

# General Terms and Conditions

(valid from December 1, 2010)

## 1 General Information

- 1.1. ISPIN AG render their services and Products, in particular those specified in chapter 2, based on the following General Terms and Conditions (GTC), which also apply to all future business relations even if they are not again expressly agreed on. Any Customers' acknowledgements referring to their own General Terms and Conditions are hereby rejected.
- 1.2. These GTC are considered to be accepted by the Customer as soon as ISPIN AG submit an offer.
- 1.3. Deviations from the GTC are only legally binding if accompanied by an explicitly written acknowledgement with an authorized signature from ISPIN AG.
- 1.4. Employees and subcontractors of ISPIN AG are not authorized to make additional oral agreements and warranties that exceed the requirements of the respective contract or these GTC.
- 1.5. At any time, ISPIN AG is authorized to modify these GTC including all their appendixes such as user instructions, specification of services etc. The current GTC are apparent on the homepage of ISPIN AG.

## 2 Terms and Definitions

The Supplier	ISPIN AG and their employees
Products	Services, consulting services, know-how, documents, offers, documentations, concepts, methods, procedures, designs, outlines, samples, software, data, data medium, source-code, patents, licenses, etc.
Customer	Client and user of the supplied Products.

## 3 Offer

- 3.1 Without any other reference to the Customer's inquiry, the offer, including the demonstration of Products, is executed free of charge.
- 3.2 The Supplier has to inform the Customer of any deviation between the offer and the Customer's inquiry.
- 3.3 If not otherwise agreed in written form, the offer is valid for 30 days effective from the date the offer was made.
- 3.4 All documents and samples delivered with the offer remain the property of the Supplier.
- 3.5 Without the Supplier's consent, third parties are not allowed to see the offer or any corresponding documents. It is particularly forbidden to pass the offer and other respective documents to any of the Supplier's competitors.
- 3.6 Specifications denominated as benchmarks by the Supplier are not binding and only form an estimate of the scale of the Product.
- 3.7 Up to the time the contract is signed and/or up to the time the written acceptance of the offer is received, the contractual parties can withdraw contract negotiations without financial consequences.

## 4 Conclusion of the Contract

- 4.1 To conclude the contract, it is necessary to have the contract countersigned by the Supplier or receive the Customer's written acceptance of the order. Should the content of the offer confirmation deviate from the Customer's original enquiry, the Supplier's confirmation in writing, accompanied by a legally valid signature, will be required to make it legally binding.
- 4.2 The conclusion of the contract may be subject to a guarantee or advance payment.
- 4.3 Should the Supplier use the services of third parties, the latter will not be contractual partners of the Customer.

## 5 Time of Performance

- 5.1 The Supplier commits to supplying the agreed Products at the times specified in the offer confirmation. At the same time, the Customer commits to accepting and paying such agreed Products at the time specified.
- 5.2 Only fixed dates confirmed in writing are legally binding. Deadlines may be extended if:
  - a) Information necessary for the performance of the contract is not received on time or has subsequently been modified by the Customer;
  - b) The Customer is in arrears with their deliverables or their contractual duties, especially if agreed payment terms are not met;
  - c) Circumstances for which the Suppliers are not responsible, such as natural disasters, general mobilization, war, riots, epidemics, accidents and diseases, occur and result in considerable disruption of operations, industrial conflicts, delayed or incorrect supply, as well as regulatory sanctions.
- 5.3 The Supplier may execute part-delivery.
- 5.4 In case of delays, Customers are to allow the Suppliers an appropriate extension of the deadline for later fulfillment. If the Supplier is not able to meet their obligations within the stated extension, Customers are authorized to notify the Supplier within 30 days, that they will waive their right to any additional services or withdraw from the contract. Further claims based on the delay of deliveries, will not be met.

## 6 Scope of Delivery and Fulfillment

- 6.1 The scope of delivery and its fulfillment is determined by the offer confirmation.
- 6.2 Supplementary orders, special requests or requests for modifications by the Customer have to be analyzed by the Supplier within two working weeks. The Supplier will decide whether such changes are possible and what would be the consequences regarding the scope of delivery, time of performance and costs.
- 6.3 However, the Supplier is not obliged to accept any such supplementary orders, special requests or requests for modifications.

## 7 Place of Delivery/Transfer of Risk

- 7.1 If not otherwise agreed, the place of delivery will be on site at the Supplier's location.
- 7.2 The benefit and risk of any Products will be transferred to the Customer at the place of delivery.

