

Additional Purchase Conditions for Supplies and Services in the Context of IT

Voith General Purchase Conditions, in their current version, are supplemented by the following terms and conditions, which apply to all supplies and services relating to information technology (IT) and therefore in particular to all contracts for the supply of hardware or software, the creation or adaptation of software or the rendering of associated services.

These terms and conditions apply additionally and, in the event of contradictions, shall take precedence over the Voith General Purchase Conditions.

This Annex is structured as follows:

Part A - General Terms and Conditions for Supplies and Services in the Context of IT at the Supplier

Part B - Terms and Conditions for the Provision of Developed Software including Documentation

Part A - General Terms and Conditions for Supplies and Services in the Context of IT at the Supplier

1. Compliance and basic technical requirements

The Supplier shall render the service in compliance with the principles of proper data processing. These include but are not limited to observance of statutory data protection regulations and implementation of all recognized state-of-the-art precautions and measures.

The Supplier shall take appropriate technical and organizational measures to guarantee a high level of IT security with regard to the services and the IT systems required by the Supplier for the purpose of rendering such services. Insofar as they are applicable to the services and the IT systems used by the Supplier to provide such services, the Supplier shall ensure compliance with the minimum standards of ISO/IEC 27001:2013 (or any subsequent version of such standards which may have appeared at a later time) or the latest applicable versions of other similar but higher standards of security, such as BSI (Bundesamt für Sicherheit in der Informationstechnik) IT-Grundschutz. The Supplier shall disclose such measures in detail with the corresponding concepts, certificates and audit reports at the request of the Customer.

2. Training and awareness raising in the context of information security

The Supplier shall regularly inform the employees and third parties entrusted with the rendering of the services about relevant information security topics, including the duties which are incumbent on them in connection with the rendering of the services to guarantee information security.

3. Protection of the Customer's data against misuse and loss

The Supplier hereby undertakes to secure all the Customer's information and data received or generated by it immediately, effectively and in compliance with the state of the art against unauthorized access, modification, destruction or loss, prohibited transmission, other prohibited processing and any other misuse. In securing the Customer's data, the Supplier must take all state-of-the-art precautions and measures to ensure that data can be archived and restored at any time without loss.

4. Protection when sending information

Any data which is sent, either physically or electronically, in the context of the supplies and services must be transmitted by means (e.g. registered post, courier, email encryption) which are appropriate to the degree of sensitivity of such data.

5. Protection against malware

The Supplier shall use state-of-the-art test and analysis procedures to examine all services and data carriers or electronically (e.g. via email or data transfer) transmitted services to ensure that they are not compromised by malware (e.g. trojans, viruses, spyware) before such services are provided or used. Data carriers on which malware is detected may not be used. The Supplier shall inform the Customer immediately if it discovers that the Customer is compromised by malware. The same obligations apply to all forms of electronic communication.

6. Transparency in services and processes

Services may not contain any undocumented mechanisms or functions which may compromise their security. Data may only be transmitted automatically to the Supplier or to third parties with the Customer's explicit written consent.

7. Communication in the event of defects or errors in the services provided

The Supplier shall inform the Customer immediately if it discovers defects or errors in the services provided to the Customer which may compromise the Customer's operations or security.

8. Handling of hardware, software, means of access and access data provided to the Supplier

All hardware, software, means of access and access data which the Customer provides to the Supplier shall be used in compliance with the Customer's terms of use. The Supplier shall keep all access data and means of access provided to it secret and take state-of-the-art measures to protect them against unauthorized access and use by third parties. If hardware, software, means of access and access data provided to the Supplier for the purpose of rendering the services are no longer required, they shall be promptly returned to the Customer. The Supplier may only use its own hardware and software with or on the Customer's systems and networks in connection with the rendering of a service if this has been permitted in advance by the Customer.

Part B - Terms and Conditions for the Provision of Developed Software including Documentation

1. Principle obligation of the Supplier

The Supplier's principal obligation is to provide as part of the service contract software that is ready to use in accordance with the specifications and functions set out in the software specifications provided, the corresponding documentation (such as the user manual) and, if no other contractual agreement is made, the source code, in each case in accordance with the current program and update status (hereinafter called the "Contractual Service").

The Supplier shall maintain and safeguard the operational readiness of the software, where this is agreed in accordance with a service level agreement that is to be agreed separately or as part of software support and/or software maintenance.

The Supplier shall fulfill the contract in person. Performance of the service by a third party shall be excluded, unless the Customer agrees to the involvement of a third party in the course of prior written notification.

Once the Contractual Service has been completed, the Supplier shall notify the Customer of this in writing or text form and agree a date on which to present the results of the work. The Supplier shall give the Customer an opportunity to carry out functional tests before acceptance of the Contractual Service. The parties shall reach a mutual agreement on the details of these tests.

