

# Special Conditions of Purchase for IT Services by DELO / as of November 2020

## § 1 Validity of the SCP-IT

(1) These Special Conditions for the Purchase of IT Services (SCP-IT) apply to the purchase of IT services by DELO Industrie Klebstoffe GmbH & Co. KGaA and WSH GmbH & Co. KG (hereinafter both individually referred to as "DELO", or "we") in addition to the GTCP in the order determined in § 4 thereof.

(2) IT services are services in the field of information technology and/or electronic information and communication, including the operation of hardware and/or software (systems), hosting and administration of data, the supply/transfer, setting/adaptation of hardware (systems), the transfer, creation, adaptation, setting, processing and expansion of software and software systems, as well as related monitoring and support services.

## § 2 Provision of IT Services

(1) The Contractor shall provide the IT services properly and in accordance with the current state of the art, including current programming standards, and shall produce the work results agreed in the order, if applicable. He will comply with the (quality) standards and working methods valid for DELO if notified accordingly by DELO.

(2) The Contractor shall adhere to the current standard of information security when providing the IT services, and shall, in particular, secure the systems of DELO according to the current state of the art against unauthorized access by third parties (e.g. hacker attacks) and against unwanted data transmission (e.g. spam). If the Contractor becomes aware of dangers or security risks to data and information/system security, he shall inform DELO without undue delay hereof and initiate, in coordination with DELO, effective countermeasures which must not limit the provision of the IT services as far as possible.

(3) If the Contractor needs access to DELO systems in order to provide the IT services, this requires our prior express written consent.

(4) The Contractor shall check the software and/or data carriers with an up-to-date virus program before sending them to DELO and ensure that the software and/or data carriers do not contain any malware, computer viruses, Trojan horses or the like. The Contractor shall ensure, by means of current software security tests prior to transfer, that the software does not contain any critical vulnerabilities that could damage the integrity and confidentiality of our systems and data or those of connected third parties.

(5) The Contractor shall assume the main obligation to technically document the provided IT services in a comprehensible manner and to inform DELO in detail about the progress of the IT services upon request.

(6) Software shall always be delivered to DELO with user documentation in German and in the usual format and – if it is not standard software – including source code and programming documentation.

(7) DELO is only obliged to provide resources (hardware, software, premises, etc.) if this is expressly agreed in writing in accordance with § 7 GTCP.

(8) DELO retains all rights to requirement profiles, illustrations, drawings, calculations, samples and other documents made available to the Contractor by DELO for the purpose of service provision. They shall be used exclusively for the provision of IT services and returned unsolicited after completion, and may not be made available to third parties without the express written consent of DELO.

(9) If the documentation or information provided by DELO for service provision is incomplete or incorrect, the Contractor shall notify DELO immediately hereof.

(10) If upgrades or updates are provided by the Contractor within the scope of the service provision, the Contractor shall ensure that these do not impair the IT services and their functionalities and that the agreed quality of the IT services is maintained.

## § 3 Support Services

On DELO's request, the Contractor shall offer support services, i.e. all related services required in connection with his hardware or software services and/or services and/or infrastructure services, such as training, consulting, optimization, maintenance/care, at standard market conditions.

## § 4 Cloud Services

The provision of cloud services, also as part of other IT services, shall only be permitted after written agreement with DELO. No data from DELO may be stored on servers outside the European Union.

## § 5 Changes to IT Services (Change Requests)

(1) If DELO requests a change to the agreed IT service after conclusion of the contract, the Contractor is obliged to check the change request - within a reasonable period of time - for its feasibility, the time required and any additional costs, and to send DELO a corresponding offer free of charge, unless the change is not feasible or cannot reasonably be expected of the Contractor with regard to his operational performance and he informs DELO hereof without delay.

(2) A change to the originally agreed IT services requires a written agreement. Until the agreement is reached, the Contractor is obliged to provide the originally agreed IT services.

