

# Sales and Service General Conditions

## I. General Provisions

### Article 1 Definitions

Within these General Conditions, the following definitions shall apply:

Agreement(s)	The Service and/or Sales Agreement.
Business Hours	From Monday to Friday, from 6:00 AM to 8:00 PM, except on January 1 <sup>st</sup> , Good Friday, Easter Monday, Ascension Day, Whit Monday, August 1 <sup>st</sup> and December 25.
Client	The co-contracting person to the Agreement.
Confidential Information	Shall be considered as Confidential Information all information and data exchanged under the Agreement and unknown from the public. This shall in particular be the case for Software, Licences, techniques, concepts, methods, procedures, and designs included within Software or linked to such, program interfaces, system architectures, offers, prices, Agreements and contractual modalities, work results as well as any and all technical and commercial details linked to the Services.
dbi	dbi services SA (CHE-115.853.816), including all of its branches and subsidiaries.
Deliverable	A performance that is defined as such by dbi and involves a result that may be tested for its conformity in comparison to the specifications agreed upon in the Agreement.
Event	Incident or disruption affecting the Client's system in relation with the Services.
FlexService	A specific Service Agreement, which provides for support services.
GC	These General Conditions.
Licence	A right that is personal, non-exclusive, revocable, non-transferable and limited in time and space that is given to the Client, against prior payment of the Price, to use the Software as described in the Agreement. Should the Software be developed by a third-party, it may also be subject to Third-Party GC.

Mission	Periods that are identified by starting and ending dates, specified in the Service Agreement and/or in a Specific Agreement, during which the Services are delivered.
Parties	dbi and the Client, together.
Place of execution	The place of execution of the contractual performance as defined in the Agreement or, failing that, in the GC.
Price	All amounts that are owed by the Client to dbi for the grant of a Licence and/or the delivery of a Product and/or Services and/or any contractual performance delivered by dbi.
Product	The hardware product and/or the Software sold in the context of the Sales Agreement.
Sales Agreement	The agreement between dbi and the Client on the sale of a Product or the grant of a Licence, as well as potential additional performances.
Service Agreement	Agreement between dbi and the Client on the delivery of Services, including FlexService, Workshop and consulting.
Services	The IT services delivered by dbi pursuant to the Service Agreement or to additional services of the Sales Agreement.
SLA	<i>Service Level Agreement</i> , i.e. the service level agreed upon for the Services and specified in the Service Agreement.
Special Provisions	Provisions of the GC that apply solely to the Service Agreement or the Sales Agreement.
Specific Agreement	Agreement between dbi and the Client specifically on one or several Missions.
Software	Software on which dbi or a third-party has property rights and on which the Agreement grants a Licence to the Client.
Third-Party GC	General conditions for a Software developed by a third-party, for example SAP.
Workshops	A specific Service Agreement, which provides for knowledge transfer services.

## Article 2 Object and application of the GC

### 2.1 Object of the GC

The GC set the conditions pursuant to which dbi delivers to the Client the Products, Software or Services in conformity with the Agreement.

The general provisions of the GC (parts I and IV, Article 1 to Article 10 and Article 26 to Article 32) apply to any and all Agreements, unless otherwise provided for in a specific provision for the Sales

Agreement (part II, Article 11 to Article 15) or the Service Agreement (part III, Article 17 to Article 25). In the event of any contradiction between the GC and one of the Agreements, the provisions of the GC shall prevail, unless the Agreement expressly mentions a derogation to the GC.

The provisions of the Swiss Code of Obligations (RS 220) and of all other special law shall apply in a suppletive capacity, when the GC do not derogate to them.

## **2.2** *Application of the GC*

The GC shall apply to all Agreements between dbi and the Client.

Unless dbi gives its special written agreement, the Client's general conditions (featured for example on an order form or which are, in any other way, communicated to dbi) shall not be applicable to the Agreement. Any derogation to the GC that would be suggested by the Client in an offer or a call to make an offer, or in any other document the Client would send to dbi, shall not be applicable and binding unless it is expressly accepted and signed by dbi.

## **Article 3** **Conclusion by electronic means and security**

### **3.1** *Conclusion by electronic means*

dbi and the Client may conduct their commercial business by electronic means, including for the conclusion of the Agreement as well as for the placing or confirming of an order.

Shall be considered as concluded any Agreement, as well as any order, made by the Client and expressly accepted by dbi through email, on a specific form available on dbi's website or on an extranet site reserved for the Client. Any Agreement and any order concluded this way shall be fully governed by the GC, without any possible derogation or exception unless dbi gives its explicit agreement to such a derogation or exception, which refers to the clauses of the GC to which it derogates.

