

## GTC for ICT goods/services – 2025 partial revision

### Explanations

#### Introductory note

During the revision of the GTC, various technical/systematic changes have been made, such as:

- a. In the interests of greater distinguishability, the new wording refers to "service procurer" and "provider".
- b. Amalgamation of the terms "tender documents" and "request for a quote" (now collectively referred to as RFQ).
- c. Consistent use of the terms "personal data" and "information".
- d. Consistent use of the umbrella term "ICT goods/services".
- e. More consistent use of the term "contract document" where the written agreement is actually meant.
- f. Relocation of certain clauses in order to give the GTC a slightly more systematic structure (these amendments are referred to below).
- g. Increased use of clearly itemised lists (a., b., c., etc.).
- h. Inclusion of a table of contents.

#### Section 1 Scope and validity

##### Section 1.1 Scope and validity

The modifications to the clause serve to simplify it. Since the GTC can be used for all types of ICT goods/services and products (including in particular cloud services), the project team decided against keeping the list of examples and the legal classification (tenancy contracts, purchase contracts, contracts for work and services, contractual relationship).

##### Section 1.2 Reference to the GTC and acceptance

The revised version now takes into account that the general terms and conditions of any subcontractors shall not apply.

##### Section 1.3 Validity of deviations from the GTC

Adopted from section 1.3 of the 2020 SCI GTC. The only change is the removal of the reference to the tender documents, as these are included in the term "RFQ" according to the new definition in section 1.2.

#### Section 2 Contract components and order of precedence

##### Section 2.1 Contract components and order of precedence

A new simplified version.

## **Section 3 Quote**

### **Section 3.1 Quote provided free of charge**

Adopted unchanged from section 3.1 of the 2020 SCI GTC.

### **Section 3.2 Compliance with the RFQ**

Newly added, partly to meet the requirements of the Inter-Cantonal Agreement on Public Procurement (ICAPP) regarding sustainability and social issues (standards regarding occupational health and safety, working conditions, equal pay and environmental law).

### **Section 3.3 Deviations from the GTC in the quote**

Adopted with no material changes from section 3.2 of the 2020 SCI GTC; deviations are only of a technical nature.

### **Section 3.4 Validity of the quote**

Based almost entirely on section 3.3 of the 2020 SCI GTC, except the reference to the tender documents has been removed.

### **Section 3.5 Withdrawal from contract negotiations**

Based almost entirely on section 3.4 of the 2020 SCI GTC, except for some technical amendments.

## **Section 4 Products and services, deliveries**

### **Section 4.1 Description of services and products**

The first part of the provision is adopted from section 4.1 of the 2020 SCI GTC; deviations are only of a technical nature. In response to the consultations, the final sentence regarding the contractual regulation of the categories of personal data processed and the purpose for which they are processed was added in view of the data protection issues.

### **Section 4.2 Transfer of benefit and risk**

Adopted unchanged from section 4.2 of the 2020 SCI GTC – only the cross-reference has been updated.

## **Section 5 Performance**

### **Section 5.1 Duty to notify**

Adopted from section 5.1 of the 2020 SCI GTC with only technical amendments.

### **Section 5.2 Execution in accordance with instructions**

Adopted from section 5.2 of the 2020 SCI GTC with slight amendments. The purpose of the amendments is to emphasise the requirements/instructions regarding data protection and information security more prominently.

### **Section 5.3 Progress reporting**

Adopted from section 5.2 of the 2020 SCI GTC with a clarification and technical adjustments.

### **Section 6 Place of performance**

Transferred for systematic reasons from section 22 of the 2020 SCI GTC but without material changes. The amendments are purely technical.

### **Section 7 Place of data processing**

#### **Section 7.1 Place of data processing**

The provision is based on section 20 of the 2020 SCI GTC with the specified changes regarding the conditions for a transfer abroad to a country with an adequate level of data protection. It has been moved to this location for systematic reasons.

#### **Section 7.2 Transfer to third countries without an adequate level of data protection**

This section has been newly introduced and completes the regulation of section 7.1 with regard to possible transfers to third countries that do not have an adequate level of data protection (including additional protective measures).

