



## **General Terms and Conditions for the Sale and Delivery of Software Support Services**

**2004 Edition**

**Professional Association of Management Consultants  
AND INFORMATION TECHNOLOGY EXPERTS  
Austrian Chamber of Commerce**

Wiedner Hauptstraße 63A-1045 Vienna: +43-(0)-590900-3760

F: +43-(0)-590900-285

E-Mail: [ubit@wko.at](mailto:ubit@wko.at)

<http://www.ubit.at>

Recommended by the Association for Management Consultancy and Information Technology  
as well as the National Committee on Trade in Machinery,  
Computer Systems, and Technical and Industrial Requirements

### **1. Scope of Contract and Validity**

The following terms are valid for all services and deliveries provided by the seller within the framework of this contract in connection with computer systems installed in Austria. The buyer's terms of purchase have no legal force, in connection either with the transactions covered by this agreement or, for that matter, with the entirety of our business dealings.

All offers are subject to change without notice.

### **2. Scope of Services**

- 2.1 Unless otherwise agreed, the services covered by this contract will be carried out by the seller, at his choosing either at the site of the computer system or in the business offices of the seller, during seller's normal business hours. Should the buyer wish services to be provided outside of normal business hours as an exception, the additional costs will be invoiced separately. The choice of personnel to carry out the contractual services is the responsibility of the seller, who may bring in third parties.
- 2.2 The seller agrees to supply the software programs contracted for in this agreement in accordance with one of the following contractually agreed classes of support:

### Support Class A

Information Service: The buyer will be informed about new programs, available updates, and programs under development, etc.

Hotline Service: The seller will be available to the buyer during agreed-upon hotline hours for advisory support should problems arise from time to time in connection with the use of the software programs covered by this contract. In case of repeated use of the hotline for very similar problems, the seller has the right to make further advisory support as covered by this agreement dependent on additional buyer training outside the scope of this contract and at the buyer's expense.

Archiving and Provision of the Software Programs Covered Under This Contract: The seller obligates himself to archive the software programs developed by him and covered by this contract in computer-readable form, along with documentation in sufficient detail to fulfil the obligations established by this contract. Further, the seller will make these available to the buyer as necessary, in accordance with the terms of the purchase agreement.

### Support Class B

Update Service: At a date determined by him, the seller will make available to the buyer the program updates provided by the producer. These updates comprise repair of mistakes, correction of possible program problems that do not occur either during the test run or during use within the warranty period, enhancement of the scope of performance, changes in the software programs consequent on legal changes.

Legal changes that result in new program logic, that is, changes in existing functions that lead to new programs and program modules, as well as possibly necessary additions to the hardware, are not included in the performance obligations covered by this contract. These programs will be offered separately to the buyer along with the required data carriers and documentation.

### Support Class C

Installation of Program Updates: The seller is responsible for copying onto or setting up the new program updates on the computer system covered by this contract.

Problem Solving on Location: In case problems arising within the scope of the contractually agreed-on services cannot be resolved by the hotline service, remote support, etc., the seller will undertake to correct the problems at the site of the computer system.

- 2.3 A mistake that requires correcting is considered to exist if a software program covered by this contract does not function in accordance with its performance specifications or documentation as set forth in the most recent valid version, and the buyer can so demonstrate.

Buyer complaints are to be addressed to the seller in writing. For purposes of careful investigation of possible mistakes the buyer is obligated to make available to the seller at no cost the relevant computer system (for systems connected online with other computers the relevant connection is to be included), software programs, protocols, diagnostic backup, and sufficient data for test purposes during the seller's usual business hours and to provide support to the seller. Identified mistakes for which the seller is responsible are to be rectified within an appropriate period of time. The seller is freed of this responsibility

when solutions are hindered by deficiencies in the domain of the buyer and which are not corrected by him.

The correction of a defect is to be carried out by a software update or by appropriate circumventory solutions.

### **3. Services Not Covered by This Contract**

- 3.1 Cost of travel, accommodation, and travel time of seller's personnel charged with carrying out the service, if not explicitly otherwise agreed in this contract.
- 3.2 In case of unauthorized use of services the seller may invoice the buyer for accrued costs at the respective valid rates.
- 3.3 Services that result from changes in the operating system or in hardware and/or from changes in mutually dependent software programs and interfaces not covered by this contract.
- 3.4 Program customization or new programming.
- 3.5 Program changes due to changes in statutory requirements, if they require a change in program logic.
- 3.6 The seller will be freed of all responsibilities under the present contract, if program changes have been carried out by employees of the buyer or by third parties in the software programs covered by this contract without prior agreement from the seller or if the software programs have not been used as designated.
- 3.7 The rectification of defects caused by the buyer or third parties.
- 3.8 Losses or damages that result either directly or indirectly from actions or omissions on the part of the buyer or user in operating the system
- 3.9 Data conversions, data recovery, and interface adjustments.

