

## Standard terms and conditions

### 1 Scope of application and modifications

- 1.1 These standard terms and conditions ("STC") govern the legal relationship between BUSINESS IT AG, Basel, (hereinafter referred to as "BUSINESS IT") and individuals who use contractually agreed services of BUSINESS IT (hereinafter referred to as "customer/s") in relation to all services offered by Business IT. Additional contractual terms may be agreed to supplement the STC. Such special terms shall take priority over the STC.
- 1.2 The STC and special terms shall take precedence over any terms and conditions of the customer.
- 1.3 The Privacy and Use Policy of BUSINESS IT shall apply in a supplementary manner to these STC.

### 2 Subject matter of the agreement

- 2.1 The details are set out in the agreement between the customer and BUSINESS IT. The information available on the website and other information provided to the customer prior to the conclusion of the contract shall not be construed as an assurance, guarantee or a binding quote by BUSINESS IT.

### 3 Services of BUSINESS IT

- 3.1 BUSINESS IT is entitled to adjust the scope and prices of its services at any time and with immediate effect. Any price increases and adjustments that may have a material adverse effect on the customer shall only become effective after a period of 30 days from the date of notification to the customer has elapsed. This is without prejudice to Section 11.4.
- 3.2 Third-party services used by the customer in connection with services provided by BUSINESS IT (e.g. telecommunications services, internet connection, etc.) are not services provided by BUSINESS IT. The customer alone shall bear the cost of such third-party services. Section 10.2 shall apply, in particular, to liability associated with third-party services.
- 3.3 BUSINESS IT is entitled to involve third parties to fulfil its obligations under the contract.

### 4 Performance of services and elimination of faults

- 4.1 BUSINESS IT shall provide the agreed IT services with due care and diligence and shall make every effort to prevent faults and disruptions to its services. However, BUSINESS IT is not in the position or under any obligation to guarantee uninterrupted availability of its IT services.
- 4.2 After the conclusion of the contract, it may take several days to set up IT services. If the customer requires additional services in connection with the setup (data migration, setup of special software, etc.), the setup may take longer to complete.
- 4.3 BUSINESS IT shall notify the customer about foreseeable service interruptions in advance. The customer shall notify BUSINESS IT without delay upon becoming aware of defects, errors, interruptions or misuse of services, equipment or software provided by BUSINESS IT.
- 4.4 Any disruptions attributable to BUSINESS IT shall be resolved by BUSINESS IT during office hours (Mon-Fri, 08:00-12:00 and 13:00-17:00, excluding public holidays and announced company holidays). In the absence of a legal obligation, BUSINESS IT shall endeavour to eliminate any faults as far as possible outside these times. When possible, BUSINESS IT shall use remote maintenance to eliminate any faults.
- 4.5 If the fault is not attributable to BUSINESS IT (e.g. because it is related to incorrect manipulation of the customer or a disruption in necessary third-party services) and/or if the costs involved in the elimination of the fault are excessive (e.g. because the fault can only be eliminated on site), BUSINESS IT will be entitled to invoice the customer for the relevant costs associated with eliminating the fault.

### 5 Obligations of the customer

- 5.1 The customer is aware that the purchase of BUSINESS IT services will place certain demands on its system environment. It is up to the customer to meet these system requirements.

- 5.2 The customer shall provide BUSINESS IT with all the documents, information, instructions, etc. required by BUSINESS IT for the proper performance of the contract in a timely manner and on his own initiative. BUSINESS IT is not under any obligation to verify such documentation, etc. In the event of a breach of this obligation, BUSINESS IT will be entitled to postpone any delivery dates adjust its prices or services and charge any additional expenses to the customer.
- 5.3 The cost of any deliveries, including any returns, shall be borne by the customer. The benefits and risks associated with the products to be delivered shall be transferred to the customer upon their dispatch from the manufacturer/distributor. The customer shall check the services of BUSINESS IT immediately upon delivery. The customer shall report any defects in writing stating the reasons for the complaint within seven days of receipt or first use. After the end of this period, the products or services shall be deemed to have been accepted and approved by the buyer and a return will thus no longer be possible. The return of products within 7 days will only be accepted if the goods are complete, unopened and in their original packaging. The customer shall also observe the installation and use instructions provided by BUSINESS IT and third-party services when connecting or using the products or services. In the case of non-compliance, the purchased products or services shall be deemed to have been approved.
- 5.4 The customer shall provide BUSINESS IT with adequate assistance during the troubleshooting and maintenance process and in particular, grant BUSINESS IT the necessary access to the customer's systems. In the event of non-compliance, the customer will no longer be entitled to have any faults eliminated or maintenance performed. An interruption of service associated with such non-compliance shall not result in a reduction of the fees payable by the customer.
- 5.5 The customer shall be responsible for all security measures (e.g. encryption, updates, patches, firewall, software against malware, etc.), compliance with any statutory and other obligations as well as compatibility with the customer's hardware and/or software.
- 5.6 If BUSINESS IT is unable to meet its obligations under the agreement due to incompatibility of BUSINESS IT services with the customer's infrastructure or system environment, BUSINESS IT shall be released from his performance obligations without affecting the customer's payment obligations.