### **Section 8 Employees**

#### **Section 8.1 Selection of employees**

Adopted from section 14.1 of the 2020 SCI GTC (moved for systematic reasons). In addition to some technical adjustments, a few material changes have been made: (a) Providers should not only take responsibility for the selection and training/instruction of their employees, but also for the adequate supervision of the deployed employees; (b) in addition to a lack of expertise, other characteristics of an individual can also lead to rejection (e.g. a lack of social skills).

#### **Section 8.2 Project organisation**

Adopted from section 14.2 of the 2020 SCI GTC with a technical amendment (moved for systematic reasons).

#### **Section 8.3 Further clarifications for increased protection requirements**

The provision is based on section 14.3 of the 2020 SCI GTC and has been moved to this position for systematic reasons. In response to various comments made during the consultation rounds, the provision has been reformulated and clarified.

#### **Section 8.4 Compliance with the service procurer's requirements by the provider's employees**

Adopted from section 13.5 of the 2020 SCI GTC (moved for systematic reasons). An addendum relating to information security has been included, which deals with the careful handling of access means provided (such as ID cards, badges, access codes, safe keys).

## **Section 8.5 Careful use of the resources provided**

Newly inserted provision that, among other things, regulates the appropriate and careful handling of the resources that the service procurer provides to the provider in the interest of sustainability.

## **Section 9 Involvement of subcontractors**

### **Section 9.1 Right to reserve consent relating to subcontractors**

The provision is based on section 6.1 of the 2020 SCI GTC, although the service procurer's prior approval is now required. In addition, it is now explicitly mentioned that consent to outsourcing to a subcontractor can be refused if, among other things, this is necessitated by the need to protect the processed data and/or heightened risks resulting from outsourcing.

### **Section 9.2 Imposition of obligations**

Newly introduced provision that stipulates the obligation of the provider to contractually impose on its own subcontractors all relevant obligations regarding data protection and information security, as well as other legal obligations (including procurement obligations).

## **Section 10 Documentation**

### **Section 10.1 Necessary documentation**

Adopted with no material changes from section 7.1 of the 2020 SCI GTC; deviations are only of a technical nature.

### **Section 10.2 Authority to copy**

Transferred unchanged from section 7.3 of the 2020 SCI GTC.

### **Section 10.3 Defect remediation**

Adopted from section 7.4 of the 2020 SCI GTC, but the time element within which a correction of documentation deficiencies may be expected has been added based on input from the consultation process.

### **Additional note**

Section 7.2 of the 2020 SCI GTC has been transferred to the "Inspection rights" chapter for systematic reasons (see section 17.2 in the new draft).

## **Section 11 Instruction**

### **Section 11.1 Instruction**

**Sections 8.1 and 8.2 of the 2020 SCI GTC have been combined here into a single section without any material changes.**

## **Section 12 Cooperation by the service procurer**

### **Section 12.1 Requirements**

Based on section 9.1 of the SCI GTC. The provision has been amended for reasons of clarification to the effect that the service procurer's requirements must be provided before the contract is concluded. It is to be understood from this that subsequent changes to the requirements or new requirements must be submitted and agreed as part of a change procedure.

### **Section 12.2 Provision of resources**

Adopted from section 9.2 of the 2020 SCI GTC without any material changes.

### **Section 12.3 Other forms of cooperation**

Adopted unchanged from section 9.3 of the 2020 SCI GTC.

## **Section 13 Remuneration**

### **Section 13.1 Remuneration options**

Based on section 10.1 of the 2020 SCI GTC. In addition to adjustments of a technical nature, this clause has been simplified in the revision (removing the list of examples and the unnecessary reference that the terms should be stated in the offer).

### **Section 13.2 Reporting of expenses and cost ceiling**

Based on section 10.2 of the 2020 SCI GTC. In addition to adjustments of a technical nature, the only change made compared to the 2020 version was to clarify that the rules relate to the possibility of the agreed cost ceiling being exceeded.

### **Section 13.3 Included services**

Adopted with no material changes from section 10.3 of the 2020 SCI GTC; deviations are only of a technical nature. However, the note that advance recycling fees and VAT can also be shown separately has been removed. This would always be possible under the contract due to the basic principle of "more specific agreement takes precedence over general agreement" in accordance with section 2.1. When it comes to invoicing, however, VAT must at least be shown separately anyway.

