

## GENERAL TERMS AND CONDITIONS

of addIT Dienstleistungen GmbH & Co KG ("addIT") for IT Consulting and Support Services

### 1. Provision of Services

- 1.1 addIT shall provide the IT Consulting and Support Services (hereinafter referred to as "Services") to the customer as agreed upon in the contract. These General Terms and Conditions shall apply to all Services provided by addIT to the customer, even if there is no express reference in the particular contract. General terms and conditions of the customer shall apply only if they are expressly accepted by addIT in writing.
- 1.2 The time schedule and detailed scope of the Services shall be defined in the contract. If not agreed otherwise, addIT shall provide the Services on its own premises.
- 1.3 addIT shall receive from the customer all the documents, information and data (hereinafter referred to as "Information") necessary for the provision of Services in a timely manner and in the form required by addIT. If, according to the contract, addIT creates or adapts software programs for the customer ("Software Programs"), the customer shall provide to addIT a complete requirement specification and all the necessary test data in the form requested by addIT. Upon written consent by addIT, the requirement specification shall become binding. Upon request and against additional compensation, addIT shall provide support to the customer in creating the requirement specification. Unless explicitly agreed otherwise the standard rates at addIT shall apply.
- 1.4 The customer shall support all measures required by addIT for the provision of Services. The customer shall, furthermore, take all the measures, which are required to fulfill the contract and which are not part of the addIT scope of Services. The customer shall keep all the Information handed over to addIT additionally stored to ensure that restoration is possible in case of damage or loss. Products, support and assistance services of the customer shall be provided at no cost to addIT.
- 1.5 Each party to the contract shall name a suitably qualified contact person who shall provide the Information and make or initiate all decisions necessary for the execution of the contract. If, due to sick leave, vacation or other reasons for which the customer is not responsible, a addIT employee is not able to provide the agreed Services, addIT shall replace in due time such employee with another suitably qualified employee. In all other respects, addIT shall be entitled to replace an employee at any time.
- 1.6 The employees of addIT do not establish an employment relationship with the customer, even if they work on the customer's premises. The customer shall convey requests relevant to the provision of Services exclusively via its named contact person to the named addIT contact person, and shall refrain from giving instructions to the employees of addIT. As far as addIT provides Services on the customer's premises, the customer shall provide adequately equipped workplaces.
- 1.7 During the term of the contract and for another full year after the termination of the contract, the customer shall neither directly nor via third parties entice away employees deployed by addIT for the provision of Services. For each violation of this obligation, the customer shall pay to addIT a penalty amounting to six times the most recent gross monthly salary the respective employee received from addIT.
- 1.8 For the provision of Services, addIT shall be entitled to subcontract third parties or other companies affiliated with addIT. Unless otherwise agreed upon, the provision of training services shall not be included in the scope of the contract.

### 2. Changes of Time Schedule and of Scope of Services

- 2.1 The time schedule agreed upon shall change adequately, if addIT is prevented from providing the agreed Services due to delays caused by the customer. Any additional expenses incurred by addIT as a result of such events shall be borne by the customer.
- 2.2 Changes in the scope of Services in terms of quality and/or quantity ("Change Requests"), especially changes in the requirement specification, shall be subject to written agreement, with the related time schedules and compensations having to be adjusted accordingly. Unless otherwise agreed upon, addIT shall provide extra Services at the rates applicable at the time the Services are provided.
- 2.3 In the event of unforeseen and extraordinary circumstances affecting the supplies or services, which are beyond addIT's control, addIT has the right to adjust prices and/or to extend delivery commitments to the extent necessary to cover any unavoidable additional costs and/ or delays arising for addIT from such unforeseen and extraordinary events.

