

1 Applicability and Scope of Services

- 1.1 These General Terms and Conditions ("GTC") apply to all contracts between the customer and msg global solutions ag, Switzerland - hereinafter referred as "msg" - for the provisioning of services as further described detailed in a Statement of Work ("Services") excluding any conditions of purchase or general terms and conditions of the customer. A Statement of Work shall describe the Services to be rendered for a specific project and other terms like, but not limited to, pricing, payment, expense reimbursement, delivery time frame, acceptance criteria and other terms and conditions that the parties desire to address. A Statement of Work or another similar document together with these referenced GTC constitute the agreement between the parties ("Agreement").
- 1.2 The provisions of an Agreement shall take precedence over any conflicting provisions of the present General Terms and Conditions.
- 1.3 Services within the meaning of clause 1.1 comprise in particular:
- Development of software programs ("Programs")
 - Development of individual Programs
 - Development of interface programs
 - Adaptation and adjustment of Programs ("Customizing") to customer requirements
 - Consultancy regarding
 - Handling and organization
 - Design
 - Delivery of analyses and concepts
 - Project consultation and support
 - Project planning
 - Project organization
 - Installation support
 - Integration support
 - Trainings
 - Expert (administrator) trainings
 - End user trainings
 - Application Management
 - Resolving issues
 - Monitoring
 - Preventive maintenance
 - Enhancements
- 1.4 In the absence of any other provisions in the Agreement, the documentation of Services rendered, support during acceptance and productive go-live as well as briefings and training are not included in the scope of Services and can be charged to the customer according to the current price list.
- 1.5 The basis for contractual performance are the standard products or standard technologies or documentation listed in the Agreement, in each

case in the version available at the time the Agreement was signed.

- 1.6 msg is entitled to use subcontractors, unless otherwise agreed. In this case, msg is liable for their performance as for its own performance.
- 1.7 Both parties will endeavour to comply with any change request by the other party within the existing Agreement. If, however, the change is likely to influence costs and deadlines, the change request and its resulting effects must be agreed upon in writing. Until a change request is agreed by both parties, msg continues the work according to the existing Agreement without taking the change request into account. msg will respond to a proposed change by customer within 10 working days, incl. effect on timeline and remuneration. The customer will inform msg within five working days whether the change shall be applied. Should the clarification of the change request require a comprehensive examination by msg or an interruption of the work, msg is entitled to demand compensation according to the rates stated in the current price list. When msg proposes a change, customer will respond within 10 working days back to msg.

2 Rights to Work Results

- 2.1 Unless otherwise agreed, the following applies:
- 2.2 Once all amounts due under a Statement of Work are paid in full and all claims have been satisfied, the customer is granted a non-exclusive, perpetual, non-transferable license to use any Deliverables and work products provided to it by msg global under a relevant Statement of Work in order to run the customers' and its Affiliates' internal business operations. "Affiliate" means, in respect of a company or other business entity, any company or other business entity controlled by, controlling, or under the common control of that company or other business entity, where "controlled by", "controlling" or "under the common control" means the possession, directly or indirectly, of the power to direct the management and policies of such company or other business entity, whether through the ownership of a majority of voting securities, by contract or otherwise.

3 Remuneration, Terms of Payment

- 3.1 The customer remunerates the Services of msg in accordance with the Agreement plus the statutory duties, fees and charges, specifically the Value Added Tax.
- 3.2 Unless otherwise agreed upon by the contracting parties, work and travel times are calculated according to actual expenses based

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on the msg price list. The applicable price list is part of the Service offering.

- 3.3 The standard workday is any eight (8) hour period of work, between 8:00 AM and 6:00 PM, Monday through Friday, excluding legal holidays.
- 3.4 Travel expenses for rail and air travel will be charged according to actual expenditure (economy class). For car journeys the rates stated in msg's price list will be charged. Accommodation costs are charged according to actual expenditure, daily expenses at CHF 60, unless otherwise agreed in the Agreement. Travel times and waiting times at the customer's premises are considered working hours.
- 3.5 All prices are subject to value added tax at the statutory rate.
- 3.6 msg will invoice the Services rendered on a monthly basis, based on the time sheets provided by msg. Unless otherwise agreed, payments are due and payable without any deductions within 30 days. If no payment is received by this date, msg is entitled to charge default interests as well as further damages caused by the delay without further reminder.
- 3.7 msg reserves the rights to the Services rendered until full payment has been received. msg is particularly entitled to prohibit the further use of the Services if the customer is in arrears and if msg has withdrawn from the Agreement as a result. Should a third-party gain access to the rendered Services prior to the full payment, the customer is obliged to inform this third party of msg's reservation and to immediately notify msg in writing of the third-party's access.

