

# AGB/IT

## **General Terms and Conditions of the members of the Austrian Airlines Group**

### **for the Purchase of IT Services**

hereinafter referred to as  
**AGB/IT**

(Valid from 15.10.2023)

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## 1. Scope and Object

- 1.1. These General Terms and Conditions of Business for the Purchase of IT goods and services (subsequently referred to in this text as 'AGB/IT') apply to the initiation of, and in addition to, contracts of all types governing the provision of IT goods and services for the Austrian Airlines AG (subsequently referred to in this text as the 'Principal') including:
- Programming and maintenance of application software;
  - Licensing of software;
  - Data centre operation;
  - Support and consulting;
  - Preparation of concepts;
  - Licensing, installation and maintenance of hardware;
  - Communication services.
- 1.2. The AGB/IT are binding for all current and future business transactions between the Principal and the supplier ("Supplier"), even if – for example, in oral orders and orders by telephone – no explicit reference is made to the AGB/IT. The Supplier accepts these conditions – if not in any other way – through delivery of the goods or provision of the services.
- 1.3. Principal and Supplier agree that the supplies and services are purchased from Supplier not only for use in Principal's own company, but also, to the same extent and under the same conditions, for use by undertakings affiliated to Principal pursuant to § 189a Z 8 UGB and by Deutsche Lufthansa AG, as Principal's parent company, and for use by undertakings affiliated to Deutsche Lufthansa AG pursuant to § 15 German Stock Corporation Act (AktG) as well as for use by SunExpress Güneş Ekspres Havacılık A.Ş and SunExpress Deutschland GmbH.

## 2. Contract Structure

- 2.1. Contracts governing IT goods and services are concluded in the form of Additional Product Agreements (subsequently referred to in this text as 'PZV') to these AGB/IT.
- 2.2. In principle, each individual order requires the conclusion of a written PZV, regulating the specifics of these goods or services. Depending on the type of goods or services, the PZV must contain at least the following items:
- **Preamble**  
Brief description of content (cf. Clause 1 of these AGB/IT)
  - **Parties**
  - **Project organisation (or corporate organisation)**  
Person in charge/contact, including time schedule
  - **Statement of Work**  
Type of goods or services (license agreement, individual order work, etc.), scope (scope of usage rights), technical specifications (*Pflichtenheft*), obligation to provide specifications, maintenance services, concretions of abstract provisions of these AGB/IT, type of software to be delivered or to be made available (cf. Clause 16.1 of these AGB/IT)

- *Service levels* (cf. Clause 222 of these AGB/IT)
- *Obligations of cooperation and system requirements*
- *Acceptance*  
Place and date(s) (cf. Clause 24 of these AGB/IT)
- *Change management*  
Optional; project-related change request forms (to be enclosed as Annex); (cf. Clause 7 of these AGB/IT)
- *Payment*  
(cf. Clause 266 and 28 of these AGB/IT)
- *Contractual term*  
Contractual term; concrete regulation of termination for convenience and possible service-related special termination rights (cf. Clause 31 to Clause 33 of these AGB/IT)

- 2.3. In the event that individual provisions of these AGB/IT and a written PZV contradict each other, the provisions of the PZV take precedence.
- 2.4. In the event of an order to Supplier through a “SAP-order”, there is a possibility that that this order contains terms that are different from the PZV and these AGB/IT, due to the requirements of the SAP system (e.g. regarding the delivery date). In the event such differences, the terms in the SAP order shall be of lesser priority.
- 2.5. In the event that a notice period in these AGB/IT or in a PZV is measured in working days, and national regulations differ, the system of national holidays of the relevant state or country that results in the lowest number of working days for the relevant period shall be applicable for observance of the notice period. Saturday and Sunday do not count as working days.

### **3. Offer and Conclusion of Contract**

- 3.1. For deliveries of goods and services, the (future) Supplier shall submit to the (future) Principal an offer officially signed by the Supplier, i.e. signed by an employee authorised to do so, in the form of a PZV in accordance with Clause 2.2 of these AGB/IT. The offer must correspond to the enquiry of the (future) Principal and be free of charge and non-binding for the same. Such offer is accepted when the Principal returns the PZV officially signed by the Principal company in the same way.
- 3.2. Deliveries of goods and services not included in the PZV do not lead to any payment claims of the Supplier.

### **4. Stipulation of Fee and Elements of Goods/Services**

- 4.1. The fee for goods and services is stipulated in the respective PZV. Prices for services provided on a regular basis are incorporated into a PZV price list (by concrete reference to the PZVs affected).
- 4.2. Unless agreed otherwise, all stated prices are fixed prices.
- 4.3. Unless agreed otherwise, all price details are understood as being net amounts in euros, excluding value added tax at the applicable rate and, where applicable, excluding charges for legal transactions, any customs duties or other dues collected by public entities. Such charges, duties and dues have to be invoiced separately.

- 4.4. In all cases, the prices include everything that the Supplier must do to fulfil its obligations of delivery and provision of goods and services at the agreed place of performance, including packaging and freight. To the extent possible, packaging and freight has to be invoiced separately.
- 4.5. Invoices can only be issued for additional services, i.e. those not agreed in the original PZV, if these additional services are based on a separate written agreement. In all cases, the scope of the additional services is to be defined therein. This special agreement has also to be specifically referred to in the invoice.
- 4.6. Unless otherwise agreed, commuting expenses and travel expenses shall be reimbursed by Principal as follows, if an employee or agent of the Supplier temporarily leaves his or her duty station on Principal's request. Any change of location within Vienna or within a radius of 25km will not be reimbursed, and travel expenses actually incurred will be reimbursed. If different means of transport are available, the least expense means, taking advantage of all tariff reductions, shall be used. Travel by rail shall generally take place in coach class. Plane tickets will generally be provided by Principal, and employees are required to travel in Economy Class. Upgrading to Business Class is possible on Principal's long-distance flights, depending on available seats and the upgrading policies. Business class travel on long-distance flights of other airlines is subject to the relevant policies of that airline. If no means of mass transportation are available or reasonable, a person may take a taxi.
- 4.7. Should a person use his or her own car, he or she is not entitled to kilometre allowance, but only to reimbursement of a ticket for public transportation, unless he or she has used his or her own car with Principal's express consent. In this event, the official kilometres allowance at the time of travel will be paid.
- 4.8. Should an overnight stay be necessary, Principal will reimburse reasonable hotel costs. A person shall preferably stay at Principal's contract hotels and coordinate his or her stay with Principal. Additional expenses for meals and other expenses will not be reimbursed.
- 4.9. All expenses must be documented by the relevant receipts, and these receipts shall be delivered to Principal. If the Supplier has travelled on business also in the interest of another contracting party, travel expenses shall be distributed proportionally among the Supplier's contracting parties.
- 4.10. Payment for possible maintenance agreements, subsequent to the development and/or licensing of individual software (components) (cf. Clause 16.1 of these AGB/IT) shall depend on the one-off payment for the development or licensing as follows:
  - During the warranty or guarantee period, errors and other defects must be removed free of charge.
  - Fees for a maintenance agreement which only includes the removal of errors following the expiry of the legal or contractual warranty or guarantee period are limited to an annual maximum of five (5) percent of the one-off payment mentioned or three times the annual charge.
  - Should the maintenance agreement also include all forms of new releases to be delivered on a regular basis, the upper limit of payment obligations per year is 15 percent of the one-off payment or three times the annual charge. During the warranty or guarantee period, this figure is ten (10) percent.