### **Section 13.4 Invoicing**

Based on section 10.4 of the 2020 SCI GTC. The following adjustments have been made: (a) clarification: the remuneration is payable within 30 days of the invoice date or in accordance with an agreed payment plan; (b) due to the redundancy of the general reservation of right of modification in section 2.1 and the new reference to a possible payment plan, the reference to a possible deviating agreement in the contract has been removed.

### **Section 13.5 Advance payments and security**

This provision replaces section 10.5 of the 2020 SCI GTC. In the first round of consultations, the project team rightly criticised the fact that the meaning and purpose of the provision was not sufficiently clear and it should be specified that it refers to securing the prepaid amounts (such as payments on account).

The revised wording should clarify this point.

### **Section 13.6 Remuneration adjustment**

The provision is essentially based on section 10.6 of the 2020 SCI GTC. The project team has tried to make it clear in this provision that a price adjustment that does not result from a change in the scope of services is only possible during the contract period if the parties have contractually agreed on such price adjustment mechanisms (such as index clauses for long-term contracts).

### **Section 14 Changes to services**

#### **Section 14.1 Information from the provider**

The provision essentially corresponds to section 11.1 of 2020 SCI GTC. The changes are primarily of a technical nature, with the following being clarified: (a) development and improvement needs may arise, in particular, from safety considerations; (b) changes may not only affect the readability of data, but also generally affect the ICT tools used.

#### **Section 14.2 Information regarding changes/discontinuation of service provision**

The provision corresponds, with the exception of a few technical amendments, to section 30.1 of the 2020 SCI GTC. The provision has been transferred to the chapter on changes to services for editorial/systematic reasons.

#### **Section 14.3 Amendment procedure**

The provision is based on section 11.2 of the 2020 SCI GTC with minor changes (in particular the reference to procurement law).

#### **Section 14.4 Continuation of work while proposed amendments are reviewed**

The provision was adopted with no material changes from section 11.3 of the 2020 SCI GTC; the deviation is only of a technical nature.

#### **Section 14.5 Agreement on changes to services**

The provision is based on section 11.4 of the 2020 SCI GTC. In addition to some technical changes, the reference to the validity of the "rates at the time of the change" has been removed from this section, as it remains unclear whether this refers to contractually agreed rates or the provider's standard rates.

### **Section 15 Confidentiality**

#### **Section 15.1 General**

The provision is based on section 13.1 of the 2020 SCI GTC. The changes compared to the previous version relate to: (a) the reference to information and personal data in particular (an amendment that has been incorporated into the entire 2025 GTC); (b) the reference to section 9.2 (imposition of confidentiality on subcontractors); (c) the limitation of purpose for processing personal data and information.

## **Section 15.2 Reference to official secrecy and professional confidentiality**

Newly inserted provision, which replaces parts of section 13.5 of the 2020 SCI GTC.

## **Section 15.3 Content of the RFQ**

Adopted with no material changes from section 13.2 of the 2020 SCI GTC; deviations are only of a technical nature.

## **Section 15.4 Advertising and publications**

Adopted with no material changes from section 13.3 of the 2020 SCI GTC; deviations are only of a technical nature.

## **Section 16 Information security and data protection**

### **Section 16.1 Power of disposal and issuing instructions**

Newly added provision intended to emphasise that the service procurer remains responsible for the handling and thus the security of personal data and information and, consequently, retains sole power of disposal and authority to issue instructions regarding such information.

### **Section 16.2 Data processing**

Newly inserted provision, which, together with sections 16.3 and 16.4, regulates and summarises the obligations regarding the processing of personal data and information (and in doing so, refers in part to other provisions of the GTC).

### **Section 16.3 Technical and organisational measures**

This provision replaces section 13.7 of the 2020 SCI GTC and contains various clarifications, particularly with regard to the need for protection and the aims of this protection.

### **Section 16.4 Continuous review of information security measures**

Newly inserted provision that clarifies that information security must not be understood as static. The security measures taken must be regularly reviewed and, if necessary, adjusted over time to new technical standards and/or the current threat situation. Any such adjustments must be documented and made transparent to the service procurer.