## 6 Permitted use

- 6.1 The customer shall be solely responsible for all content (language, images, data, etc.) used in connection with the services of BUSINESS IT.
- 6.2 The customer shall not use any services or products made available to the customer to commit or support unauthorised acts and shall take appropriate measures to prevent such misuse by third parties.
- 6.3 In particular, the customer may not use the products or services of BUSINESS IT in a manner that is incompatible with the Swiss legal system or with third-party rights (in particular, intellectual property rights). The sending of nuisance messages, unsolicited advertising and similar and the specification and/or use of a false or third-party sender address or telephone number is prohibited.
- 6.4 When using BUSINESS IT internet services, the customer is, in particular, prohibited from getting involved in criminal acts such as fraud, cybercrime, money laundering, breaches of business secrets, forgery of documents, illicit gambling and lotteries, etc.), and participation in such offences, as well as any acts against the security of systems and networks without the prior consent of the data subject and if necessary, the authorities. These include e.g. system vulnerability or network vulnerability testing (scanning); attempting to break security precautions and authorisation measures; monitoring of data traffic (sniffing); disruption of the systems of BUSINESS IT and/or its customers, in particular, using mail bombs, mass mailings or other attempts to overload the system (flooding); manipulation of control information in TCP/IP packets (packet headers).
- 6.5 While BUSINESS IT is not under any obligation to monitor the content of customers, it is entitled, and may, in the case of justified suspicion of a breach of these STC (e.g. based on an appropriate, justified request from a third party and/or an authority) and/or an action attributable to the customer, which has put the normal functioning or security of the network at risk, block the customer's accounts or take other appropriate measures. BUSINESS IT is also entitled to block customer accounts without notice, when customers transfer excessive amounts of data without the consent of BUSINESS IT. The customer shall bear the relevant costs and the measures taken by BUSINESS IT will not release the customer from his obligations.
- 6.6 The customer shall not make passwords available or accessible to third parties. The customer shall notify BUSINESS IT promptly about the loss or misuse of such data.
- 6.7 The customer is responsible for terminating the use of services in accordance with the procedure recommended by BUSINESS IT (e.g. by clicking on "Logout").

## 7 Intellectual property rights

- 7.1 Unless expressly agreed otherwise, the customer shall be granted the non-exclusive, non-transferrable right to use the contractual software without time limitation during the contract term for the customer's own, internal use subject to the condition precedent that the customer shall be in full compliance with the contract concluded with BUSINESS IT (including these terms and conditions) at all times. The customer is prohibited from making the software acquired under the contract with BUSINESS IT available or accessible to third parties.
- 7.2 The licence terms shall apply to standard third-party products, to the extent that they contain further restrictions.
- 7.3 BUSINESS IT and/or any third-party licensor shall, in principle, remain the sole owner of the intellectual property rights to everything made available to the customer under the agreement.

## 8 Prices and payment terms

- 8.1 All prices quoted by BUSINESS IT are exclusive of VAT.
- 8.2 The prices are based on the latest price list of BUSINESS IT. Section 3.1 applies to price changes after the conclusion of the agreement.
- 8.3 The customer shall pay the invoices received from BUSINESS IT within the contractually agreed payment period, but no later than 30 days after the invoice date. If the customer fails to raise any reasoned objections to the invoice from BUSINESS IT in writing by the due date, the relevant invoice shall be deemed to have been approved.
- 8.4 If the customer fails to pay the invoice on time or in full, BUSINESS IT will be entitled to suspend or block all services immediately and without the need for any formal notice. The customer shall continue to be obliged to pay invoices in full during the period of suspension or blocking.