## 8 Payment

- 8.1 The Supplier will deliver their Products at the costs agreed. If the costs are not previously agreed, the Customer has to pay any of the Supplier's expenses, costs etc. based on the current rate of remuneration agreements. Products are calculated according to the price at the time the order was placed.
- 8.2 If not otherwise agreed, any expenses, costs, fees etc. are calculated in Swiss Francs, excluding VAT, any duties, taxes, freight charges, package costs, installation and commissioning costs, expenses for support, training and insurances.

- 8.3 If not otherwise agreed, services rendered outside official office hours include the following surcharges on the hourly or daily rates:
  - a) Monday to Friday before 7:00 am and after 7:00 pm +25%
  - b) Saturday, midnight to midnight +25%
  - c) Sunday, midnight to midnight +50%
- 8.4 Invoiced services are payable within 10 days of the invoice date. The Supplier may define shorter terms of payment for specific Products.
- 8.5 If not otherwise agreed, the Supplier is authorized to impose advance payment up to 50% of the total price as well as accept part payment amounting to the value of the delivery provided so far.
- 8.6 The Customer may declare set off against claims from the Supplier only with the Supplier's written consent or by providing a legally binding court decision.
- 8.7 If there is an undue delay in payment, delinquency interest in the amount of 8% per annum will be invoiced without previous reminder.
- 8.8 The Suppliers' Products will stay their property until full payment is effected by the Customer. Furthermore, the Supplier is authorized to withdraw from agreed deliveries and to reclaim all delivered Products. Finally, the Supplier is also authorized to protect their Products against the right of retention.
- 8.9 The Suppliers reserve the right to make further indemnity claims:

## 9 Duty of Supplier

- 9.1 The Supplier has to deliver their Products in good quality and with reasonable care.
- 9.2 The Supplier has to select their employees with care and ensure they are well educated, as well as adequately supervise their further education and their professional operating principles.
- 9.3 The Customer is authorized to obtain a monthly report on the project status. On the Customer's request, the Supplier provides the names of the employees involved as well as their role in the project.

## 10 Duty of Customer

- 10.1 If necessary, the Customer makes suitable workspace and hardware available. The Customer shall also grant admission to the relevant premises.
- 10.2 The Customer shall provide the Supplier with all the relevant, current Products necessary to fulfill the contract.
- 10.3 The Customer has to select their project members with care and ensure they are well educated, as well as adequately supervise their further education and their professional operating principles. On the Supplier's request, the Customer provides the names of the employees involved as well as their role in the project.
- 10.4 The Customer duly allocates the necessary staff in order to test and approve applications. They must also be provided with the necessary education and training regarding the specific Products. Furthermore, the Customer has to make the necessary equipment available in due time. He shall also be concerned about supervising their tasks and will be jointly responsible for achieving a correct and convenient contract delivery.
- 10.5 Furthermore, the Customer will:
  - a) Pay the fees and all the expenses agreed on in due time;
  - b) Not dispose the Supplier's Products improperly and refrain from committing any illegal acts.
  - c) Comply with legal and regulatory terms and provisions. The Customer will also provide the necessary permissions from the authorities;
  - d) Comply with relevant principles of data security, especially storing and keeping passwords secret and changing passwords or initiating specific modifications immediately if unauthorized third parties are suspected of having gained access to the relevant passwords;
  - e) Notify the Suppliers of recognizable defects or damages (incidents);
  - f) Take all reasonable measures to detect such incidents and their reasons or to redress them as fast and easily as possible.

## 11 Warranty and Statement of Complaint

- 11.1 The Supplier guarantees to act with due care and accuracy and to deliver Products whose properties meet the written agreement. Even if the Supplier performs accurately, the Customer is aware that software development and consulting is not always 100% error free.
- 11.2 The Supplier will not be liable for defects, such as natural wear and tear, acts of God, inappropriate handling by the Customer or any third party, other interferences by Customer or any third party, overuse, inappropriate resources, unpredictable extreme environmental incidents etc.
- 11.3 The Supplier does not guarantee and will not be liable in case of the Customer's negligence, especially if the Customer or any third party has modified or applied the Product without authorization.
- 11.4 The Supplier does not guarantee and will not be liable for damages arising from Customer's violation of contractual obligations nor for damages arising from operational tests or data recovery. The Supplier will under no circumstances accept liability for consequential damages, loss of profit or data etc.
- 11.5 All the above limitations regarding guarantee and liability also apply to any subcontractors of The Supplier.
- 11.6 Provided the relevant properties were written and agreed in the contract but the Supplier did not perform accurately, the Supplier will eliminate the defects as long as the Customer is able to properly document them.
- 11.7 The contracting parties will agree on the modalities of delivery and acceptance procedure. If no modalities are agreed, the Customer has to verify all the Supplier's Products themselves. The Supplier has to be properly notified of any defects in writing.
- 11.8 The Supplier has to be notified by the Customer within two working weeks otherwise the delivered Products are deemed free of defects and approved by the Customer.
- 11.9 The Customer is obliged to pay in due time even if an agreed acceptance procedure has been delayed for reasons not within the Supplier's liability.
- 11.10 Periods of warranty as well as limitation periods will not be interrupted if defects are acknowledged or remedied.
- 11.11 Any further claims regarding liability and guarantee will not be accepted.