## **5. Information obligation of the Supplier and Duty of Cooperation of the Principal**

- 5.1. The Supplier must independently ensure clarity in relation to all details of the order and the designated work for which it is responsible. It must obtain all the documents and information necessary for performance from the Principal, which shall provide these on demand and in good time.
- 5.2. Errors that result from the neglect of these obligations are to the expense of the Supplier.
- 5.3. In the development of software individually for the Principal, the same shall ensure that test data for the purpose of testing the software is available to the Supplier upon request and free of charge. The request shall specify in greater detail the test data, the extent and the time by when it needs to be made available.

## **6. Specifications (*Pflichtenheft*)**

Projects are carried out in accordance with AAG project management guidelines.

- 6.1. On the basis of the information obtained from the Principal, in particular with regard to its operating processes and requirements, the Supplier must first produce a list of specifications (*Pflichtenheft*) by the date fixed in the PZV and hand the list over to the Principal. It shall provide concretions of the content of the goods/services and their technical realisation by describing in detail which functions or individual goods/services are to be provided using the software to be licensed or produced or the system being developed, with what funds, subject to which prerequisites and with which guidelines.
- 6.2. Should the Supplier be in delay regarding the transfer of the list of specifications, or should the list of specifications deviate from the quotation or the state of the technology in aspects that are material to the Principal, the Principal can withdraw from the contract subject to the setting of a two-week grace period and claim compensation for the damages caused as a result.

## **7. Changes to Scope of Service**

- 7.1. Changes and corrections to the scope of goods/services and the nature of performance, in particular those requested by the Principal for reasons of technical progress, are included in the price where they can be performed by the Supplier without material additional cost.
- 7.2. Otherwise – as long as there is no significant change in the scope of the order and no fundamental change in the market situation has occurred in the meantime – changes and additions to the goods or services ordered, where made in connection with the object of the contract and in accordance with the determination of its purpose, are to be made at the request of the Principal subject to the same conditions and in the same price range. Should such additional orders or other changes allows a reduction in price, the Principal is entitled to this reduction in price. In such cases, the delivery time is to be newly agreed.
- 7.3. As long as the Supplier has not yet delivered individual software, individual software components or individual software adaptations to be produced by it, the Principal can demand changes in writing at any time compared to the PZV, the list of specifications, the program description or at any point in time subsequent to the program description

stages in its development. The Supplier will take the request for change into account where reasonably within the scope of its operational capability.

- 7.4. Should the review of possible changes or the actual implementation of the change have consequences for the contractual structure of the goods/services (payment, periods of notice, acceptance terms, etc.), the Principal and Supplier are to make a written adjustment to the contractual provisions by mutual agreement and without delay. In particular, agreement has to be reached regarding the adjustment of deadlines and payments. Where agreement is not reached within two calendar weeks of the Supplier receiving the request for change, the matter has to be escalated to the next higher controlling body or management of both parties. During the negotiations over the requests for changes, i.e. until conclusion of the written agreement over the adjustment of the contractual regulation of the requests for changes by the Principal, the work shall continue to be performed to the previously agreed extent. Where possible, the parts of the goods/services affected by the requests for changes will be deferred until negotiations over the desired changes have been concluded.
- 7.5. Should the Principal wish a complete interruption of the work or should the Supplier be of the opinion that the consequences of the request for change of the Principal will be so great that the work should be interrupted (in such cases, it shall inform the Principal immediately in writing), the next higher level controlling body or management shall be informed by both parties. The Principal shall bear the additional costs incurred due to the interruption or continuation it has explicitly requested.
- 7.6. Should adjustment of the contractual provisions (cf. Clause 7.4 of these AGB/IT) not take place within 30 calendar days of the Principal having asserted the necessity of an adjustment, the work shall continue without consideration of the request for change unless the Principal withdraws from the PZV within a further seven (7) working days. In event of a withdrawal by the Principal, the Supplier is entitled to demand the agreed payment; however, it must calculate those costs which it saves as a result of the termination of the order or achieves due to an alternative use of the intended working capacity or culpably fails to achieve. Should the Supplier refuse to consider the request for change or the adjustment of the PZV without a justified reason, however, it is only entitled to compensation for costs until the time of withdrawal.
- 7.7. All performance deadlines are extended by that period in which the work was interrupted or deferred due to the request for change and by the period of time that must be spent on the request for change.

## **8. General Principles**

- 8.1. All activities are to be performed conscientiously and according to the latest state of the technology and expertise.
- 8.2. The Supplier shall devote all means available to it to completing the work conferred upon it satisfactorily and in time. The goods shall be delivered in appropriate and error-free packaging customary in trade. The size of packaging shall be in accordance with DIN EN 13698-1 („europallet“) and the maximum height shall not exceed 2 meters, unless a deviation is necessary due to the size of goods. Packaging shall be returned at the Supplier's risk and expense.
- 8.3. In the case of orders including several different units, the Supplier is only entitled to perform partial deliveries and to issue partial invoices with the prior written consent of the Principal.

- 8.4. Before beginning to perform the work, the Supplier shall appoint a coordinator who is available to the Principal as a permanent point of contact and procures the information of the Supplier necessary to perform the work and reaches the necessary decisions at the Supplier.
- 8.5. Where the Principal has justified doubts about the qualification, suitability or readiness to perform of a member of staff employed by the Supplier within the scope of the project, it shall communicate this with reasons to the Supplier immediately and in writing. The Supplier will promptly take the necessary measures to eliminate the mentioned nuisances or to replace that employee by a qualified, suitable and motivated employee of the Supplier on request. Should an employee of the Supplier be incapacitated, Principal shall have the right to request that this employee be replaced by a qualified, suitable, and motivated employee of the Supplier.
- 8.6. The Principal shall also appoint an authorised member of staff or appropriate point of contact for the Supplier with responsibility for the respective PZV or the deliveries and services to be provided within the scope thereof.

## **9. Integrity**

- 9.1. The Contractor undertakes to comply with the legal provisions on combating corruption. In particular, he undertakes that he will not offer, promise or grant any inadmissible advantages (e.g. bribes, kickbacks, valuables or other benefits) to public officials or mandate holders or other third parties, including employees of the Principal or persons closely associated with them, for the purpose of initiating or continuing business transactions, obtaining other favorable business decisions or obtaining other unlawful advantages, each of which is connected with the Principal. The same prohibition shall apply to employees of the Contractor, vicarious agents and other third parties acting on the instructions of the Contractor.

## **10. Human rights and environment- related obligations pursuant to the UN Global Compact and the Act on Corporate Due Diligence Obligations in Supply Chains Lieferkettensorgfaltspflichtengesetz – “Supply Chain Act“), ILO basic principles**

- 10.1. Deutsche Lufthansa Aktiengesellschaft must, subject to the obligations of the Act on Corporate Due Diligence Obligations for the Prevention of Human Rights Violations in Supply Chains (Lieferkettensorgfaltspflichtengesetz - “Supply Chain Act“), apply adequate human rights and environment related due diligence in its supply chains, with the aim
- to protect any protected legal positions,
  - to identify, detect and prevent human rights and environment-related risks,
  - to detect and terminate violations of human rights-related and environment-related obligations, and
  - to ensure that all its subsidiaries, including Austrian Airlines AG, equally comply with these due diligence obligations.



