

# anexia



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## **GENERAL TERMS AND CONDITIONS**

### IT SERVICES

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## IT SERVICES

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### 1. General information

- 1.1. The Contractor is to provide for the Client services in information technology and the operation of hardware and software components in accordance with the enclosed service level agreements (SLAs), which form an integral part of the General Terms and Conditions.
- 1.2. These General Terms and Conditions (GTC) apply to all current and future services performed by the Contractor for the Client, even if, in an individual case, in the conclusion of the contract no express reference is made to these GTC. Terms and conditions of the Client will apply only if they have been acknowledged in writing by the Contractor.

### 2. Scope

- 2.1. The exact scope of services is laid down in the respective SLAs with the Client. Unless otherwise agreed, the provision of the services by the Contractor will take place during the normal business hours of the Contractor pursuant to the SLA. The Contractor will ensure that the services are performed and made available in accordance with the respective SLAs.
- 2.2. The performance of the equipment and technology used by the Contractor is based on the qualitative and quantitative performance needs of the Client as calculated on the basis of information provided by the Client. Should new requirements on the part of the Client require a change to the services or technology used, the Contractor will at the request of the Client make a corresponding offer.
- 2.3. The Contractor is entitled at its discretion to change the equipment used to provide the services as long as no impairment of the services is anticipated.
- 2.4. Services outside the agreed scope that are provided by the Contractor and used by the Client will in each case be remunerated by the Client in accordance with the actual personnel and material expenditure at the applicable rates set by the Contractor. These include in particular services outside the normal business hours of the Contractor, the analysis and elimination of faults and errors caused by improper handling or operation by the Client, or by other circumstances for which the Contractor is not answerable. Training is also in principle not included in the services and requires a separate agreement.
- 2.5. Should the Contractor, at the request of the Client, arrange for services to be provided by third parties, these contracts will be concluded exclusively between the Client and the third party under the respective terms and conditions of the third party. The Contractor is responsible only for the services that it provides itself.

### 3. Duty of cooperation and provision of the Client

- 3.1. The Client undertakes to support all measures required for the provision of the services by the Contractor. The Client further undertakes to adopt all measures required for fulfillment of the contract that are not included in the scope of services offered by the Contractor.
- 3.2. If the services are to be provided by the Contractor at the premises of the Client, the Client will provide the network components, connections, electrical power including peak voltage equalization, emergency power supplies, floor area for installations, workstations and infrastructure required for the provision of the services in the required scope and quality (e.g. air-conditioned) and free of charge. The Client is at all times responsible for compliance with the conditions set by the manufacturers for the operation of the hardware. The Client must likewise guarantee room and building security and safety, including protection from water, fire and access by unauthorized persons. The Client is itself responsible for any special safety precautions (e.g. safety cells) on its

premises. The Client is not entitled to issue instructions, irrespective of their nature, to the Contractor's members of staff, and will address all wishes concerning the performance of the service exclusively to a contact nominated by the Contractor.

- 3.3.** The Client will provide all the information, data and documents required by the Contractor for execution of the order on the agreed dates set, at its own expense and in the form required by the Contractor and will support the Contractor if requested to do so in the analysis of problems and elimination of faults, the coordination of processing orders and coordination of the services. Changes to the work processes at the Client's premises that might bring about changes to the services to be performed by the Contractor for the Client require prior consultation with the Contractor in respect of their technical and commercial effects.
- 3.4.** If this is not expressly included in the scope of services to be provided by the Contractor, the Client will at its own risk and expense ensure that a network connection is present.
- 3.5.** The Client must treat the passwords and logins required for the use of the services provided by the Contractor in confidence.
- 3.6.** The Client will additionally keep the data and information handed over to the Contractor in a safe place so that they can be reconstructed at any time in the event of loss or damage.
- 3.7.** The Client will execute the duties of cooperation incumbent on it in a timely manner so as to ensure that the Contractor is not hindered in its provision of the services. The Client must ensure that the Contractor and/or third parties commissioned by the Contractor for the provision of the services are granted the required access to the premises of the Client. The Client is responsible for ensuring that the members of staff of its affiliated companies involved in the fulfillment of the contract or third parties commissioned by it play their due part in cooperating in the fulfillment of the contract.
- 3.8.** Should the Client fail to carry out its duty of cooperation in accordance with the agreed schedule or in the envisaged scope, the services provided by the Contractor will, notwithstanding possible limitations, nonetheless be deemed to have been provided in compliance with the contract. Schedules for the services to be provided by the Contractor will be subject to an appropriate delay. The Client will compensate the Contractor for any resulting extra expense and/or costs at the applicable rates set by the Contractor.
- 3.9.** The Client will ensure that its members of staff and third parties answerable to it will treat with care the equipment and technologies used by the Contractor and any other assets that may be entrusted to it; the Client will be liable for any damage.
- 3.10.** In the absence of any other agreement, anything provided by and any cooperation offered by the Client will be free of charge to the Contractor.