### **Section 16.5 Duty to report information security breaches**

**The regulation is taken in essence from section 13.8 of the 2020 SCI GTC. The project team deliberately refrained from expanding this provision at GTC level – despite the fact that, during the consultation process, it was requested that the FOBL sample clauses regarding cyber attacks be included. This approach also corresponds with that of the federal government, which likewise did not include any more detailed provisions in its own GTC for IT services during the most recent revision. Objectively, this also seems to be the correct course of action to the project team, especially since the**

**FOBL sample clauses cannot be adopted as they are. As explicitly stated, they are more of a collection of provisions that need to be compiled on a case-by-case basis for the business cases which are to be regulated by a contract, and transferred to the individual contracts.**

**Cyber clauses should therefore be considered when drafting individual contract templates, where cyber risks are actually imminent. However, individual/call-off contracts are not sufficient protection in themselves to avoid incidents like Xplain, unless they deal in great detail with the specific security measures that must be taken by the provider to avoid such cyber incidents. In line with a 'security-by-design-and-default approach', these requirements or measures should be required of the provider as early as the tendering stage. It should also be considered that ultimately the community as the service procurer remains responsible for any form of outsourcing. Outsourcing necessitates control, and control is only possible for those who understand – and also exercise information and control rights.**

## **Section 17 Inspection rights**

### **Section 17.1 Fundamental authorisation**

The new section 17 replaces section 13.9 of the SCI GTC, but addresses part of the same provision. For example, the new section 17.1 is based on the first part of section 13.9 of the 2020 SCI GTC, which covers the fundamental justification for conducting inspections.

### **Section 17.2 Inspection by auditors**

The provision has been transferred without change from section 7.2 of the SCI GTC (chapter entitled "Documentation"), but inserted into the chapter entitled "Inspection rights".

### **Section 17.3 Supplier's entitlement to remuneration**

With the exception of a linguistic amendment, transferred without change from the last part of section 13.9 of the 2020 SCI GTC.

### **Section 17.4 Costs borne by the service procurer**

Newly inserted provision that clarifies that the service procurer initially bears the costs it incurs in connection with an audit. However, the service procurer is justified in passing on these costs to the provider and not contributing to the inspection costs if an inspection reveals the provider is responsible for a breach of the contract or the law.

### **Section 17.5 Reinstatement of the contractual conditions**

This new provision makes it clear that it is the responsibility of the provider to rectify the identified audit points or the identified deviations between the current situation and what it should be, at its own expense.

## **Section 18 Default**

### **Section 18.1 Commencement of default**

Transferred with a technical adjustment from section 15.1 of the 2020 SCI GTC.

## **Section 18.2 Service procurer's optional rights**

Adopted with no material changes from section 15.2 of the 2020 SCI GTC, the deviations are only of a linguistic nature.

## **Section 18.3 Suspension of services/rights of retention**

Transferred from section 15.4 of the 2020 SCI GTC with increased precision regarding rights of retention.

## **Section 19 Warranty of title**

### **Section 19.1 Principle**

The provision is based on section 12.1 of the 2020 SCI GTC and has been supplemented to the effect that (a) the use of services or products by the service procurer may not infringe any third-party rights; (b) the service procurer, for its part, guarantees the legal freedom of the resources it has provided to the provider exclusively for the purpose of fulfilling the contract. The remaining amendments to the 2020 GTC are only of a technical nature.

### **Section 19.2 Indemnity**

Adopted with no material changes from section 12.2 of the 2020 SCI GTC; deviations are only of a technical nature.

### **Section 19.3 Claims arising from an infringement**

Adopted with no material changes from section 12.3 of the 2020 SCI GTC; deviations are only of a technical nature.

## **Section 20 Material warranty**

### **Section 20.1 Principle**

The new provision is based on section 16.1 of the 2020 SCI GTC and has been clarified in part and amended technically.

### **Section 20.2 Reduction/rectification**

Adopted from section 16.2 of the 2020 SCI GTC, with technical amendments and a change regarding the grace period for rectification. Based on the proposals made in the second round of consultations, an attempt has also been made to make it clearer, in relation to section 20.3, that the primary remedy is always to rectify the defect or make a substitute delivery (which had previously only been implied in section 16.3 of the 2020 SCI GTC).

