

**Supplementary Terms and Conditions of S&T AG  
for Services and Work**

(Last update: 01/2013, Version: 1.0)



**1. SCOPE OF APPLICATION**

Subject to deliverables as agreed, these Supplementary Terms and Conditions are applicable to:

- services (consulting and support services);
- software creation;
- other work.

**2. SERVICE PROVISION**

- (a) If the agreed work consists in software creation, supplies and services also include an operating manual (user documentation or online help). S&T will deliver that operating manual in the German language. Customer will receive a copy of the software in object code form.
- (b) The software is implemented and operating personnel trained only by virtue of special agreements.
- (c) If S&T provides services (e.g. consulting services) only, customer will be responsible for overall management and supervision. In such an instance, S&T's services will solely consist in the support of projects which customer executes at customer's sole responsibility.
- (d) S&T will promptly notify customer if S&T realises that the requirements customer has defined for S&T to consummate the contract that are part of the specifications are incomplete or otherwise unfit or if further support services may be necessary. Customer will supplement or change these requirements immediately by written notice or communicate any other decision by written notice to S&T.

**3. CHANGE REQUESTS**

- (a) Both parties may issue written change requests during the contract term. If customer makes a change request, S&T, within a reasonable time limit from receipt of that request, will communicate by written notice how it believes this will affect the existing contractual agreement, unless another time limit was agreed in writing. Any change request made by S&T will already specify the necessary changes. Within 10 work days from receipt of a change request, customer will inform S&T in writing whether customers agrees or rejects such a request.
- (b) S&T will not refuse to carry out customer's change request without objective grounds. An objective ground is deemed to exist if S&T believes a change would jeopardise the success of a service or if the resources necessary for that change could be procured only with unreasonable commercial effort.
- (c) Customer may reject S&T's change requests stating the reasons for that rejection, but are solely responsible for the relating consequences.

- (d) Work will continue on the basis of the existing contract as long as we have not agreed on how to adjust the contract after receipt of a change request. Customer may give written notice and demand that the work affected by a change request be interrupted in whole or in part until the contract has been adjusted. In that event, customer will put S&T into the same commercial position as if the existing contract were consummated. Also, the execution period will be extended by the number of days by which execution had to be interrupted as a result of a change request.
- (e) If customer's change request requires comprehensive testing, S&T may ask for a reasonable compensation to carry out those tests. The notice shall specify the testing costs.

**4. ACCEPTANCE OF ANY AND ALL SUPPLIES AND SERVICES**

- (a) All services capable of being accepted under applicable law are subject to the following:
- (b) Customer will accept services immediately after S&T has issued a completion notice. S&T may ask customer to accept also services that may be used separately. Accepted parts of services shall form the basis for a continuation of the project. Notwithstanding the above, in the further course of the project, subsequent partial services will be tested as to whether they are compatible with already accepted partial services in accordance with the terms and conditions of the contract. We will record the acceptance process in an acceptance certificate that shall be jointly prepared by S&T and customer. Errors will be categorised as follows:

Error category	Definition
1. Critical	Use of work results is impossible or unreasonably restricted. The error seriously affects major functions and/or the security of work results; work results are unfit for further use.
2. Severe	Functional use of work results is seriously restricted. The error substantially affects functions and/or the security of work results, but allows further use of work results.
3. Minor	Functional use of work results is slightly restricted. The error insignificantly affects the functionality and/or security of work results and allows work results to be further used with only minor

	restrictions.
4. Irrelevant	Functional use of work results is possible without restriction. The error does not or only insignificantly affects the functionality and/or security of work results. Work results may be used without restriction.

