

## Special Terms and Conditions– Customer Specific Development 2022

### 1. Applicability

- 1.1. These Special Terms and Conditions are to be applied when the Supplier has assumed a contractual obligation to provide Customer Specific Development for the Customer or if the parties have agreed this in writing or in some other way. In addition to these Special Terms and Conditions, the Customer Specific Development is also subject to the provisions in *General Terms and Conditions* (below ‘the General Terms and Conditions’), it being understood that that which applies to the Product also applies to the Customer Specific Development unless otherwise explicitly agreed between the Parties.
- 1.2. ‘Customer Specific Development’ means the work performed by the Supplier when developing a specific solution, function or product for the Customer as specified in detail in each contract.
- 1.3. ‘Assignment’ means the Assignment received by the Supplier to perform Customer Specific Development.
- 1.4. ‘Intellectual Property Rights’ means all present and future rights, title and interest whatsoever (whether legal or beneficial and whether registered or unregistered), in the copyright and in any design rights, trademarks, patents, rights or protections or similar to copyright (including all moral rights), topography rights, software programs, applications, database rights, know-how, trade names, trade secrets, inventions and other intangible proprietary information.
- 1.5. In these Special Terms and Conditions, the Contract means each individual contract between the Customer and the Supplier that covers Customer Specific Development. These Special Terms and Conditions and the General Terms and Conditions constitute an integral part of every such Contract.

### 2. Scope of the Assignment

- 2.1. The Supplier undertakes, in accordance with the provisions in these Special Terms and Conditions, to carry out Assignments for Customer Specific Development as agreed between the Parties.
- 2.2. The Assignment may only be changed after written agreement between the parties. If either party believes there is a need to change the scope of the Assignment, they are to notify the other party in writing as soon as possible.

### 3. Performance of the Assignment

- 3.1. Each party must appoint a contact. The specified contacts are to be entitled to make binding decisions for the parties within the framework of the Contract and to change the Assignment. However, the contacts are not entitled to amend these Special Terms and Conditions.
- 3.2. The Supplier must perform the Customer Specific Development with care and in a professional manner. The Supplier shall further perform the Customer Specific Development as specified in the Contract.
- 3.3. Unless agreed otherwise, the Supplier is not under any obligation to provide the materials required for the performance of the Assignment.
- 3.4. The Customer must grant the Supplier access to the premises, information, documentation, equipment and materials required for the Assignment and otherwise perform the agreed measures. The Customer is responsible for ensuring that the information provided to the Supplier is accurate, complete and unambiguous. If

the Customer fails to meet its obligations, the Supplier is entitled to compensation for any additional expenses occasioned by such failure. The Customer is responsible for any consents and notices required to permit the Customer’s use and receipt of the Customer Specific Development.

- 3.5. If the parties have agreed that the Customer will provide supplementary services, the Customer is responsible for ensuring that they are performed within the agreed time or, if no specific time has been agreed, within such time that the Supplier’s work is not delayed.
- 3.6. Unless the Parties agree otherwise, the Assignment will be performed at the Supplier’s premises.
- 3.7. During the performance of the Assignment and for a period of one year after its completion, the Customer undertakes not to employ any of the Supplier’s employees.
- 3.8. Subject to a written agreement thereto with the Customer, the Supplier is entitled to assign its rights and/or obligations under this Contract to another service provider.
- 3.9. The Supplier is responsible for ensuring that the Assignment is performed according to the agreed timetable if such a timetable has been drawn up by the parties. In the event of any delay caused by the Customer or any circumstance on the Customer’s side, the Supplier is entitled to the necessary extension of the agreed performance time. The Supplier is also entitled to the necessary extension if the Assignment is changed or increased in scope or if an extension is required to ensure that staff receive leave or annual leave as prescribed by law or other statutory instrument.

### 4. Payment

- 4.1. The Parties may agree in writing that Compensation for the Customer Specific Development shall be limited to the Customer meeting agreed upon minimum commitments for the purchase of products or services from the Supplier during a specified period of time. Should the Customer, after the Parties agreeing on such minimum commitments, fail to meet the minimum commitments, the Supplier shall notify the Customer of the breach of the agreement, which shall be considered a material breach of the agreement. Upon receiving such notice, the Customer shall remedy the breach within 30 days. Should the Customer fail to remedy such breach within 30 days from receiving notice thereof, the Supplier shall be entitled to invoice any outstanding amounts, with terms of payment being ten days after receipt of the invoice, without any obligation to provide any additional Products or materials and may terminate the Contract with immediate effect. If payment is delayed, penalty interest on arrears will be charged from the due date. Penalty interest is charged at the statutory rate.
- 4.2. If the Supplier incurs expenses for materials, etc., that are attributable to the Assignment, the Supplier is entitled to separate payment for them.
- 4.3. If the Customer does not meet its payment obligation, the Supplier is entitled to stop all work or part thereof, and all deliveries of materials without any liability. The Supplier may also immediately issue an invoice for any work that has been carried out up until that point in time but not yet invoiced with terms of payment being ten days after receipt of the invoice, notwithstanding other provisions in these Special Terms and Conditions and notwithstanding any other agreements on payment terms. If the Customer is in default more than 30 days after the Supplier has requested in writing payment of the amount due, the Supplier may give written notice of termination of the Contract with the

Customer with immediate effect.

- 4.4. The Customer is not entitled to withhold payment pending rectification of errors or defects.

## **5. The Supplier's liability for the Assignment**

- 5.1. The Supplier is liable for errors caused by the Supplier's performance of the Assignment in violation with the terms of the Contract, as specified in the General Terms and Conditions and clause 3.2 above. Delivery of the Assignment and the consequences of delays in relation to the Assignment are governed solely by the General Terms and Conditions.
- 5.2. It is noted in particular that any damages paid or compensation for delays in respect of the Assignment must be calculated only on the basis of payment made for the Assignment which the claim concerns and not the price of the Product or any other calculation basis.

## **6. Intellectual property**

- 6.1. The ownership to any and all Intellectual Property Rights created as a result of the Customer Specific Development shall vest with the Supplier. The Supplier grants the Customer a worldwide, non-exclusive, perpetual, license to use, reproduce and modify the results of the Customer Specific Development.
- 6.2. The Customer acknowledge and agree that any third-party software and/or materials provided as part of, or together with the Customer Specific Development, may be subject to separate terms and conditions. The Supplier makes no warranties or representation as to the functionality of such third-party software and/or materials and shall under no circumstances assume any liability in relation to such third party software and/or materials.

## **7. Processing of Personal data**

- 7.1. To the extent the Supplier will process personal data on behalf of the Customer, the Customer shall be the personal data controller and the Supplier shall be the personal data processor. In addition, the Parties shall enter into a data processing agreement governing the Supplier's processing of personal data on the Customer's behalf. Processing of personal data may only take place in accordance with applicable law, in accordance with Customer's instructions and as further set out in the data processing agreement.
- 7.2. In the event that the terms and conditions of these Special Terms and Conditions is in conflict with the data processing agreement, the provisions in the data processing agreement shall prevail in regard to processing of personal data.