### 3. Compensation, Retention of Title

- 3.1 Unless otherwise agreed upon, addIT shall calculate the amounts payable in compensation on the basis of hours worked at the rates specified in the contract. The amounts payable shall be charged at the end of each month on the basis of the reports on Services provided, submitted to the customer. As far as addIT provides Services at fixed or all-in prices, addIT shall be entitled to request an advance payment of at least 10% of the fixed or all-in price; furthermore, payment dates shall be agreed in the contract dependent on the progress of Service provision ("Milestones"). Value added tax ("VAT") at the legally applicable rates will be charged additionally.
- 3.2 Service provision at the customer's premises shall be charged at a half day's rate at least. The surcharges generally applicable at addIT shall be charged for Service provision outside normal working hours (Monday to Thursday, 08.00 a.m. to 5.00 p.m., Friday 8.00 a.m. to 12.30 p.m.), on Saturdays, Sundays or public holidays including days generally free at addIT.
- 3.3 Payment shall be due within 15 days from the date of invoice without deductions. The customer shall check the invoice without undue delay and raise any objections no later than 10 days after the date of invoice. Such objections shall be sent in written form to the contact person defined in the invoice stating the reasons why the invoice is disputed. Invoices not disputed within 10 days shall be deemed accepted. Payment shall be deemed effected on the day addIT may dispose of it. If the customer defaults in payment, addIT shall be entitled to claim interest on arrears as legally applicable and all costs incurred due to the enforcement of the claim. Should the customer's default in payment exceed 14 days, addIT shall have the right to cease the provision of all Services without prior notice to the customer. Furthermore, addIT shall be entitled to make the compensation for all Services provided immediately due and payable, notwithstanding any agreed upon payment dates. Upon the occurrence of any one of the events described in lit. (a) to (c) during contract duration, addIT shall be obliged to fulfil any outstanding supplies or Services only in consideration of payment in advance or on the provision of a security. In the event the customer does not comply with a respective demand by addIT, addIT shall be entitled to grant a reasonable period of grace for the advance payment or the provision of the security, and following the fruitless expiry of this grace period addIT shall be entitled to withdraw from the contract and/or claim compensation for damages or reimbursement of expenses.
- (a) The customer's delay of payment by more than 60 days
  - (b) The customer's delay of payment of at least three invoices over any period of six consecutive months by more than 30 days
  - (c) The customer's credit ratings as issued by Moody's, S&P, Fitch, Duff & Phelps or an equivalent agency drops to BB/Negative or below, or in the case of a Dun and Bradstreet rating, 4 (four).

A conversion to the former payment terms will be effected after a period of 24 months subject to customer's credit rating exceeding the thresholds of lit (c).

- 3.4 To accommodate for inflation the prices shall be adjusted annually, starting on the first anniversary of the effective date of the contract and on each subsequent anniversary during the term of the contract. The index to be used to calculate the adjustment of the prices shall be the Austrian consumer price index ("VPI 2020"). The index to be used shall be the most recent published version covering the full year preceding the anniversary of the effective date. In the event that the index is not published anymore, or substantially changes its content and format, the Parties will determine in good faith a substitute index that materially corresponds to the previous index. The applicable adjustment shall be determined by addIT no later than thirty (30) days after each anniversary of the effective date (or as soon as practically possible in case considering the publication dates of the relevant index) and applied to the first invoice following that date the adjustment has been determined and retroactively as of the applicable anniversary of the effective date.
- 3.5 Time spent travelling within Klagenfurt by addIT employees shall be considered as working time and shall be shown separately on the report of Services provided. In the case of provision of Services outside Klagenfurt, travel times shall be compensated at the hourly rates agreed upon. In the case of fixed price contracts the hourly rate applicable to travel time shall be agreed upon in the contract. A flat-rate daily expense allowance per employee of EUR 52 as well as EUR 50 per night for necessary overnight stays shall be charged additionally; if the actual costs for overnight stays exceed the flat-rate amount, the customer shall reimburse the amount paid in excess of the flat rate. VAT will be charged additionally. The rates mentioned above shall be adjusted in accordance with the price adjustment provision specified under paragraph 3.4.
- 3.6 In addition, the client shall reimburse travel costs at the rate actually incurred. In the case of travel by car, the legally applicable kilometer-based flat rate shall be charged. In the case of travel by train, the price for a first-class ticket shall be charged; in the case of travel by airplane, the price for a business class ticket shall be charged. Other ancillary expenses, such as telephone costs, shall be charged as actually incurred. Travel and ancillary costs shall be reimbursed upon presentation of the corresponding receipts (copies).
- 3.7 The customer shall not have the right to withhold or offset payment on the grounds of any warranty claims or other claims, unless approved in writing by addIT or asserted by court order. Until the compensation due to addIT has been paid in full, including interest and cost, addIT shall reserve the title to all products delivered by addIT. Unless otherwise agreed upon, the customer shall not have the right to use the products and Services provided by addIT until having fully paid all amounts due to addIT.

