General Terms and Conditions of Business (GTC) of linkyard ag

Version 1/2016

Definitions

Supplier	The company linkyard ag as the provider of a service or services to the customer.
Third party supplier	A third party company separate from linkyard ag whose goods and services are relevant to a specific agreement.
Third party software	A software component from a third party supplier.
Customer	The party procuring services from linkyard ag.
Written form	If provisions of these GTC or contractual documents based on it require the written form, this requirement may be fulfilled - unless explicitly defined otherwise - either on paper or electronically by e-mail.
Contractual partners	The supplier and the customer

Scope and validity

These General Terms and Conditions of Business (GTC) shall govern the conclusion, content and fulfilment of agreements on the production, licensing and maintenance of software between the customer and the supplier.

The concrete details of the services shall be established in the following documents, which shall form integral parts of the agreement and shall apply in the event of conflicts in the following order:

a) Individual agreement (contractual document)
b) Offer
c) These General Terms and Conditions of Business

Alternative agreements shall be possible at any time, but must be agreed in writing.

The supplier's services

The supplier shall offer the following services in particular:

- The production of software solutions using its proprietary standard software or standard software from third party suppliers,
- The granting of licenses for standard software,
- The maintenance of software solutions and standard products,
- The distribution of licenses for standard software from third party suppliers,
- The distribution of software solutions;
- The performance of consultancy and support services in the field of IT.

The type, scope and characteristics of the services shall be laid down in the offer and/or an individual agreement between the supplier and the customer.

Proprietary software license

The supplier shall grant the customer a non-transferable, non-exclusive right to use the software in accordance with the individual agreement and/or offer. The license shall be for an unlimited period unless otherwise agreed in accordance with the individual agreement and/or offer.

The customer may neither license the rights to the use of the software to third parties nor lease, rent, lend or otherwise make the software available to third parties.

Third party software licenses

The supplier may distribute licenses for third party software. The customer shall in such cases acquire a license for its use directly from the third party supplier. The license conditions of the third party supplier in question shall apply at all times.

In the case of a third party software license, the supplier's obligations shall end upon the handover to the customer of the license in question. The supplier shall have no further obligations.

Maintenance

The supplier shall also offer the customer the maintenance associated with the software solutions it generates and with its standard software during the period of use. The details of the maintenance shall be laid down in a separate maintenance agreement.

The supplier shall undertake to remedy faults in accordance with fault classes for the period of the maintenance. Unless otherwise provided for, maintenance by the supplier shall commence upon commissioning.

Remedying faults which existed upon delivery or when the service was performed and which fall under warranty and the remedying of faults in accordance with the section below shall not be deemed to be maintenance.

Obligations of the customer

The customer shall undertake to comply with the use and integration requirements contained in the software documentation and to note and comply with any additional instructions of the supplier in relation to the installation, commissioning and use of the software.

The customer shall undertake not to modify, reproduce, align, distribute, display, publish, reverse engineer, translate, disassemble, decompile or attempt to generate a source code derived from the software in any other way.

Remuneration

The supplier shall perform the services at fixed prices or by hours worked with or without an upper limit on the remuneration (cost ceiling). It shall inform the customer in its offer of the cost categories and cost rates.

For maintenance, an annual flat fee for on-call service and availability to remedy reported faults shall be agreed between the supplier and the customer in the maintenance agreement. The annual flat fee shall include 10 hours of maintenance unless a different amount is set in the offer or individual agreement. Expenses over and above this in connection with maintenance and the remedying of faults shall be charged by hours worked at a separately agreed hourly rate.

If the supplier carries out services on the basis of hours worked, it shall deliver, together with the invoice, a report stating the work performed and period worked for each person deployed and for each day.

Unless otherwise agreed, invoicing shall take place after the services charged have been carried out. Invoices shall be payable within 30 calendar days of receipt and shall be due without deductions (net).

Execution

The contractual partners shall inform each other immediately of all circumstances from their areas of operation which threaten or could threaten the fulfilment of the agreement.

The supplier may at its own discretion use independent subcontractors to carry out the agreed services. It shall take care that the subcontractors also comply with all the provisions of the agreement.

Cooperation by the customer

The customer shall provide the supplier in good time with all specifications and documents from its area of operation which are required for the fulfilment of the agreement and shall grant the supplier the access to premises and information systems required for the performance of the agreement. The customer shall respond to enquiries within a useful period and shall cooperate actively and within the mutually agreed schedule in accordance with the individual agreement and/or offer.

Changes to the performance

Both contractual partners may request changes to the agreed service performance in writing. If an impact on characteristics, costs or schedules is to be expected, the supplier shall submit an offer for the changes to the performance. The changes to the performance shall be deemed to be approved upon written acceptance of the offer relating to the changes.

Intellectual property rights

All industrial property rights (intellectual property rights, industrial property and copyright protection and expectancies), especially patent rights, copyrights, design and trademark rights as well as know-how, in respect of existing software solutions and software solutions to be developed during the term of this agreement, including the associated documentation and program documents, shall belong in their entirety to the supplier.

Exceptions to this shall be hardware and software from third parties which are additionally required for the use of the supplier's software or which have been additionally sourced by the customer from the supplier, and in relation to which third party rights are reserved.

Information security and secrecy

The contractual partners shall undertake to observe secrecy about confidential documents, information and data made accessible to them by the other contractual partner and which are neither obvious nor generally accessible. This obligation shall also be imposed on third parties involved. The obligations of secrecy shall exist even prior to the conclusion of the agreement and shall also remain effective after the end of the contractual relationship. The right to comply with statutory duties to report, clarify and inform shall remain reserved.

