GENERAL TERMS AND CONDITIONS

for operator services in IT
(B2B)

2018 Version

1. General

1.1.   The Contractor shall render the Client with IT services and the operation of hardware and software components subject to the Service Level Agreements (SLAs) attached, which shall form an integral part of these Terms and Conditions.

1.2.   These General Terms and Conditions (T&C) shall apply to all present and future services that the Contractor provides to the Client, even in individual cases, in which no explicit reference is made to the T&C upon conclusion of contract. Terms and conditions of the Client shall only apply should the Contractor agree to these in writing.

2. Scope of services

2.1.   The exact scope of services of the Contractor shall be established in the respective SLA with the Client. Insofar as not otherwise agreed, the Contractor shall perform their services during their usual business hours according to the SLA. The Contractor shall arrange for the performance and availability of the services according to the respective SLA.

2.2.   The appliances and technology used in the rendered services by the Contractor shall be based on the qualitative and quantitative service needs of the Client, as identified by means of the information provided by the Client. Should new needs by the Client require a

change of services and/or of the technology used, the Contractor shall provide a corresponding quote at the request of the Client.

2.3.   The Contractor shall be entitled to change the appliances used in the rendering of services at their discretion, insofar as this does not compromise the services.

2.4.   Additional services performed for the Client by the Contractor, which exceed the agreed scope, shall be paid for by the Client according to actual staff and material costs at the usual prices of the Contractor. This shall particularly include services rendered outside of the usual business hours of the Contractor, the analysis and rectification of incidents and errors caused by improper use or operation by the Client or other circumstances, which cannot be attributed to the Contractor. Additionally, training services shall not be included in the services on principle and shall require a separate agreement.

2.5.   Should the Contractor arrange for third-party services at the request of the Client, these contracts shall only be concluded between the Client and the third party based on the terms and conditions of the third party. The Contractor shall only be responsible for services they themselves render.

2.6.   We expressly indicate that a barrier-free design, as defined by the Federal Law on Equality of Persons with Disabilities (Federal Disability Discrimination Act − *BGStG*) is not included in the quote, unless this was separately/individually requested by the Client. Should a barrier-free design not have been agreed upon, it shall be incumbent upon the Client to check the admissibility of the service with regard to the Federal Disability Discrimination Act.

3. Client obligations of cooperation and facilitation

3.1.   The Client shall undertake to support all measures necessary for the rendering of services by the Contractor. Furthermore, the Client shall take measures, which are necessary for the fulfilment of the contract and are not included in the scope of services of the Contractor.

3.2.   Should the services be rendered on-site on the premises of the Client, the Client shall, free of charge, provide the net components, connections, supply current incl. peak voltage equalization, emergency power supply, floor space for equipment, working spaces as well as infrastructure in the required quantity and quality (e.g. air conditioning) necessary for the rendering of services by the Contractor. In any case, the Client shall be responsible for adhering to the prerequisites requested by the respective manufacturer for the operation of hardware. Similarly, the Client shall provide room and building security, such as protection against water, fire and unauthorized access. The Client shall be responsible for special security precautions (e.g. safety cells) on their premises. The Client shall not be entitled to give employees of the Contractor instructions, regardless of nature, and shall exclusively inform the contact person named by the Contractor about all needs pertaining to the rendering of services.

3.3.   The Client shall provide all information, data and documents necessary for the execution of the order in the form requested by the Contractor, on the fixed dates and at their own cost, and shall support the Contractor in problem analysis and emergency maintenance, the coordination of data processing orders and the coordination of services if requested. Changes in work processes of the Client, which might cause changes in the

services to be rendered by the Contractor for the Client, shall require prior coordination with the Contractor regarding their technical and commercial effects.

3.4.   Unless expressly specified in the scope of services of the Contractor, the Client shall ensure connection to the grid at their own risk and cost.

3.5.   The Client undertakes to handle confidentially those passwords and that log-in information necessary for the use of the services of the Contractor.

3.6.   The Client shall store all data and information given to the Contractor at their premises as well, so that these may be reconstructed at any time in case of loss or damage.