- 3.8 Any customs, taxes, duties, fees, imposts, tariffs and charges related to the conclusion or the execution of the contract, including but not limited to withholding taxes ("Charges"), shall be borne by the customer. In the event addIT is required to pay such Charges to any authority, the customer shall indemnify addIT for any such payments.
- 3.9 The customer explicitly agrees that addIT shall be entitled to use the service of Affiliated Computer Services of India Private Limited, a company of the Xerox Group ("Xerox"), for invoicing purposes and to transfer the data as listed in the standard application SA001 of the Austrian Standard and Model Ordinance 2004 (as amended from time to time) to Xerox provided that addIT commits Xerox to confidentiality. The customer further agrees that addIT may also use the invoicing services of other third parties, provided that addIT immediately informs the customer about the use of such third party and commits the third party to confidentiality. The provisions set forth in clause 4.6 remain unaffected.

#### **4. Rights to Results, Standard Software, Confidentiality, Data Protection**

- 4.1 Unless otherwise agreed upon, the non-exclusive licence to use and exploit the results created individually by addIT for the customer (in particular "individual" software) within the framework of Service provision as well as the ownership of the agreed documentation shall be transferred to the customer, once the compensation due to addIT has been paid in full. addIT shall in any case remain entitled to use and exploit its ideas, concepts, experiences, tools, development modules and technologies used or developed within the scope of the Service provision.
- 4.2 As far as the provision of Services by addIT includes the delivery of standard software components supplied by third parties, the special terms and conditions (in particular license and warranty conditions) of the respective manufacturer or vendor of such standard software components shall prevail.
- 4.3 Each party shall maintain confidentiality vis-à-vis third parties concerning all Information disclosed to it in the context of the contract and marked as confidential. The obligation to maintain confidentiality shall not apply to Information (i) which are already known to the public at the time they are handed over to the respective other party or (ii) which later become known to the public without any fault on the part of the receiving party or (iii) in respect of which the receiving party can prove that they either (a) were already known by the receiving party when they were handed over, or (b) later became known by the receiving party independently of any communication with the other party to the contract, or (c) were disclosed to the receiving party by third parties, e.g. under a license agreement. The obligation to maintain confidentiality shall remain in effect even after the termination of the contract.
- 4.4 Other companies affiliated with addIT and subcontractors of addIT shall not be considered as third parties, if and so far they are bound by a confidentiality obligation corresponding to paragraph 4.3.
- 4.5 The customer consents, that addIT may name the customer and the respective project as reference vis-à-vis third parties. Other information, as but not limited to press releases, shall be coordinated mutually by the parties.
- 4.6 The customer hereby declares that, as part of the provision of the Services, addIT will not be processing, even incidentally, any personal data. Should the customer decide to request from addIT that it processes personal data for the purposes of the provision of Services under this Agreement or should addIT become aware that in deviation to its declaration set forth above in the first sentence of this clause 4.6, the customer transmits addIT personal data with the purpose of being processed by addIT, it is expressly agreed between the Parties that
- (a) such processing of personal data will have a direct impact on the delivery of the Services which may require a review and modification of the terms of the contract, including, notably, the scope of the Services and the financial terms of this contract;
  - (b) they shall negotiate in good faith and agree on the necessary revisions to the terms of this Agreement;
  - (c) the customer shall provide addIT with adequate documented instructions regarding the processing of the personal data;
  - (d) until conclusion of such data processing agreement all penalties and service levels applicable to the services affected by the data processing shall no apply;
  - (e) the customer shall not initiate nor continue any transmission of personal data to addIT prior to the signature of any adequate addendum governing the processing of personal data as well as any other relevant modification of the terms of the contract and the implementation of the agreed measures regarding the processing of personal data.