### **3.2** *Security*

Each Party is responsible for implementing its own security systems and procedures that are required to ensure the security of data, passwords, web sites and any other electronic platform used in the context of the Agreements. Each Party shall be responsible for any breach or wrongdoing, in particular for the use of passwords as well as the mailing of unauthorized messages, originating from a failure of its own security systems and procedures.

## **Article 4** **Payment modalities and Price**

### **4.1** *Payment and billing modalities*

The Products and/or Services are billed by dbi in accordance with the Agreement's provisions. In the absence of such provisions:

- The Licences shall be paid in advance by the Client,
- The other Products shall be billed to the Client after their delivery,
- The FlexService Services as well as the Workshops are paid in advance by the Client,
- The other Services are billed to the Client monthly, based on the activity report provided to the Client by dbi.

The amount mentioned in the bill is payable within a 30-day period as from the bill's date.

In the event of overdue payment of the Price, the Client shall be automatically considered as being in default, without any notification or formal notice being required. A 5% yearly interest shall be added to any overdue payment. dbi may also, without any prejudice nor responsibility, suspend all contractual performance that should still be delivered, until the full payment of the Price.

In the absence of an objection raised by the Client, sent to dbi by registered mail within 10 days of the bill's date, the bill shall be considered as fully and entirely accepted by the Client. It shall be considered as an acknowledgment of debt in the meaning of Art. 82 of the Swiss Federal Law on Debt Enforcement and Bankruptcy (RS 281.1).

In case of a termination of the Agreement, whatever the cause, the Client shall have to pay entirely all amounts that are due in relation to the performances already delivered, as well as of the Price corresponding to the contractual performances delivered until the effective end of the Agreement. Additional penalties may be provided for in the Agreement.

#### **4.2 Price**

##### *(a) In general*

The Price is defined in the Agreement.

For the Services, the Price may be calculated on an hourly basis (hourly rate) or a daily basis (daily rate), or determined as a lump sum. The Price includes dbi's travel costs to the Place of execution, the meal costs as well as any parking costs. Any other costs (hotel night, purchase of light equipment, etc.) are not included in the Price and shall be subject to a surcharge based on the effective costs.

In relation to the Products, the Price is firm for the Product and/or the Product's period of validity as specified in the Sales Agreement. Should the Product's delivery be expected after 90 days, or any other shorter delivery period provided for in the offer or one of the Agreements, dbi may adapt the Price.

In case of a late delivery after the 90-day period, for a cause for which dbi is responsible, the Price shall be proportionally adapted to the number of days of the delay in comparison to the agreed validity period. No such adaptation shall be made if the late delivery is caused by an order modification by the Client or for any other cause that is not of dbi's responsibility.

dbi shall not be bound by any potential Price (would it be firm or not) that has been agreed upon with the Client, when such a Price has been set based on incorrect information communicated by the Client, or if the costs or expenses to be paid or born by dbi increase for any reason due to the Client.

Failing any special provision in the bill or in the Agreement, the Prices are deemed exclusive of VAT and other similar indirect taxes. These taxes shall be exclusively born by the Client and shall be added to the Price.

##### *(b) Supplements*

The Price mentioned in the Agreement is to be understood as subject to potential supplements and extras provided for in the Service Agreement and the Sales Agreement.

For all Agreements, a supplement in addition to the hourly rate or daily rate shall apply for any performance provided by dbi, or any other person or entity acting on behalf of dbi, after the Business Hours. The Price, as well as this supplement, shall together amount to the 170% of the agreed Price. Should the Price be determined as a lump sum, the supplement shall be calculated based on an hourly rate of CHF 200.-.

For all Agreements, any performance that would not be included in the description of the contractual performances shall be billed, in case of a Price determined as a lump sum or if the Parties have not agreed on another hourly rate, based on an hourly rate of CHF 200.-.

For all Agreements, any cancelation of a scheduled appointment that would not be notified to dbi at least 48 hours in advance shall be billed for an amount equivalent to 50% of the performances.

#### **4.3** *Termination*

Without any prejudice for the other termination rights provided for in the GC, dbi may terminate the Agreement with immediate effect in case of the non-payment of the Price by the Client, to the condition that dbi has sent a payment reminder to the Client and left him 30 days to proceed to the full payment.

### **Article 5** Working time

Unless otherwise provided for in one of the Agreements, the working time of dbi's staff and employees sent or made available to the Client in the context of the Agreement shall be of eight hours per day, during Business Hours.

