

§ 1 Subject

- (1) The subcontractor shall perform services for the contractor on behalf of the latter's client (hereafter "the client").
- (2) On the conclusion of an individual contractual agreement (contract document), the contract between the parties shall comprise the following documents, by order of precedence:
 1. The individual contract for services (hereafter "contractual agreement");
 2. These general terms and conditions for contractual agreements;
 3. The contractor's quality management documentation.
- (3) The parties shall define the following terms and conditions in the contractual agreement, as relevant:
 - Subject;
 - Services provided by the subcontractor and the contractor;
 - Relevant completion and delivery dates (start and duration of the work);
 - Payment for services;
 - The place of performance;
 - The contractor's project manager (hereafter "project manager");
 - Applicable quality management (QM) provisions;
 - Any other relevant provisions.

§ 2 Terms and conditions of performance

- (1) The parties hereby acknowledge that the subcontractor is an independent contractor, and not an employee, of FUJITSU. FUJITSU shall not provide the subcontractor with any employee benefits, including, without limitation, assumption of liability, worker's compensation, health insurance benefits, and/or paid leave. The subcontractor is solely responsible for the performance of the relevant services. The subcontractor may freely determine the time and place of performance, unless otherwise required by the nature of any tasks within the scope of the project forming the subject of the agreement. The subcontractor shall obtain the prior approval of the contractor and any relevant members of the client's project organisation, in respect of the manner, time and place of performance.

- (2) To the best of its knowledge and ability, the subcontractor agrees to respect the interests of the contractor with regard to the client. The subcontractor is entitled to work for third parties, provided that this does not infringe any contractual duties towards the contractor.
- (3) The subcontractor is not entitled to negotiate with the client about the scope of the contract or remuneration. The subcontractor shall not accept any payments arising from, or in connection with, the contractual relationship between the contractor and client.
- (4) Where possible, the subcontractor and project manager shall agree on any completion and delivery dates one month in advance. Should the subcontractor or its representative(s) be unable to fulfil their obligations towards the contractor for urgent personal reasons, in particular, without limitation, due to ill health, the contractor is to be notified without delay.

§ 3 Obligation to provide information

In line with project management best practices, the subcontractor shall notify the project manager in writing about the current situation of the work and any remaining tasks or activities. The subcontractor shall do so at regular intervals; on request; and/or immediately on the occurrence of any unforeseen events.

§ 4 Remuneration

- (1) The contractor shall remunerate the subcontractor as specified in the contractual agreement. The remuneration is to be paid as invoiced, plus the applicable statutory rate of value-added tax. Each service provided shall be individually documented, unless provided otherwise.
- (2) The remuneration is not required to be paid as long as and insofar as the client has not accepted and paid the contractor for any services provided by the subcontractor due to defects. The contractor is entitled to retain the remuneration wholly or partly, until the subcontractor has provided the contractor with a copy of the relevant contractual agreement, signed by the subcontractor.
- (3) Travel time and expenses will not be reimbursed, unless provided otherwise in the contractual agreement.

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- (4) The subcontractor shall provide the contractor with monthly invoices stating the payment due.

§ 5 Completion and delivery dates

Agreed completion and delivery dates shall be binding. In particular, any completion and delivery dates agreed by the contractor and client shall take precedence, insofar as they are known to the subcontractor, and punctual completion or delivery depends on the services provided by the subcontractor.

§ 6 Data protection and confidentiality

- (1) The subcontractor shall keep in strict confidence all sensitive information and/or operational or trade secrets of the contractor and/or client, to which the subcontractor may gain access, unless these have otherwise entered the public domain. At the request of the contractor, the subcontractor will obtain a suitable written undertaking from all employees, and will submit these to the subcontractor.
- (2) The contractor shall keep in strict confidence all sensitive information and/or operational or trade secrets of the subcontractor to which the contractor gains access, unless these have otherwise entered the public domain.
- (3) Where the subcontractor's duties involve the processing of personal data, the subcontractor shall be prohibited from processing, publicising, providing access or otherwise using this data without authorisation for any purpose other than the relevant lawful purpose. The contractor or client may request a separate written undertaking under Article 5 of the German Federal Data Protection Act (Bundesdatenschutzgesetz).
- (4) Information from the subcontractor arising from the contractual relationship shall be collected, processed and used by FUJITSU in accordance with applicable German legislation, including, without limitation, the German Federal Data Protection Act.
- (5) These obligations continue to apply even after the termination of the contractual relationship.

