



## **1 GENERAL**

### **1.1 AREA OF APPLICATION**

These General Terms and Conditions apply to all member companies of the Trivadis Group.

### **1.2 CONTENT**

All quotations, offers, orders, deliveries, and provision of products and services of/by the Trivadis Group shall be governed exclusively by these General Terms and Conditions. They shall apply irrespective of whether the parties acknowledge them expressly or tacitly.

Any amendments hereto or ancillary agreements shall not be binding unless rendered in writing.

### **1.3 SCOPE OF PRODUCTS AND SERVICES PROVIDED, PERFORMANCE, PLACE OF PERFORMANCE**

Offers and quotations of the Trivadis Group are without obligation to it.

A contract is not deemed to have been concluded until the Trivadis Group has issued a written confirmation of order. In exceptional cases the commencement of performance of a service by the Trivadis Group may be decisive in determining when a contract has been concluded.

In the event of calculation or typographical errors in an offer or quotation, the Trivadis Group reserves the right to correct same.

The provisioning of products at the domicile of the Trivadis Group shall be deemed to constitute delivery or performance insofar as no specific place of performance is agreed upon by the parties hereto or none follows from the nature of the respective business transaction.

### **1.4 DEADLINES AND OTHER TIMES**

Only those deadlines and times which have been agreed to in writing, in particular on-call times outside of normal working hours, specific repair times or response times, etc., shall be binding. Such times shall be appropriately extended in the event that

- a) details required by the Trivadis Group for performing work are not made available to it in a timely manner or when the Customer subsequently changes them without notifying the Trivadis Group;
- b) when the Customer is in delay or default of completing work to be performed by it or of complying with its contractual obligations, particularly when the Customer does not adhere to the payment terms;
- c) when impediments arise which the Trivadis Group could not have avoided. Examples of such impediments include but are not limited to the following cases of force majeure: acts of God, natural phenomena and disasters; mobilization of law enforcement and armed forces; armed conflicts, war, insurrections, epidemics; casualties or accidents; substantial interruption of operations; lockouts, strikes or other concerted acts of workmen; shortage of power, labor or materials; delayed deliveries or non-delivery by suppliers of the requisite raw materials, semi-finished or finished goods; essential



components becoming defective; embargoes; acts or omissions on the part of government authorities; or any other causes, circumstances or contingencies beyond the Trivadis Group's control.

The Trivadis Group shall be entitled to make part deliveries or deliveries in installments.

In the event of delays, the Customer shall grant the Trivadis Group a reasonable period of time to subsequently comply with its obligations. In the event that the Trivadis Group shall not have complied with its obligations upon this grace period elapsing, the Customer shall be entitled to dispense with subsequent fulfillment or rescind the contract providing it issues a written declaration to this effect within three days.

In the event that the Trivadis Group can be shown to be at fault for delay in performance, and should the Customer dispense with performance or rescind the contract, it shall be entitled to compensation for the actual damage or loss caused as a result, with any such damages being limited to a maximum of 20 % of the value of the delayed delivery of products or performance of services. Any claims for the compensation of consequential damage or loss on account of delays is precluded.

## **1.5 COOPERATION OBLIGATIONS INCUMBENT UPON THE CUSTOMER**

The Customer shall support the Trivadis Group in performing its work. The Customer shall take the following necessary measures in particular:

- a) provide the required room for equipment including accessories in addition to the requisite device connectors, in air-conditioned rooms wherever necessary, in accordance with the specifications of the Trivadis Group;
- b) draw to the attention of the Trivadis Group in a timely manner any and all special technical prerequisites as well as point out to it statutory, government and other regulations in effect at the destination insofar as they are significant for performance in conformity herewith;
- c) designate a knowledgeable, sufficiently informed staff member who is available to the maintenance and support personnel;
- d) use the equipment exercising due care and in accordance with the instructions of the Trivadis Group, not subjecting it to any undue loading, wear or tear, satisfying the requirements with regard to the surrounding environment and performing customary cleaning work;
- e) afford the Trivadis Group unimpeded access to the equipment, data carriers and documentation and provide it with the requisite facilities;
- f) make available the requisite communication systems — e.g. by installing a modem or the requisite communication software — so that the Trivadis Group can perform investigations in the course of remote servicing and take actions directly affecting the system;
- g) make available any and all suitable facilities for maintenance work required for storing tools, materials and supplies.