### **Section 20.3 Failed rectification/reduction/alteration**

The provision is based on section 16.3 of the 2020 SCI GTC. In addition to technical deviations, it has now been explicitly stated that rectification can also be waived if it appears objectively from the outset not to be expedient (e.g. because it is objectively or subjectively impossible).

### **Section 20.4 Notice of defects and limitation period**

The provision was actually adapted during the revision, but was eventually adopted unchanged from section 16.3 of the 2020 SCI GTC into the final version based on the results of the consultation rounds. As happened in the preparation of the 2020 GTC, the project team decided not to follow the revised warranty right in the Swiss Code of Obligations in this partial revision either, and to leave the limitation period at one year for the sake of balance.

### **Section 20.5 Services provided after expiry of the warranty**

Based on section 16.5 of the 2020 SCI GTC. The only change is that the conditions agreed by the parties initially apply before adjusting in line with market practice.

### **Section 20.6 Differing warranty provisions**

Adopted unchanged from section 16.6 of the 2020 SCI GTC.

## **Section 21 Liability**

### **Section 21.1 Limitation of liability**

Adopted with no material changes from section 17.1 of the 2020 SCI GTC; deviations are only of a technical nature.

### **Section 21.2 Limitation of liability**

Transferred unchanged from section 17.2 of the SCI GTC.

## **Section 22 Contract penalties**

### **Section 22.1 Applicability**

The purpose of the new chapter 22 is to remove certain redundancies that were in the 2020 SCI-GTC with regard to contract penalties and to summarise these provisions. Section 22.1 regulates at the outset which circumstances will incur contract penalties based on the GTC. As in the 2020 SCI GTC, these are (a) violations of the provisions regarding confidentiality/information security and data protection; and (b) cases of default.

### **Section 22.2 Contract penalty for violations of the provisions relating to confidentiality/information security and data protection**

The provision replaces parts of section 13.4 of the 2020 SCI GTC. The project team did not change the amount of the contract penalty despite requests to do so, as an adjustment to the specific circumstances at the individual contractual level would always be possible under section 2.1. However, the reference to the basis of assessment for continuing obligations was changed from the 2020 version of the GTC and was modelled on the federal government's GTC.

### **Section 22.3 Contract penalty in the event of default**

The provision replaces parts of section 15.3 of the 2020 SCI GTC. The project team did not adjust the

amount of the contract penalty here either; the provision is almost identical to section 15.3 of the 2020 SCI GTC. The only change is the note that the penalty is still due even if the missing service is provided at a later date.

#### **Section 22.4 Contract penalty and claim for performance/claim for damages**

The provision replaces parts of section 13.4 and section 15.3 of the 2020 SCI GTC. The wording has been clarified but there were no material changes. The principle remains: (a) the provider's claim to performance remains; (b) a paid contract penalty will be offset against further claims for damages. However, the rule is now also applicable as a basic principle to contract penalties which are additionally agreed in the individual contracts.

### **Section 23 Replacements and maintenance**

#### **Section 23.1 Hardware**

Adopted with no material changes from section 18.1 of the 2020 SCI GTC; the deviation is only of a technical nature and attempts to formulate the "default mechanism" more clearly.

#### **Section 23.2 Maintenance of hardware and software**

Adopted with no material changes from section 18.2 of the 2020 SCI GTC; the deviation is only of a technical nature.

#### **Section 23.3 Other recurring services**

New provision, which, similar to section 23.2, stipulates an obligation to provide and support with regard to other recurring services. This is aimed primarily at online/cloud-based services such as SaaS.

### **Section 24 Consequences of termination of the contractual relationship**

#### **Section 24.1 Return/deletion/destruction of provided materials**

The provision is based on section 19.1 of the 2020 SCI GTC; the deviations are only of a technical and linguistic nature, with one exception. The only substantive adjustment is the reference to deleting in addition to returning and destroying (see also section 24.2).

#### **Section 24.2 Return/deletion/destruction of personal data and information**

This provision replaces and supplements section 13.10 together with section 24.3 of the 2020 SCI GTC.