3.7.   The Client shall fulfil their obligations in a timely manner such that the Contractor is not hindered in the rendering of services. The Client shall ensure that the Contractor and/or the third parties commissioned by the Contractor to render services have the necessary   access   to   the   premises   of   the   Client. The Client shall be responsible for the employees of their associated enterprises or third parties commissioned by the Client, which are involved in the contractual fulfilment, such that these assist accordingly in contractual fulfilment.

3.8.   Should the Client not fulfil their obligations of cooperation by the agreed dates or in the agreed scope, the services rendered by the Contractor shall nevertheless be considered as rendered according to contract in spite of possible limitations. Schedules for the services to be rendered by the Contractor shall be postponed to an adequate extent. The Client shall separately reimburse additional expenditures and/or costs hereby incurred by the Contractor at the respective rates of the Contractor.

3.9.   The Client shall ensure that their employees and the third parties affiliated to them handle the appliances and technologies used by the Contractor as well as, if applicable, assets left to the Client with care. The Client shall be liable to the Contractor for any damage.

3.10.   Insofar as no other provisions are agreed upon, facilitation and cooperation of the Client shall be free of charge.

4. Personnel

4.1.   Should any employees of the Client be transferred to the Contractor according to the agreements of the contractual partners, a separate written agreement shall be concluded for this purpose.

5. Change requests

5.1.   Both contractual partners may request amendments to the scope of services at any time ("change requests"). However, a requested change shall include a precise description of said change, the reasons for the change and its impact on the schedule and the costs in order to provide the other party with the opportunity to conduct an assessment. A change

request shall only be binding by means of legally binding signatures of both contractual partners.

6. Impairment of performance

6.1.   The Contractor undertakes to provide services according to contract. Should the Contractor not provide their services by the agreed dates or only deficiently, i.e. considerable deviations from the quality standards agreed upon, the Contractor shall immediately begin to rectify the defects and provide their services in due form, free from defects, within an adequate period, by either repeating the affected services or completing necessary improvements as they deem best.

6.2.   Should the deficiency be caused by facilitation or cooperation of the Client, or by an infringement of the obligations of the Client as stipulated in Clause 3.9, any obligation to rectification of defects free of charge shall be excluded. In such cases, the services rendered by the Contractor shall nevertheless be considered as rendered according to contract in spite of possible limitations. The Contractor shall chargeably rectify the defect at the request of the Client.

6.3.   The Client shall support the Contractor in the rectification of defects and shall provide all necessary information. The Client shall immediately notify the Contractor in writing or by e-mail of any deficiencies that occur. Any additional costs arising from delayed notification in the rectification of defects shall be borne by the Client.

6.4.   The provisions of this Clause shall apply accordingly to possible deliveries of hardware or software products from the Contractor to the Client. The guarantee for such deliveries shall be six months starting from transfer. Section 924 of the Austrian Civil Code "Assumption of Deficiency" shall be excluded by mutual agreement. For any hardware or software products of third parties allocated to the Client by the Contractor, the guarantee conditions of the product manufacturer shall prevail over the provisions of this Clause. Until full payment is made, the Contractor shall retain ownership of all hardware and software products delivered by them.

7. Contractual penalty

7.1. The Contractor shall adhere to the fulfilment steps and/or restoration dates as listed in the SLA according to their priorities. Should the Contractor exceed the deadlines listed in the SLA, the Contractor shall pay penalties to the Client per each exceeded hour commenced until actual restoration (completion) according to the SLA:

The penalties per year mentioned above shall be limited to an amount of 20% of the total fees of the year. Enforcement of further claims for damages shall be excluded, save for cases of wilful or gross negligence.

Should an excess with penalties occur, the Contractor shall be immediately informed thereof in writing.

8. Liability

8.1.   The Contractor shall only be liable to the Client for damage the Contractor verifiably causes in cases of gross negligence. This shall also apply mutatis mutandis to damage caused by third parties brought in by the Contractor. In case of bodily injuries caused by the Contractor, the Contractor shall be liable without limitation.

8.2.   Liability for indirect damage, e.g. loss of profit, costs related to interruptions, data losses or claims of third parties, shall be expressly excluded.