- 10.2. The Contractor undertakes to comply with the ten principles of the UN Global Compact, the five basic principles of the International Labor Organization (ILO) and the following precepts and prohibitions: prohibition of child labor; prohibition of forced labor and all forms of slavery, exploitation, humiliation and abuse; prohibition of disregard for occupational safety and health and protection from work-related health hazards; disregard for freedom of association and the right to collective bargaining; prohibition of unequal treatment in employment; prohibition of the withholding of an adequate living wage; prohibition of the destruction of natural resources through environmental pollution; prohibition of unlawful infringement of land rights; prohibition of the commission or use of private or public security forces which, due to a lack of instruction or control, may lead to harm to life and limb; prohibition of any act or omission in breach of duty to act that goes beyond the foregoing and which is directly likely to impair, in a particularly serious manner, a protected legal position within the meaning of section 2 paragraph 2 of the Supply Chain Act and the unlawfulness of which is obvious upon reasonable assessment of all the circumstances in question; prohibition of the production, use and/or disposal of mercury pursuant to the Minamata Convention; prohibition of the production and/or use of substances within the scope of the Stockholm Convention (persistent organic pollutants - POPs) as well as the non-environmentally sound handling of wastes containing POPs; prohibition of the import or export of hazardous wastes within the meaning of the Basel Convention.
- 10.3. The Contractor undertakes to provide human rights or environment-related training for employees who are responsible for minimizing or exposed to relevant risks. The Principal may require the Contractor to provide evidence of the performance of and participation in relevant training courses or to ensure that the relevant employees of the Contractor participate in any relevant training courses offered by the Principal.
- 10.4. If the Principal requests information from the Contractor in context of its risk analysis to be carried out under the Supply Chain Act to identify or assess human rights or environment-related risks, the Contractor shall provide the Principal adequately with the required information to the extent permitted by applicable law or contractual obligations. The Contractor agrees that for the purposes of its risk analysis, the Principal transfers relevant information on the contractual relationship with the Contractor to a third party specialized on risk analysis that processes the information on behalf of the Principal.
- 10.5. If the Contractor discovers or otherwise becomes aware of a potential violation of human rights or environment-related obligations in its own business operations in relation to the provision of services to the Principal, it shall be obliged to inform the Principal thereof and the measures it has taken consequently.
- 10.6. The Contractor shall cooperate with the Principal and support the Principal with best efforts to implement the measures required by the Supply Chain Act with a view to terminating, preventing, and minimizing human rights and environment-related risks and violations, particularly the implementation of required preventive and remedial measures.
- 10.7. The Contractor undertakes, upon the Principal's request, to inform its employees about the possibility of using the principal's complaint procedure. Information about the complaint procedure as well as access to it are available at <https://www.austrian.com/at/de/ombudssystem>.
- 10.8. Once a year or occasion-related, the Principal is entitled to conduct an audit on the Contractor's business and industrial premises and within its business operations to identify and assess human rights and environment-related risks or violations and to assess and determine whether the Contractor complies with its obligations pursuant to

this Article 10 (“Audit”). The principal may mandate a third party, which is bound to professional objectivity and secrecy, to conduct the Audit during the Contractor’s regular business hours. The Principal shall notify the Contractor of the Audit with a prior two-weeks’ written notice. The Contractor is entitled to take appropriate measures to protect its business secrets and personal data, particularly customer data. The Contractor bears the cost of the Audit unless it demonstrates that no human rights or environment-related risk or violation and no violation of human rights or environment-related due diligence obligations exist.

- 10.9. The Contractor assures to comply with the expectations of the Lufthansa Group as expressed in its Contractor Code of Conduct (<https://www.lufthansagroup.com/en/Contractors.html>).
- 10.10. The Contractor further undertakes to use best efforts to pass on the obligations pursuant to this Article 10 to its direct Contractors in an obligatory manner.
- 10.11. If the Principal notices that the Contractor is in breach of any of the obligations set forth in Articles 9 to 10.10., the Principal reserves the right to temporarily suspend the contract concluded with such Contractor or - if necessary, also extraordinarily - to terminate it for good cause.
- 10.12. Reservation to change: The obligations to be complied with by the Contractor pursuant to this Article 10 may be adjusted at any time depending on the results of the risk analysis continuously conducted by Lufthansa Group. The Contractor will be informed by the Principal one month prior to the entry into force of any adjustment and has the option to object to this within two weeks from the date of knowledge, of which the Principal will again inform the Contractor separately in each individual case.

## **11. Transfer of Contractual Obligations to Third Parties and Legal Status of Subsuppliers**

- 11.1. The Supplier may not subcontract the entire order.
- 11.2. The Supplier shall carry out the contractual service under its own responsibility. The Supplier shall procure and shall be responsible to Principal that subcontractors, if any, comply with all regulations of these AGB/IT imposed upon the Supplier itself.
- 11.3. The Supplier shall be required to carry out itself material parts of that work which falls under its authority. Parts of services may be subcontracted only if the subcontractor has the authority, technical capability and knowledge which is necessary to carry out its part of the order. The Supplier shall notify Principal in case he should subcontract parts of a delivery or service, stating the company name, address and responsible contact person of that sub-Supplier. These services shall be invoiced in any event by the Supplier.

## **12. Confidentiality, Data Protection, Control and PCI DSS**

- 12.1. All data and information produced for the Principal are subject to its exclusive control and ownership (Datenhoheit).
- 12.2. The Supplier is obliged to use data and processing results exclusively within the scope of the orders of the Principal and to return these to the Principal or only transmit them

in accordance with its written instructions. Use of transferred data for the own purposes of the Supplier shall also require written instructions of this nature.

- 12.3. Upon request by the Principal, the same is to be provided with data that has been produced, stored or processed for it by the Supplier or using the systems or software components developed or operated by the same. This data is to be provided immediately in the existing or agreed format and on a typical standard data carrier. The costs to the Supplier of converting data carriers other than those typical (deviant data carriers) are to be refunded by the Principal.
- 12.4. The parties are under an obligation to keep confidential all personal data received from the other party, as well as information defined as 'confidential', 'internal' or similar, or information recognisable for other reasons as commercial or operational secrets for an unlimited period (even after termination of the contractual relationship) and – unless necessary to achieve the object of the contract – not to record, forward or make use of this data. The information to be kept confidential also includes data entered and stored in computer systems and technical, operational and commercial details.
- 12.5. Through suitable contractual agreements of the parties with their employees and their authorised representatives, it is to be ensured that these also refrain from any own use, forwarding or unauthorised recording of the information defined in Clause 10.4 of these AGB/IT for an unlimited period of time, even after termination of their contract of employment with the Supplier.
- 12.6. The confidentiality clause does not apply to information which:
- is publicly accessible, was already known to the parties or later published by the disclosing party,
  - has been independently and autonomously developed by one party without having known or used similar information of the other party,
  - has been revealed by a third party who is entitled to do so and is not subject to a duty of confidentiality, or
  - must be disclosed as a result of legal regulations or orders from state organs; but only where the situation has been indicated to the other party in writing before the disclosure.
- 12.7. Principal's obligation of confidentiality to the undertakings affiliated to it pursuant to § 189a Z 8 UGB, to Deutsche Lufthansa AG, as parent company, and to the undertakings affiliated to it pursuant to § 15 German Stock Corporation Act (AktG) as well as to SunExpress Güneş Ekspres Havacılık A.Ş and SunExpress Deutschland GmbH.
- 12.8. In the event that the Supplier is the processor (*Dienstleister*) for the Principal in the meaning of the Austrian Data Protection Act (= DSGVO 2000; Official Federal Gazette I, No. 165/1999), it must take sufficient safety measures in accordance with § 14 thereof to prevent data from being used contrary to regulations or made available to third parties without authorization.
- 12.9. According to § 15 of the Austrian Data Protection Act 2000, employees may only transfer data on the basis of explicit instructions from their employer. Unless their employees are already under such an obligation under the law, the controller (in the meaning of the Austrian Data Protection Act 2000) and the processor must enter into a contract that these will only transfer data from data applications on the basis of instructions and that they will maintain data confidentiality even after the termination of their employment relationship with the controller or processor. In addition, under the terms of this

provision, the controller and processor must inform any employees affected by such instructions about the transfer instructions applicable to them and about the consequences of breaching data confidentiality.