### **Article 6** Licences

#### **6.1** *Grant of Licences*

The Agreement's execution may require delivering Software to the Client. dbi is entitled, in this context, to grant the Client all required Licences on the Software.

The Licence's conditions and modalities provided for by the Software publisher (in particular the Third-Party GC) are deemed fully and entirely known and understood by the Client. They shall be fully applicable and the Client commits to respect them entirely. These conditions of the Licence may be communicated to the Client by dbi with the Product, in the documentation provided pursuant to the Agreement or, if this is not the case, on request of the Client.

#### **6.2** *Responsibility*

The Client shall be fully and entirely responsible for any prejudice or contractual violation that would be caused by or derive from the violation of the Licence's conditions.

Should dbi suffer a prejudice further to the violation of the Licence's condition by the Client and/or any other person because of the Client, including in case of any claim against dbi by the third-party publisher of the Software, the Client shall have to fully and entirely indemnify dbi for all prejudice as well as all costs that would derive from this. The same principle applies in favour of any third-party, in particular any subcontractor of dbi, who would be affected by the violation of the Licence's conditions.

To the necessary extent and in the limits of the law, dbi may transfer to the Client its rights against the publisher in case of a claim by a third-party against the Client because of the Software's use in conformity with the Licence. By doing so, dbi shall be freed from any responsibility and warranty or

guarantee towards the Client in relation to the Software and Licence and shall therefore not be held liable of any warranty or guarantee towards the Client. dbi shall have no obligation to provide assistance to the Client or intervene on the Client's side.

The Client commits in any case to inform immediately dbi of all claim that would be raised against him in relation to the Licence and to fully collaborate with dbi, as much and as far as would be deemed necessary by dbi.

### **6.3** *Test Software and free Licences*

In case of a test Software or a Software that would be provided to the Client based on a fee-free Licence, the Software shall be deemed provided as is and without any warranty or guarantee. dbi shall bear no responsibility whatsoever towards the Client or any other person for any potential prejudice that would be suffered (directly or indirectly) in relation to the Software.

### **6.4** *Software and Licences provided by the Client*

dbi shall not be held responsible for any problem linked to Software that would be provided by the Client and/or to Licences for such Software.

The Client shall fully and entirely indemnify dbi for all prejudice that dbi would suffer, as well as any of dbi's subcontractors for all prejudice they would suffer, because of a Software or Licence provided by the Client. This indemnification shall include all judicial costs and legal fees if judicial action is taken against dbi and/or any of its subcontractors.

### **6.5** *Termination effects*

In case of a termination of the Agreement with immediate effect, all Licences that would have been granted or provided to the Client, as well as any right to use and/or operate the Software, may be terminated with immediate effect.

In case of an ordinary termination of the Agreement, the applicable modalities provided for in the Agreement for the Licence's duration shall apply.

## **Article 7** *Limitation and exclusion of responsibility*

### **7.1** *Limitation and exclusion of responsibility*

Should dbi be held responsible based on the Agreement, this responsibility shall in any case be limited to the annual amount billed by dbi to the Client for the Agreement and, at the most, to a maximum amount of CHF 250'000.-. This limitation shall not apply in case of intent or gross negligence.

All responsibility of dbi for an indirect prejudice (including when caused through another prejudice), such as loss of earnings or loss of profit, operating loss, loss of savings or any other claim from a third-party towards the Client, is excluded. Any responsibility in case of a force majeure event is also excluded.

Notwithstanding the above, and exclusively should dbi be covered by an insurance benefit, dbi shall indemnify the Client, solely within the benefits paid by the insurance.

### **7.2** *Subcontractors and other participants*

The limitations and exclusions stipulated above shall apply to dbi as well as to any subcontractor, agent, employee, or organ that would intervene in the name or on behalf of dbi.

dbi shall not be held responsible in any way for the consequences of the intervention of third-parties, auxiliaries, agents, employees, or subcontractors of the Client, or of any other participant that would not have been mandated by dbi personally without the Client's request or choice.

The Client shall fully indemnify dbi for all prejudice that dbi would suffer, as well as any subcontractor of dbi for any and all prejudice that such subcontractor would suffer, in relation to the acts or omissions of third-parties, auxiliaries, agents, employees or subcontractors of the Client. This indemnity shall include any judicial and lawyer-fee costs that would arise should judicial action be initiated against dbi and/or any of its subcontractors.