## 4. Personnel

If employees of the Client are to be taken on by the Contractor in accordance with the agreements made between the contracting parties, a separate written agreement will be required.

## 5. Change requests

Both contracting parties can request changes to the scope of the services at any time (change requests). Any desired change must, however, set out an exact description of the change, the reasons for the change, its influence on the schedule and the costs to allow the addressee of the change request to make an informed assessment. A change request will become binding only when it has been signed by both contracting parties.

## 6. Disruptions to the service

- 6.1.** The Contractor undertakes to provide the service in accordance with the contract. If the Contractor fails to provide the services in accordance with the envisaged schedule or the provision thereof is inadequate, i.e. there are significant deviations from the agreed quality standards, the Contractor must begin work to remedy the defects without delay and provide its services properly and without defects within an appropriate period of

grace, where it may choose either to repeat the services concerned or to carry out any necessary remediation work.

- 6.2. If the inadequacy of the work stems from provision or cooperation on the part of the Client or a breach of the duties of the Client pursuant to section 3.9., any obligation to remedy the defects free of charge will lapse. In such cases, the services provided by the Contractor will, notwithstanding possible limitations, nonetheless be deemed to have been provided in compliance with the contract. The Contractor shall, if so requested by the Client, rectify the defect in return for payment.
- 6.3. The Client will support the Contractor in its rectification of the defects and provide all the information required. The Contractor must be notified without delay by e-mail by the Client of any defects that come to light. Any additional costs in the rectification of the defect caused by a delay in notification will be borne by the Client.
- 6.4. The provisions of this section apply mutatis mutandis to any deliveries of hardware or software products by the Contractor to the Client. The warranty period for such deliveries is six months from handover. Section 924 ABGB "Presumption of Defectiveness" is excluded by mutual consent. Any hardware or software products of third parties entrusted to the Client by the Contractor are covered by the respective warranty conditions of the manufacturers of these products, which override the provisions of this section. Until such time as full payment has been made, the Contractor reserves title to the hardware and software products supplied by it.

## 7. Contractual penalty

The Contractor must comply with the priorities of degrees of fulfillment or recovery times stated in the SLA. If the Contractor exceeds the time limit set in the SLA for recovery, the Contractor must pay the Client penalties according to the SLA for each complete or part hour that elapses after the deadline until the point of actual recovery (fulfillment): The aforementioned penalties are limited to 20% of the overall annual payment per year. The assertion of any additional claim for compensation is excluded unless it relates to intent or gross negligence.

If any deadlines are exceeded in a manner that triggers a penalty, the Contractor is to be notified thereof in writing without delay.

## 8. Liability

- 8.1. The Contractor is liable to the Client for any damage for which it is demonstrably culpable only in the case of gross culpability. This applies mutatis mutandis to damage that can be attributed to third parties brought in by the Contractor. In the case of culpable personal injury, the Contractor will be liable without limitation.
- 8.2. Liability for indirect damage – such as lost profit, costs associated with interrupted operations, data losses or claims of third parties – is expressly excluded.
- 8.3. Claims for compensation expire in accordance with the statutory regulations, at the latest, however, upon expiry of one year from the time the damage and the author of the damage came to light.
- 8.4. If the Contractor uses third parties to carry out the work and in this context warranty and/or liability claims are asserted against this third party, the Contractor will assign these claims to the Client. In this case, the Client will assert its claim as a priority against this third party.
- 8.5. If data backup is expressly agreed on as a service, liability for the loss of data is by way of derogation from section 8.2 not excluded. It is, however, limited for the recovery of the data to a maximum sum in euros of 10% of the order total per case of damage, where the maximum upper limit is €15,000. Warranty and compensation claims of the Client that go beyond those set forth in this contract – irrespective of legal grounds – are excluded.