- 12.10. The processor can only entrust another company with processing work with the consent of the Principal. However, it must conclude a contract in the sense of §§ 10 and 11 of the Austrian Data Protection Act 2000 with the subcontractor. In this contract, the processor must ensure that the subcontractor is under the same obligations to which the processor is subject on the basis of this agreement.
- 12.11. The processor shall make provisions for the technical and organisational requirements enabling the Principal to fulfil the requirements of § 26 (Right of Information) and § 27 (Right to Correction or Deletion) of the Austrian Data Protection Act 2000 related to the data subject within the legal time limits at any time, and shall provide the Principal with all the necessary information to do so.
- 12.12. After termination of the service, the processor is under a duty to hand over to the Principal all results of processing and documents containing data, or to continue to keep them securely protected from unauthorised access while under its instruction, or to destroy them in accordance with the order.
- 12.13. The Principal is granted the right to inspect and check at any time the data processing facilities in relation to the processing of data it has transferred. The processor is under an obligation to provide the Principal with the information necessary to check that the obligations listed in this Clause 11 are being observed.
- 12.14. In case of involvement in payment card processing the following applies: payment cards are to be exclusively processed and transmitted through a PCI DSS (Payment Card Industry Data Security Standard) certified system. A copy of the certificate of PCI DSS compliance has to be submitted to the Principal annually.

### **13. Loyalty**

- 13.1. The parties are under a duty of reciprocal loyalty.
- 13.2. They shall refrain from all headhunting and employment – including through third parties – of such employees of the other party who have worked on the realisation of the orders for a duration of the respective PZV and twelve (12) months following termination of the contract.
- 13.3. The contractual partner breaching Clause 13.2 is under an obligation to pay the other contractual partner damages in lump-sum form equal to the current gross annual salary of the employee in question.

### **14. Delivery or Transfer for Use of Hardware**

- 14.1. Hardware components (if applicable including software to be delivered according to the PZV) are to be delivered by the Supplier to the place of installation, including in-house transportation, in agreement with the Principal by the deadlines specified in the respective PZV at the latest. The components are to be transferred into an operationally ready condition (initial installation) and to be handed over to the user specified by the Princi-

pal in such a manner that all the warranted features are available to the same without work or effort on the part of the Principal.

- 14.2. The shipment must include a packing slip or delivery note indicating the order number of the client. This delivery note must be signed by the client upon receipt. Failure to comply with this requirement will result in all damages and costs being borne by the contractor. The acceptance of the goods by the client is subject to the condition that the hardware corresponds to the order.
- 14.3. The risk of transportation (*Transportgefahr*) is borne by the Supplier.
- 14.4. The Principal reserves the right to only request delivery of all or individual components at a later time by agreement with the Supplier. The term 'components' in the meaning of the previous sentence refers to self-contained hardware, e.g. a complete computer. Delivery can be delayed for a maximum of 90 calendar days after the originally agreed date.
- 14.5. In the event that no delivery dates have been agreed, the parties shall consensually agree on dates on which the delivery shall take place.

## **15. Maintenance of Hardware**

- 15.1. In the event that the maintenance of hardware is agreed in a PZV, this shall include the regular preventative inspection of the hardware with the aim of maintaining operational readiness (Maintenance) and the removal of malfunctions at the request of the Principal (repair).
- 15.2. The processor guarantees that the services agreed regarding the servicing of hardware are sufficient to maintain the operational readiness of the respective components or system, and will provide any missing services without separate charge.
- 15.3. Repairs shall take place via a hotline service and remote support as well as, if necessary, through the repair or exchange of damaged components or other trouble shooting at the place of installation, with the Supplier bearing any costs due to the dispatch, deployment and accommodation of its personnel and any costs due to the repair or exchange of parts, as long as the errors have occurred within the scope of the ordinary usage of the hardware.
- 15.4. In the event that a hardware component cannot be made functional within a reasonable amount of time, the Supplier shall install a component on loan without charge until the time of beginning of operation of a replacement item.
- 15.5. In the event that a preventive inspection or corresponding software monitoring determines components that threaten to become damaged in the course of ordinary operation, these are to be replaced by the Supplier as a precautionary measure and without charge.
- 15.6. Technical changes customary in components of this nature shall be installed by the Supplier free of charge and with the consent of the Principal. Where such changes are associated with consequential costs to the Principal, the Principal must be informed about this before the installation is performed.
- 15.7. The Supplier is to be kept informed of changes in the place of installation. The Supplier can only refuse to continue to carry out the maintenance at the new place of installation

for good cause (*aus wichtigem Grund*). Additional costs incurred while carrying out maintenance due to the change of place of installation are at the Principal's charge.

- 15.8. The level of security present in the system of the Principal (backup, encryption, firewalls, virus and intrusion detection systems, etc.) may not, even temporarily, be reduced due to maintenance measures.
- 15.9. Maintenance services are to be documented by the Supplier to the extent customary in the industry.
- 15.10. With regard to the reporting, diagnosis and removal of errors, etc., Clause 25.2 to 25.6 of these AGB/IT apply accordingly. Reaction times, problem solution times, availability, etc. can be specifically determined in the PZV in the form of Service Level Agreements (cf. Clause 22 of these AGB/IT).

## 16. Delivery or Provision of Software

- 16.1. With regard to software being delivered or provided, the following forms (which can be freely combined) shall be distinguished for the purposes of these AGB/IT:
- **Standard software** of the Supplier or third parties, including any developments thereof, i.e. software not developed on the instruction of the Principal, software not to be viewed as individual software in the sense of the following definition.
  - **Individual software** is software developed by the Supplier on the instructions of the Principal in exchange for payment of a development charge (order development, *Auftragsentwicklung*).
  - **Individual software components** are order developments that do not represent independent programs/systems, but instead are linked to standard or individual software (systems) or integrated into these or interact with these. In the case of individual software components, a distinction is to be drawn between freestanding and non-freestanding components (*eigenständigen und nichteigenständigen Komponenten*).
  - **Freestanding individual software components** are self-contained modules (program files), i.e. there is no mixing of individually produced program code with standard code. The individual code is physically separated.
  - **Non-free-standing individual software components** are mixtures of individually produced program code with standard code (in one file), e.g. in the case of adaptation (modifications) of standard code. The individual code is not physically separated.
  - **Software developed jointly** is software produced jointly by the employees of both parties in the sense that both sides have made essential contributions to the development.
  - **Provided Software (*bereitgestellte Software*)** is software used by the Supplier to provide (data centre) services (within the scope of the operation of systems) for the Principal. This includes, for instance, software on host computers used for processing of data (*Auftragsdatenverarbeitung*) or by remote access only.
- 16.2. In case of doubt, licensed software shall be considered to be individual software.
- 16.3. Unless specified otherwise in the respective PZV, in the event that software is licensed, the rights in the software granted are granted to both the Principal and to the other members of the corporate group of Austrian Airlines.

16.4. In the case of standard software, the scope of the rights granted shall be determined by the respective PZV.

16.5. In the case of standard software developed by third providers, the conditions of these providers shall additionally apply as long as they are also binding upon the Supplier. These conditions are to be made available to the (future) Principal by the (future) Supplier at the time of conclusion of the contract at the latest.

16.6. In the case of standard software and standard software components provided by the Supplier, the following applies additionally:

- The Principal obtains the non-exclusive right to use the object code – in the case of licensing limited in time, for the agreed period – on all its current and future facilities and in case of emergency on a replacement system and to make the copies necessary for this and for security purposes.