The Supplier shall be entitled to additionally invoice the Customer for any expenses and additional work caused by insufficient cooperation on the Customer's part. The currently applicable schedule of fees shall apply to the products and services provided by the Trivadis Group.

## **1.6 RESPONSE AND ON-CALL TIMES**

When a specific response time has been agreed upon between the Trivadis Group and the Customer, the Trivadis Group undertakes to commence work within the agreed-upon number of hours subsequent to the Customer requesting the supply of products and/or services as provided for hereunder. The establishment of contact by the Trivadis Group's i/c staff member shall constitute the commencement of work.



The supply of products and services as provided for hereunder will be done during the Trivadis Group's customary working hours.

## **1.7 CHANGE PROCEDURE**

While services are being rendered, both of the parties hereto can, at any time, suggest changes in the products and services agreed upon in writing. In the event of a change request on the part of the Customer, the Trivadis Group shall inform it whether the change is possible and what impact it will have on the contract, in particular on pricing and deadlines, etc.

In the event that such a change has a substantial impact on the service being provided, the Trivadis Group will inform the Customer about the duration and costs involved in a detailed investigation thereof, in addition to providing a preliminary estimate of the feasibility and indicating the resultant consequences.

Once an agreement is reached on a change to the contract/order, the Customer shall confirm the change in writing, otherwise the contract/order will proceed unchanged.

## **1.8 LIABILITY**

All cases of contractual violations and their legal consequences, including any and all entitlements and claims of the Customer, irrespective of the legal grounds on which they are based, are exhaustively covered and definitively specified in these Terms and Conditions.

Save for warranty claims, the Trivadis Group will assume liability for damage and loss — regardless of the legal grounds on which such claims may be based — up to a total of a maximum of 20 % of the remuneration for the project or service.

This means that any and all non-expressly indicated claims for compensation for damage or loss, reduction in the (purchase) price, and suspension or rescission of the contract are precluded. In no event shall the Customer be entitled to claims for any compensation for any damage whatsoever which does not arise directly in the items delivered as such, this including but not being limited to non-realized business profits, business interruption, production down times, loss of use, installation and removal of components, loss of business information, loss of business, non-realized savings, interest losses, or any other pecuniary loss) as well as any and all other incidental, special, indirect or consequential damage. This exclusion of liability shall not apply to fraudulent intent or gross negligence on the part of the Trivadis Group, however it shall apply to any fraudulent intent or gross negligence on the part of persons employed or appointed by the Trivadis Group to perform any of its obligations. In addition, the Trivadis Group shall assume no liability for any damage or loss as the result of non-fulfillment of the Customer's contractual obligations (arising in particular from the Customer's duty to perform its cooperation obligations in an error-free and timely manner).

The foregoing limitation of liability shall not affect claims of the Customer arising from product liability.

## **1.9 PRICING AND TERMS OF PAYMENT**

Unless indicated otherwise, pricing is understood to be quoted in the currency of the country in which the product or service is provided, excluding VAT, fees, charges, customs, transportation, packaging, insurance, installation, running-in, commissioning, training and user support. Payment shall be effected net within ten days of the invoice date unless specified otherwise on the invoice. Upon this period elapsing, the Customer shall automatically be deemed to be in arrears.



In this event the Customer shall be liable to payment of interest charged in accordance with the interest rates in effect at the Customer's domicile, with, however, a minimum of 4 % above the respective discount rate of the national central bank being applicable. The Trivadis Group reserves the right to assert claims for any damage or loss extending beyond this.

Any outstanding amounts receivable and claims shall become payable immediately in the event that the Customer is granted a stay for the purpose of negotiating a composition agreement or bankruptcy proceedings have been initiated against it.

In the above events, the Trivadis Group shall be entitled to hold back delivery on items not yet delivered and to rescind the contract.

