of the respective Service, while ongoing compensation shall be charged monthly in advance. 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 as well as all costs arising from collecting outstanding amounts. 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.
- 8.5 Ongoing compensation is based on 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 the 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. The compensation shall be adjusted in the equal ratio.
- 8.6 Any kind of offsetting of amounts by the customer shall be permitted only in the case of a counterclaim recognized by amsbg in writing or if finally decided by a court of competent jurisdiction. The customer shall have no right of retention.
- 8.7 Any taxes, duties, fees, imposts, tariffs and charges related to the conclusion or the execution of the contract, included but not limited to custom duties, stamp duties or withholding taxes [hereinafter referred to as "Charges"] shall be borne by the customer. In the event amsbg is required to pay such Charges to any authority, the customer shall indemnify and hold harmless amsbg for any such payments.

9 Force Majeure

- 9.1 As far and as long obligations under this contract are not met in time or in an orderly fashion due to force majeure, such 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, this shall not constitute a breach of contract.

10 Rights of Use for Computer Programs and Documentation

- 10.1 As far as amsbg delivers computer programs to the customer or permits the customer to use computer programs within the scope of Service provision, the customer shall have the non-exclusive, non-transferable, personal right, limited to the duration of the contract, to use the respective computer programs in unmodified form; this right must not be sublicensed.
- 10.2 The use of computer programs in a network shall require a license for each and all-simultaneous users. The use of computer programs on stand-alone PCs shall require a license for each PC.
- 10.3 For any third party software-products delivered by amsbg to the customer the standard license terms of such third parties shall be applicable prior to paragraph 10.1-10.5.
- 10.4 Unless otherwise agreed, amsbg shall not transfer any further rights for the computer programs to the customer. This shall in no way affect the rights of the customer pursuant to paragraph 40(d), 40(e) UrhG [Austrian Copyright Act].
- 10.5 None of the material and documents, in particular the documentation for the computer programs, delivered to the customer by amsbg shall be copied or distributed in any way.
- 10.6 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.
- 10.7 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.
- 10.8 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].
- 10.9 amsbg shall not be liable with respect to any Claims if (a) amsbg did not cause the infringement of intellectual property rights willfully 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 Disposal of waste electrical and electronic equipment

- 11.1 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.
- 11.2 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].
- 11.3 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 11. The customer shall bear the burden of proof of performance of this obligation.

12 Duration of Contract

- 12.1 The contract shall enter into force upon its signature by both parties and shall continue for an indefinite period. Both parties shall have the right to terminate the contract by registered mail subject to 6 months' prior notice, but not earlier than at the end of the minimum duration agreed upon in the contract.
- 12.2 Each party shall have the right to terminate, by registered mail, the contract prematurely and without notice for good cause. Good cause shall be understood to exist, in particular, if (a) the other party violates, in spite of having been given notice in writing and having been threatened with termination of contract, essential obligations under the contract, or if (b) proceedings for bankruptcy or other insolvency proceedings against the other party have been filed, opened, or rejected for lack of assets, or if (c) the provision of Services is obstructed or prevented due to force majeure for a period in excess of six months.

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- 12.3 Moreover, amsbg shall be entitled to prematurely terminate the contract for good cause, if key parameters of Service provision have changed and, for this reason, amsbg can no longer be expected to continue providing these Services from an economic point of view.
- 12.4 The parties shall cooperate to ensure retransfer of any employees taken over by amsbg from the customer, if the transfer of the employment relationships is affected by legal rules and regulations after termination of the contract. If this is not the case, upon amsbg request the customer shall be obliged to offer employment contracts to the employees affected at the employment contract terms and conditions applicable for these employees at the time the contract is terminated. Upon request, the customer shall be obliged to purchase the hardware, employed by amsbg solely and exclusively for the customer, for a price equal to the remaining costing based book value of this equipment.
- 12.5 Upon termination of the contract, the customer shall promptly return all records, documents, manuals and documentations provided by amsbg.
- 12.6 Upon request, amsbg shall support the customer against compensation at the rates applicable at that time, in retransferring Services to the customer or to a third party appointed by the customer upon termination of the contract.

13 Data Protection and Privacy

- 13.1 In handling personal data, amsbg shall comply with the applicable rules and regulations of the Austrian Data Protection Act and the Telecommunications Act and take all reasonable technical and organizational precautions to protect and secure data within its sphere of responsibility.
- 13.2 amsbg shall not be obliged to verify the admissibility, in terms of data protection rules and regulations, of data processing commissioned by the customer. The customer shall ensure the admissibility of the transfer of personal data to amsbg as well as the processing of such data by amsbg.
- 13.3 amsbg shall take all reasonable precautions to safeguard customer data and information stored by amsbg against unauthorized access by third parties. However, amsbg shall not be held responsible, if third parties nevertheless succeed in unlawfully gaining access to such data and information.
- 13.4 By signing the contract, the customer shall consent to the transfer of data from this business case to subcontractors involved in the execution of this contract as well as to other companies of the Siemens Group as far as necessary for purposes of intra-group reporting.

14 Confidentiality

- 14.1 Each party shall assure the other party that it will treat all business secrets disclosed to it within the context of this contract and the execution of this contract as confidential and not disclose them to third parties, as far as this information is not in the public domain, or was already known to the receiving party without involving a breach of confidentiality, or is disclosed or surrendered to the receiving party by a third party not imposing an obligation for secrecy, or has verifiably been independently developed by the receiving party, or is liable to being disclosed due to a court decision or decision by a public authority with legal effect.
- 14.2 14.2 Other companies of the Siemens Group as well as subcontractors of amsbg shall not be regarded as third parties as far as they are subject to a corresponding confidentiality obligation.
- 14.3 14.3 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.

15 Miscellaneous

- 15.1 The parties shall appoint, in the contract, competent and knowledgeable employees capable of either taking or initiating any necessary decisions.
- 15.2 During the term of the contract and for another full year after termination of the contract, the customer shall neither directly or via third parties entices away employees deployed by amsbg to 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 employee received from amsbg.
- 15.3 Any alterations or amendments of the contract shall have to be made in writing in order to be effective. This shall likewise apply to any waiver of such form requirement.
- 15.4 If any of the provisions, either in whole or in part, of the contract is or becomes invalid or unenforceable, this shall not serve to invalidate the remaining provisions thereof. The invalid or unenforceable provision shall be replaced with a valid provision, which serves the economic purpose of the invalid or unenforceable clause as closely as possible.
- 15.5 .amsbg shall be entitled to assign the contract with all its rights and obligations to any other company of the Siemens Group.
- 15.6 amsbg shall have the right to employ third parties to fulfil its duties and obligations, either in whole or in part.

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- 15.7 The customer consents to the transfer of data from this business case to subcontractors involved in the execution of this contract as well as to other companies of the Siemens Group as far as necessary for purposes of intra-group reporting.
- 15.8 Exclusively Austrian law without its conflict-of-laws provisions shall govern the contract. The application of the UN Convention on Contracts for the International Sales of Goods shall be excluded. 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).
- 15.9 The fulfilment of the agreement 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.