All acceptances must follow a formal procedure. A report to be signed by both parties shall be produced for the acceptance. If the Contractual Service is not ready for acceptance, the Supplier undertakes to rectify the defects immediately and present the service to the Customer again for acceptance.

2. Rights of use

2.1 Ownership and the Customer's exclusive rights of use

Ownership of all results and interim results of services provided by the Supplier as part of the contract, e.g. performance descriptions, specifications, studies, concepts, documentation, including installation, usage and operating manuals as well as documentation on maintenance and further development, reports, consultancy documents, charts, diagrams, images and bespoke software, programs, adapted software (customizing) and parameterization as well as all interim results, aids and/or other performance results produced in the course of this (together: "Work Results") shall

pass to the Customer when these objects are handed over, providing they are physical objects.

In other respects, the Supplier grants the Customer exclusive, permanent, irrevocable, sub licensable and transferrable rights to the Work Results when these are created but at the latest when they are handed over. These rights shall be unlimited in respect of the geographical area, time and content and have no limitation in respect of the use and exploitation.

These usage rights shall include all types of use, in particular the storage, loading, execution and processing of data, processing, also by third parties, including permanent combination with the Supplier's services, the right to reproduce and disseminate, the right of performance and presentation, including in public, the right to market, make changes, convert, translate, make additions to and develop further. The usage right shall also include future novel usage forms.

The Customer shall be entitled to grant both free-of-charge and paid-for sublicenses and further usage rights to these usage rights and to transfer usage rights to third parties, without requiring further permission from the Supplier.

The Supplier shall ensure that those he brings in to fulfill the contract for him will waive the following rights: to be named as authors, and to have access to any original copies of software or other work such as documentation, drawings and other Work Results that may be protected by copyright.

2.2 The Customer's non-exclusive usage rights

The Supplier hereby grants the Customer a non-exclusive, irrevocable, permanent right to use works, other copyright material and other un-protected technical knowledge ("Know-how") that the Supplier had already developed or used before the start of the contract and Know-how, standard software and development tools (together called "the Supplier's Intellectual Property") acquired by the Supplier and his vicarious agents the course of providing the service, independently of the Contractual Service. These rights shall not be limited to a specific geographical area, they shall be transferable, sub licensable usage rights that are covered by the agreed compensation, providing this is necessary for the Customer to use the Work Results provided by the Supplier, without further consent being required on the part of the Supplier. This also includes the reproduction, editing and modification of the Supplier's Intellectual Property by the Customer or third parties, providing that this is required to use the Work Results.

2.3 Usage rights for customizing services

Where the Supplier has customized his own software or the software of third parties for the Customer, he shall grant the Customer usage rights to this in accordance with item 2.1.

2.4 Duty to notify

Before the end of the contract the Supplier shall give the Customer written notification of all third-party software, standard software, development tools and other works (such as all documentation required for the further development and processing of the Supplier's performance results) to be used in the context of developing the Work Results, including materials that the Supplier uses under license. These, including the Supplier's rights, are to be listed in the contract. Unless agreed to the contrary in the contract, the Supplier shall grant the Customer the usage rights to third-party software, standard software, development tools and other works in accordance with Item 2.2.

2.5 Coauthors

Where the Supplier's employees or vicarious agents are coauthors, the Supplier warrants that he has acquired from them the right to grant usage and exploitation rights set out in Items 2.1 and 2.2 above.

2.6 Rights to inventions

Where Work Results contain inventive achievements, if the invention has been made by an employee, the Supplier undertakes to claim it in good time and transfer the invention to the Customer. The Customer is free to make the decision whether to register inventions for worldwide intellectual property rights in his name or the name of a third party designated by him. The Supplier undertakes to make any declarations and provide signatures to obtain, maintain and defend inventions. No special remuneration shall be provided for this.

2.7 Granting of rights for updates and supplementary performance

Updates, upgrades, additions, new versions and similar as well as the updated documentation in each case (together called "Updates") provided to the Customer by the Supplier shall also be subject to the provisions of this agreement.

2.8 Continued application

The usage rights granted shall not be affected by withdrawal from the contract, its termination or ending in any other way.

3. Defects and performance disruptions

The Supplier warrants that the Contractual Service is free of the rights of third parties that limit or exclude the use in accordance with the contractually defined scope. Should a third party assert such claims, the Supplier shall indemnify the Customer against all costs and compensation amounts, providing that the Customer has advised the Supplier without delay about the claim being asserted, the Supplier has sole control of the defense and the Customer gives the Supplier support and information required to pursue the aforementioned case.

The Supplier also guarantees that the Contractual Service meets the Customer's special requirements, the specified or agreed technical or other specifications and is suitable for the planned use that is consistent with the agreed performance requirements.