Bills of exchange will not be accepted unless this has been agreed upon. All bill of exchange costs and discount charges shall be assumed by the Customer.

In the event there is a deterioration in the Customer's asset position upon concluding the contract, the Trivadis Group shall have the option of requiring advance payment or security as it shall see fit, this requirement to be complied with within one week. Alternatively, the Trivadis Group shall also have the option of discontinuing executing the order and issuing an accounting of the products and services provided to date and invoicing same. In the event of non-payment of the invoice, the Trivadis Group shall be entitled to rescind the contract. In this case the Customer shall not be entitled to any compensation for damages.

The Customer shall not be permitted to withhold payment for or offset claims of its own against amounts owed to it by the Trivadis Group.

Increases in the price of products which are beyond the control of the Trivadis Group can be passed on to the Customer.

#### **1.10 SOFTWARE AND KNOW-HOW**

The Customer itself may use the software, know-how, data media and documentation made available to it as provided for, however it may not make these items available to third parties. The ownership thereof and the right to continued use shall remain with the Trivadis Group or its licensors, even in the event that the Customer subsequently modifies the software programs or the documentation of know-how.

However, any enhancement or modification of the software by the Customer itself shall be subject to the written consent of the Trivadis Group.

In the event of violation thereof by the Customer it shall become liable for damages.

#### **1.11 NONDISCLOSURE: OBLIGATIONS TO MAINTAIN CONFIDENTIALITY**

Both of the parties hereto obligate themselves and their employees to maintain confidentiality concerning any and all information pertaining to or ensuing from the business dealings of the parties, information which is not publicly or generally accessible, and not to reveal this information to third parties, in addition to making every effort to prevent third parties from gaining access to same.

IT-contractors, delivering IT services like application-, support- or maintenance services, to the receiving party, are not considered a third party, independently whether the receiving party is using the services in a self hosted infrastructure or via a telecommunication remote access to an infrastructure provided by the IT contractor, especially but not limited to Infrastructure-as-a-Service, Platform-as-a-Service or Software-as-a-



Service (Cloud Computing). Such IT contractors have to be bound to at least the same confidential obligations as stipulated between the parties.

The parties shall take the requisite measures and precautions required to maintain adherence to existing rules and regulations pertaining to data integrity, backup and access. Employees in particular are to be obligated to maintain confidentiality in writing. This obligation is to be to the effect that it shall also remain in effect upon any termination of employment.

As far as personal data is provided to Trivadis by customer for the purpose of processing or using the data for a special purpose, especially by providing data files, customer is responsible, that delivering the data to Trivadis is according to all relevant legal data prohibition laws. Trivadis will handle all personal data according to all contractual obligations set between the parties and all relevant data prohibition laws.

Eventual Non Disclosure Agreements, that may have been agreed to between the parties, are not prohibiting to give company related data – excluding personal data like for example the company address - to the IT contractor.

#### **1.12 PATENT RIGHTS AND COPYRIGHTS**

The Trivadis Group shall assume no liability for the products and services supplied by it not violating the industrial proprietary rights of third parties, insofar as this is permissible and unless provided for otherwise. The Purchaser is obligated to make immediate notification to the Trivadis Group in the event that it should gain knowledge of any such violations or any complaints are lodged with the Purchaser pertaining to same.

Unless agreed upon otherwise in writing, the Trivadis Group shall own all proprietary rights in general, and copyrights in particular. They may not be made available to third parties without the express written consent of the Trivadis Group. In addition, any copying shall be prohibited without the express consent of the Trivadis Group. Any copies are to be surrendered immediately to the Trivadis Group should it so request. As to any damage or loss caused by the violation of any patent or other protective rights, the Trivadis Group shall not assume any liability unless it knew or had to have known that such rights existed and that these rights resulted in the Customer being confronted with justified, enforceable and non-extinct claims of third parties. The amount of any such liability on the part of the Trivadis Group shall be limited to the invoiced value of the item or product or service supplied.

