

## **1 Application and scope**

- 1.1 Companies of the Alpiq InTec Group (the respective company hereinafter referred to as AIT), as ICT companies, offer their final customers, hereinafter referred to as customers, a wide range of services and products relating to information and communications technology.
- 1.2 These General Terms and Conditions (hereinafter referred to as T&C-ICT-Services) regulate the rights and duties in the relationship between AIT and its customers. They apply to all business relationships between AIT and its customers relating to IT & TelCom. For all other services and deliveries by AIT, AIT's general terms and conditions (T&C) apply if nothing further has been agreed in advance or after the fact in writing.
- 1.3 The customer's business terms are only used if and to the extent to which AIT expressly accepts them in writing and they do not contradict AIT's T&C-ICT-Services.
- 1.4 All subsidiary agreements, changes and additions to this contract must be in written form to be legally effective.
- 1.5 If individual provisions are or become ineffective or invalid this does not affect the validity and effectiveness of the other provisions. In such a case the invalid provision is to be interpreted or supplemented to achieve the intended purpose of the provision as closely as possible.
- 1.6 Changes are notified to customers using circulars or in another appropriate form and come into force one month after written notification to customers.
- 1.7 "Products" are the software, hardware and services offered and sold by AIT.

## **2 Ordering, delivery and transfer of the products**

- 2.1 Orders can be made in writing (fax or letter) or electronically.
- 2.2 The relevant order confirmation is key to deciding the scope and execution of the delivery. This is subject to availability and the ability of the manufacturer to deliver the products.
- 2.3 The delivery deadlines stated by AIT are only to be viewed as guidelines without an express written assurance to the contrary. The delivery deadline is stated in good faith but without liability. This applies in particular to delayed deliveries, e.g. due to bottlenecks at the manufacturer.  

If a delivery is delayed after a delivery date assured in writing by AIT, a customer may consider AIT to be in default after an additional period of at least three weeks set in writing and may withdraw from the relevant order after setting an appropriate additional period. In this case AIT is only liable to the customer for direct and immediate damages if and to the extent to which the delay or impossibility of delivery is proven to be the result of a gross contractual infringement by AIT.
- 2.4 For delivery problems resulting from circumstances over which AIT has no influence, such as strikes, lock-outs, missing materials, transport or operational blocks by the manufacturer or transport problems, AIT is entitled to annul the order.
- 2.5 Changes to the order or annulments desired by the customer must be sent to AIT in written form. AIT may charge the customer for any costs already incurred.
- 2.6 AIT is permitted to make partial deliveries.

## **3 Acceptance and checking**

- 3.1 The customer is obliged to check the correctness and completeness of products and services delivered by AIT immediately after delivery or collection and to notify AIT in writing of any damage, faults or complaints without delay after discovery, at the latest 10 days after delivery or collection.
- 3.2 All guarantees and other claims by the customer lapse if the notification is not provided in time unless the damage or fault was not recognisable during the inspection of the goods received.

## **4 Transfer of possession and risk**

- 4.1 Possession and risk are transferred to the customer with the products.
- 4.2 If the customer does not collect the products in good time the products are stored at the customer's risk and expense for five days before being sent on to the customer.

## **5 Returning products**

- 5.1 The return of products by the customer requires the prior consent of AIT and is done at the expense and risk of the client. The products must be returned in the original packaging and with an enclosure providing a detailed description of the errors/faults and proof of purchase. It is not permitted to return software that has been opened.
- 5.2 AIT reserves the right to return products with missing, defective or marked original packaging or those that are not in perfect condition to the customer at their expense and risk. If the products are returned without a description of the fault AIT may locate the fault at the expense of the customer (minimum charge of 1 hour).
- 5.3 The processes agreed between AIT and the manufacturer always apply.

## **6 Prices**

- 6.1 The prices for AIT products and services are understood as net in Swiss francs (CHF), excl. VAT, customs-paid and ex AIT's location. Subsidiary costs, such as the costs of packaging and shipping (freight/transport), are not included in the prices and, along with value added tax, will be charged to the customer. Unless otherwise agreed accessories are not included in the price. Support services are not included in the product's price and are invoiced to the customer separately and as incurred in line with the rates set in the valid service price list or special agreement.
- 6.2 The prices of products and subsidiary prices are always charged in line with the price list at the time the order was confirmed. If AIT receives assurances from the manufacturer or supplier about passing on price reductions to the customers the prices at the time of delivery or transfer of the products apply. This applies in reverse for price increases by the manufacturer or supplier.

## **7 Terms of payment**

- 7.1 If no other written agreement is in place, all AIT invoices are due for payment net on the 30th day after the invoice date to the bank account stated. After this period the customer is in arrears without a reminder being issued. AIT may assert default interest of 10% p.a.
- 7.2 If the customer is in default AIT is entitled to stop all other services to the customer in full or in part without additional notification until its invoices have been paid or satisfied. All consequences from such a delivery stop are exclusively borne by the customer.
- 7.3 If the customer then does not pay or satisfy its debts within a period subsequently set by AIT, AIT is entitled to refuse all additional services to the customer and to assert a claim for damages. In addition, AIT is also entitled to act pursuant to the general legal regulations of the Swiss Code of Obligations (OR).
- 7.4 All claims by AIT, including those for which instalment payments have been agreed, become due immediately if (a) the customer repeatedly does not comply with the payment terms or (b) at the request of AIT does not provide the necessary security to remove AIT's justified doubts about its liquidity/ability to pay, e.g. for collections or other signs that the customer has payment difficulties.  