## § 6 Rights of Use

(1) If the Contractor provides standard software to DELO, i.e. software that has been developed for the needs of several customers on the market and not specifically for DELO, the Contractor shall grant DELO simple, irrevocable, sublicensable rights of use that are unrestricted in terms of time, space and content and can be transferred to companies affiliated in

accordance with sections 15 and following of the German Stock Corporation Act (AktG).

(2) DELO acquires exclusive, irrevocable, transferable, sublicensable rights of use, unlimited in time, space and content, to all other work results and delivery items (e.g. individual software, adaptations of standard software, documentation, source codes and concepts), as well as to corrections, patches, updates, upgrades, etc., provided by the Contractor in connection with the contractual performance, which include every known type of use, including the right to rework, copy, change and expand.

(3) The Contractor shall inform DELO without undue delay of any employee inventions made during the performance of the contractual services. If DELO demands transfer, the Contractor makes use of the invention and transfers it to DELO. There is no obligation on the part of DELO to register a patent.

(4) All rights within the meaning of this clause may also be exercised by third parties commissioned by DELO, provided that the exercise is carried out by the commissioned third parties for the business purpose of DELO.

## § 7 Open-source Software

(1) If the Contractor uses open-source software for service provision, he shall ensure that it complies with the applicable license conditions of the relevant open-source software and that its use does not restrict the contractual or intended use of the IT services by DELO.

(2) For open-source software components that are incorporated into the work results or otherwise transferred to DELO in the context of the service provision, the use of open-source software under copyleft license is not permitted unless DELO has expressly permitted it previously in writing. Copyleft licenses are license terms for open-source software to avoid that further developments of the software or software components connected to it or integrated in it may be distributed exclusively under the respective license terms.

(3) For open-source software components that are incorporated into the work results or otherwise transferred to DELO in the course of the service provision, the Contractor shall state which specific components are involved under which open-source license terms and shall send the respective license text to DELO. Insofar as this is required according to the respective license terms, the Contractor shall transfer the source code of the open-source software to DELO.

(4) The Contractor shall indemnify DELO without limitation in terms of amount against all claims of third parties and associated costs arising from the use of open-source software.

## § 8 Liability for Defects, Warranty

(1) We are entitled to statutory warranty rights without restriction. Except in the case of services, we are therefore entitled, after setting a reasonable deadline, to demand, at our discretion, the remedy of the defect or the renewed provision of the contractual service. The obligation to remedy defects includes necessary adjustments to the user documentation. All costs incurred in the course of subsequent performance shall be borne by the Contractor. If subsequent performance fails, we shall be entitled to statutory rights to replacement, reduction, withdrawal and damages without limitation.

(2) If the Contractor provides software parts to DELO for software maintenance, defects in these parts as well as defects in the interaction of the software (parts) with the maintained software will be eliminated in accordance with the provisions of the maintenance contract. If the maintenance contract ends before the limitation period for claims for defects expires, DELO is entitled to full rights mentioned in paragraph 1 with regard to such defects.

(3) Warranty claims for defects become time-barred 24 months after acceptance of the contractual performance, unless a longer period is stipulated by law.

## § 9 Property Rights of Third Parties

(1) The Contractor guarantees that the IT services and work results are free of third-party rights and that they do not violate any third-party rights.

(2) If IT services and/or work results violate the rights of third parties, the Contractor shall do everything reasonable to create contractual conditions by acquiring rights. If the acquisition of rights is not successful, the Contractor will provide us with equivalent IT services which do not infringe the rights of third parties (workaround). The workaround is only equivalent if it does not or only insignificantly restrict the agreed usability of the IT services and work results by DELO. The Contractor shall bear the costs of the workaround and any necessary adaptation of the environment of the IT services, unless he is not responsible for the violation of the rights of third parties.