## 9 Services of BUSINESS IT

- 9.1 If the agreement between the customer and BUSINESS IT covers services, the provisions set out in this Section 9 shall apply in a supplementary manner to these standard terms and conditions.
- 9.2 BUSINESS IT shall act in accordance with the instructions of the customer. Unless otherwise agreed between the parties, BUSINESS IT shall be under no obligation to advise the customer or provide any other services extending beyond specific instructions.
- 9.3 BUSINESS IT is entitled to engage auxiliary personnel and /or entrust their provision to third parties in whole or in part.
- 9.4 If the parties have agreed the provision of training services of any kind (introduction, training, workshops, advice on the use of software or hardware, etc.) by BUSINESS IT (e.g. if the customer has selected optional training services on the website), the parties shall arrange the training venue, duration and date(s) on a case-by-case basis. Unless otherwise agreed, BUSINESS IT will be entitled to specify the venue, duration and date(s) of the training and where appropriate, the class size, while taking into account the interests of the customer.
- 9.5 If the customer cancels the training services before the start of the course, the customer shall pay BUSINESS IT a percentage of the training fee in accordance with the following schedule: If the course is cancelled at least two months before the start 0%; if it is cancelled at least one month before start 50%, if it is cancelled less than one month before the start 100%.

## 10 Liability and indemnification

- 10.1 The liability of BUSINESS IT shall be limited to damage caused intentionally or by gross negligence.
- 10.2 BUSINESS IT shall not be held liable for third-party conduct, information, services or products. In particular, it does not accept any liability for the availability of third-party information or warrant that such information is accurate, complete or up-to-date. BUSINESS IT, furthermore, does not accept any responsibility for the efficient running of third-party services or third-party products being free from defects. In addition, BUSINESS IT does not accept any responsibility for the compatibility of BUSINESS IT products or services with the system environment used by the customer, unless it has specifically guaranteed such compatibility.
- 10.3 Any liability for damage caused by force majeure events is excluded (including e.g. power outages, administrative orders, lightning, fire or strikes and other unforeseeable and unavoidable circumstances).
- 10.4 The customer is liable to BUSINESS IT for loss or damage to the equipment, systems, software or data made available to the customer by BUSINESS IT.

- 10.5** The customer shall indemnify BUSINESS IT harmless against any costs, compensation obligations and other financial consequences relating to third-party claims pursued against BUSINESS IT in connection with customer's conduct (including, but not limited to claims for breach of Section 6).
- 10.6** If claims are pursued against the customer in connection with an agreement with BUSINESS IT, the customer shall notify BUSINESS IT as soon as possible. The customer may not take any legal action without the consent of BUSINESS IT. Customer shall provide BUSINESS IT with defence against such claims upon request. Unless the third-party claims are based on a grossly negligent or intentional breach of contract by BUSINESS IT, the relevant costs shall be borne by the customer.

## **11 Commencement, duration and termination**

- 11.1** Unless otherwise agreed, the agreement between the customer and BUSINESS IT is concluded for an indefinite period. At the end of the term of 12 months, it can be terminated by giving a three months' notice.
- 11.2** Any notice of termination by the customer shall be sent by registered letter to the following address: BUSINESS IT AG, Clarastrasse 21, CH-4058 Basel.
- 11.3** BUSINESS IT is entitled to terminate the agreement in whole or in part with respect to individual services at any time and without notice if the customer violates the law, breaches in any other way Section 6 of these STC, fails to pay invoices in full and on time even after a reminder or if BUSINESS IT cannot be reasonably expected to continue to be bound by the agreement. If BUSINESS IT terminates the agreement without notice due to breach of contract by the customer, the customer shall continue to be obliged to pay the fees until the earliest date for proper notice of termination. If BUSINESS IT terminates the agreement due to violation of Section 8 by the customer, BUSINESS IT will be entitled to withhold the data of the customer located on the servers of BUSINESS IT until the outstanding invoices of BUSINESS IT have been paid in full.
- 11.4** Any changes to the STC, services and/or prices shall be communicated to the customer in advance. In the case of any objections, the customer will be entitled to terminate the agreement by giving written notice within ten days of receipt of the notification of change. If the customer exercises his right to terminate the agreement, BUSINESS IT will be entitled to declare within another ten days of receipt of this notice of termination that it wishes to continue to be bound by the agreement on the old terms and conditions. In this case, the agreement shall continue to apply unaffected by the notification of change or the termination by the customer.

## **12 Other**

- 12.1** The place of performance is the registered office of BUSINESS IT.
- 12.2** To be effective, any changes to the agreement must be made in writing.
- 12.3** Customers are not entitled to assign rights and transfer obligations under this agreement to third parties without the prior written consent of BUSINESS IT.
- 12.4** The parties shall keep confidential any information of which they become apprised in connection with the performance of their contractual obligations and which is by nature confidential or has been expressly classified as confidential by the disclosing party.
- 12.5** These standard terms and conditions shall be governed by and construed in accordance with the laws of Switzerland. The parties agree that the sole place of jurisdiction shall be the competent courts of the canton of Basel.

Basel, 1 May 2015