16.7. The following applies to individual software components and individually provided software adaptations provided by the Supplier for the Principal:

- The Principal acquires an unrestricted, exclusive usage right (including the right to make modifications and the right of transfer (*Weitergabe*) to third parties) to the object code and source code. This usage right can be restricted in terms of time in the respective PZV.
- In the case of non-free-standing individual software components, the Principal acquires an exclusive usage right to the object code unrestricted by location. Rights to the source code are not transferred. This usage right can be restricted in terms of time in the respective PZV. The exclusive rights only apply to the part of the software adapted (modified) for the Principal.
- When performing software orders for third parties, the Supplier shall not copy the individual software components created on the basis of these AGB/IT wholly or in part.

16.8. The following applies additionally to individual software (components):

- The Principal has the right to modify programs and documentation and to use the results produced thereby in the same way as the original versions of the programs and documentation. The Principal is under an obligation when exercising this right to observe and implement all obligations to document and observe standards according to these AGB/IT and the respective PZVs.

16.9. The following applies to jointly developed software:

- In the absence of an agreement stating otherwise, both contractual parties have independent usage rights to the source code and to the object code for their own purposes, but not for the marketing of the software.
- The PZV shall determine which contractual party also has the right to issue sub-licenses (distribution right) or whether both contractual parties should be entitled to this right and to what extent (ratio) participation in any license charges realized should take place.
- Where both contractual parties are granted distribution rights, an agreement is to be reached over distribution strategy before beginning distribution activities (in particular pricing, including in relation to maintenance services and market presence).

16.10. The following applies to provided software:

- No rights going above and beyond the remote usage of the system are transferred to the Principal.

## **17. Delivery of Programs and Documentation**

- 17.1. When communicating the operativeness (*Funktionsfähigkeit*) of programs, the Supplier shall make the program available to the Principal in machine-readable form (object code) and, in the case of individual software and freestanding individual software components, also in the form of the source code, annotated according to the state of the technology (*Stand der Technik*).
- 17.2. The Supplier shall deliver detailed documentation of the program application (user documentation).
- 17.3. The Principal has the right to copy the user documentation as many times as necessary for its use of the programs.
- 17.4. Any documentation may only be used for the purposes of the Principal and the other members of the group of companies named in Clause 1.1 of these AGB/IT. Usage for or by third parties is only permitted to the extent explicitly described in the PZV (processing of data, *Auftragsdatenverarbeitung*).
- 17.5. Until the end of the warranty period or until the end of the term of any maintenance contract, the Supplier shall make the necessary modifications to the documentation of any program changes that may have been necessary to the individual software provided by it; where the program changes have been for the purposes of error removal or within the scope of the contractually due making available of new releases, this is to be done free of charge.
- 17.6. Wherever possible, the Supplier shall deliver the documentation in the German language, if not, in the English language.

## **18. Escrow of Source Code**

- 18.1. At the request of the Principal, the Supplier shall escrow the source code of the standard software (components) provided by it. The source codes of third parties can be requested if an explicit agreement has been reached to this end.
- 18.2. The escrow is to take place at a notary (*Notar*) or an escrow company selected by the Principal. The Supplier can only object to this selection for good cause (e.g. unreliability, non-compliance with standards normal in the industry or possible conflicts of interest due to an escrow that has already taken place for other reasons).
- 18.3. All costs of the escrow, including the costs of the Supplier, are borne by the Principal.
- 18.4. The terms and conditions of the escrow agreement, in particular the conditions of release of the escrowed source code, shall comply with the conditions standard in the industry. A claim for release exists if
- the Supplier refuses, despite written notice given by the Principal, to comply with its contractual obligations to remove defects (maintenance of functionality) within a reasonable period;



- the Supplier makes it impossible for the Principal to use the software in question to a considerable extent through its breach of contractual obligations and does not remedy the problem within a reasonable period, despite written warning;
- the Supplier enters into legal incapacity, in particular if a process of liquidation, insolvency, bankruptcy or settlement is opened over its assets, it is liquidated or it ceases commercial operation and does not name a legal successor to the existing rights and obligations under the contract;
- release by the escrow agent or the Supplier to the Principal has been ordered in an executable judgement, a equivalent order or an equivalent decision in legal or arbitration proceedings.

18.5. The release of the escrowed material to the Principal shall bring about no additional transfer or exhaustion of intangible rights to the material.

18.6. The material remains a commercial secret and the confidential know-how of the Supplier. The Principal is under an obligation – subject to regulations to the contrary in the PZV – to use the material exclusively for itself for the purpose of understanding, the maintenance and removal of errors in the software. It may only use the material to maintain or support the use of the relevant software permissible according to the PZV.

## **19. No rights of Third Parties**

19.1. The Supplier guarantees that the software licensed on the basis of these AGB/IT is free from industrial property rights of third parties and that no other rights exist that might restrict or exclude the usage on the part of the Principal.

19.2. The Supplier shall in particular ensure through appropriate agreements with its employees and agents (*Beauftragte*) that the extent of usage to which the Principal is entitled is not impeded by possible joint copyrights (*Miturheberrechte*) or other rights.

19.3. The Supplier shall defend the Principal against claims brought in connection with the goods and services provided based on to alleged breach of intellectual property rights, including all costs of a legal dispute or out-of-court settlement, necessary provision of security (*Sicherheitsleistung*) and court-ordered non-appealable compensation obligations or agreed settlement payments. In return, the Principal shall pass on to the Supplier without deduction any reimbursement payments received from the opponent.

19.4. The Principal shall inform the Supplier in writing of any claims asserted without delay (*unverzüglich*) after becoming aware of the same and provide its support in the defence or settlement of the claim through reasonable assistance and information.

19.5. The Supplier reserves the right to undertake all defence measures and settlement negotiations.

19.6. Any legal actions brought or settlement negotiations conducted by the Principal are brought or conducted in accordance with the instructions of the Supplier. In the event that there is no such instruction, the Principal shall act according to its own best judgement (*nach pflichtgemäßem Ermessen*).

19.7. In the event that the usage of goods or services is prohibited by a judicial decision or a measure of this nature is threatening to take place, the Supplier can choose to do any of the following in agreement with the Principal:

- obtain for the Principal the necessary rights to continue to use the goods and services;
- change the goods and services with unchanged functionality in such a way that no intellectual property rights are breached;
- replace the goods or services with another that breaches no intellectual property rights and corresponds with the requirements of the Principal and is functionally equivalent with the replaced object of the contract.

## 20. Maintenance of Software

20.1. In the event that the maintenance (*Pflege*) of software is agreed in a PZV (see Clause 4.10 of these AGB/IT with regard to the agreement of payment) – and unless the agreement explicitly covers mere error removal only – this shall include the making available of the latest tested releases or versions corresponding with the current state of the technology. This shall also include installation of the same if this is more difficult than the mere menu-directed transfer of the program code onto a mass storage device in the hardware of the Principal. It must be ensured that the level of quality of all the functions included in the newly installed release or version is at least as high as that of the respective previous release or version. In the context of maintenance of software, it needs to be ensured that within six months after the release of new releases/versions and service packs of the basic systems of the Principal, such as operating systems, subsystems, data base systems etc., the product received from the Supplier receives the status “ready”, ensuring a frictionless operation. If there are deficiencies after security updates, these have to be fixed within the timeframes set out in the service level agreement (SLA).

Maintenance services shall also include the adaptation of software to changes in the law or other official (*behördliche*) requirements.