Default

The contracting partners shall be in default after a reminder contractually agreed deadlines has been given, allowing a period of grace of 90 calendar days.

Fault classes

Software errors and failures shall be assigned to the following fault classes:

Fault class	Definition	Criteria
Blocker	**Prevents operation** The fault does not allow use in the sense of the fundamental purpose.	Operation totally interrupted. Core system functions are unusable. All the customer's users are affected. No workarounds are available. Example: it is impossible to log in.
Critical	**Partially prevents operation** Use in the sense of the fundamental purpose is ensured. However, there is a material fault in an important sub-function or work is only ensured by using complex workarounds.	Operation partially interrupted. Core system functions are unusable. The majority of the customer's users are affected. The customer can use an organisational or technical workaround solution for a limited period. Example: an interface to an important third party system (e.g. SAP) does not work.
Average	**Impedes operation** Use in the sense of the fundamental purpose is ensured. However, there are faults in sub-functions which make work difficult.	Operation is not interrupted. Core system functions are usable. A small number of the customer's users are impeded. Workarounds are not needed. Example: master data cannot be changed using

		the GUI.
Minor	**Disrupts operation**	
	Faults which impair the use of the solution only slightly.	Operation is not interrupted. Minor impairment as a result of avoidable extra effort, failings in comfort. Workarounds are not needed.
		Example: orthographical errors, errors in the documentation.

The fault classes shall relate both to the faults identified during the warranty period and to those which are reported or identified in the context of maintenance services. The "Blocker" and "Critical" fault classes shall be deemed to be material faults, the "Average" and "Minor" fault classes to be immaterial faults.

Reporting of faults and failures

The customer shall report software errors and failures via the linkyard customer portal, accompanied by the available documentary material (faulty files, screenshots, log files etc.) and stating the date, time and the operating steps executed.

Warranty and the remedying of faults

The supplier shall warrant that the services it delivers have the agreed characteristics.

If there is a fault which lies in the fact that the software solution or the service to be performed does not have the agreed characteristics, the supplier shall correct it free of charge within a reasonable time. The supplier may in particular, by its own choice, describe a workaround, supply a modified version of the software or provide data cleaning scripts. Material faults shall be remedied outside the normal release schedule, immaterial faults shall be corrected with the next normal release or the release thereafter. If, after analysis, it appears that the failure was not caused by the software maintained or updated by the supplier, these services shall be remunerated separately.

linkyard ag shall not provide any warranty whatsoever for third party software and the services of third party producers.

Complaints about faults must be made within 30 days of the latter's discovery. The warranty period shall be 6 months from delivery or the performance of the service.

After the end of the warranty period, services to remedy faults shall be charged. The right of the contractual partners to conclude a separate maintenance agreement shall be reserved.

Liability

The supplier's liability towards the customer shall be limited to gross negligence and intention and to direct damage. No liability shall be accepted for opportunity costs, forgone profit or consequential damages.

The supplier shall not accept any liability whatsoever for third party software and the services of third party producers.

Should the customer fail to act in accordance with use and integration requirements, it shall be liable for the damage suffered by itself, the supplier or a third party.

Test and acceptance

The contractual partners shall agree on the conditions for acceptance in the relevant individual agreement.

Unless agreed otherwise, the services shall be deemed to be accepted if the customer does not report any faults via the linkyard customer portal in writing within 30 calendar days. Likewise, the services shall be deemed to be accepted when the customer starts the productive use of the software or software solution.

Moreover, the service shall be deemed to be accepted if the customer refuses to take part in the acceptance test despite a reminder and reasonable period of grace, even though the conditions for doing so are in place.

If immaterial faults (cf. fault classes) are revealed during the performance test, the service shall nevertheless be conditionally accepted.

If material faults are present, acceptance shall be deferred. The supplier shall remedy the identified faults and shall invite the customer to a new test.

Termination

Either contractual party may terminate this agreement at any time, observing a period of notice of three (3) months effective at the end of a month. Remuneration paid in advance shall be reimbursed *pro rata temporis* in the event of early termination. An exception from this is third party software, to which different conditions may be applied.

Agreements may be terminated without notice at any time by the other contractual partner in the event of serious breach of contract. In the case of maintenance agreements and support agreements, the remuneration shall in this event be calculated *pro rata temporis*, in the event of one-off

remuneration proportionately on the basis of a 12-month service period. The right to assert claims for damages shall remain reserved.

Amendments to these terms and conditions

The supplier may amend these terms and conditions at any time. The customer shall be informed of amendments in advance. If the customer does not agree to the amendments, it may declare explicitly that it wishes to cease to use the supplier's services and may terminate the agreement with the supplier within 30 calendar days from the notification of the amendment. In this case, the termination of the agreement shall apply at the time at which the amended General Terms and Conditions of Business come into force.

Severance clause

Should one or more of the above provisions be or become ineffective, the effectiveness of the remaining contractual provisions shall remain unaffected. The ineffective provision shall, in this case, be replaced by a similar one which is as close an equivalent as possible from the business point of view.

Applicable law and place of jurisdiction

Swiss law shall apply to the contractual relationship, to the exclusion of the Vienna Sales Convention. In the event of conflicts and difficulties between the contractual partners, they shall endeavour to reach a consensual solution at the management level and resolve the dispute amicably. If no consensual solution is possible, the ordinary courts of the City of Bern shall have jurisdiction over all disputes arising from or in connection with this agreement.