#### **5. Acceptance, Warranty, Liability**

- 5.1 Immediately after the notification of addIT that the software programs created or adapted by addIT have been made available for acceptance, the customer shall start the acceptance tests. If defects are identified during acceptance testing, addIT shall remedy the defects within a reasonable period of time at no cost to the customer and then make the respective part of the software program again available for acceptance testing. If the customer fails to declare

acceptance for any reason other than a material defect that significantly impedes or prevents the use of the software program, the software program shall be deemed accepted 4 weeks after having been made available for acceptance testing, but in any case as soon as it is being used or passed on to a third party by the customer. These provisions shall apply *mutatis mutandis* to the creation of documents, such as detailed specifications or requirement specifications, by addIT as required under the contract. After acceptance by the customer, such documents shall be regarded as the exclusive basis for Service provision by addIT.

- 5.2 Defects in terms of acceptance and warranty shall be reproducible deviations of the software programs' functionality from the agreed functionality, already existing at the time of acceptance testing, provided such deviations impede the use of the software programs. Errors caused by errors in the environment (hardware, operating system, customer or third party software) or by incorrect use shall not be regarded as defects.
- 5.3 Defects that occur within a warranty period of 6 months after acceptance of the software program and are duly given notice of by the customer in writing shall be remedied by addIT at its choice within a reasonable period of time at no cost to the customer. The application of paragraph 924 ABGB (Austrian Civil Code) shall be excluded. addIT shall receive from the customer all the Information required for defect correction purposes.
- 5.4 As regards software programs, which the customer has extended by means of interfaces designed for that purpose, addIT shall provide warranty up to the respective interface. In all other respects, warranty for software programs modified by the customer without the prior consent of addIT shall be precluded, even if a defect occurs in a non-modified part, unless the customer proves that there is no causal relationship between the defect and the modifications made by the customer.
- 5.5 This paragraph 5 shall apply accordingly to other supplies and services provided by addIT. If no acceptance procedure has been agreed upon in the contract for these supplies and services the warranty period shall start upon handing over to the customer. If and insofar standard software components of third parties are included in addIT's scope of Services the warranty conditions of the respective manufacturer or vendor supplier shall prevail.
- 5.6 addIT shall be fully liable for any personal injury caused for which addIT can be held responsible. addIT shall be liable for damages to customer's tangible property for which addIT can be held responsible up to an amount of EUR 500.000,- per damage event. addIT shall in no event be liable for indirect damages, loss or damage of information or data, damages due to business interruption, loss of profits and any other consequential damages.
- 5.7 If data storage is explicitly included in the scope of Services, liability for retrieval of data is limited to EUR 50.000, -- per damage event.
- 5.8 Under no circumstances shall the total aggregate liability of addIT towards the customer under this contract exceed 50% of the revenues due under the contract in case the contract duration is less than 2 years. In case the contract duration exceeds two years the total aggregate liability of addIT towards the customer under this contract shall not exceed the revenues due in the first contractual year.
- 5.9 Any warranty and damage claims by the customer other than those expressly mentioned herein, irrespective on which legal grounds they might be based, shall be excluded unless otherwise provided by mandatory law, as for instance for damage caused intentionally.
- 5.10 If penalties are agreed, the total aggregate liability limit defined above shall also include claims for such penalties. Any damage claims exceeding such penalties are excluded.
- 5.11 These limitations of liability shall also apply for the benefit of addIT's board members, subcontractors, suppliers and employees. The burden of proof for the existence of gross negligence rests with the customer.
- 5.12 Except as set forth, and subject to the conditions and limitations stated below in this paragraph, addIT shall assist the customer if any eligible claim, suit, action or proceeding ("Claim") is brought against the customer by a third party. Such assistance shall be to the extent the Claim is based on any infringement of intellectual property rights, as but not limited to patents protected under the laws of Austria or copyrights, which is caused by the provision of products or licensed software by addIT or use of such products or licensed software for their contractually intended purpose by the customer.