§ 7 Deliverables

- (1) Any deliverables produced by the subcontractor for the contractor, in particular, without limitation, programmes (in object and source code), documentation and calculations, are the exclusive property of the contractor. This extends to goods that are not specifically deliverables under the contractual agreement, insofar as they are related to the contractor's projects, and/or are substantially based on the experience of, and/or work of or for, the contractor.

- (2) The subcontractor shall grant the contractor an exclusive and unlimited right of use over all deliverables subject to copyright law arising from the work performed for the contractor. The contractor hereby acknowledges this right. This right shall include, without limitation, the processing, modification, duplication, publication and commercial use of the works. The contractor is also authorised, without requiring specific permission in each case, to transfer this right wholly or partially to a third party and/or to grant rights of use to third parties.
- (3) Any claims the subcontractor may have in relation to the transfer of these rights to the contractor are wholly addressed by the remuneration.
- (4) This agreement continues to be valid even after the termination of the contractual relationship.

§ 8 Exclusivity

- (1) During the term of the contractual agreement and for one year thereafter, the subcontractor shall not perform any work, either directly or indirectly, for clients of the contractor, in whose projects the subcontractor has been involved. For clients with more than four separate geographical locations, this obligation applies only to those sites at which the subcontractor was employed; or which contracted the services of the contractor, and by extension the subcontractor. The subcontractor may not accept any contracts from, or provide services for, such offices.
- (2) Should the subcontractor breach its obligation under subclause (1), the contractor is entitled to claim a contractual penalty amounting to a maximum of 75 per cent of the remuneration payable to the subcontractor by the client for any work in breach. This shall at least amount to the agreed penalty set out in the contractual agreement. In addition to such penalties, the contractor is entitled to claim compensation from the subcontractor for any losses arising from the breach of the obligation in subclause (1), and to request that the subcontractor cease the work in question.

§ 9 Warranty

- (1) Should any goods or services provided by the subcontractor under the contractual agreement be defective, the contractor is entitled to demand a repair or replacement, as it sees fit, unless any such repair or replacement should be of no further interest to the contractor, with good cause. Should the subcontractor fail to respond after an initial request by the contractor followed by an additional reasonable extension of time, or should an attempted repair or re-

placement be unsuccessful, the contractor may have recourse to all statutory rights.

- (2) Claims of defects must be submitted in writing, clearly describing the alleged defects and if possible, attaching any written records, hard copies or other documents depicting/describing the defect.
- (3) In respect of any defects in the services provided by the subcontractor, the warranty period for claims by the contractor against the subcontractor shall be at least as long as the relevant warranty period for claims by the client against the contractor. The contractor shall notify the subcontractor of the applicable warranty periods agreed with the client.

§ 10 Liability

- (1) The subcontractor shall be liable to the contractor as provided by statute.
- (2) The subcontractor shall indemnify the contractor in respect of any claims made against the contractor by third parties, in particular, without limitation, by clients, arising from the acts or omissions of the subcontractor. This shall extend to all consequential losses, in particular salary and legal costs.

§ 11 German Minimum Wage Act

- (1) The subcontractor is obliged to comply with the regulations of the Mindestlohngesetz - "MiLoG" ("German Minimum Wage Act"). In addition, the subcontractor shall ensure that any of its involved sub-subcontractors comply with the provisions of the German Minimum Wage Act and that its subcontractors impose the respective obligations to their subcontractors.
- (2) Furthermore, the subcontractor shall indemnify and hold harmless FUJITSU and all other FUJITSU Affiliates receiving works and services under this contract from any and all third party claims or from payment of contributions to a joint scheme for parties to a collective agreement according to § 13 German Minimum Wage Act and § 14 (Arbeitnehmer- Entsendegesetz – "AEntG" ("German Posted Workers Act") arising from any infringement of the regulations of the German Minimum Wage Act by the subcontractor or its subcontractors or sub-subcontractors.
- (3) In case the subcontractor does not comply with its obligations to pay minimum wages to its employees or to pay contributions to a joint scheme for parties to a collective agreement for which FUJITSU as entrepreneur is liable like a guarantor in accordance with § 13 German Minimum Wage Act and § 14 German Posted Workers Act or if the subcontractor fails to ensure that its subcontractors comply with the respec-

tive obligations, the subcontractor shall reimburse FUJITSU for all incurred damages and losses.