4 Duties to Cooperate, Supplementary Provisions of the Customer

- 4.1 The participation of the customer is indispensable for the successful provisioning of the Services described in the Agreement. The cooperation obligations of the customer described in this Section 4 as well as additional cooperation obligations of the customer possibly specified in the Agreement are main performance obligations of the Agreement. The customer is obligated to support msg's work, even if not explicitly agreed upon in the Agreement, in the best possible way and free of charge, in due time, in the required quality and scope and, if necessary, also by providing temporary personnel.
- 4.2 At the beginning of msg's work, the customer shall name a competent contact person to msg,

who is authorized to make decisions regarding the Services to be provided by msg or to bring them about in due time. This contact person establishes the necessary contacts with the customer's specialist departments for msg's work, ensures the necessary communication with all departments at the customer's premises and coordinates the scheduling of msg's work with the affected departments at the customer.

- 4.3 The customer shall provide all necessary equipment and software including the required licenses for msg's work free of charge, ready for operation and within the necessary operating hours. In particular, the customer shall enable access to the customer's premises if work on-site is required, and shall provide all necessary facilities and infrastructure, including, if applicable, a development environment with the required number of terminals and other aids free of charge. The customer shall be responsible for the operation and system maintenance and shall regularly back up all software and Programs and data.
- 4.4 The customer shall examine msg's Services for completeness and possible defects and shall immediately and if possible, documented in writing (also via mail), notify msg of any complaints.
- 4.5 If the customer does not meet the obligation to cooperate or does it not in time the customer shall be liable for any project delay an additional cost resulting therefrom. msg is also entitled to set the customer a reasonable deadline for subsequent fulfilment and to terminate the Agreement if this deadline is not met.

5 Confidentiality

- 5.1 The contracting parties undertake to keep secret confidential information and documents of the other contracting party which are obviously confidential, or which are designated as confidential by the other contracting party, such as Programs, operating secrets and business secrets, and treat them with strict confidentiality. The contracting parties shall also instruct their employees and third parties accordingly, insofar as they have not already been otherwise bound to confidentiality equally.
- 5.2 The confidentiality obligation also strictly applies on all Agreements closed between the parties and all information related to the performance of Agreements and maintain silence towards others. Confidentiality as well strictly prohibits disclosure to third parties of any financial or commercial concessions of the parties.
- 5.3 Confidential information may only be used for the purpose of the Agreement. In addition, said

information may neither be recorded, stored, duplicated, passed on nor used for own purposes or exploited in any other way.

- 5.4 Except for Programs, which shall be kept confidential forever, the Confidential Information shall be kept confidential for at least five years after the end of Statement of Work during which a party as gained access to such Confidential Information.
- 5.5 Notwithstanding the foregoing, the contracting parties may disclose confidential information if (i) the latter was already known to the recipient of the information at the time of the assignment, without any obligation to confidentiality, (ii) the information has already been published, or was published later through no legal or contractual fault of the recipient of the information, (iii) which a party lawfully receives from a third party without any obligation to confidentiality, (iv) the information has been independently developed by the recipient of the information, or (v) legal provisions or orders of governmental bodies require the disclosure of the information or the other contracting party has agreed to this. The contracting parties will, as far as legally permissible, immediately inform each other as soon as they are requested by an authority to provide information concerning confidential information from the other contracting party or are subjected to other sovereign measures.
- 5.6 msg is entitled to include the customer in its reference customer list, unless the Agreement contains a deviating provision in this respect. The processing of personal data is liable to the subsequent sections and the data privacy statement of msg where applicable.

6 Data Protection

- 6.1 When processing personal data, the parties shall comply with Swiss data protection legislation and in particular data secrecy. If msg processes personal data of the customer, its employees or customers of the customer within the scope of an Agreement, then the customer is the "data controller" and msg is the "data processor" on behalf of the customer in accordance with the applicable provisions of the data protection laws and, if applicable, the specific provisions on data processing agreed upon in the Agreement.
- 6.2 The contractual partners shall also impose corresponding obligations on their employees and, if applicable, subcontractors.
- 6.3 If msg itself collects and processes personal data of the customer or its employees as the data controller, it does so only for the purpose of preparing and executing this Agreement and

post-contractual obligations (such as warranty obligations) and only to the extent necessary for this purpose. After termination of the Agreement, the personal data may only be included in a customer list. msg only uses the customer list to inform about current products and Services and to initiate future joint projects.