The Parties undertake to adhere to the laws and regulations which apply to them. dbi thus adheres to the laws and regulations generally applicable to it as a provider of products and services in the field of information technology. It is, however, the responsibility of the Customer to be informed of and to indicate to dbi, the requirements that result from the laws and regulations applicable to its commercial activity, particularly those regarding the acquisition of the Products and Services governed by these GTC.

## Article 8    Secret and confidentiality

Each Party commits to avoid any divulcation, communication or use, for herself or any third-party, of any Confidential Information and/or secret of the other Party or of any third-party intervening in relation to the Agreement's execution, the existence of which such Party becomes aware of in the context or in relation to such an execution. This confidentiality obligation applies without any limit in time.

The confidentiality obligation shall not apply to any Confidential Information (i) that would become publicly available without the fault or the responsibility of the Party receiving such Confidential Information or (ii) in case of a valid production order issued by a competent judicial or administrative authority.

The Client expressly authorizes dbi to name him or her in any reference list, communication, or publication.

## Article 9    Intellectual property

### 9.1    *Absence of any transfer*

Unless the Agreement expressly provides for a transfer, the signature and performance of the Agreement shall not result in any transfer whatsoever of intellectual property rights from one Party to the other.

All rights relating to Software that are not expressly granted to the Client in the context of the Agreement remain to dbi, the third-party owner of the Software and/or any authorized dealer.

### 9.2    *Use of the results*

dbi may make any use of any result obtained in the context of the Agreement's execution for its own needs, as well as for the needs of any third-party and/or client, to the exclusion of the Client's Confidential Information. This shall cover any knowhow, concept and method acquired or developed in relation to the Agreement, by dbi alone or in cooperation with the Client or with any third-party. The Client shall have no possibility or power to oppose such a use of the results.

### **9.3** *Development of intellectual property*

Any intellectual property right that would be created or generated in the performance of the Agreement (including any invention, improvement, or patentable discovery) by dbi or any third-party mandated by dbi shall belong exclusively to dbi.

Should such rights have been created in cooperation with the Client, the Parties shall agree on the legal consequences of such a creation. It is specified that dbi shall in any case remain free to make any use of such rights, including any commercial use, without having to compensate the Client.

## **Article 10 Non-solicitation**

In the event that the Client recruits a dbi services employee during the term of the Contract and up to 12 months after its expiry, the Client shall owe dbi a fix indemnity equivalent to six times the monthly salary of the solicited person, including social security charges and all fixed expenses. Such an indemnity shall be due for each case of solicitation. It shall not free the employee of its obligations.

## **II. Special provisions applicable to the Sales Agreement**

### **Article 11 Order**

Any order shall be subject to or must be made within the context of a Sales Agreement. Should no specific document be entered into as such, the order accepted by dbi shall be deemed as the Sales Agreement.

Any order by the Client must be accepted by dbi. This acceptance may be made tacitly only when dbi effectively performs the Agreement. These GC shall fully apply also in case of a tacit acceptance.

### **Article 12 Delivery and installation**

#### **12.1** *Delivery term*

The Products' delivery term is only for indicative purposes and shall be, in the absence of another explicit provision in the order or in the Sales Agreement, be less or equal to ninety (90) days. dbi shall make its best efforts, within what is deemed possible, to respect such an indicative delivery term. This is, however, not a firm commitment on any fixed date or term.

The delivery term may in particular be extended for reasons linked to the Product's availability by the supplier or difficulties encountered in relation to its delivery at the place of delivery. The Client shall be informed as soon as possible by dbi, with a reference to the new indicative delivery term.

In case of a delay of more than ninety (90) days from the indicative delivery date mentioned in the Sales Agreement, the Client may cancel the order relating to the concerned Product(s). Any delivery of a Product that would already have been done, as well as any other current order that would not be directly impacted by the delivery delay, may not be cancelled by the Client. Any other claim by the Client against dbi in relation to the delivery delay, including any prejudice that the Client would invoke in this context, is explicitly excluded.

#### **12.2** *Place of delivery*

Unless the Sales Agreement provides otherwise, the place of delivery mentioned in the order shall have to be in Switzerland. The place of delivery shall correspond to the Place of Execution.



dbi shall deliver, or have delivered, the Product to the place of delivery mentioned in the order. In the absence of such a reference, the delivery shall be made at the address of the Client's headquarters in Switzerland or, in the absence of such headquarters, at the address of a branch or subsidiary of the Client in Switzerland. Should such a branch or subsidiary not exist in Switzerland, dbi shall retain the Product until the Client communicates to dbi a delivery address in Switzerland. No delay or violation of the Agreement may be invoked against dbi in such a case.

