

# GENERAL TERMS AND CONDITIONS

## 1. Sphere of application

These General Terms and Conditions shall be applied to all transactions which are agreed between the parties.

## 2. SLA

With respect to the provision of managed services, Arcplace's tasks and the rights and obligations of the parties are more closely described in a Service Level Agreement (SLA). In the case of contradictions between individual provisions of the SLA and the AGB, the provisions of the SLA shall prevail.

## 3. Acceptance

Arcplace's services and deliveries are subject to acceptance by the Customer inasmuch as this is possible, for checking their compliance with the contractual provisions ("acceptance"). Acceptance shall take place within two weeks of the installation or delivery concerned. The Customer is obliged to sign the acceptance form presented by Arcplace and to report any errors or defects in the services or delivery on this form. If Arcplace does not receive a signed acceptance form within two weeks of the installation or delivery concerned, the services or delivery shall be regarded as having been accepted and approved.

## 4. Hardware, software and services provided by third parties

To fulfil its contractual obligations, Arcplace can resell, license or supply hardware from third-party manufacturers and/or software, which is the property of third parties, and services provided by third parties to the Customer. Arcplace expressly rules out any warranty or guarantee on its part with regard to such hardware, software or services. Inasmuch as permissible and possible, Arcplace shall assign any warranty claims and demands for compensation, which are due to Arcplace in accordance with the contractual conditions concerned against third parties, to the Customer for direct assertion. Further-reaching claims in connection with the products or services of third parties are ruled out.

## 5. Sub-contractors

Arcplace may use sub-contractors for the provision of its services. Arcplace is liable for the sub-contractors' actions in the same way as for its own. On demand by the customer, Arcplace is obliged to notify the customer as to whether sub-contractors are used or not. Third-party manufacturers of hardware, licensors or third parties, which provide services (see para. 5) are not regarded as sub-contractors.

## 6. Granting of licences

Arcplace shall grant the Customer licences for the use of software inasmuch as this is envisaged in connection with the provision of managed services. Such licences are personal, non-exclusive and non-transferable. They are intended only to enable the use of software for the period of validity of the contractual relationship concerned and observing the specifications and restrictions determined therein. They shall lapse on termination of the contractual relationship between the Customer and Arcplace. The customer undertakes not to copy, translate, adapt, change, modify, destroy, decompile or imitate any licensed software by means of reverse engineering.

## 7. Customers' obligations

The Customer is obliged to guarantee the co-operation necessary for fulfilment of the contract by Arcplace at its own expense. Arcplace is not liable for defects, delays or damage which are caused fully or partly through non-performance of a co-operation obligation for which the Customer is responsible. As long as the Customer is in delay with its co-operation, Arcplace has no obligation to perform; agreed delivery periods and dates shall be postponed by the Customer's term of delay.

The Customer is solely responsible for the operation and servicing of the IT systems to which Arcplace's services refer. The Customer shall ensure the functionality and operation of these systems and inform Arcplace immediately about any

events or changes which could have an effect on the provision of services by Arcplace.

## 8. Prices, invoicing and payment conditions

All prices are stated without VAT or other charges, levies or taxes. These shall be invoiced additionally.

The prices can be altered in the case of any adjustment or extension to the contract. Such price adjustments shall be notified by Arcplace in writing to the customer at the latest three months before the end of the term of contract.

In the case of delayed payments, Arcplace reserves the right to demand default interest of a maximum of 1% per month. No reminder is necessary on the part of Arcplace. Arcplace is entitled to suspend its services and deliveries immediately if the Customer is in delay with its payments.

## 9. Duty to take care, service quality and warranties

### 9.1 Duty to take care

Arcplace shall provide the services adhering to the contractual obligations and exercising customary occupational care in line with industrial and technological standards. Arcplace is, however, not obliged to bring about any definite results or work achievement unless this is expressly agreed on a contractual basis.

### 9.2 Service quality and measures

For the case that Arcplace does not achieve the promised service quality or a defined service level or does not honour an agreed warranty, the following shall apply exclusively:

- Arcplace shall take all economically reasonable measures to eliminate poor or non-fulfilment of the service quality, a service level or other contractual obligations. These measures, to be taken by Arcplace, shall thereby include the following: investigation into the cause of the problem together with the Customer, the taking of meaningful measures and orientation of the Customer about the measures taken.
- Arcplace may pay the Customer compensation for the poor or non-fulfilment of the service quality, a service level or other contractual obligations. Such compensation shall be paid in the form of credits. Determination of the amount of such compensation shall lie within the sole discretion of Arcplace.

### 9.3 Warranty

If Arcplace supplies hard or software itself, a one year warranty shall apply. During this warranty period, Arcplace is obliged to eliminate defects at no cost or – in accordance with its own choice – replace the product at no cost. With regard to the warranty and liability in connection with the delivery of hard or software which has been manufactured by third parties, para. 4 above shall apply.