(3) In the event of assertion of claims against DELO if third-party rights are violated by the IT services, the Contractor shall be responsible, as far as legally possible, to assume legal defense and to manage it independently at his own expense. DELO will support the Contractor to a reasonable extent in the defense against claims asserted by third parties.

## § 10 Liability, Indemnity

(1) DELO can request the Contractor to compensate all damages caused by him, as far as these damages are either based on a guarantee, an assurance or a culpable breach of the Contractor's duty. In addition, DELO is entitled to statutory claims for damages.

(2) Upon first request, the Contractor is obliged to indemnify DELO without limitation in terms of amount against any liability towards third parties or against third-party claims and related costs arising from the IT services. This indemnity obligation includes, for example, claims arising from violation of third-party property rights, claims of authors who were involved in the creation

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of the work results, as well as claims arising from the violation of open-source license provisions.

(3) The obligation to indemnify shall not apply if the claim is based on grossly negligent or intentional breach of duty on our part.

### **§ 11 Taxes**

All direct taxes (e.g. withholding tax) which are levied or paid in Germany on the basis of the remuneration paid to the Contractor shall be borne by the Contractor. If DELO is legally obliged to deduct withholding tax (e.g. source tax) from at least a part of the remuneration, the difference will be paid out only. The maybe accrued withholding tax is paid quarterly to the tax office in charge for DELO. If a double taxation agreement valid for contractual services provides for a reduction or exemption from withholding taxes, the resulting higher remuneration will only be paid out if a valid certificate, which entitles DELO to make a lower tax deduction, is available at the latest at the time of payment if this is prescribed by the relevant applicable law. Upon request, DELO will provide the Contractor with an original tax certificate of any withholding tax withheld.

### **§ 12 License Audits**

(1) The Contractor is entitled to demand information from DELO to which extent the software, which was provided for IT services, is used on his computers.

(2) Only under the following conditions is the Contractor entitled to carry out a license audit at his own expense on the business premises of DELO - either himself or through commissioned third parties, provided that these have been appropriately bound to secrecy:

- if there is a good reason for this, i.e. in particular the justified suspicion that the provided software is not used in accordance with the license terms,
- after reasonable notice in writing,
- in compliance with data protection regulations,
- solely by carrying out the inspections and controls necessary to verify compliance with the provisions of the license,
- as well as during the normal business hours of DELO and without interfering with normal business operations.

### **§ 13 Settlement in the Event of Termination**

(1) If DELO terminates the contract for the IT services for good cause, the Contractor is only entitled to charge for the services demonstrably provided up to the date of termination, provided DELO has use for this. DELO may also demand partially completed services against reimbursement of the demonstrably incurred costs, but no more than the value of the partially completed service in relation to the total value of the respective service.

(2) If insolvency proceedings are opened over the assets of the Contractor or out-of-court settlement proceedings are applied for, DELO is entitled to terminate the contract with immediate effect. In this case, the above paragraph shall apply accordingly.

### **§ 14 Prohibition of Assignment**

The transfer of contractual rights or obligations by the Contractor requires our prior written consent to be effective. The Contractor is not entitled to assign his claims against DELO or have them collected by third parties without our prior written consent, which may not be unreasonably withheld. If the Contractor assigns his claim against DELO without our consent, the assignment is nevertheless effective; DELO may, however, make payment to the Contractor or the third party with discharging effect at our discretion.

### **§15 Choice of Law, Place of Jurisdiction**

(1) The contracts concluded with the inclusion of these SCP-IT are subject to the law of the Federal Republic of Germany (excluding the UN Convention on Contracts for the International Sale of Goods).

(2) Exclusive place of jurisdiction is Munich. However, we are also entitled, at our discretion, to sue the Contractor at his general place of jurisdiction.

### **§ 16 Miscellaneous**

(1) Subsidiary agreements, amendments or supplements to the contractual agreement must be made in writing.

(2) Should one or more of the above provisions be or become invalid, the validity of the remaining provisions shall not be affected.