### **4. Prices**

- 4.1 Prices quoted are understood to be prices ex works. The costs of program carriers (e.g., magnetic tapes, magnetic diskettes, magnetic tape cassettes, etc.) as well as documentation and any contract fees will be invoiced separately.
- 4.2 For services that can be carried out on the premises of the seller but are carried out as an exception on the premises of the buyer at his request, the buyer bears the costs of travel, accommodation and travel time for the seller's personnel who are charged with carrying out the service.
- 4.3 If labour and material costs, or other costs and charges, increase after the conclusion of the contract, the seller has the right to increase accordingly the flat-rate amounts shown separately and to charge the buyer at the higher rate from the beginning of the month following the cost increases. These increases are deemed to be accepted by the buyer a priori, if they do not exceed 10% per annum.
- 4.4 All fees and taxes (especially sales tax) are calculated in accordance with the laws in effect at the time. Should the

tax authorities subsequently impose additional taxes or levies, these will be borne by the buyer.

## **5. Delivery Schedules**

- 5.1 The seller will endeavour to provide answers to buyer inquiries within a reasonable period of time during the usual business hours of the seller.
- 5.2 The buyer does not have the right to withdraw from the contract nor is he entitled to damages in case a prospective delivery date is not adhered to.
- 5.3 Partial and advance delivery are permissible.

## **6. Payment**

- 6.1 The agreed-upon flat-rate amounts are payable by the buyer in advance for the entire calendar year or the part of the calendar year remaining.
- 6.2 Invoices presented by the seller fall due 14 days after the date of the invoice, without any deductions and free of charges.
- 6.3 Payment on the agreed-upon dates is an essential condition for delivery and for fulfilment of the contract by the seller. Non-compliance on the part of the buyer with the agreed-upon payment deadlines gives the seller the right to discontinue current work and to withdraw from the contract. All costs connected therewith as well as loss of profit are to be borne by the buyer. In case of delayed payment, interest on payment in arrears will be charged at customary bank rates. In case two consecutive instalments are not paid on time, the seller has the right to enforce non-compliance and to call accepted drafts.
- 6.4 The buyer is not entitled to withhold payment because of incomplete total delivery, guarantee or warranty claims, or complaints.

## **7. Length of Contract**

The contractual relationship, which assumes the professional installation of the properly procured software program covered by the contract, begins when the contract has been signed and is deemed to continue for an unlimited period of time. This contract can be cancelled by either party to it in writing at least 3 months before the end of the calendar year, but not prior to the end of the 36<sup>th</sup> month of the contract. If the software program covered by the contract is proved to have been taken out of operation, the contractual relationship can be prematurely cancelled on three-months' notice. In this case, the aliquot portion of the annual flat rate for the services not used will be transferred to an Austrian bank account specified by the buyer.

## **8. Liability**

The seller is liable for damages insofar as intent or gross negligence can be proven, within the framework of statutory regulations. Liability is excluded in case of slight negligence.

Compensation for subsequent damages and financial loss, not realized savings, loss of

interest, and for damages arising from third-party claims against the seller is in every case excluded, to the extent legally permissible.

## **9. Location**

The location of the computer systems covered by this contract is established contractually. In case of a possible change in location of the computer systems the seller is entitled to establish a new flat-rate amount or to cancel the contract prematurely.

## **10. Copyright and Use**

- 10.1 The seller or his licensors are entitled to all copyrights on the agreed services (programs, documentation, etc.). The buyer obtains only the right to use the software after payment of the agreed remuneration strictly for his own purposes, only with the hardware as specified in the contract, and, in accordance with the number of licenses acquired, simultaneously at different workplaces. By this contract the buyer acquires merely the authorization to use the software. Distribution of the product by the buyer is not permitted, as per the copyright law. The buyer does not by virtue of participating in the production of the software acquire any rights beyond its use as set forth in this contract. Any infringement of the copyrights of the seller will result in the right to claim damages, in which case the seller is entitled to full satisfaction.
- 10.2 The buyer is permitted to make copies for archival and data backup purposes only on condition that the software does not contain an express prohibition on the part of the licensor or a third party and that all notices of copyright and ownership are transferred unchanged into these copies.
- 10.3 Should the disclosure of the interfaces be necessary to produce the interoperability of the software covered by this contract, the seller is to request this of the buyer with remuneration of costs. If the seller does not comply with this stipulation and de-compilation follows in accordance with copyright law, the results are to be used exclusively for the production of interoperability. Misuse will result in claims for damages.

## **11. Loyalty**

The parties to the contract obligate themselves to reciprocal loyalty. They will not hire away staff or employ, including by way of third parties, staff of the other party to the contract who have worked on the realization of the projects, during the duration of the contract or for 12 months after the end of the contract. A party to the contract in violation of this clause is obliged to pay lump-sum damages in the amount of one annual salary of the employee.

## **12. Protection of Data Privacy, Nondisclosure**

The seller obligates his employees to observe the provisions of §20 of the Data Privacy Law.

### **13. Other**

Should individual terms of this contract be or become inoperative, this will not affect the remaining terms of this contract. The parties to the contract will work in a spirit of partnership to find an arrangement that approximates as nearly as possible the inoperative terms.

### **14. Concluding Terms**

Insofar as not otherwise agreed, the statutory regulations applicable to registered merchants are exclusively those in force under Austrian law. This is the case also when the order is carried out outside of Austria. In case of conflict, it is agreed that only the responsible local court in the seller's place of business has jurisdiction. For sales to consumers within the meaning of the consumer protection law, the above terms are valid only insofar as the consumer protection law does not insist on other conditions. Non-compliance with essential parts of this contract entitles the parties to this contract to premature termination of the contract without notice.