## 9. Remuneration

- 9.1. The remuneration to be paid by the Client and the conditions are to be taken from the contract. Sales tax at the statutory rate will be invoiced in addition.

- 9.2. The travel time of employees of the Contractor will be deemed working time. Travel time will be remunerated at the agreed hourly rate. The aforementioned rates will change in accordance with the sliding price-scale clause in section 9.5. In addition, travel costs and any other accommodation costs incurred by the Client will be reimbursed at actual cost. The reimbursement of travel and ancillary costs will be subject to the presentation of receipts (copies).
- 9.3. The Contractor is entitled at any time to make the provision of the service dependent on advance payments or the provision of other securities of appropriate value by the Client.
- 9.4. In the absence of any other agreements, one-off remunerations will be invoiced immediately after provision of the service, ongoing remunerations quarterly in advance. Invoices submitted by the Contractor, including sales tax, are payable without any deduction and free of charges no later than 14 days after receipt of the invoice. The payment terms set for the total order apply to partial invoices by analogy. A payment will be deemed to have been made on the day on which the Contractor can avail itself of the funds. Should the Client default on its payments, the Contractor will be entitled to charge statutory default interest and all the costs required for the collection of the debt. Should the default on the part of the Client last for longer than 14 days, the Contractor will be entitled to suspend provision of all services. The Contractor will moreover be entitled to demand immediate payment for all previously provided services, irrespective of any payment terms.
- 9.5. Ongoing remunerations are based on the collective contractual salary of an employee of companies in the field of services in automatic data processing and information technology on the experience level for special work.
- 9.6. The Client may offset claims for payment only with counterclaims that have been recognized by the Contractor or are res judicata. The Client has no right of retention.
- 9.7. The Client is responsible for paying all duties arising out of the contractual relationship, such as fees for legal transactions or withholding tax.

If claims for the payment of such duties should be asserted against the Contractor, the Client will indemnify the Contractor against such claims.

## 10. Force majeure

If and to the extent that instances of force majeure, such as war, terrorism, natural disasters, fire, strike, lockout, embargo, governmental intervention, power supply failure, failure of transportation, failure of telecommunications networks or data lines or cables, changes in the law that affect the services after the conclusion of the contract or any other non-availability of products, should mean that obligations cannot be fulfilled on schedule or properly, this will not represent a breach of contract.

## 11. Rights to use software products and documentation

- 11.1. If the Contractor hands over software products to the Client or enables the Client to use software products in the context of the services, the Client will have the non-exclusive, non-transferable, non-sublicensable right, limited to the duration of the contract, to use the software products in an unchanged form.
- 11.2. In the event of the use of software products in a network, a license is required for every simultaneous user. In the event of the use of software products on standalone PCs, a license is required for every PC.
- 11.3. Any software products of third parties handed over to the Client by the Contractor are covered by the respective license provisions of the manufacturers of these software products, which override the provisions of this section.
- 11.4. In the absence of a separate agreement, no further rights to software products will be conferred on the Client.

The rights of the Client pursuant to Articles 40(d) and 40(e) of the Copyright Act will not be impaired thereby.

- 11.5. None of the documents handed over by the Contractor to the Client, particularly documents concerning software products, may be either reproduced or in any other way disseminated, either in return for payment or free of charge.