- 20.2. Maintenance shall also include services of the Supplier for the maintenance of operational readiness (*Betriebsbereitschaft*) of this software at the Principal and for the removal of errors in the software and/or the associated documentation after the expiry of the period of warranty or guarantee.
- 20.3. Maintenance of the software shall also include the installation of error corrections at no additional cost to the Principal. In normal cases, installation shall take place after transmission of a bug-fix version or a patch by the Principal or ‘remotely’ by the Supplier.
- 20.4. Maintenance of software shall also include the information of the staff members appointed as responsible for the software by the Principal (in the absence of an appointment, the project manager) regarding the type and extent of the work done.
- 20.5. The installations of the relevant software on the hardware units defined in the PZV are to be maintained. The Supplier is to be informed of any changes to the installation of the software and the place of installation of the hardware units. The Supplier can only refuse to continue the maintenance at the new place of maintenance for good cause (*aus wichtigem Grund*). Additional costs incurred carrying out the maintenance due to the change in the place of maintenance are charged to the Principal.
- 20.6. Clause 24 of these AGB/IT applies accordingly with regard to the reporting, diagnosis and removal of errors. Reaction times, problem solving times, availability, etc. can be specially regulated in the PZV in the form of Service Level Agreements (cf. Clause 222 of these AGB/IT).

## **21. Training**

- 21.1. The PZV shall define the type, duration and period of the initial training.
- 21.2. In the course of the introduction of individual software or multihosting applications, the Supplier shall train the personnel designated by the Principal for the usage of the programs in how to use the programs and handle the associated means (*Arbeitsmittel*).
- 21.3. Training shall primarily be provided at the place of business of the Principal; where it proves more appropriate, it shall be provided at the place of business of the Supplier or another location if so agreed between the parties.
- 21.4. Up to the total duration stated in the PZV, training shall take place for the number of employees named there within the amount of fees agreed for the product. Additional training measures requested by the Principal shall be charged for at the agreed rates.

## **22. Service Levels**

- 22.1. The parties can agree so-called 'Service Level Agreements' (compulsory service standards) in individual PZVs. These can especially apply to the following metrics:
- Availability;
  - System reaction time;
  - Network performance;
  - Helpdesk;
  - Problem management;
  - 2nd level support;
  - Change management.
- 22.2. Service Level Agreements – where included – become part of the respective PZV and describe the service promises made by the Supplier in relation to a concrete item. In the event that the Supplier does not comply with a specific Service Level, the Service Levels shall also define the claims of the Principal.
- 22.3. The parameters on which the Service Levels are based are to be continuously measured and recorded by the Supplier. Records are to be made available to the Principal upon request without undue delay.
- 22.4. In case of doubt, the total measurement period for compliance with Service Levels is one month.
- 22.5. Irrespective of wider-ranging warranty and damage compensation claims, agreed payment is reduced in case of non-fulfilment of an agreed Service Level – unless determined otherwise in the respective PZV – by 30 percent of the amount that would have become due had the Service Level been observed in the period of time to which the relevant Service Level relates. The preceding contract year shall be used as the basis for calculation. Calculation shall take place on the basis of estimated figures before expiry of the first contract year, with a settlement using the actual figures at the end of the first year of the contract.

## 23. Data Backup

- 23.1. The Supplier who processes data of the Principal is under a duty to back up these data daily. The technical details of this are to be determined in the respective PZV.
- 23.2. The Supplier guarantees that reconstruction of this data is possible at any time – where this is technically feasible – and must immediately hand over or transmit to the Principal upon request a data carrier with the current complete data backup and the incremental data backup carried out since.

## 24. Acceptance

- 24.1. In the event that works services (*Werkleistungen*) and/or deliveries are provided, the Supplier shall indicate to the Principal its readiness of acceptance.
- 24.2. To the extent that the acceptance criteria are fulfilled, the Principal shall declare its acceptance during an appropriate period of time after the acceptance test.
- 24.3. The acceptance criteria are fulfilled if the service essentially corresponds, i.e. with the exception of minor deviations, with the service description according to the PZV and the list of specifications (see Clause 6 of these AGB/IT), and if it offers the explicitly required and – unless the service description specifies otherwise – the normally assumed features. The presence of any of the errors listed in Category 1 entails the right to refuse acceptance. The errors listed in Category 2 are counted as minor errors (no right to refuse acceptance).

Category	Error Description
1	<p><b>Significant Errors/Errors Hindering Acceptance</b></p> <p>Practical (economically useful) usage of the overall system is only possible with restrictions. The error influences commercial handling and/or security. The error goes beyond the field of so-called ‘cosmetic errors’ (wrong colours or type sizes, typing and spelling errors in screen presentations and printouts, etc.) and cannot be dealt with by employees of the Principal using the system without great effort and an adverse effect on workflow (e.g. by means of a double click instead of a simple mouse click or by means of an additional ‘screen change’).</p>
2	<p><b>Insignificant Errors/Errors Not Hindering Acceptance</b></p> <p>All other errors.</p>

- 24.4. Any errors and deviations from the service description with respect to the agreed acceptance criteria and the absence of explicitly required and normally assumed features are taken down in the acceptance record (*Abnahmeprotokoll*). The acceptance record defines which services are accepted and whether the acceptance criteria have been fulfilled.

- 24.5. After the conclusion of the acceptance tests, the Principal sends, without undue delay, to the Supplier the officially signed acceptance declaration and/or an error record which defines the errors or defects that have occurred in a way that is understandable and reconstructable for the Supplier. In the event that all the errors described therein are acknowledged by the Supplier, it returns the error record, also officially countersigned, by way of confirmation. By so doing, it is declaring that it renounces any dispute of the existence of the documented errors or defects. Where these are only acknowledged in part, this is to be recorded in writing by the Supplier in the error record to be returned. The disputed points are to be clarified by the bodies responsible within the scope of the project organisation.
- 24.6. Warranty and guarantee deadlines begin with receipt of the acceptance declaration, or in the case of part-deliveries, with receipt of the overall acceptance declaration.
- 24.7. In the event that errors prove to be unreconstructable and occur several times a week, the Supplier is under an obligation to provide reasonable support in the search for their origin. Should it turn out that products that are not the object of the contract have caused the error, the costs connected with the search for the error are charged to the Principal.
- 24.8. Irrespective of other contractual claims, the Principal has the right to withhold a proportion of the payment commensurate with the error until removal of the error.
- 24.9. In the event that acceptance is refused due to Category 1 errors, this is to be done in writing together with the error record. The Supplier begins with the error removal of these deviations on the following working day. After conclusion of the error removal, a renewed acceptance test is to be carried out within a reasonable period, but within 30 calendar days at most. In the event that the removed error demonstrably has no effect on the system as a whole, the renewed acceptance test relates only to the part-system affected. Wherever possible, there is to be partial acceptance of those components not yet accepted.
- 24.10. The Supplier is to remove Category 2 errors within a reasonable period.
- 24.11. Partial services and partial deliveries can also be accepted separately. After the last partial service or partial delivery, a conclusive integration test is to be carried out and – in the event that no errors hindering acceptance emerge – the overall acceptance declaration.
- 24.12. Delays in acceptance by the Principal are the responsibility of the same. Correspondent additional expenses are borne by the Principal. Where a reduction in payment, a contractual penalty or something else has been agreed in the event of non-observance of (partial) acceptance deadlines by the Supplier, these claims lapse for the period of delay where they are the fault of the Principal.
- 24.13. The delivery or service shall be deemed accepted if the Principal does not accept the delivery or service due to circumstances that are not within the scope of responsibility of the Supplier within 30 calendar days. This period is extended by a maximum of 30 further calendar days in the event that the Principal credibly explains that the delay is the result of temporary staff shortages (e.g. holiday, illness, etc.) that have occurred as a result of a delayed delivery for which the Supplier is responsible.
- 24.14. In the event that the delivery or declaration of readiness of acceptance does not take place on the agreed date or that calculable according to the regulations of this section, this counts as a substantial reason entitling the Principal, after setting a reasonable ex-

tension period under penalty of withdrawal, to declare its withdrawal in relation to the respective PZV. The PZV can contain a definition in concrete terms of the reasonable period. The regulation of this section does not apply if the PZV contains a clause regulating the consequences of delay otherwise for the case described here.