The customer has the obligation to inform AIT if it can predict liquidity problems.

7.5 At the request of AIT the customer will assign to AIT its claims on final customers from the sale of the products delivered by AIT in place of payment (Art. 172 OR).

7.6 Cheques are only accepted by AIT for payment after prior special written agreement and under the conditions that all costs and fees are paid by the customer.

## **8 Offsetting/retention right**

8.1 The customer is not entitled to offset any claims by AIT against counter-claims.

8.2 Any retention or return right by the customer to AIT's items does not apply.

8.3 The customer is obliged to pay the invoice no matter whether the products can be supplied for sale on to a final customer, invoiced or collected.

## **9 Reservation of title**

9.1 The products delivered by AIT remain the property of AIT - even in the customer's sphere of influence - until AIT receives full payment of the purchase price in line with the contract.

AIT is entitled to register reservation of title pursuant to Art. 715 CC (ZGB) up to this time in the reservation of title register at the customer's location.

The customer is obliged at the request of AIT to give his written agreement to the entry of the reservation of title for all the points that are important for the entry (cf. Art. 4 Para. 4 of the Federal Court's regulation).

9.2 As long as the purchase price has not been paid in full the customer is obliged to maintain the products delivered by AIT treat them carefully and insure them against the usual risks.

## **10 Warranty**

10.1 The responsibility for selecting, configuring, deploying and using the products as well as the results achieved by them is with the customer or recipient of the products, i.e. the final customer. The customer is aware that AIT does not inspect products received from manufacturers and suppliers.

10.2 The warranty offered by AIT for the products it delivers is in all regards determined by the warranty provisions of the relevant manufacturer or supplier. AIT's sole duty is in assigning all of its own warranty claims against the manufacturer/supplier to the customer.

10.3 The customer recognises that as a result of the relevant applicable warranty terms, the warranty may be restricted at the choice of the manufacturer/supplier to subsequently improve or exchange the defective/faulty products and also only applies if the products remain in Switzerland or the Principality of Liechtenstein.

10.4 In addition, the customer acknowledges that in all cases a fault only exists if this is notified in detail and in writing to AIT immediately after discovery and includes a relevant, reproducible fault. Liability is in particular excluded for faults that are due to one of the following reasons:

- Improper maintenance
- Not complying with operating and installation regulations
- Improper use of the products
- Use of unapproved parts and accessories
- Natural wear
- Transport, improper handling or treatment
- Modifications or attempted repairs
- External influences, in particular force majeure (e.g. power supply or air conditioning failure, damage from elements) and other reasons for which neither AIT nor the manufacturer/supplier are responsible.

Warranty services not covered by the manufacturer/supplier and additional costs caused by the customer will be charged to the customer. If the error description is missing or incomplete the fault is located by AIT at the customer's expense.

10.5 In all cases, the customer will adhere to the processes defined by the relevant manufacturer/supplier when processing any warranty services.

## **11 Liability**

AIT is liable for direct damage that AIT has culpably caused in the fulfilment of the contract up to a maximum amount in total of CHF 1,000,000.00 (one million Swiss francs). Any further liability for damage of any kind, irrespective of the legal grounds for this, is

waived to the legally permissible extent, such as in particular the liability for indirect damage, consequential damage, unforeseeable damage and purely financial damage (e.g. shortfalls in turnover, loss of earnings, non-achievement of savings, recourse claims, etc.). The liability for personal injury remains unrestricted. The right of rescission is excluded in all cases.

## **12 Patents and other protective rights**

If a third-party makes or asserts claims against the customer or its final customers as a result of the infringement of patents, copyrights or other commercial protective rights by the products supplied or operated by them, the customer will notify AIT of such infringement notifications or claims in writing and without delay. AIT will pass on such notifications without delay to the supplier or manufacturer and request them to rectify the situation. The customer waives all claims for warranties or liability against AIT.

## **13 Re-export**

The products sold by AIT are subject to the relevant export conditions of the originating countries and Switzerland. The customer is obliged to obtain a special export licence from the responsible authority (currently the Department for Import and Export at the Federal Economic Department) before the products are re-exported. This obligation is transferred if the products are sold or otherwise transferred to the relevant purchaser with the obligation to bind future owners.

## **14 Software programs**

14.1 The usage and warranty terms relating to software products, programs, manuals and other documents delivered by AIT depend on the special conditions of the relevant software manufacturer that in particular are included in the software license contract between the software manufacturer and user/final customer.

14.2 The customer is obliged to transfer the obligations from the software manufacturer's usage and warranty terms if the software products are sold on or otherwise transferred to the owner with the obligation to bind future owners.

## **15 Manufacturer reporting, data protection**

15.1 The customer acknowledges that AIT processes customer data, such as the sales prices and quantities as well as the names and addresses of customers, and passes these on to manufacturers / suppliers as part of the periodic, so-called manufacturer reporting process.

15.2 The customer also agrees to AIT processing customer data for the purpose of checking the customer's creditworthiness and notifying loan insurance companies appointed by AIT of this.

## **16 Transfer**

The customer may only transfer the rights and/or duties from individual contracts (deliveries, services) with the prior written approval of AIT.

## **17 Court of jurisdiction and applicable law**

***The sole place of jurisdiction is the registered office of AIT.*** However, AIT is also entitled to take legal action against the customer at the place where he has his registered office.

The legal relationship shall be exclusively governed by material Swiss law. The provisions of "the Vienna purchasing law" (CISG) and the conflict of law rules of the Swiss Federal Act on International Private Law are expressly excluded.