- 6.4 The personal data is kept by msg as long as there is an interest in future cooperation. Afterwards, the personal data is deleted from the customer list. This does not apply to personal data that msg must keep longer due to legal retention obligations.
- 6.5 The customer, respectively the employee concerned, has the right at any time to request information free of charge about his or her personal data collected by msg, including a copy of the same, free of charge and to be informed about the type, scope, purpose and duration of the data processing. Furthermore, he/she has the right to demand the correction of incorrect personal data and, if necessary, the restriction of its processing.
- 6.6 After termination of the Agreement and post-contractual obligations, the customer or the employee concerned is also entitled at any time to prohibit further processing of the personal data and to request deletion from the customer list by means of a written notification to the e-mail address provided on msg's website.
- 6.7 msg processes the personal data either itself or through auxiliary persons under msg's supervision and responsibility. The personal data will not be passed on to third parties or abroad.
- 6.8 The customer or the respective employee concerned has the right to contact the responsible supervisory authority, the Swiss Federal Data Protection Commissioner, at any time.

7 Delivery of Services, Work Results or Programs, Obligation for Acceptance Test

- 7.1 An acceptance test procedure can be agreed upon in the performance specification for work results such as the development, Customizing or parameterizing of Programs. If no acceptance test procedure is agreed upon, the Agreement shall be deemed fulfilled when the relevant Service has been performed or the work result has been delivered.
- 7.2 As far as an acceptance test obligation is agreed upon and unless otherwise specified, the following shall apply:
The Services description within the Agreement (see clause 1.1.) details the Services to be

tested by msg, the test criteria and the specifics of the tests to be carried out.

- 7.3 After the specified tests have been carried out, the contracting parties are obliged to jointly sign a protocol on the acceptance of the Services according to the Agreement (acceptance protocol). Within this acceptance protocol, the acceptance is declared successful or not. Any errors must be documented and classified as more or less significant. In case the acceptance failed, the customer shall at least twice grant msg a reasonable period of time to rectify the error(s), and if necessary, to carry out new test(s) and seek acceptance.
- 7.4 Acceptance does not take place if there are serious defects that considerably impair the work result or make the contractual use of it impossible. However, acceptance shall take place if there are no or only minor defects that only marginally or insignificantly impair or not at all impair the contractual use of the work result. These will be remedied within the scope of the warranty after acceptance.
- 7.5 The work results shall be deemed duly accepted at the latest two weeks after delivery if no written objection is made by the customer. If the Services are Programs, they shall be deemed duly accepted at the latest four weeks after delivery, provided the customer has not made any written complaint about defects by that time.
- 7.6 If the customer does not accept the work results for another reason than due to a significant defect according to clause 7.4 or if he uses them productively, acceptance shall in any case be deemed successful.

8 Warranty

- 8.1 A material defect exists if work results/ Programs do not have the contractually agreed qualities or are not suitable for the contractually stipulated use. The contractually agreed quality results from the respective performance description (see clause 1.1).

A defect of title shall be deemed to exist if the rights required for the contractual use of the work results/ Programs could not be granted. The customer is obligated to inform msg immediately in writing of any claims or allegations made by third parties in this regard.

- 8.2 Claims due to material defects and defects of title expire 12 months after acceptance of the corresponding work results. If the customer modifies work results/ Programs by msg or has them modified by third parties, the claims due to material defects and defects of title are void,

unless the customer proves that the defects are not due to the modifications and that the analysis and correction of defects by msg is not impaired.

- 8.3 Should defects become apparent within the warranty period, the customer shall immediately notify msg systems in writing in a comprehensible manner stating the information that is appropriate for the detection of defects (including the actions that led to the defect). The customer shall support msg systems to a reasonable extent in the search and removal of defects. msg will rectify the defects within a reasonable period of time free of charge. At its discretion msg eliminates defects by eliminating the defect (subsequent improvement) or producing a new work (subsequent delivery). msg may also remedy the defect by providing the customer with instructions by telephone, in writing or electronically. A replacement by a third party is possible by mutual Agreement.
- 8.4 Should a suspected defect reported by the customer not exist or not result from msg's work results/ Programs, msg is entitled to invoice the customer for the costs incurred by the analysis and other processing according to the current price list for Services.
- 8.5 The customer shall set reasonable deadlines to allow msg to rectify the defect by means of supplementary performance. If msg is not successful with the supplementary performance within a reasonable period of time, which allows for at least two attempts at rectification, the customer is entitled to set msg a reasonable period of grace. If msg is also unsuccessful within this period of grace, the customer is entitled to exercise its rights in respect of abatement or withdraw from the Agreement. In addition to withdrawal or abatement, the customer may, in case of any fault of msg, also claim for damages instead of the performance of Services or reimbursement of futile expenses.
- 8.6 The right to withdraw from the Agreement and claim for damages instead of the performance of Services only exists in the case of significant defects, which seriously impair the work results or make their use impossible.
- 8.7 In the case of a justified withdrawal from the Agreement, msg is entitled to demand appropriate compensation for the customer's use of the Services provided until the cancellation of the Agreement.