addIT shall at its discretion provide the customer with a non-infringing replacement product or modify the licensed software so that it becomes non-infringing, provided that the replacement product/modified licensed software meets substantially the same functional specifications as the licensed software or procure for customer the right to use the licensed software; if such options would cause unreasonable expenses addIT shall inform the customer. Within 4 weeks after such notice customer may terminate the contract to the extent it is affected by the infringing products or licensed software. For the purpose of this paragraph Claims shall be defined as eligible only, if addIT has acknowledged such Claim in writing or the Claim is affirmed by a legally binding adjudication.

addIT shall only be liable if the customer (a) gives addIT prompt written notice of any alleged or threatened Claims, (b) allows addIT to control the defence and/or settlement of such Claim, (c) in case of a legal proceeding gives addIT a third party notice according to § 21 ZPO [Austrian code of civil procedure].

addIT shall not be liable with respect to any Claims if (a) addIT did not cause the infringement of intellectual property rights wilfully or negligently, (b) customer's use of the products or licensed software is other than as permitted under the contract, (c) the product or licensed software is modified by the customer or any third party after delivery without addIT prior written consent, (d) the product or licensed software is supplied according to specific customer's design or instructions or (e) the product or licensed software is combined by customer or its contractors with items not furnished or approved by addIT.

## **6. Force Majeure**

- 6.1 Neither Party shall be responsible for delays or failure to perform any of its obligations herein (other than payment obligations) resulting from or in connection with acts, events or circumstances beyond the reasonable or foreseeable control of such Party. Such acts shall include, but shall not be limited to, acts of God (including earthquakes, hurricanes and volcanic eruptions), strikes, lockouts, riots, civil unrest, civil protests, acts of war, epidemics (including communicable disease outbreaks and public health emergencies), governmental regulations superimposed after the fact, fire, communication line failures, power failure, or other disasters, whether such acts have been identified, declared or accepted as such under the relevant law or not.
- 6.2 In such circumstances as listed in Clause 6.1 above, the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed, provided that if in the reasonable opinion of the Affected Party performance of the Agreement is substantially prevented for a continuous period of six (6) months from the date on which such performance was initially due by virtue of any of the aforesaid events, then either Party may terminate this Agreement by written notice to the other.
- 6.3 Both Parties will use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations. In particular, the Parties will cooperate in good faith to adopt together some mitigation measures in order to decrease the impact of the Force Majeure Event, such as remote working, off or nearshoring, etc, as far as they are proportionate, adequate and in compliance with the law.

## **7. Applicable Law, Place of Jurisdiction**

If differences of opinion arise in connection with the Services the parties shall undertake all reasonable efforts to achieve out-of-court agreement. If the parties cannot clarify differences of opinion on the work level concerned, there shall be escalation to the next higher management level. If no amicable solution can be found on this level, there shall be escalation to the managing director level. Each party is entitled at the earliest 60 days after introduction of the aforementioned dispute settlement process to take legal action. The right of the parties to look for legal protection is not affected by the duty to carry out a dispute settlement process.

The exclusive place of jurisdiction for all disputes arising from the contract shall be the competent court in Klagenfurt. The contract shall be governed exclusively by Austrian law without its conflict-of-laws provisions. The application of the UN Convention on Contracts for the International Sales of Goods shall be excluded.