- (c) Customer may not refuse acceptance on the grounds of insignificant errors. If category 3 or 4 errors exist, the parties will agree in the acceptance certificate how and within what time these errors shall be eliminated. Acceptance may not be refused on the grounds of defects in customer's services or services of third parties that have not acted as S&T's servants, and may not serve as reservation to unrestricted acceptance of S&T's services.
  - (d) Customer will report any errors by immediate written notice to S&T, such notice to specify the error symptoms and their consequences, hence stating the error categories.
  - (e) The work results shall be deemed accepted if customer neither accepts the deliverables nor delivers a snagging list within 20 work days from S&T's completion notice. Productive use of the created results shall be deemed to be acceptance in any event.
- 5. TITLE, RESERVATION OF TITLE, PROPERTY RIGHTS**
- (a) All items, such as presentations or offers, S&T may have made available to customer shall be S&T's intellectual property, even if these should have been made available prior to the conclusion of the contract. Should no contract be concluded, these documents shall either be returned or destroyed, as S&T elects, and may not be used until their return or destruction.
  - (b) All work results, including but not limited to software and data carriers, which S&T has made available to customer in performance of the contract shall remain S&T's property until customer has fully and completely paid the contractually owed compensation. Customer may not encumber with third-party rights or resell to third parties any items owned by S&T, except with S&T's prior written consent. Furthermore the rules referring to the reservation of title mentioned in Section 5 of the General Terms and Conditions of S&T shall be applicable.
  - (c) If customer is more than four weeks late with the payment of the contractually owed compensation, S&T may ask customer to surrender the items owned by it. The exercise of that surrender claim does not constitute a termination of the contract concluded with customer.

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Besides reference is made to Section 4.2 "Terms of Payment, Default" of the General Terms and Conditions of S&T.

### 6. SUPPLEMENTARY TERMS AND CONDITIONS OF PAYMENT

- (a) Except as contractually otherwise agreed, customer's payments for S&T's services will cover costs as actually incurred on the basis of S&T's rates applicable on the service provision date, plus statutory value added tax applicable on the invoice date.
- (b) Except as otherwise agreed, S&T will invoice customer monthly in arrears. If services are invoiced as incurred, S&T will attach a performance record to each invoice, which customer may object by written notice within 10 work days. Later complaints are not permitted.
- (c) Customer must use prepaid services during the agreed term of a contract. Unless otherwise agreed, unused services will not be subject to any credit or refund.
- (d) Time and material-based price estimates in quotations for work shall not be binding in nature. Quantities underlying an estimate are calculated on the basis of an evaluation of supplies and services to our best knowledge and belief and on the basis of information made available to customer.

### 7. SUPPLEMENTARY CLAIMS ARISING FROM DEFECTS

- (a) Section 377 and 378 of the Austrian Commercial Code (Inspection and Notice of Non-Conformity) are applicable for entrepreneurs. Customer is obliged to inspect the goods and services promptly and undertake to report to S&T any defects inherent in services which customer may have discovered, such notice to describe the defects and be accompanied by all relevant documents and information within a period of 8 working days ex delivery. Hidden defects shall be reported within 8 work days after customer has discovered them, otherwise customer's warranty claim will expire. S&T undertakes to examine a notice of defects received and to start eliminating such defect within a time limit that is reasonable in view of the seriousness of the defect. Customer will grant S&T best possible support in connection with the elimination of defects by providing relevant information, staff and other necessary resources.
- (b) If S&T is able to prove that defects customer has allegedly discovered in the services delivered do not constitute defects and that the services are prescribed by customer's tasks underlying the specifications or other instructions customer may have issued,

customer is required to reimburse S&T for any costs it has incurred in connection with processing customer's complaint. The amount of that compensation depends on S&T's rates and tariffs as applicable from time to time.

### 8. FRUSTRATED EXECUTION

- (a) If a contract for services and work is not executed for reasons within customer's control, S&T will retain the agreed compensation. Saved expenses to be credited in this event pursuant to Section 1168 (1) of the Austrian Civil Code are calculated as a lump-sum as follows:
- (b) Besides the compensation owed up to the termination date, customer is also required to pay a sum equal to 40% of the compensation which would have been payable for supplies and services to be provided after the date of termination. Customer may still prove that S&T, as a result of the non-execution of further services, has saved expenses in excess of 60 % of the value of the remaining compensation and may thus assert only a compensation of less than 40 % of the compensation.