### **12.3** *Costs*

The delivery costs as well as handling costs shall be added to the Product's price unless the Sales Agreement or the order accepted by dbi explicitly specifies otherwise. The costs linked to any of the Client's specific requirements (special packaging, special mailing preferences, etc.) shall in any case be at the Client's expense and be added to the Price.

### **12.4** *Installation*

In the absence of another rule in the Sales Agreement, the installation of the Product(s) is not included in the Price. Should the Client wish that the installation be made by dbi, the Parties shall agree on the applicable hourly rate as well as on the applicable modalities.

## **Article 13** *Acceptance*

### **13.1** *In general*

The Product shall be deemed accepted by the Client in the absence of a written notification by him within ten days as from the delivery. In any case, the Product shall be deemed accepted as soon as it is used by the Client.

### **13.2** *In case of the Product's installation*

If the Parties have agreed on the Product's installation by dbi, the Product shall be deemed accepted by the Client in the absence of a written notification from him within ten days as from the installation.

Should the installation not be made within 30 days as from the Product's delivery, for any reason that would not be of dbi's responsibility, the Product shall be deemed accepted by the Client on the 31<sup>st</sup> day following the delivery and/or immediately as from the Product's use, if earlier.

### **13.3** *Absence of acceptance*

Should the Client not accept the Product for a reason that would be recognized as valid by dbi, dbi shall have to make the necessary corrections and/or take the required measures within an appropriate timeframe, in order to deliver an acceptable Product. Should dbi not proceed within a ninety-day timeframe as from the Client's acceptance refusal, the Client may terminate the Agreement and claim the reimbursement of any amounts paid for the relevant Product. Any other responsibility of dbi is excluded.

## Article 14 Risk and ownership transfer

### 14.1 Risk transfer

Damage or loss risks concerning the Product shall be transferred to the Client as from the conclusion of the Sales Agreement or, for Products that are ordered later on, at the time of the order.

### 14.2 Ownership transfer

Ownership on the Product shall be transferred to the Client at the latest of the two following events: Time of the delivery or full payment of the Price for the Product.

dbi may register its ownership title with any competent public register, at the expense of the Client, and/or inform of it the landlord of commercial premises occupied by the Client and/or any other third-party and/or authority. The Client shall collaborate with dbi to ensure such a registration and/or information.

Should the Client not fully pay the entire Price, dbi may take the Product back and terminate any Licence that would have been granted.

## Article 15 Warranty and liability exclusion

Any warranty in relation to the Product (including any warranty for defects) shall exclusively be of the manufacturer's and/or supplier's responsibility, depending on the warranty that is offered, to the exclusion of dbi. To the extent permitted by law, dbi shall assign to the Client all rights deriving from the applicable warranty on the Product. By doing so, dbi shall be released from all responsibility and warranty towards the Client in relation to the Product. dbi does not give any warranty regarding the Product's installation by the Client or any third-party. Furthermore, dbi shall have no obligation to provide assistance or support to the Client, unless a Service Agreement is entered into on this matter.

The duration, extent and conditions of the warranty may be communicated with the Product, as an appendix to the Sales Agreement or on request of the Client. Such conditions are deemed fully known and understood by the Client. The Client shall exclusively communicate with the manufacturer and/or the supplier for anything in relation to the warranty (including the warranty for defects), to the exclusion of dbi. Should a Service Agreement cover the Product's maintenance, the provisions of such an Agreement shall apply.

Should dbi suffer any prejudice because of the Product's misuse by the Client and/or any other person because of the Client, the Client shall fully indemnify dbi for any such prejudice and any cost that would derive from it. This same principle shall apply in favour of any third-party, in particular any of dbi's subcontractors, who would be affected by non-compliance with the Product's and/or Licence's conditions.

## Article 16 Additional performances

The Sales Agreement may provide for additional performances in the form of Services linked to a Product, for example the installation, a Workshop, etc. The special provisions provided for hereunder, which are applicable to the Service Agreement, shall be applicable to such Services, even if they are provided for in the Sales Agreement.

### III. Special provisions applicable to the Service Agreement

#### Article 17 Object and contractual structure

The Service Agreement covers dbi's mandate in relation to support services for components, as specified in the Service Agreement.

The Parties may enter into specific Agreements in relation to certain Services.

As a rule, the Services are ordered and delivered in the context of Missions.

#### Article 18 Order and duration

The Services are described in the Service Agreement. This Service Agreement may also be made as an offer of dbi accepted by the Client, or as a request by the Client expressly accepted by dbi.