In the event that the items or products supplied have been produced according to designs or instructions given by the Customer, the Purchaser shall release the Trivadis Group from any and all claims asserted on the basis of violations of the industrial proprietary rights of third parties.

#### **1.13 NON SOLICITATION**

The parties hereby agree to not engage in any active, direct or indirect solicitation of staff member of the other party during an existing contractual obligation between the parties and 12 months thereafter.

In each case of breaching this non solicitation clause, the breaching party agrees to immediately pay 50'000.- Euro to the other party.



#### **1.14 14. CURRENCY OF LEGAL RELATIONS**

If nothing specific has been agreed upon, a hardware maintenance or software support agreement can be canceled at any time providing three months' notice is given. Purchase agreements are satisfied upon performance being rendered by both of the parties as provided for herein.

Project management and cooperative agreements can be terminated by either party hereto at any time. In the event that this takes place in an illtimed manner, the terminating party to the contract shall be obligated to render compensation to the other party for any resulting damage or loss.

#### **1.15 EXPORT**

The Customer is responsible for adherence to domestic and foreign export regulations. Re-exporting certain products of foreign origin is not permitted unless with a permit issued by the Import and Export Division of the Swiss Federal Department of Economic Affairs in accordance with an obligation entered into with this agency (arms export). The Trivadis Group will specifically designate any such products in quotations, offers and invoices, with the permit obligation devolving upon the Customer.

#### **1.16 RESALE**

The Customer may resell the products — whether modified or unmodified — providing there is no agreement between the parties prohibiting this and the nature of the business transaction does not preclude this.

In the event that the Customer resells the products, it shall ensure that all obligations ensuing from software licenses, non-disclosure provisions and any permit requirements applicable to re-export are transferred to the purchaser.



## **2 PROJECT MANAGEMENT AND COOPERATIVE AGREEMENTS**

### **2.1 DEFINITION**

The main obligation to be satisfied by project management and cooperative agreements is the performance of work, whether this be in the sense of contributing to the timely and on-schedule completion of the project or the guidance of decision-making and conduct of the Customer by way of imparting decision-making fundamentals.

### **2.2 AWARD OF CONTRACT**

The award of contract is done by way of a separate agreement between the parties hereto, said agreement detailing the services to be rendered in addition to deadlines and other times and compensation.

### **2.3 DISCLOSURE OBLIGATIONS**

Both of the contracting parties are obligated to inform the other about any and all circumstances which may impact the rendering of services.

### **2.4 AUTHORIZATION OF SUBSTITUTION**

The Trivadis Group is authorized to transfer the performance of services to third parties in whole or in part. The Trivadis Group shall remain responsible for the services performed by any such subcontractors.

### **2.5 KNOW-HOW**

The Trivadis group is entitled to use ideas, concepts and procedures pertaining to information processing which it acquires in the course of performing services — whether by itself or in concert with the Customer's staff — in the rendering of services of a similar type for other customers.



### **3 SOFTWARE ENGINEERING AGREEMENTS**

#### **3.1 DEFINITION**

"Software engineering agreements" refers to the independent engineering, programming and supply of concrete predefined deliverables, on the contractor's responsibility, which are required in the course of an information technology project. They may also contain contract law aspects.

#### **3.2 SCOPE AND PERFORMANCE**

The scope and execution shall be laid down in the agreement between the parties hereto, said agreement detailing the services to be rendered in addition to deadlines and other times and compensation.

#### **3.3 AUTHORIZATION OF SUBSTITUTION**

The Trivadis Group is authorized to transfer the performance of work to third parties in whole or in part. The Trivadis Group shall remain responsible for the services performed by any such subcontractors.

#### **3.4 ACCEPTANCE**

Each and every performance hereunder shall be subject to acceptance. "Acceptance" shall mean the supply of products and/or services along with the acknowledgement of the work so supplied as constituting performance in conformity herewith.

In the event that performance as contractually agreed upon does not include the engineering and programming of software, acceptance shall be deemed to take place by virtue of delivery to the Customer.

In the case of software, acceptance shall serve as proof of the proper functioning of the IT system, with the number, time, scope and procedures of (partial) acceptances being governed by the individual contract.