#### **Section 24.3 Return/destruction procedure**

This provision replaces and supplements section 13.10 together with section 24.2 of the 2020 SCI GTC.

#### **Section 24.4 Support obligations after termination**

The provision is based largely on section 19.2 of the 2020 SCI GTC. In addition to technical changes, the wording has been clarified and, among other things, knowledge transfer and training have been explicitly mentioned as components of the support at the end of the contract.

## **Section 25 Assignment, transfer and pledging**

### **Section 25.1 Assignment**

Adopted with no material changes from section 21.1 of the 2020 SCI GTC; the deviations are only of a technical/linguistic nature.

### **Section 25.2 Import certificate**

Adopted with no material changes from section 21.2 of the 2020 SCI GTC; the deviation is only of a technical nature.

## **Section 26 Applicable law and place of jurisdiction**

### **Section 26.1 Applicable law**

The provision has been adopted from section 23.1 of the 2020 SCI GTC. The only reservation removed was that was of a differing agreement, which already generally follows from section 2.1.

### **Section 26.2 Exclusion of the applicability of the Vienna Sales Convention**

Adopted unchanged from section 23.2 of the 2020 SCI GTC.

### **Section 26.3 Place of jurisdiction**

The provision has been adopted from section 23.3 of the 2020 SCI GTC. The only reservation removed was that was of a differing agreement, which already generally follows from section 2.1.

## **Section 27 Intellectual property rights**

### **Section 27.1/27.1.1 The service procurer's pre-existing materials**

Newly introduced provision which deals with the rights to pre-existing materials that the service procurer makes available to the provider for any reason while providing the service (e.g. pre-existing software code that belongs to the service procurer, so that it can be developed). The project team considered it was advisable to regulate this point, especially since the service procurer already has to guarantee the legal freedom of such materials vis-à-vis the provider in accordance with section 12.1 of the 2020 SCI GTC – which of course can only be the case if they have been used in accordance with the contract for the fulfilment of the services and not otherwise.

### **Section 27.2**

#### **Section 27.2.1 Rights to the results of work**

Adopted with no material changes from section 24.1.1 of the 2020 SCI GTC; the deviations are only of a technical nature.

#### **Section 27.2.2 Rights to the results of work – the provider's/third-party products**

Adopted with no material changes from section 24.1.2 of the 2020 SCI GTC; the deviations are only of a

technical nature.

### **Section 27.3/27.3.1 Customised software**

Adopted with no material changes from section 24.2 of the 2020 SCI GTC; the deviation is only of a technical nature.

### **Section 27.4/27.4.1 Patent rights**

Adopted with no material changes from section 24.3 of the 2020 SCI GTC; the deviations are only of a technical nature.

### **Section 27.5 Rights to standard software**

#### **Section 27.5.1 Basic principle**

Adopted with no material changes from section 24.4.1 of the 2020 SCI GTC; the deviations are only of a technical nature.

#### **Section 27.5.2 Service procurer's right to use**

Adopted with no material changes from section 24.4.2 of the 2020 SCI GTC; the deviations are only of a technical nature.

#### **Section 27.5.3 Time limitation on the right to use**

Adopted unchanged from section 24.4.3 of the 2020 SCI GTC.

#### **Section 27.5.4 Right to copy**

Adopted unchanged from section 24.4.4 of the SCI GTC.

#### **Section 27.5.5 Use in case of primary system failure**

Adopted unchanged from section 24.4.5 of the SCI GTC.

#### **Section 27.5.6 Manufacturer's licence conditions**

The provision is based on section 24.4.6 of the SCI GTC. In addition to some technical changes, the rather expansive original clause has been condensed and certain redundancies removed. It has now also been specified that the manufacturers' licence conditions must not only be disclosed as part of the tender process, but must also be explicitly mentioned in the contract and incorporated into it as an integral part.

#### **Section 27.5.7 Open source software**

The provision is based on section 24.4.7 of the SCI GTC. However, as well as some technical changes, the clause has also been revised and expanded in response to feedback during the consultation rounds. The addition to the original wording is aimed at making sure the provider ensures from the outset that OSS components are integrated in accordance with the rules of the relevant licences and that the corresponding licence and, in particular, copyright notices are affixed. The provider must also ensure that

it does not integrate any components into an application the use of which by the service procurer could lead, due to the respective licence, to a viral "copyleft effect" on other parts of the software. This may be particularly relevant where developments are based on proprietary components belonging to the service procurer.