The Service Agreement is entered into for the duration that is specified by the Parties or, in the absence of such a specification, for an indefinite period.

In case of a fixed term agreed upon in the Service Agreement, this Service Agreement shall be tacitly renewed, to the same conditions and for the same duration, unless one and/or the other Party notifies the other Party of its refusal of such a renewal, at least three months before the scheduled end of the Agreement.

#### Article 19 Agreement in time

As a lasting contract, the Service Agreement may evolve in time, depending on the Client's needs and the introduction of new systems and/or Services. Such evolutions shall be agreed upon in writing by the Parties in the context of the Service Agreement and/or of specific Agreement. The Parties commit to discuss, in good faith, of any required evolution or modification in the context of the Service Agreement.

It is the Client's duty to inform dbi of any change, any evolution and any modification that would impact the Services and any other contractual performance provided by dbi, in particular relating to the access to the systems covered by the Service Agreement or the details as well as the availability of the configuration elements.

#### Article 20 Execution of the Services

##### *20.1 Place of execution*

The Place of execution for the Services shall be specified in the Service Agreement. In the absence of such a specification, and to the condition that the Place of execution does not derive naturally from the type of Service covered by the Agreement, the Services shall be performed within dbi's facilities.

Should the Services have to be provided at the Client's facilities, the Client shall make available to dbi, free of charge, at least the same working spaces, the same equipment and computer software as well as the same facilities and services as those the Client would have made available to its own staff for the performance of a similar work. The Client shall ensure that dbi has access to the Client's facilities at all time and to the maximum required extent.

The same obligation shall apply to the Client when dbi requires remote access, or if such a remote access is useful, for the performance of all or part of the Services.

In any case, the Client shall provide dbi with all necessary credentials and accesses in view of the provision of the Services, including Oracle accounts, SYS, systems and RMAN, SSH, RDP, SCP and HTTPS (Oracle ports).

### **20.2** *Costs*

The costs implied by a performance in another place than dbi's premises (including for any travel in the context of the project) shall be borne by the Client. They shall either be directly paid by the Client or billed to him based on effective costs. No prior agreement of the Client shall be required on this matter.

The time required for travel shall be billed on the basis of the hourly rate specified under art. 4.2(b).

### **20.3** *Supported Software*

Components shall only be supported if the installation prerequisites are respected. Should the versions and editions not be supported by the editor of such components, dbi may, at its own choice, continue the effective supporting or request from the Client that he migrates the components towards the level of the last patch.

dbi recommends in any case to migrate the components towards the level of the last patch, to reduce the risks that problems appear.

### **20.4** *Maintenance*

dbi shall put the necessary maintenance services at the Client's disposal during the duration of the Service Agreement.

The modalities of the maintenance (times, maintenance tasks, intervention duration, etc.) shall be specified in the Service Agreement.

### **20.5** *Hiring of services*

When the Service Agreement and the Mission requires it, dbi shall put at the Client's disposal the adequate human resources for the performance of the Services.

Should one or several such staff members allocated to the Mission be unable to work without any responsibility of the Client (in particular in case of illness or accident, of departure or of fulfilment of a legal obligation), dbi shall make its best efforts to replace such concerned staff member(s) as soon as possible by other staff members with comparable qualifications.

The absence for training or holidays of staff members allocated to the Mission shall be planned together by the concerned staff member, dbi and the Client.

### **20.6** *Obligation of means*

Unless otherwise provided for in the Service Agreement, dbi shall be held by an obligation of means in relation to the Services. dbi shall provide, in this context, its Services in a professional manner and by respecting the applicable rules of the art, in conformity with the use in the IT industry. When possible, dbi shall make its best to provide the Client with a continuous availability for the agreed upon Services.

The Service Agreement shall be deemed executed with the provision of the agreed upon Services.

### **20.7** *Obligation of result*

dbi shall not be held by an obligation of result in relation to the provided Services unless this is explicitly provided for in the Service Agreement and that the Service consists in the delivery of a Deliverable.

In such a case, the level of service shall be the only criteria allowing deciding whether the result is fulfilled and shall be the only warranty granted by dbi.

## **Article 21 Modifications and communication**

### **21.1** *Modifications brought by the Client and planned increases*

The Client must immediately inform dbi of any modification that would have consequences on the Services, including the modification of IP addresses, of servers and components or of a server's storage places, as well as the installation of a Client's program. This information must be received by dbi at the latest 72 hours prior to the modification by the Client.

dbi shall inform the Client if the modification brought may impact the Services. Should the Client proceed to the modification notwithstanding this information, dbi may not be held liable for any problem or Event that would occur.