8.3.   Claims for damages shall lapse according to legal provisions, however, at the latest after one year starting from the knowledge of the damage and the person responsible for this.

8.4.   Should the Contractor fulfil work with the assistance of a third party and any guarantee and/or liability claims arise against this third party therefrom, the Contractor shall cede those claims to the Client.

8.5.   Should data backup be expressly agreed upon as a service, liability for the loss of data shall not be excluded, deviating from Clause 8.2, however, restoration of the data shall be limited to a maximum of 10% of the total order sum per case of damage, however, with an overall maximum of EUR 15,000. Further claims for damages and guarantees of the Client than those stipulated in this Contract shall be excluded, regardless of legal basis.

9. Remuneration

9.1.   The remuneration to be paid by the Client and the conditions thereof shall be determined in the contract. Statutory VAT shall be charged additionally.

9.2.   Travel time of the employees of the Contractor shall be considered working hours. Travel time shall be remunerated at the amount of the hourly rate agreed upon. The stated rates shall change according to the flexible price clause in Clause 9.5. Additionally, the Client shall reimburse travel expenses and possible accommodation expenses according to actual costs. Reimbursement of travel and other expenses shall take place upon submission of receipts (copies).

9.3.   The Contractor shall be entitled to make the rendering of services subject to payment of advance payment or the facilitation of other securities of an adequate amount by the Client at all times.

9.4.   Insofar as there are no other contractual agreements, non-recurring remuneration shall be paid after service completion. Continuous remuneration shall be paid quarterly in advance. The invoices issued by the Contractor incl. VAT shall be paid within 14 days of receipt of the invoice without deductions and free of charges. In case of partial invoices, the payment conditions agreed upon for the entire order shall apply by analogy. Payment shall be considered completed on the day upon which the Contractor has this at their disposal. Should the Client fall into payment arrears, the Contractor shall be entitled to charge statutory default interest and all costs necessary to enforce payment. Should the arrears of the Client exceed 14 days, the Contractor shall be entitled to discontinue all services. Furthermore, the Contractor shall be entitled to demand immediate payment of the remuneration for all services provided so far, regardless of any payment terms.

9.5.   Continuous remuneration shall be based on the collective agreement salary for

salaried staff of businesses in the service sector in automatic data processing and IT on the experienced level for special tasks (ST2).

9.6.   The Client shall only be entitled to exercise a set-off with a counterclaim either accepted by the Contractor or legally determined. The Client shall not be entitled to right of retention.

9.7.   The Client shall bear all charges resulting from the contractual relationship, e.g. legal transaction fees or taxes at source.

Should the Contractor be charged such fees, the Client shall indemnify and hold the Contractor harmless.

10. Force majeure

10.1.   Insofar and for as long as obligations cannot be fulfilled in due time or in due form due to force majeure, e.g. war, terrorism, natural disasters, fire, strikes, lockouts, embargos, state intervention, power cuts, cancellation of transport, telecommunication network and/or data lines blackouts, legislative changes after conclusion of contract that have an effect on services, or other unavailability of products, this shall not pose a breach of contract.

11. Right of utilization for software products and documentation

11.1.   Insofar as the Contractor allocates software products to the Client or the Client is enabled to use software products within the framework of services, the Client shall be entitled to the non-exclusive, non-transferrable, not sub-licensable right to use the software in unaltered form for the duration of the contract.

11.2.   For the use of software products in a network, each simultaneous user shall require its own license. For the use of software products on standalone computers, each PC shall require its own license.

11.3.   The license conditions of the respective software manufacturer shall prevail over the provisions of this Clause where the Contractor allocates third-party software products to the Client.

11.4.   Provided that no separate agreement is made, no further rights to software products shall be transferred to the Client.

This shall not affect the rights of the Client as per Sections 40(d), 40(e) of the Austrian Copyright Act.

11.5.   Documents allocated to the Client by the Contractor, particularly software product documents, shall not be copied or in any way distributed in exchange for money or free of charge.

12. Term of contract

12.1.   The contract shall enter into force by means of the signatures of both contractual partners and shall be unlimited. The contract may be terminated by each contractual partner subject to a notice period of six months, however, at the earliest at the end of the minimum term agreed upon in the contract, by means of a letter sent by registered post.