## 12. Term of the contract

- 12.1. The contract will come into force when it has been signed by both contracting parties and is concluded for an indefinite period. The contract may be terminated by either contracting party by registered letter with the observance of a period of notice of six months, at the earliest, however, at the end of the minimum term agreed in the contract.
- 12.2. Each contracting party is entitled to terminate the contract prematurely and without notice for good cause by registered letter. Good cause will be deemed to have arisen in particular if one of the contracting parties, in spite of a written warning and the threat of termination, breaches key obligations of the contract, or if bankruptcy or other insolvency proceedings are filed or initiated against the other contracting party or rejected due to a lack of assets, or if the performance of the other contracting party is hindered or prevented as a result of force majeure for longer than six months.
- 12.3. The Contractor is moreover entitled to terminate the contract prematurely for good cause if essential parameters of the provision of the services have changed and the Contractor can, from an economic point of view, no longer reasonably be expected to continue to provide the services.
- 12.4. When the contract comes to an end, the Client must return to the Contractor without delay all the documents entrusted to it by the same.
- 12.5. At the request of the Client, the Contractor will at the end of the contract support the Client at the applicable hourly rates of the Contractor in the return of the services to the Client or to a third party nominated by the Client.
- 12.6. Unless they are terminated six months before the expiry of the minimum contractual term, the terms of the individual (pre-) contracts / offers will be extended automatically by a further 12 months. This provision applies also to (pre-) contracts / offers that have already been automatically extended.

## 13. Data protection

- 13.1. When handling personal data, the Contractor observes the provisions of the EU General Data Protection Regulation (GDPR), the Austrian Data Protection Act (DSG) and the Austrian Telecommunications Act (TKG) and adopts the technical and organizational measures required for data protection in the Contractor's area of responsibility. The Contractor processes the Client's personal data exclusively in connection with the provision and administration of the products or services and accounting in accordance with the (pre-) contracts and offers and in compliance with the applicable statutory provisions.
- 13.2. In the case of contract data processing pursuant to GDPR by the Contractor with the Client as controller, Anexia's currently valid "General Privacy Policy" published on the Anexia homepage applies in conjunction with a respectively separately concluded individual "Contract Data Processing Agreement." It also forms an integral part of these General Terms and Conditions and applies to all products and services or existing and future contracts between Client and Contractor and thus constitutes a binding, written legal instrument in accordance with Article 28 (2) and (9) of the GDPR. This ensures GDPR-compliant collaboration in contract data processing for both parties.

## 14. Confidentiality

- 14.1. Each contracting party assures the other that it will treat all the operating secrets that come to its attention in connection with this contract and the execution thereof in confidence and not disclose them to third parties, unless these are already generally known or were previously known to the recipient without any obligation to observe confidentiality, have been shared with or entrusted to the recipient by a third party without any obligation to observe confidentiality, have demonstrably been independently developed by the recipient, or whose disclosure is compelled by a legally binding official or judicial decision.
- 14.2. Subcontractors affiliated with the Contractor are not to be deemed third parties if they are subject to a nondisclosure agreement whose content corresponds to this section.

## 15. Miscellaneous

- 15.1. The contracting parties will nominate in the contract knowledgeable and competent staff who can take or initiate the necessary decisions.
- 15.2. The Client will not recruit employees used by the Contractor to provide the services, either itself or via third parties, for the duration of the contract and until the expiry of one year after the end of the contract. In the event of a breach of the foregoing provision the Client shall pay the Contractor a contractual penalty of twelve times the gross monthly salary most recently paid to the member of staff in question by the Contractor, at least, however, the collective contractual salary of an employee of companies in the field of services in automatic data processing and information technology on the experience level for special work.
- 15.3. Any changes or amendments to this agreement must be made in writing to be effective. The same applies to the cancellation of this written form clause.
- 15.4. Should one or more provisions of the contract be or become completely or partially ineffective or unenforceable, the effectiveness of the remaining provisions will remain hereby unaffected. The ineffective or unenforceable provision must be replaced by an equivalent effective provision that comes as close as possible to the economic purpose of the ineffective or unfeasible clause.
- 15.5. Any disposal of the rights or obligations arising from the contract requires the prior written consent of the other contracting party. The Contractor is, however, also entitled to transfer the contract without the consent of the Client to a company affiliated with the Contractor under the terms of the law governing company groups.
- 15.6. The Contractor is entitled to make use of third parties, either in whole or in part, to fulfill its obligations.
- 15.7. Unless otherwise agreed, the statutory provisions that apply to relationships between registered traders are those enshrined in Austrian law, even if the order is executed abroad. In the event of disputes, the territorial jurisdiction of the court that is competent for the registered office of the Contractor is deemed agreed, to the exclusion of all other jurisdictions.