9 Non-Solicitation and Legal Status of msg Employees

- 9.1 During the term of an Agreement and up to one

year after its termination, the customer may not recruit any of the msg employees deployed to the customer according to the Agreement or offer them employment directly or indirectly without the prior written consent of msg. In case of infringement, the customer shall owe msg a gross annual salary for the respective employee in the sense of a contractual penalty according to article 160 of the Swiss Code of Obligations. In addition, msg is entitled, but not obligated, to terminate without notice due to breach of contract of the corresponding Agreement. The payment of the contractual penalty does not release the customer from the future compliance with the non-solicitation clause.

9.2 msg employees entrusted with the execution of work are in a subordinate relationship to msg. The customer is not authorized to issue instructions to such persons for another reason than operational company organization.

10 Liability

10.1 msg is liable for damages, which the customer has incurred in connection with a warranty claim or other reasons related to the contractual relationship, as long as these damages have been caused intentionally or through gross negligence on the part of msg. msg excludes any further liability for damages, in particular from the non-fulfilment of msg's contractual obligations, as well as for indirect and consequential damages such as loss of profit, interruption of operations, loss of use, claims of third parties or data loss etc.

10.2 Excluded from this limitation of liability is the liability for culpably caused personal injuries and according to the regulations of the law on product liability.

10.3 These limitations of liability also apply to auxiliary persons.

10.4 If a damage is due to both msg's fault and the customer's fault, the customer must allow his contributory negligence to be taken into account. In particular, the customer is responsible for a proper and regular backup of his data.

Insofar, msg is liable for causing data loss through its own negligence, msg shall be liable only for the costs of copying the data from the customer backup file and for the reconstruction of data which would have lost despite customer's regular security back-ups in reasonable time intervals.

This limitation does not apply if the data backup was impeded or impossible due to reasons attributable to msg.

11 Term and Termination

11.1 The Agreement shall commence upon mutual signing of the Agreement or written acceptance of msg's offer by the customer. The Agreement shall last as long as described in the Agreement or as it is evident from the circumstances, or for an indefinite period of time.

11.2 A Agreement concluded for an indefinite period may be terminated by either party by giving three months' notice to the end of a calendar year.

11.3 The right to exercise extraordinary termination for good cause remains unaffected. If reasonable, the terminating party shall grant 30 days' period to cure the breach. In cases where such grace period is not reasonable, either party may terminate with immediate effect by providing written notice to the other party, in particular if the other party is unable to meet its obligations under the Agreement caused due to such party (i) being insolvent, (ii) making an assignment for the benefit of creditors, (iii) having a receiver appointed to administer all or a material portion of its assets, or (iv) filings (or has filed against it) a bankruptcy proceeding which such proceeding is not discharged within sixty (60) days of the commencement thereof.

11.4 Any notice of termination must be provided in writing.

12 Final Provisions

12.1 The customer may not transfer the rights and obligations arising from the respective Agreement to third parties without the prior written consent of msg.

12.2 The customer may only set off claims of msg with claims recognized by msg in writing or with legally binding and enforceable claims.

12.3 This Agreement is subject to Swiss law. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. The Uniform Computer Information Transactions Act as enacted shall not apply.

12.4 Place of fulfilment is Zürich..

12.5 For all legal disputes arising out of or in connection with this Agreement, the parties agree to the exclusive jurisdiction of the Commercial Court of the Canton of Zurich. The parties undertake to make at least one attempt to reach an out-of-court settlement before commencing legal proceedings.

12.6 Amendments and supplements to this Agreement must be made in writing. This also

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applies to any amendments to these GTCs.

- 12.7 Should individual provisions of the Agreement be or become invalid or unenforceable in whole or in part or contain an omission, the validity of the remaining provisions of the Agreement shall not be affected thereby. In place of the invalid, impracticable or missing provision, an appropriate provision shall apply which, as far as legally possible, comes as close as possible to what the contractual partners would have wanted if they had considered this point when concluding the Agreement.

msg global solutions ag
Thurgauerstrasse 39
8050 Zürich