12.2.   Each contractual partner shall be entitled to terminate the contract prematurely and without notice in case of an important reason by means of a letter sent by registered post. An important reason shall particularly be in the event that the other contractual partner violates obligations arising from the contract in spite of a written warning or threat of termination, if the other contractual partner has applied for or has begun insolvency proceedings or if such proceedings have been declined due to insufficiency of assets or the services of the other contractual partner will be hindered or impeded for more than six months due to force majeure.

12.3.   Furthermore, the Contractor shall be entitled to prematurely terminate the contract, should crucial parameters of service provision have changed and the Contractor therefore cannot be expected to continue the services for economic reasons.

12.4.   Upon termination of contract, the Client shall immediately return all documents and files received from the Contractor.

12.5.   Upon termination of contract, the Contractor shall support the Client upon request in returning the services rendered to their previous state to the Client or a third party named by the Client at the cost of the effective hourly rates of the Contractor.

13. Data protection / confidentiality

13.1.   The Contractor shall adhere to the regulations of the Austrian Data Protection Act, the GDPR and the Austrian Telecommunications Act regarding the handling of personal data and shall take the technical and organisational measures necessary for data protection in their area of responsibility.

The Contractor, and in particular their employees, undertake to fulfil the provisions stipulated in Section 6 of the Austrian Data Protection Act.

13.2.   The data privacy statement as defined by Section 13 and 14 GDPR and the data processing agreement as defined by Section 28 Para. 3 GDPR shall be attached to the order.

14. Non-disclosure

14.1. Each contractual partner shall guarantee the respective other to treat any operational secrets they learn from the other in relation to this contract and its completion as secrets and to not disclose these to third parties, unless these secrets are generally known, were known by the recipient prior to the obligation of non-disclosure, the recipient was informed about these by a third party without non-disclosure obligation,

the recipient verifiably developed these on their own or these have to be disclosed due to a legally binding decision of authorities or a judge.

14.2.   The sub-contractors affiliated with the Contractor shall not be considered third parties insofar as these are subject to a non-disclosure agreement that conforms to this Clause.

15. Miscellaneous

15.1.   The contractual partners shall name knowledgeable and competent employees who may make or prompt the necessary decisions.

15.2.   The Client shall not themselves or via third parties headhunt employees working for the Contractor in the provision of services during the term of contract and for a year after termination of contract. The Client undertakes to pay a contractual penalty to the Contractor in case of infringement, to the amount of twelve times the most recent monthly gross salary of the employee concerned, however, at least the salary of salaried staff of businesses in the area of services in automatic data processing and IT at the experienced level for special tasks (ST2) according to the collective agreement.

15.3.   Any alterations and amendments to this contract shall be made in writing. This shall also apply to the cancellation of this form requirement.

15.4.   Should individual clauses of the contract be or become invalid or not feasible in full or in part, the other clauses shall be and shall remain valid. The invalid or non-feasible clause shall be replaced with a valid one, the intention of which comes as close as possible to the meaning and economic purpose of the invalid one.

15.5.   Every ordinance made pertaining to the rights and obligations according to this Contract shall be subject to the prior written consent of the respective other contractual partner. Albeit, the Contractor shall be entitled to transfer the contract to an affiliated enterprise even without the consent of the Client.

15.6.   Unless something else has been agreed upon, the legal provisions in terms of Austrian law for contracts between businesses exclusively apply, even in case the mandate is implemented abroad. The local jurisdiction of the objectively competent court for the place of business of the Contractor shall be exclusively agreed upon for possible disputes.

The court of jurisdiction shall be explicitly agreed upon again in the contractual agreement with the Client.

The Austrian Professional Association for Consulting and IT recommends the following mediation clause as a pro-business method of dispute resolution:

In the event that any disputes, which cannot be solved by mutual agreement, arise from this contract, the parties to the contract agree to engage a listed mediator (Austrian Civil Rights Mediation Law (*ZivMediatG*) specialized in business mediation from the list of the Austrian Ministry of Justice in order to reconcile these out of court. Should no mutual agreement regarding the selection of the business mediator or with regard to content be

possible, legal measures shall be initiated no sooner than one month after the negotiations fail.