## 12 Duty to Supply Information

- 12.1 The contracting parties will duly point out special technical requirements, as well as legal, regulatory and other standards valid at the final location if they are of importance for the correct execution of the Products.
- 12.2 Moreover, the contracting parties will duly inform each other of obstacles preventing the fulfillment of the contract or leading to inappropriate solutions.

## General Terms and Conditions

### 13 Intellectual Property Rights

- 13.1 With the exception of agreed rights of use, the Supplier or licensor generally owns all the intellectual property rights including industrial property rights, patent and intellectual property rights as well as exploitation rights and rights of modification regarding the delivered Products. Unless otherwise agreed, the Supplier also owns the source code.
- 13.2 Products, in particular ideas, concepts, methods, practices and patent rights on inventions which have been developed or created by the Supplier during the completion of the contract belong to the Supplier exclusively.
- 13.3 With due regard to confidentiality, the Supplier will have the right to use the result of a working process or its copy or modifications for advertising and/or other projects.
- 13.4 In particular and in addition to paragraph 13.1–13.3 the following applies:
- If not otherwise agreed in written form, the Supplier will transfer the unlimited, not exclusive right of use connected to the Products developed by the Supplier within the scope agreed to the Customer free of charge;
  - The right of use is given to the Customer exclusively; however, they are not allowed to resell or rent it to any third party for any use possible;
  - If not otherwise agreed in written form, the Customer does not have any right of use until they have completely paid for the negotiated Products;
  - Regarding paragraph 13.2, any Products developed by the Supplier will stay the intellectual property of the Supplier;
  - The Supplier's software is protected by intellectual property rights. The Customer is allowed to use the software but not to make copies, allow any third party to use it, modify it nor make the source code available to any third party;
  - Regarding the software, the provisions of the Supplier's, i.e. the manufacturer's, license agreement are exclusively valid. Any multiple right of use requires a special agreement in written form.

### 14 Intellectual Property Rights of 3rd Parties

- 14.1 The Customer has to accept that written information about the Supplier's Products and their company name are protected.
- 14.2 Both parties guarantee that any Products used or ceded for use in a business case do not compromise any intellectual property rights of a third party.
- 14.3 Nevertheless, if a third party raises a claim regarding a breach of their intellectual property rights, the Customer will immediately inform the Supplier in writing. Without prior consent of the Supplier, the Customer must not start any material legal proceedings. On the Supplier's request, the Customer will assign the Supplier to conduct the case including the negotiation of settlements.
- 14.4 If any right of use connected to a subject in the contract is prohibited by a court of law or if, in the Supplier's opinion, there might be a future claim regarding intellectual property rights, the Supplier has the following choice:
- To modify the relevant Product in order not to breach any intellectual property rights;
  - To procure the right to use the relevant Product for the Customer;
  - To substitute the relevant Product with a similar Product, which does not breach any intellectual property rights and yet complies with the Customer's request;
  - To retract the relevant Product and refund any fees paid by the Customer, less an adequate amount for using the Product and for the connected depreciation;
- 14.5 The above obligations are not valid if the intellectual property rights are breached by the Customer's modifications to the relevant Product or by using the Product together with equipment not delivered by the Supplier. If a party is responsible for the infringement on any intellectual property rights, they are held liable and shall make compensation for any intellectual or material damage.