#### **Section 27.5.8 Warranty obligations in connection with third-party components**

Newly inserted provision. The aim is to ensure that, even if third-party provisions (including warranties) apply to OSS components or proprietary third-party components, the provider remains responsible for the integration of these components and the functioning of the overall product in an overall context. This principle applies to both standard software and customised developments.

#### **Section 27.5.9 Applicability of the provisions to online use of software resources**

Newly inserted provision, motivated by the fact that certain clauses under section 27.5 should also apply mutatis mutandis to offers in which software is accessed and used online (e.g. SaaS offers) and is not provided to the service procurer for local installation as standard or as a customised product.

### **Section 28 Testing and acceptance of deliveries and services**

#### **Section 28.1 Quality & testing**

The provision is essentially based on section 25.1 of the 2020 SCI GTC. In addition to a technical change, the project team has also stipulated here that delivery items must be tested according to the state of the art before they are delivered to the service procurer.

#### **Section 28.2 Framework conditions for testing**

Adopted unchanged from section 25.2 of the 2020 SCI GTC – only the manner in which the list is presented has been adjusted.

#### **Section 28.3 Notice of readiness for testing**

Adopted with no material changes from section 25.3 of the 2020 SCI GTC; the deviation is only of a technical nature.

#### **Section 28.4 Partial services**

Adopted unchanged from section 25.4 of the 2020 SCI GTC.

#### **Section 28.5 Confirmation of freedom from defects**

Adopted unchanged from section 25.5 of the 2020 SCI GTC.

#### **Section 28.6 Dealing with minor defects**

Adopted with no material changes from section 25.6 of the 2020 SCI GTC; the deviations are only of a technical nature.

#### **Section 28.7 Definition of "minor defect"**

Adopted with no material changes from section 25.7 of the 2020 SCI GTC; the deviations are only of a technical nature.

### **Section 28.8 Dealing with significant defects**

Based on section 25.8 of the 2020 SCI GTC. As well as some technicalities, the clause has been clarified to the effect that the presence of a single significant defect can lead to refusal of acceptance.

### **Section 28.9 Definition of "significant defect"**

The provision has been adopted from section 25.9 of the 2020 SCI GTC. As well as some technical changes, the project team has now clarified that a significant defect is also deemed to exist under the definition if information or data security is significantly compromised.

### **Section 28.10 Consequences of unjustified refusal of inspection/acceptance**

Adopted with no material changes from section 25.10 of the 2020 SCI GTC; the deviations are only of a technical nature.

## **Section 29 Purchase of hardware**

### **Section 29.1 Delivery**

Adopted unchanged from section 26.1 of the 2020 SCI GTC.

### **Section 29.2 Installation**

The provision is based on section 26.2 of the 2020 SCI GTC. In addition to some purely technical adjustments, a note has been added stating that the installation requirement also extends to "device-related software".

## **Section 30 Maintenance of hardware**

### **Section 30.1 Scope of maintenance**

The provision is based on section 27.1 of the 2020 SCI GTC. The only change in the new version is the inclusion of full device replacement, which is offered as an alternative to repair and replacement of defective parts.

### **Section 30.2 Parts replacement**

The provision is based on section 27.2 of the 2020 SCI GTC. As well as some technical adjustments, the project team included the obligation for the provider to use or install only original spare parts and consumables as standard, or at least parts and consumables recommended and approved by the manufacturer. This can be of some significance for the service procurers, since many equipment manufacturers will refuse a warranty claim because parts that are neither original parts nor parts that are recommended by the manufacturer have been used.

### **Section 30.3 Fault detection**

Content adopted from section 27.2 of the 2020 SCI GTC without any changes. The changes are purely technical.