## **8. Duration of Contract**

- 8.1 addIT shall deliver the Services either for the duration of the project agreed upon with the customer or for the duration agreed upon in the contract. As far as Services under this contract are provided on an ongoing basis, each party shall have the right to terminate the contract in writing by registered mail at the end of each quarter, giving 6-months' prior notice. Any software programs not yet accepted at the time the contract is terminated shall in any case be completed and compensated under the terms and conditions of the contract.
- 8.2 In all other respects each party shall have the right to prematurely terminate for good cause, in writing by registered mail, a contract concluded on an ongoing basis. Good cause shall be deemed to exist, in particular, when (a) the other party's property and assets are subjected to insolvency proceedings or when the opening of such proceedings is rejected due to a lack of assets and such termination is not contrary to applicable mandatory law, or when (b) the other party violates material obligations under the contract, in particular, payment obligations, so that the terminating party can no longer be reasonably expected to continue the contract or (c) the provision of Services is obstructed or prevented due to force majeure for a period in excess of six months. If the Services are not provided on an ongoing basis, the provisions of this paragraph shall apply correspondingly, provided that the customer may only terminate the contract due to a gross negligent breach of contract by addIT.

## **9. Compliance**

- 9.1 "Compliance Laws" means applicable national and international laws and regulations relating to corruption, money laundering, terrorist financing, fraud and tax evasion, human rights, competition, export control, national and international sanctions in connection with the performance of the Contract.
- Each Party represents and warrants to the other Party that, at the date of the Contract:
- i. it complies with applicable laws and regulations, notably Compliance Laws,
  - ii. it has internal policies in place to comply with the highest standards of integrity and ethics in connection with the operation of its business,

- iii. neither it, nor anyone on its behalf has ever been convicted or subject to sanctions by a statutory, regulatory or judicial authority in relation to a violation of Compliance Laws.

Throughout the term of the Contract, the Parties undertake to perform the Contract in accordance with applicable laws and regulations, notably Compliance Laws.

The customer commits to comply with Atos' Business Partner Commitment to Integrity (available [here](#)).

In case of potential breach of any of the representations, warranties or undertakings set forth above, notably in case of opening of an investigation by a statutory, regulatory or judicial authority in relation to a violation of Compliance Laws, or any compliance related event likely to affect the reputation of either Party, each Party undertakes to inform the other Party without any delay and to provide any information reasonably requested by the other Party on this matter.

#### 9.2 Audit right

The customer accepts to submit in good faith to any audit process conducted by addIT or any third-party selected by addIT relating to compliance with Compliance Laws, notably by providing without any delay the relevant information requested.

#### 9.3 Suspension and Termination

In case of breach by a Party of any of the provisions set forth in Clause 9.1 or 9.2 above, the other Party may notify the immediate suspension of the Contract.

If the breaching Party fails to remedy such breach to the satisfaction of the other Party within a period of thirty (30) days as of receipt of the notification, the other Party may immediately and unilaterally terminate the Contract without being liable for any penalty or indemnification due to such termination.

### 10. Concluding Clauses

10.1 Any amendments or alterations to the contract shall have to be made in writing in order to be effective.

10.2 addIT shall have the right to assign, transfer or novate the contract, in whole or in part, and any of the rights, obligations and remedies hereunder, to any third party. addIT shall inform the Customer of the identity of the third party if and when such assignment, transfer or novation takes place.

10.3 The customer shall consent to the transfer of data from this business case to other companies affiliated with addIT for the purposes of intra-group reporting.

10.4 If any of the provisions of the contract is or becomes invalid, this shall not serve to invalidate the remaining provisions thereof. In such cases, the parties shall make every effort to find provisions whose business result would match those of the invalid provision as closely as possible.

10.5 The fulfilment of the contract on addIT's part is subject to the proviso that this shall not be prevented by impediments on the grounds of national and/or international legal requirements, in particular export control provisions. Regarding the use of the results of the Services provided by addIT, the customer is additionally responsible for the compliance with Austrian or any other applicable export regulations, especially German or US export regulations.

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