### 15 Confidentiality

- 15.1 The contracting parties will disclose all confidential and proprietary information (the „Confidential Information“) to each other. Confidential information includes all data, materials, Products, technology, computer programs, specifications, manuals, business plans, software, marketing plans, financial information, and other information disclosed or submitted, orally, in writing, or by any other media, to the recipient by the other party. The recipient agrees that the Confidential Information is to be considered confidential and proprietary to the other party and that the recipient will hold the same in confidence. The recipient also agrees that they will not use the Confidential Information other than for the purposes of their business with the other party nor disclose it to unauthorized third parties.
- 15.2 The contracting parties will disclose such Confidential Information within their company only to employees involved in the relevant business. These employees are bound by the same rules of confidentiality.
- 15.3 The contracting parties will not use such Confidential Information for their own profit or the profit of any third party. If not otherwise agreed, they will also not use them for research or development purposes.
- 15.4 Although the parties are permitted to use general insights gained from the collaboration, they must not use the collaboration or any of its results for promotional or scientific purposes unless given prior written consent by the other contract party.
- 15.5 The obligations regarding confidentiality are effective from the date the contract is concluded as well as after the termination of the contract.
- 15.6 The obligations regarding confidentiality are not effective
- If the informant has no verifiable interest in maintaining the confidentiality;
  - If the recipient has been aware of the relevant information prior to its disclosure;
  - If the information is generally known and public.
- 15.7 An infringement on these regulations entitles the other party to claim for a contract penalty amounting to CHF 50000.00 for each violation of the regulations unless they are able to prove their innocence. Paying the damages does not exempt the party concerned from complying with the confidentiality rules in future. Any claims based on subsequent damages remain applicable.

### 16 Headhunting Employees

- Either party may not enlist, employ or make use of any services of the other Party's employees without written consent. Any Party violating this agreement is obliged to pay a compensation (costs of recruiting and introduction etc.) at the value of half the annual wage of the relevant employee for each breach, but no less than a contract penalty of CHF 50000.00 Furthermore, the Party concerned reserves its right to claim further indemnification.

### 17 Non-Competition Clause

- 17.1 For the term of this agreement and three years after its expiry, either party may not compete against the other in its original business area without written consent. The non-competition clause applies to the entire territory of Switzerland.

- 17.2 The parties will aim at reaching their decisions by mutual agreement.
- 17.3 In the event of one party breaching the above non-competition clause, this party is obliged to pay a contractual penalty of CHF 50000.00 for each infringement. The payment of the penalty does not exempt the party concerned from complying with the non-competition clause in future. Even in the event of the penalty being paid, the elimination of any breach of contract as well as the recompense for further warrantable damages may be required.

### 18 Liability

- 18.1 In the event of property or personal damage, the Supplier will only assume limited liability within the scope of their liability insurance if the damage occurred through gross negligence or willful default on the part of the Supplier or by any of their subcontractors.
- 18.2 The Supplier's liability for financial loss and consequential damages – insofar as legally permissible – is excluded.

### 19 Scope of Validity and Termination

- 19.1 These General Terms and Conditions (GTC) apply to all Products. These GTC can be terminated by each contracting party at the end of the following month. However, the GTC will remain valid regarding already delivered and agreed Products.
- 19.2 If the Supplier has not agreed to deliver or produce a fully functional system or Products, the Customer is allowed to revoke the order as specified in the mandate law and the Supplier shall hold the Customer harmless, especially in the amount of compensation and benefit.

### 20 Conditions for Support

- 20.1 Unless otherwise, i.e. in a separate support agreement or in this section, defined, the current GTC apply.
- 20.2 If not defined in another agreement, support services are performed on the Supplier's premises. For necessary assignments on the Customer's premises, the provisions made in a respective support agreement apply.
- 20.3 Should the Supplier perform any support services without a prior support agreement, they will be invoiced separately for each month unless a respective support agreement is agreed retrospectively. In principle, ISPIN AG's current estimation of service costs or any other applicable payment agreements apply.

### 21 Applicable Law

- 21.1 Swiss Law shall exclusively apply to this contractual relationship to the exclusion of the Vienna Sales Contract Law (United Nations Convention on Contracts for the International Sale of Goods, signed in Vienna on April 11, 1980).
- 21.2 If not otherwise agreed, the provisions of Article 394ff OR (civil law, part 5) are applicable.
- 21.3 Subject to mandatory places of jurisdiction under federal law, the exclusive place of jurisdiction – with the exception of 21.4 – for all disputes arising from this contractual relationship is the domicile of ISPIN AG.
- 21.4 The Supplier is also allowed to claim at the Customer's domicile.
- 21.5 **The Customer herewith expressly declares to accept the before mentioned place of jurisdiction.**

### 22 Final conditions

- 22.1 If any of the terms contained in these GTC is held to be invalid or unenforceable by a court of competent jurisdiction, any remaining terms contained in these GTC will remain in full force and effect as if such invalid or unenforceable terms had never been included.
- 22.2 In case of any misunderstandings and disputes, the contracting parties will make any reasonable effort to reach an amicable settlement before bringing said disputes up before court.