The Customer is compelled to take acceptance, this also including the making available of test data. In the event that the Customer prevents or poses an obstruction to acceptance, despite a period of grace having been granted by the Trivadis Group, acceptance shall be deemed to have taken place with said act of prevention or obstruction.

A certificate of acceptance will be drafted for each acceptance and signed by both of the contracting parties hereto. It will detail which insubstantial errors or defects are to be rectified or which substantial errors or defects will necessitate acceptance being repeated whether in whole or in part.

If errors or defects are exhibited during acceptance, the Customer shall first be exclusively entitled to rectification of same or the provision of a replacement within a reasonable period of time. If renewed acceptance proves unsuccessful, the Customer shall grant the Trivadis Group another reasonable period of time to rectify the errors or defects. If another acceptance proves unsuccessful, the Customer shall be entitled to assert the warranty claims as set forth in the next section only for errors or defects which preclude or substantially negatively impact proper functioning.





### **3.5 WARRANTY**

The Trivadis Group warrants that the products are supplied in a properly functioning condition. The decisive issue in this context is the existing IT peripheral environment upon the contract being concluded. The supply of products and services as provided for hereunder will be done by the Trivadis Group in accordance with the state of the art.

The Customer, and the Customer alone, shall be responsible for proper use and data backup. The Trivadis Group shall assume no liability for any damage or loss resulting from the use of a program or device unless such damage or loss can be shown to be attributable to premeditation or gross negligence on the part of the Trivadis Group.

The warranty period shall amount to 6 months and shall commence upon acceptance, or in the case of several acceptances, upon the last acceptance.

If the product or service provided by the Trivadis Group should exhibit any errors or defects, the Customer shall exclusively be entitled to rectification of same or provision of a replacement within a reasonable period of time. In the event that errors are present upon the commencement of the software warranty period which still existed upon the last acceptance, the Trivadis Group can dispense with providing further rectification or replacement and rescind the contract instead. Section I.8 shall apply analogously.

The warranty obligation of the Trivadis Group shall elapse prematurely in the event that the Customer performs improper modifications to the software (e.g. source code) or has such modifications performed by a third party or when, in the event that a defect has occurred, the Customer fails to take all the measures necessary and suitable to minimize damage and doesn't afford the Trivadis Group an opportunity to remedy the defect.



## **4 SOFTWARE MAINTENANCE**

### **4.1 SCOPE AND PERFORMANCE OF SUPPORT**

The scope and performance of software maintenance work shall be governed by the agreement between the parties hereto, said agreement detailing the services to be rendered in addition to deadlines and other times and compensation.

### **4.2 TYPE OF PERFORMANCE**

The Trivadis Group will — at its discretion — render software maintenance services at the Customer's site or at the site of the Trivadis Group's i/c technical service, depending on the nature of the maintenance to be rendered.

### **4.3 SOFTWARE ERRORS**

Software errors shall exclusively be deemed to be deviations from the programming specifications which are not in conformity with warranted characteristics as contractually provided for or which negatively impact or prevent the use of the software as contractually designated.

### **4.4 AREA OF APPLICATION OF THE GENERAL TERMS AND CONDITIONS**

In addition to the terms and provisions set forth in I. General above, the following terms and conditions shall apply to the individual primary products and services provided by the Trivadis Group: II. Project Management and Cooperative Agreements for General Consulting and Support Services and III. Software Engineering Agreements for the Remediating of Errors or Program Adaptations and Enhancements.



## **5 CONCLUDING PROVISIONS**

### **5.1 CHOICE OF GOVERNING LAW**

All legal relations between the parties hereto shall be governed and interpreted in accordance with the laws of the country of the company of the Trivadis Group signing the offer, order, delivery, or provision. The United Nations Convention on Contracts for the International Sale of Goods is hereby excluded.

### **5.2 VENUE**

The courts at the domicile of the company of the Trivadis Group signing the offer, order, delivery, or provision shall have jurisdiction with regard to any and all disputes arising from or in connection with these General Terms and conditions.