Any maintenance that would be programmed by the Client shall have to be communicated to dbi at least 72 hours in advance when it is scheduled to take place between 6:00 PM and 8:00 AM. It must be scheduled with dbi's agreement if it exceeds this timeframe.

Any request from the Client on a modification or a change in the Services must be received by dbi at least 72 hours in advance.

The Client shall also have to inform dbi of any planned volume increase, in particular due to the number of users, the number of data or the number of planned operations.

Any communication from the Client in relation to the Services must be made to the service desk, as indicated in the Agreement.

The Client shall be entirely responsible for any and all consequences deriving from the violation of his information and notification obligations. The Client shall have to indemnify dbi for any prejudice that dbi would suffer because of such a violation, including for any extra or additional work that would be required.

### **21.2** *Notification by dbi*

Any element that depends on the Client and that does not allow a correct performance of the Services shall be notified to the Client by dbi.

Should the Client not make the changes or modifications that are required by dbi, dbi shall inform the Client of the points and elements that would not be covered for this reason.

### **21.3 Reports**

dbi shall provide the Client with a quarterly report as well as an annual report containing at least the number of Events and the service requests, by criticality and by status.

No quarterly report shall be established in the absence of Events or service requests during the past quarter.

## **Article 22 Acceptance**

The Services shall be deemed having been accepted by the Client in the absence of a written notification from him within fifteen days as from their completion. The Services shall be deemed completed:

- In case of punctual Services, at the time when they may be used by the Client or do not require any further intervention by dbi to make them usable for the first time;
- In case of Services that are rendered as continuous performances (as are maintenance services), at the time when each performance rendered by dbi and included in the Services is completed.

In the absence of such a written notification, the Client shall be deemed as having definitively accepted the Services and shall be considered as having forfeited any subsequent reclamation right, including when the Services impose an obligation of result on dbi pursuant to the Service Agreement.

Should the Client not accept the Services for a reason held as valid by dbi:

- If the reason does not prevent the use of the Services by the Client, or does not seriously impede such use, the Client shall be deemed as having accepted the Services, under reserve of the corrections to be brought by dbi within three months as from the notification;
- If the reason seriously impedes or completely prevents the use of the Services by the Client, dbi shall proceed to the necessary corrections within a reasonable timeframe agreed upon with the Client – should the Services still not be accepted after the end of such a timeframe, dbi shall have a final deadline of at least thirty days to proceed to the necessary corrections.

Should there be no acceptance by the Client for a reason that would be recognized as valid by dbi, the Client shall be entitled to request a reduction of the Price in proportion of the depreciation affecting the provided Services or decide to terminate the Agreement and request the reimbursement of the amounts paid for the Services that are affected by the reason recognized as valid by dbi. Any other responsibility of dbi is excluded.

## **Article 23 Events**

### **23.1 Event hierarchy**

The Event classification shall be made depending on the Event's impact on the Client's activity, based on the following hierarchy:

- Critical Events, i.e. an important incident or disruption, or the blocking of the Client's production environment;

- Middle Events, i.e. an incident or a disturbance that causes a disruption in the production environment's capacities or a total blocking situation that only affects a test or development environment;
- Minor Events, i.e. an incident or a disturbance that has no impact, or only a limited impact, on the production environment or a partial blocking situation that only affects a test or development environment.

The Event hierarchy shall be determined by dbi, in consultation with the Client.

### **23.2** *Alert and dbi answer*

The Client must alert dbi of any Event immediately upon its appearance, by phone, email or through the supervision infrastructure validated by dbi.

dbi's intervention deadlines (reaction time) shall be defined in the Service Agreement.

Should dbi not respect these deadlines, the Client may claim the following damages:

- For minor Events, an hour offered for each hour of delay;
- For middle Events, two hours offered for each hour of delay;
- For critical Events, three hours (for a Service Agreement « FlexService + » or « FlexService ++ ») or five hours (for a Service Agreement « FlexService +++ ») for each hour of delay.

During dbi's intervention, the Client must provide dbi all necessary information at the latest thirty minutes after an information request by dbi.

## **Article 24** *Warranty and responsibility*

### **24.1** *Corrective measures*

Should defaults affect the Services because of a failure or a violation of dbi's obligations, dbi shall take, free of charge, the necessary corrective measures to suppress the problems, to the condition that:

- The Client has informed dbi of the encountered problems without delay and by communicating all useful information for the identification of the defaults;
- The problems may not be attributed to the Client, whether directly or indirectly, including through any of its agents, proxies, employees or representatives;
- The problems are not imputable to external elements that are independent of dbi's will.