### 9.4 Exclusion of further claims

The aforementioned measures are the only legal remedies with respect to poor or non-performance and represent the only obligation of Arcplace in this respect. Any other than the aforementioned rights or legal remedies for the Customer are excluded. In particular, the Customer has no right on the basis of poor or non-fulfilment to assert any reduction in the contractual remuneration or damages of any type (for example, replacement claims for direct or indirect damage, damages due to loss of turnover, loss of profit, replacement measures or loss of data).

## 10. Force majeure

Any event of force majeure which makes provision of the contractual services more difficult or impossible, shall entitle Arcplace to delay in time in performance of its duties for the duration of this hindrance and to a reasonable additional term necessary to take up the provision of the services again. Any liability on the part of Arcplace for events of force majeure is ruled out.

#### 11. Intellectual property

All computer programs, software development tools, methods, processes, technologies, algorithms, expertise and knowledge which are used by Arcplace for carrying out services under the work contract, shall remain Arcplace's or its licensors' property.

Arcplace is not obliged to defend the Customer or to compensation in regard to the claims of third parties concerning the violation of intellectual property in connection with the use of hard and software which does not originate from Arcplace (i.e. only supplied but not manufactured by Arcplace). Similarly, Arcplace is not liable for claims due to the violation of intellectual property in connection with services which have been provided by third party.

#### 12. Confidentiality and secrecy

The parties recognise that, based on their mutual business relations, they could gain access to confidential information belonging to the other party. Software, the conditions of concluded contracts, any technical documentation, specifications or other information about the services provided by Arcplace, deliveries and business methods are also regarded as confidential information. Each party assures that, for the term of the contractual relations and beyond, it shall pass on no information belonging to the other party to third parties or use it itself in any other than the contractual pretext without having obtained the previous written approval of the other party.

Excepted from the obligation to secrecy are ideas, concepts, information and technologies which were already known to the other party at the time of entering into the contractual relationship or which became known to it from third parties.

#### 13. Data protection

Both parties are obliged to adhere to the applicable data protection regulations. For reasons of clarity and in the scope in which Arcplace is given access to the data processed by the Customer, it is expressly stated that the Customer takes over the position of the owner of the data collection and Arcplace restricts itself to the position of a data processor.

#### 14. References and marketing

Arcplace is entitled to mention its co-operation with the Customer in its list of references or in its general marketing measures.

#### 15. Term of contract, contract adjustment and ordinary termination (termination with notice)

The contractual relations shall apply for at least as long as Arcplace provides services for the benefit of the Customer. Otherwise, the commencement and end of the contract are aligned to the relevant contract documents and the other provisions of these general terms and conditions.

In the case of permanent contracts, the parties undertake to check the reasonableness of the regulations agreed once annually and, if necessary, to enter into negotiations concerning adjustment to the contract content concerned. As long as no agreement is reached on the adjustment of individual provisions, the contract shall remain in power in its present form.

Permanent contracts can be terminated adhering to a termination period of 3 months with effect from the end of the month; termination shall be carried out in writing. Contract relationships, for which a fixed contract term has been agreed, are reserved. These can – with the reservation of dissolution of contract for good cause in accordance with para. 16 – not be terminated.

#### 16. Dissolution of contract for good cause

Each party can terminate the concluded contracts at any time for good cause. Good cause is assumed in particular in the following cases:

- If one party is confronted with appreciable endangerment to or deterioration in its financial situation or if the request for execution of bankruptcy or composition proceedings against one party has been submitted or one party has made such a request itself.
- If the Customer does not meet the obligation to pay Arcplace's invoices in spite of due date, and the Customer has not fulfilled its payment duties within 30 days of a written reminder.

#### 17. Consequences of contract termination

The parties undertake to surrender all records, information and data which they have received as a result of their co-operation at the end of the contractual relationship on request by the other party.

Before the end of the contract, the parties shall agree on those arrangements which are necessary for the services provided up to that point of time by Arcplace to be continued by the Customer or a third party engaged by the Customer.

#### 18. Applicable law and place of jurisdiction

All legal relations of the parties are subject to Swiss law excluding the rules on conflict of laws and the Viennese Convention on Contracts for the International Sale of Goods (CISG). The only place of jurisdiction is Zurich (Switzerland). Arcplace is entitled, however, to sue the Customer at his seat of business or in front any other competent court.

#### 19. Assignment and transfer

The assignment and/or transfer of rights and obligations from the contractual relationship require the written approval of the other party.

#### 20. Partial inapplicability

Should any one provision or regulation, which the parties have agreed, turn out to be inapplicable or non-executable, this shall not impair the applicability of the other regulations and conditions. A regulation shall take the place of the inapplicable or non-executable provision which most closely approaches the purpose of the provision to be replaced.

#### 21. Export control

The export of products (such as, for example, hardware, software, systems) which are subject to the export restrictions of the Department for Import and Export of Seco or corresponding foreign authorities (such as, for example, the American) is prohibited. The Customer is obliged to follow these export restrictions.

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