24.15. § 377 Austrian Commercial Code is not applicable to contracts on which these AGB/IT are based.

## **25. Warranty**

- 25.1. Unless provided for otherwise in the PZV, the Supplier warrants for two (2) calendar years after acceptance that the products supplied by it provide all normally required functions and features as well as those in the PZV (including all supplements, additions and miscellaneous attachments) or those confirmed in other documents and sources of information provided by it or the respective producer, and that the performance of the products corresponds at a minimum to the assured values. During this time, any disruptions and disturbances to the products and similar – unless these are the responsibility of the Principal or of third parties acting on behalf of the Supplier and operating the products improperly – are to be removed by the Supplier free of charge, including the making available of the spare parts.
- 25.2. The Supplier shall provide a telephone number and e-mail address for the coordination of all ongoing services and the answering of questions about the usage of the components that are the object of the contract, at which the Principal can report disruptions and problems with the components and gather information.
- 25.3. The Supplier shall begin work to remove Category 1 errors (see Clause 24.3 of these AGB/IT) on the day after the error report (Monday to Sunday, 09.00 to 17.00, cf. Clause 2.5 of these AGB/IT). Removal of Category 2 errors shall begin in the calendar week (Monday to Friday) after the error report.
- 25.4. In the event that the Supplier cannot remove errors within a reasonable period during the warranty period, the Principal has the choice and the right to have the errors removed, to demand a reduction in price or – in the case of significant errors – to withdraw from the contract at the cost of the Supplier.
- 25.5. In case of disruptions or unplanned Category 1 interruptions to operation, the Supplier is under an obligation to do everything possible to immediately restore the functions of the system according to the contract.
- 25.6. Insofar as the parties cannot agree whether an error exists or not in a specific case, or to what extent defects exist, they can conjointly determine an expert to ascertain the error. Any costs of ascertaining the error are borne by the Supplier where it emerges that it is responsible for the error.
- 25.7. The warranty period for the product affected or stand-alone (functionally independent) part-product begins to run again upon the successful conclusion of the removal of an error.
- 25.8. In the event of disruption or damage to the products provided or licensed by it, the Supplier is under an obligation to produce written findings for the Principal at the request of the same and free of charge about the nature and origins of the disruption or damage and the measures taken by it to remove the problem and to hand these findings over to the Principal. Where the disruption or damage has not been caused by

products forming the object of this contract, any costs associated with the production of the findings are charged to the Principal.

25.9. The Supplier also guarantees – even after expiry of the above-mentioned warranty period – the availability at any time of maintenance services including spare parts for a minimum period of five (5) years in order to keep the products in a good, usable condition, even if no maintenance agreement exists. The obligation does not exist if the Supplier cannot observe this commitment to availability for reasons for which the Supplier is not responsible. Outside the warranty period, the services named are provided subject to reasonable conditions and within a reasonable time.

## **26. Penalties (*Pönale*)**

26.1. After the unsuccessful expiry of a reasonable extension period after non-observance of an agreed acceptance date for reasons for which the Supplier is responsible, the Principal is entitled to invoice for a penalty (*Pönale*) (lump-sum compensation, *pauschalierter Schadensersatz*) equal to five (5) percent of the agreed one-off payment or three times the annual charge per calendar week of delay begun (delay week).

26.2. In the event that the Principal is affected by not-insignificant contributory negligence, the penalty is to be proportionately reduced.

26.3. Irrespective of potential rights to reduction of payment or withholding of payments, other claims, particularly to compensation going beyond this, withdrawal rights, etc. only exist from the beginning of the fourth (4th) delay week. Penalties asserted are to be credited to potential compensation claims.

## **27. Limitation of Liability**

27.1. Liability for compensation going beyond the claim to penalties (lump-sum compensation) only exists if the damage has been caused intentionally or negligently (*vorsätzlich oder grob fahrlässig*).

27.2. In the event of ‘minor negligence’ (*leichte Fahrlässigkeit*), the Supplier shall be liable – as long as it has not breached an obligation, the observance of which is essential for the achievement of the purpose of the contract (‘cardinal obligation’) –for damages only up to the total contractual amount (in case of continuing obligations involving ongoing payments, up to the level of three times the annual charge).

27.3. Liability for the loss of data is restricted to the typical expenditure on restoration that would have occurred in case of regular data backup appropriate to the level of risk, unless the Supplier is responsible for the cessation or the failure of such data backup.

27.4. The Principal guarantees its cooperation in order to minimise its damages within the scope of its possibilities.

27.5. In case of acts of God – including war, civil unrest, forces of nature or fire, sabotage, epidemics, quarantines, governmental measures, strikes, lockouts or similar – none of the parties is liable for delays or non-fulfilment of its obligations.

## **28. Invoicing, Payment and Delayed Payment**

28.1. Invoices (including attachments) shall be delivered to the Principal’s e-mail address [invoices@austrian.com](mailto:invoices@austrian.com) immediately after the project was concluded or the delivery or

service was properly provided and subject to declaration of the relevant PZV and on the basis of evidence of the work being confirmed by the Principal. No advance payments will be made.

- 28.2. The final invoice is settled at the end of the month following the delivery or service and receipt of the invoice. Interim invoices are settled at the end of the month following receipt of the invoice.
- 28.3. At the request of the Principal, the Supplier shall present complete and precise documents in accordance with the principles of orderly accounting (*Grundsätze der ordnungsgemäßen Buchführung*) as evidence of its debts.
- 28.4. Deliveries and services before the agreed date do not affect the payment deadline bound to this date.
- 28.5. The Principal is entitled to withhold payments due to incomplete provision of the service or incomplete fulfilment of guarantee or warranty claims.
- 28.6. Upon payment of invoices of the Supplier, the Principal reserves the right to claim all legally admissible possibilities for offsetting with counterclaims of its own.
- 28.7. In the event that it makes the payment within 14 days of receipt of the invoice, the Principal is entitled to apply a discount of three (3) percent. For part-invoices, the payment conditions laid down for the overall order apply accordingly.
- 28.8. In the event of delayed payment, the Supplier is entitled to charge interest on arrears of nine point two (9,2) percentage points above the basic rate of interest announced by the Austrian National Bank (Österreichische Nationalbank), if it does not show higher damages.

## **29. Assignment of Claims**

- 29.1. Assignment of claims against the Principal requires its written consent to be effective.
- 29.2. Consent shall be deemed to have been granted from the beginning in the case of assignments that take place on the basis of extended retention of owner's title (*verlängerter Eigentumsvorbehalt*).

## **30. Retention of Owner's Title (*Eigentumsvorbehalt*)**

- 30.1. The Supplier reserves the proprietary rights to sold and delivered hardware components and data carriers including documentation until payment is completed. In the event of a delay in payment, the Supplier is entitled, irrespective of other rights, to sue for fulfilment or to withdraw from the respective PZV and to assert its retention of owner's rights.
- 30.2. Initially, usage rights to hardware or software shall only be granted temporarily and shall be subject to the Principal paying the payment due. In the event that the payment due is not settled in full within 10 working days even after written warning, all usage rights lapse automatically without further declaration of termination by the Supplier – except in case of justified withholding – and usage rights of the hardware or software by the Principal cease immediately.