In the event that mediation could not be held or was discontinued, any litigation initiated shall be subject to Austrian law.
As agreed, all necessary costs incurred due to previous mediation, particularly for legal advisors consulted, may be claimed in litigation or arbitration as "pre-trial costs".

The above terms and conditions are only to be seen as template to create terms and conditions. The provisions thereof are suggestions, which may be deviated from in individual cases. Should a specific contract provide otherwise, it is generally helpful to clearly point out which clause of the terms and conditions is altered by the contractual agreement in order to avoid misunderstanding (e.g. 'This regulation replaces Clause X. of the T&C'). Use of the template shall not replace accompanying legal counsel.

Cloud services

These services shall be considered similarly to those of conventional outsourcing of IT services for users of cloud services. Hence, cloud services shall contain agreements also common to a classic IT outsourcing contract. A catalogue with recommended contractual elements required in the general terms and conditions (T&C) or service level agreements (SLA) of cloud service businesses can be found at: www.ubit.at in the category 'Berufsgruppe IT-Dienstleistung/Checkliste für Cloud-Verträge'.

Validity of T&C

In general, contractual agreements shall prevail over clauses from T&C. Furthermore, T&C only become part of a contract if this is (verifiably) agreed upon, ideally in writing. At the same time as (prior to) conclusion of the contract, the T&C must be communicated to the client. Communication of the T&C after conclusion of the contract shall be principally ineffective with regard to invoices, delivery notes and the like. Disadvantageous, unusual and surprising clauses in T&C, as well as clauses the client should not have to expect according to the circumstances of the contract and the layout of the document, shall not form subject matter of the contract unless the client has expressly (verifiably) been notified of this. License holders who use T&C on a regular basis must display the T&C in areas frequented by their customers.

Should both client and contractor refer to the validity of their respective T&C, this shall result in dissent insofar as the T&C contradict one another; in principle regardless of Clause 1.2. Most often, the contract will nevertheless be concluded because the contractual partners agree/agreed on the most important clauses of the contract (normally: performance and price), meaning only those clauses that contradict each other

are invalid (partial invalidity). Those items that are not governed by the contract shall then be determined by legal provisions or complementary interpretation. Nevertheless, in order to ensure the validity of the T&C as far as possible, the T&C contain the 'defence clause' stipulated in Clause 1.2.

Liability

The contractor shall only be liable for gross negligence to the client, except for bodily injuries.

Remuneration

The remuneration agreed upon with the client shall be stated in the contract. Remuneration shall be due once an invoice is issued by the contractor. Cash expenditures and charges shall be reimbursed by the client upon submission of receipts.

Data protection and confidentiality

The responsible person, processors and their employees shall keep personal data from data processing, with which they were entrusted or to which they gained access only due to their professional work, confidential, notwithstanding other statutory non-disclosure obligations, insofar as there is no other legally admissible reason for transmission of the personal data, which was entrusted or became accessible (data secrecy). Employees are to be instructed about this and about possible consequences in case of violation.

Due to the changes caused by the EU General Data Protection Regulation and the Austrian Data Protection Adjustment Act 2018 (DSG), directly including further data protection clauses in the T&C is not recommended, but rather providing a supplement. Written consent necessary where applicable with regard to data protection shall be obtained properly and obligations of information shall be fulfilled in a timely manner and in full.

Additionally, data processing agreements are to be concluded, should data be processed for the client in the order (which may be assumed in this industry). Samples and further information can be found at: www.wko.at/datenschutz and at: www.ubit.at.

N.B.: As per the nature of works contracts, the contractor is entitled to have other independent third parties substitute them in order to fulfil the contract. This differs from the use of in-house auxiliary persons (e.g. salaried staff of the contractor) attributable to the contractor in any case.
From the perspective of data protection, however, you must agree with the client on passing on data to a sub-contractor within an order. This can be provided in a data processing agreement or in a separate agreement.

Miscellaneous

The place of jurisdiction shall be explicitly agreed upon again in a contractual agreement with the client.