### **24.2** *Responsibility*

dbi may in no case be held responsible for the unavailability of components or for having not respected the reaction times:

- If the Client does not answer dbi's requests, which would enable the Event's resolution, or delays its answer to them;

- If modifications have been made on the components or on their access, without such modifications having been notified beforehand to dbi and accepted without reserve; or
- If the Client does not offer an access method that allows to have access to the components (including because of third-party causes, including network problems).

## Article 25 Termination

### **25.1** *Ordinary termination*

In case of an Agreement entered for an indefinite period, each Party may terminate the Service Agreement for the end of a month, with a three-month notice period.

To avoid any doubt, it is specified that the ordinary termination shall not apply to fixed-term Agreements, including when they are renewed according to art. 18.

### **25.2** *Early termination with penalty*

The Client may terminate a fixed-term Service Agreement of more than a year for the end of a month, by respecting a three-month notice period. Such early termination is not possible during the first six months of the Agreement. The Service Agreement may therefore end, at the earliest, after nine months.

In case of such an early termination, the Client shall have to pay an indemnity, which shall amount to 20% of the Price that would still have been owed until the end of the Service Agreement.

### **25.3** *Immediate termination for cause*

The above provisions shall not limit the right of each Party to terminate the Agreement with immediate effect and without penalty, to the condition that the other Party is in default to fulfil one of its obligations and has not remedied such default within a 30-day period as from the day it received a formal default notice by the other Party, through registered mail.

### **25.4** *Formal requirements and consequences of the termination*

The Service Agreement's termination must be notified to the other Party through registered mail.

The services provided until the end of the notice period shall be billed by dbi in conformity with the terms of the Service Agreement, and shall have to be fully paid by the Client. The indemnity provided for under art. 25.2 comes in addition to such amounts.

Should the termination only be given for Services that are provided in relation to a particular Mission, it shall not affect the validity of the Service Agreement in relation to other Missions and Services, which shall continue to be provided by dbi.

Should the termination be made because of a change of service provider by the Client, dbi shall proceed to the acts and provide the necessary information to the Client and/or to the new service provider, to ensure the transition. This obligation shall apply during the notice period. dbi shall bill such services based on an hourly rate of CHF 200.- if the Parties have not agreed on a different hourly rate.



## IV. Final clauses

### Article 26 Non-exclusivity

Unless the Agreement expressly provides otherwise, the Agreements shall not imply any exclusivity from dbi in relation to the Services and/or the Products. The Client acknowledges that dbi may offer identical or similar Services, as well as sell identical or similar Products, for its own account or any third-party's account, to any person or entity of its choice, including any competitors of the Client.

### Article 27 Written form

Any modification, suppression or addition to these GC can only be made in writing and must be signed by the Parties.

Unless otherwise provided for in the GC, the Parties accept that electronic communications (in particular through email and facsimile) validly fulfil the conditions of the written form.

### Article 28 Partial nullity

Should parts of these GC be declared void, totally or partially, or would in any other way be considered as lacking legal effect, whatever the reason or ground, all other provisions of the GC would remain in force.

Any clause that would be declared void or lack legal effect shall be replaced by a new clause as close as possible to the previous clause, pursuing as much as possible the same goals and respecting the same modalities.

### Article 29 Exclusion of any offsetting

The Client waives irrevocably and unconditionally any possibility to set off any amount that would be due to the Client by dbi and/or any third-party having acted on behalf of dbi, with the fees that are due to dbi and/or any third-party having acted on behalf of dbi pursuant to the Agreement.

### Article 30 No waiver

The waiver or omission by dbi in or of exercising any one or more of its rights under the GC or the Agreement, or to request the performance of one of the GC's provisions, of the Agreement or of any of the rights that are linked to them, shall not be construed as a waiver of such rights or of the performance of such provisions, nor affect in any way the validity of the Agreement.

### Article 31 Entirety

The Agreements contain all terms, conditions, insurances, warranties, commitments, and obligations agreed upon by the Parties in relation to their object and shall cancel and supersede any prior agreement or commitment between the Parties, oral or written, in relation to such object.

### Article 32 Governing law and place of jurisdiction

The Agreements are subject to Swiss substantive law, to the exclusion of all rules on conflict of laws provided for in international private law.



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The Parties commit to undertake in good faith all necessary efforts to resolve, by amicable means, any possible dispute between them. Failing an agreement further to such efforts, the ordinary courts of Delémont shall have jurisdiction on and for any possible dispute between the Parties.