### **31. Term Termination for Convenience**

- 31.1. In the event that continuing obligations are agreed, arrangements for termination are to be provided in the respective PZVs.
- 31.2. If no such arrangements have been made, continuing obligations (*Dauerschuldverhältnisse*) subject to the relevant PZVs can be terminated in writing (registered mail) on the part of the Supplier subject to observance of a termination period of 24 months and, on the part of the Principal, subject to observance of such a termination period of twelve (12) months to the end of a calendar month. This time limit shall be deemed to be complied with if the notice was sent on the last day of the time limit.

### **32. Termination for Good Cause**

- 32.1. A PZV can be terminated with good cause (*aus wichtigem Grund*) by either of the two contractual parties without observing a period of notice and by means of a written statement.
- 32.2. The following count as particularly good causes for extraordinary termination: insolvency, bankruptcy, compensation or liquidation of the other contractual party; repeated serious breaches of contract by the other party which continue despite written warning, especially serious breach of the duty of loyalty and confidentiality; repeated serious breaches of Service Levels; finally, other circumstances if their occurrence or continued existence frustrates or significantly impedes the purpose of the cooperation or would result in unreasonable hardship for the terminating party.

### **33. Obligations of the Parties upon Termination of a PZV Governing a Continuing Obligation**

- 33.1. The Supplier shall support the Principal to take over the provision of the services forming the object of this contract at the time of termination of the contract or to have a third party take over these services. In doing so, both parties are under an obligation to take into consideration the goal of a broadly smooth course of business during the rescission.
- 33.2. During the rescission (*Rückabwicklung*), the regulations of these AGB/IT, where applicable, shall continue to apply.
- 33.3. Stages in rescission and the rescission plan
- In the event that termination of the contract entails more complex rescission measures on at least one party to the contract, a stage in the rescission begins with receipt of the termination notice. Following announcement of the termination, the parties shall cooperate closely with the aim of drawing up and agreeing a rescission plan as quickly as possible. Negotiations over a rescission plan of this nature are to begin within the first month of the termination being announced.
  - The Supplier is under an obligation – insofar as this is technically feasible and reasonable within the scope of its operational ability – to immediately provide those services that are necessary according to the demigration plan presented by the Principal.

- Additional costs and expenses incurred by the Supplier in association with the rescission plan are charged to the Principal on the basis of time (hourly rates according to the current general price list) and materials.
- This obligation to reimbursement of costs does not apply if the Principal has carried out the termination in the form of an extraordinary notice of termination with important reason for which the Supplier is responsible (see Clause 32).
- Immediately after the beginning of the rescission stage, the Supplier shall hand over to the Principal lists of the operating resources and of all contracts with third parties governing the provision of the Supplier with services that are being used to provide the services forming the object of this contract.
- The parties shall strive to reach agreements over the following in the rescission plan:
  - the measures necessary, where practicable, to minimise interruptions to the services forming the object of this contract as a result of the termination or ending of the contract;
  - details of alternative services to be provided by the Supplier as a (temporary) replacement for the services forming the object of this contract;
  - the takeover of hardware, software, contracts, documents and (where necessary) personnel; and
  - unless regulated otherwise, payment to be made to the Supplier for services provided after the day of the termination of the contract.

#### 33.4. Provision of services during the rescission stage

- The Supplier is under an obligation to continue to provide all contractually due services – on a diminishing scale (according to the rescission plan if necessary) – for a period of a further six (6) months following the expiry of the contract.
- The Supplier continues to be paid by the Principal for regular services (i.e. those regulated in contracts valid at that time) according to the generally applicable conditions. After expiry of this six-month rescission stage, this obligation ends.

#### 33.5. Transfer of assets/rights

- In the event that the contract is ended by ordinary termination, the Supplier shall transfer to the Principal all operating resources used exclusively to provide services – where legally admissible – at the book value as at the date of termination of the contract.
- On this date, and where legally possible, the Principal shall enter into the rights and obligations arising from existing licensing and maintenance agreements.
- In the event of extraordinary termination by the Principal (cf. Clause 32 of these AGB/IT) due to behaviour for which the Supplier is responsible, the Principal shall be granted the right to purchase the operating resources used to provide the services according to its own choice ('cherry picking') at a purchase price equal to the market value at the time of the termination and to assume responsibility for individual existing licensing and maintenance agreements where legally possible.

- Regulation of usage rights to software used and/or developed for the Principal is otherwise primarily oriented to the regulations of the individual PZV (in relation to licensing of time/duration, for example). Where rights are licensed to time, the Supplier shall offer to the Principal licenses for usage after termination of the contract subject to the conditions of the Supplier valid at that time.

#### 33.6. Consent of third parties

- Insofar as operating resources or contracts form the object of the rights of third parties or have been concluded with third parties, the parties shall conjointly strive to gain the necessary consent of these third parties.

### **34. Legal Succession**

34.1. The rights and obligations resulting from these AGB/IT and the PZVs based on them pass over to the possible legal successors on both sides.

### **35. Right of Review**

35.1. Implementation of the safety measures must be verifiable by appropriate means. For that purpose, Supplier shall keep records showing what safety-related measures are performed when, by whom and with what result.

35.2. All records shall be prepared in a 'tamper-proof' manner, i.e. they must be clear and understandable in particular for a competent third party.

35.3. With respect to the relevance of external reviews, for example by the auditor, Supplier shall offer archiving services to comply with statutory retention periods. This includes the provision of data, e.g. logging data, collected in connection with the provision of IT services, which serve a documentation function.

35.4. Principal's Group Audit Department shall be entitled to review Supplier's records.

### **36. Written Form and Severability Clause**

36.1. Agreements, additions, subsidiary agreements and covenants deviating from these AGB/IT are only effective if in the written form and officially signed by both companies being parties to the contract. This also applies to a waiver of this clause requiring the written form.

36.2. In the event that individual regulations of these AGB/IT be or become invalid or unenforceable, the contractual parties shall immediately replace these with regulations that are valid and enforceable and come closest to achieving the intended economic purpose of the contract. The validity of the remaining contract is unaffected by this.

### **37. Settlement of Disputes and Arbitration Settlement**

37.1. Possible disputes arising from these AGB/IT and the PZVs based on them are primarily to be settled by a steering committee or similar joint committee, if necessary to be set up at the highest level of management of the contractual parties. To initiate this process, one of the contractual parties sends the other a written communication containing an invitation to solve the dispute. The parties are entitled to call upon an arbitration court (see Clause 37.2) if the resolution to the dispute according to this paragraph has

not commenced within 90 calendar days of the written communication containing the invitation to reach a solution to the dispute having been received.

- 37.2. For disputes arising as a result of or in connection with these AGB/IT or over their validity, however, including those over the validity of this arbitration clause itself, the jurisdiction of an arbitration court to be formed according to the following regulations is agreed with the exclusion of recourse to legal process: the regulations of the Austrian Chamber of Commerce (International Arbitration Court) (*Wirtschaftskammer Österreich – Internationales Schiedsgericht*), including the regulations governing the selection of the arbitrators, are to be applied to the arbitration court. Vienna is agreed as the location of the arbitration court. The language of the process is German. The arbitrators must have long-standing experience as jurists in the IT sector. In principle, the arbitration court consists of one individual arbitrator; should one party so wish, a senate consisting of three (3) arbitrators may reach a decision.
- 37.3. The AGB/IT and the PZVs based on them are subject to Austrian law. The United Nations Convention governing international commerce (UN Convention on Contracts for the International Sale of Goods) and the conflict of law rules of International Private Law does not apply.
- 37.4. In the event of differences between the the German language version of the AGB/IT and this document, the German version shall be legally binding upon the parties. Terms in this document to which a German translation has been added shall be interpreted in the meaning assigned to them by the German translation.