## **Section 31 Additional warranty for software**

### **Section 31.1 Damaging software routines**

Chapter 31 is an entirely new provision which the project team drafted on the basis of various suggestions regarding the quality of delivered software. Section 31.3 should ensure that the software delivered to the service procurer shall not contain any software routines that could potentially cause damage (such as viruses, Trojans, etc.) and that the provider shall check for this using adequate means as part of the quality control prior to delivery.

### **Section 31.2 Examples of prohibited features**

A new provision that is intended to further tighten the basic principle under section 31.1, in particular with regard to protecting the integrity, confidentiality, availability, accountability and traceability of personal data and information or systems and infrastructures.

### **Section 31.3 Applicability of the provision**

Another new provision, which states that chapter 31 applies to all types of software (standard software, customised software, software for testing purposes, etc.).

## **Section 32 Software maintenance**

### **Section 32.1 Delivery of new versions**

The provision is based on section 28.1 of the 2020 SCI GTC. Compared to the previous version, the following proposed changes have been taken into account and implemented: (a) the maintenance of software is also aimed at addressing security vulnerabilities, as well as general errors; (b) extension of the delivery obligation to include releases and patches; (c) functional changes to the software applications are only subject to a fee if this is also agreed by the parties in the call-off contract.

### **Section 32.2 Investigating the cause of the fault**

Adopted with no material changes from section 28.2 of the 2020 SCI GTC; the deviations are only of a technical nature.

### **Section 32.3 Troubleshooting**

Adopted with no material changes from section 28.3 of the 2020 SCI GTC; the deviation is only of a technical nature.

### **Section 32.4 Upgrading software versions**

Adopted with no material changes from section 28.4 of the 2020 SCI GTC; the deviations are only of a technical nature.

## **Section 33 Operating, reaction and repair time, availability**

### **Section 33.1 Operating and reaction**

Adopted with no material changes from section 29.1 of the 2020 SCI GTC; the deviations are only of a technical nature.

### **Section 33.2 Definition of operating hours and response time**

Based on section 29.2 of the 2020 SCI GTC. Apart from some technical adjustments, it has simply been specified that the times indicated refer to Central European Time or Central European Summer Time, i.e. the time applicable at the service procurer's place of business in Switzerland.

### **Section 33.3 Fault rectification and response/rectification time**

Adopted with no material changes from section 29.3 of the 2020 SCI GTC; the deviations are only of a technical nature.

### **Section 33.4 Provision of services outside operating hours**

Adopted with no material changes from section 29.4 of the 2020 SCI GTC; the deviation is only of a technical nature.

### **Section 33.5 Availability**

Adopted with no material changes from section 29.5 of the 2020 SCI GTC; the deviations are only of a technical nature. The project team also corrected a calculation error, as the specified "default availability" of 99.8% does not correspond to a value of 44 hours per quarter, but in fact to just 4.4 hours.

## **Section 34 Termination**

### **Section 34.1 Contracts for an indefinite period**

Adopted with no material changes from section 31.1 of the 2020 SCI GTC; the deviations are only of a technical/linguistic nature.

### **Section 34.2 Reimbursement of prepaid amounts**

Adopted unchanged from section 31.2 of the 2020 SCI GTC.

### **Section 34.3 Termination for material breach of contract**

Adopted unchanged from section 31.3 of the 2020 SCI GTC.

### **Section 34.4 Further cancellation terms**

Adopted unchanged from section 31.4 of the 2020 SCI GTC.

## **Section 35 Secondment of staff, contracts awarded to private individuals**



### **Section 35.1 Permits**

Adopted with no material changes from section 32.1 of the 2020 SCI GTC; the deviations are only of a technical nature.

### **Section 35.2 Liability for faithful and careful selection**

The provision is based on section 32.2 of the 2020 SCI GTC. In addition to a technical adjustment, the intention was to make it clear that the provider is also responsible, among other things, for the faithful and careful checking of the professional and personal suitability of temporary staff.

### **Section 35.3 False self-employment**

Adopted with no material changes from section 32.3 of the 2020 SCI GTC; the deviations are only of a technical nature.

### **Section 35.4 Other gainful employment**

The provision is based, almost unchanged, on section 32.4 of the 2020 SCI GTC. The only change is that secondary employment that could have a negative impact on the performance of services no longer needs to be regulated by the service procurer, but instead requires its consent.

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