Any deviation of the Contractual Service from the agreed quality shall always be deemed to be a quality defect. The same shall apply if the Contractual Service is not suitable for the use set out in the contract.

The documentation is deemed to be defective if a knowledgeable user with the level of knowledge usually expected to use the software cannot, by applying reasonable effort with the help of the documentation, operate individual functions or resolve the problems that occur.

The Supplier guarantees that current programs but at least those intended for the purpose of the contract can be operated free of malfunctions using the Contractual Service on the basis of industrial standards. The Supplier furthermore guarantees that at the time of acceptance the Contractual Service complies with the current statutory requirements.

The limitation period for quality defects shall be two years from acceptance of the Contractual Service. The statute of limitations for defects of title shall be two years and commence at the end of the calendar year in which the claim arises and the Customer became aware of the defect of title (in particular infringement of an intellectual property right) and the entitled party received the information or should have done so unless gross negligence was involved. A defect notification by the Customer suspends the statute of limitations. The Customer shall inform the Supplier without delay of any defects that occur up to the time the statute of limitation applies. If required and after consultation, the Customer shall be involved as required in analyzing and rectifying the defect.

3.1 Supplementary performance

The Supplier shall rectify defects promptly and within an appropriate period during the warranty period, taking account of the Customer's interests, and either deliver an improved version of the Contractual Service or provide the Contractual Service from new. If use in accordance with the contract causes an impairment of the rights of third parties, the Supplier shall either modify the Contractual Service so that it does not infringe the protected rights or obtain authorization so that the Contractual Service can be used in accordance with the contract without any limitation and without additional cost for the Customer. The provision of a replacement solution or a workaround can be used as a short-term measure to provide a temporary solution or to bypass the effects of a defect. The defect is not deemed to be rectified until it has been fully resolved within a reasonable period of time.

3.2 Reduction in the price, withdrawal

If the Supplier refuses to rectify the defect or is unsuccessful in doing so or if the additional period allowed to the Supplier passes without a resolution being found, the Customer may choose whether to reduce the remuneration or withdraw from the contract in full or in part.

3.3 Withholding of payment and offsetting payments

If the Supplier does not meet his obligations, the Customer may hold back payment for the Contractual Services until the Supplier has fulfilled his obligations in full. The Customer may deduct his claims against the Sup-

plier from remuneration due to the Supplier on account of the Supplier's failure to comply with his obligations.

3.4 Reimbursement of expenses, compensation

More extensive claims, including in relation to compensation and reimbursement of expenses, shall not be affected.

4. Open-Source-Software

Open Source Software ("OSS") is software, which is generally provided free of charge and open source and can be used under a license, which does not restrict redistribution of the software, allows modifications and derived works and must allow redistribution thereof under the same terms as the license of the original software ("OSS-License"). OSS-Licenses include without limitation "Berkeley Software Distribution License" (BSD), "GNU General Public License" (GPL), and the "GNU Lesser General Public License" (LGPL). Copyleft Licenses are licenses that require that any derivative work or work based on the program is distributed or conveyed only under the original license terms ("Copyleft License").

4.1 Requirements

OSS may only be included in the software provided by the Supplier with prior written approval by the Customer. The Supplier will provide to the Customer all information and materials necessary for deciding on the use of OSS in the software. This includes:

- (i) a transparent and complete list of all components licensed under an OSS-License,
- (ii) the license text of each OSS-License,
- (iii) copyright notices,
- (iv) the results of a state of the art security and vulnerability scan of all open source code used, and
- (v) A clear description and documentation regarding the technical integration of the OSS components.

The Customer will grant the approval in its sole discretion. A granted approval is to be revoked, if the provided information or materials are false or incomplete.

OSS-License texts and the respective source code must be provided separately. The Supplier will provide all source code to the extent that this is required by applicable licenses.

The Supplier will put the Customer in a position to completely comply with all requirements under the applicable OSS-Licenses at all times.

This requirements also apply to any updates, patches, upgrades or new versions of the software.

4.2 Guarantees

The Supplier guarantees that it:

- (i) complies at all times with the license requirements of applicable OSS-Licenses and that the Customer has received all necessary licenses from the authors of the OSS incorporated in the software,
- (ii) has an Open Source Compliance System in place that is in accordance with best practices of the industry,
- (iii) uses only OSS components that are licensed under compatible OSS-Licenses,
- (iv) has not incorporated any Copyleft License in the software,
- (v) has scanned all open source code used in the software for security risks.

4.3 Indemnification

The Supplier shall indemnify, defend, and hold harmless the Customer and Customer's affiliates, employees, directors or agents of any claims, damages, expenses and liability which arise in direct or indirect connection of Supplier's breach of one of the foregoing requirements of obligations, irrespective under what legal theory.