- (4) Upon request of FUJITSU the subcontractor is obliged to prove to FUJITSU the duly payment of minimum wages by providing FUJITSU with respective documents (i.e. documents in accordance with § 17 German Minimum Wage Act, in particular complete records of employee working hours and complete wage statements of the employees of the subcontractor, including wages which are paid abroad). The subcontractor is obliged to perform regular monitorings of its subcontractors.

§ 12 Ethical Standards

Subcontractor shall be obliged to comply with the applicable laws. In particular, subcontractor will not engage, actively or passively, neither directly nor indirectly, in corruption in all forms, including extortion and bribery, in any violation of basic human rights of employees or any child labour. Moreover, Subcontractor will take responsibility for the health and safety of its employees; subcontractor will act in accordance with the applicable environmental laws and will use best efforts to promote these Ethical Standards among its suppliers. Subcontractor shall inform FUJITSU of the measures it adopted to ensure compliance with the rules, restrictions and principles herein, on FUJITSU's request. In the event of a failure to comply with any provision of this Section 12, subcontractor shall notify FUJITSU immediately in writing. Subcontractor agrees to keep accurate books, accounts, records, contracts, invoices and accompanying documentation (collectively, hereinafter "Documents") in connection with the transaction(s) contemplated by the contracts on which this terms and conditions refer and in connection with any other business transactions involving the Parties. FUJITSU reserves the right to audit the Documents by itself or by outside auditors acting on FUJITSU's behalf, upon notice. Subcontractor agrees to fully cooperate in any such audit. Subcontractor warrants and represents that it has no public official as its director, officer, controlling shareholder, employees who will perform the service within this contract and that no public official has a controlling interest in subcontractor at the date of this contract. Subcontractor shall immediately notify FUJITSU in writing if such warranty or representation is no longer true. Any breach of the obligations stipulated in these Ethical Standards shall constitute a material breach of contract by subcontractor. FUJITSU may terminate this contract, or suspend or withhold payment effective immediately upon written notice to subcontractor, if it has a good faith belief that subcontractor has breached, or has caused a breach of this Section 12. FUJITSU will not be liable for any claims, losses, or damages arising from or related to failure by subcontractor to comply with this Section 12 or related to the termination of this contract under

this Section 12. Subcontractor shall indemnify and hold FUJITSU harmless against any such claims, losses, or damages.

§ 13 Term of the contract

The contract between the parties shall come into force on the signature of the contractual agreement by both parties. The contractor is entitled to prematurely terminate the contractual agreement on the premature termination of the contract between the contractor and client, to which the contractual agreement with the subcontractor refers; unless the termination of the contract is attributable to the contractor. In this event, the contractual agreement shall be terminated at the same time as the contract with the client. The contractor is obliged to notify the subcontractor without delay of the premature termination of the contract with the client.

§ 14 Miscellaneous provisions

(1) Amendments and additions to this contract must be made in writing, and must be expressly described

as such. This requirement also applies to any changes to this provision.

(2) The courts of Munich shall have exclusive jurisdiction in any proceedings arising out of the contract, should the subcontractor be a Kaufmann as defined by the German Commercial Code, or should the subcontractor not have any registered office or normal place of residence in the Federal Republic of Germany, at the time at which the proceedings are initiated.

(3) The legal relationship between the subcontractor and contractor shall be exclusively governed by the law of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980.

(4) In the event of any provisions of the contract being or becoming wholly or partially void, this shall not affect the validity of any other provisions. Insofar as permitted by law, the parties shall agree to replace any such void provisions with equivalent provisions, from a commercial perspective.