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Special Terms and Conditions of the uvex group for IT Services

General provisions

Our Special Terms and Conditions below apply to orders and contracts from companies of the uvex group (hereinafter referred to as "uvex") for IT services (in particular the creation and/or upgrading of software, software support and maintenance, licence purchase and all other software and hardware-related services) as well as subordinately the Terms and Conditions of Purchase of the uvex group (as of 11/2012), if the relevant branch office of the ordering uvex company is located in Germany, or the International Terms and Conditions of Purchase of the uvex group (as of 11/2012), if the relevant branch office of the ordering uvex company is not located in Germany, which we will gladly send upon request and which are available to download under https://www.uvex-group.com/en/terms-and-conditions/purchase. Any terms and conditions of the other party to the agreement that contradict or supplement our terms and conditions shall not become a component of the agreement even if we do not expressly object to them. Deviations from our terms and conditions are thus subject to our express written approval in any case. If inclusion of our Special Terms and Conditions is objected to, we are entitled to cancel the order – free of any claims against us of any kind; if we refrain from cancelling the order, this shall not constitute acknowledgement of another party's terms and conditions.

Definitions

Updates

Updates are technical developments and/or new functional features of software, without changing the key programming foundation (e.g. programme structure, programming language) and functionalities. Updates are identified with a new version number of the software.

Source code

The term "source code" refers to a readable text of a computer programme written in programming language. This source code is translated into object code prior to execution.

Object code

Object code consists primarily of executable code for the target platform/architecture for which the program was written. It contains pre-parsed

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code and program libraries. Object code can be executed on the target platform/architecture, but does not permit conclusions about the source code.

1. Provision of services
The service provider will not exclusively provide services for uvex.

In addition to services contractually agreed, the service provider shall also furnish relevant documentation.

Prior to undertaking upgrades, the service provider is obligated to secure the latest version, so that access to the last functioning version is always ensured.

If and to the extent that no other arrangement is made, software and updates shall be made available as copies on data storage media or for downloading.

If employees of the service provider who are engaged in service provision are replaced, the service provider must inform uvex in advance and obtain uvex's written approval, unless said employee leaves the service provider's company. If uvex refuses approval, the employee shall continue to be engaged. uvex is also entitled to require the replacement of employees engaged by the service provider at any time if collaboration is at risk for professional or personal reasons. If uvex objects to the replacement of an employee or uvex supports this employee and the service provider fails to respond within a reasonable period, uvex is entitled to a special termination right.

An obligation by uvex to collaborate must be explicitly agreed in writing.

Third parties may be assigned work to carry out the performance or parts of the performance only after prior written approval by uvex.

2. Remuneration
All IT services to be provided are covered with payment of the agreed remuneration. If remuneration on an hourly basis is agreed, uvex must sign a timesheet to form the basis for settlement. If individual services are excluded from the scope of services, the service provider must make express reference to this in writing. uvex must issue a separate, written order before such services may be performed. If it is agreed that uvex is to pay travel expenses (e.g. travel and hotel costs), uvex must approve them in writing in advance.

3. Rights granted
The service provider grants uvex and its affiliated companies within the meaning of Section 15 AktG [German Stock Corporation Act] a right of use of the provided

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IT services unrestricted as to time, location and content. The right of use is exclusive, if and to the extent the IT services involve a work performance that is to be individually created for uvex. If third parties have rights to the IT services, e.g. copyrights, the service provider guarantees it holds the rights accordingly and will ensure that uvex and its affiliated companies will be granted the rights of use described above free of charge.

The right of use also includes the right to further develop and/or upgrade IT services by uvex itself or third parties.

"Named user"- licences may be reissued monthly to depict change of user appropriately.

uvex is entitled to reproduce software in the quantities required and to operate it on several systems, regardless of whether its own or third party systems are involved.

If and to the extent third parties assert claims against uvex based on IT services rendered by the service provider, the service provider shall release uvex fully on first demand from all claims in this regard. This also includes legal defence costs.

If copyrights accrue, the author waives attribution pursuant to Section 13 S.2 UrhG [German Copyright Act].

4. Response times for support and maintenance agreements
If no response times are agreed in support and maintenance agreements, the following response times shall apply, which refer to customary work days at uvex and start upon receipt of the error report:

Error category	Response time
No functionality	Report before 12 noon: on the same day Report after 12 noon: to 12 noon on the following day
Limited functionality	48 hours
Functionality exists	72 hours

If the parties disagree as to the error category the higher level shall apply.

The service provider is prepared also to provide support and maintenance services outside customary hours on request.

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Support and maintenance services must be provided for a minimum of 3 years if no other arrangement is reached in writing.

5. Acceptance

If the object of the IT services is a work performance, the service provider shall ask uvex for acceptance in writing. uvex shall also be granted a reasonable deadline for acceptance, which will make it possible for uvex to conduct comprehensive tests within the ordinary course of business.

A breach of agreed documentation duties entitles uvex to refuse acceptance.

6. Termination for cause

uvex is entitled to terminate in particular but not conclusively if

a) in the case of support or maintenance agreements, the service provider fails to comply with response times agreed or alternatively specified in these Special Terms and Conditions more than twice,
b) the service provider no longer provides updates for software used,
c) the service provider is in default of meeting its contractual obligations and does not perform even after receiving a written request within a reasonable period of time,
d) if insolvency proceedings are instituted regarding the assets of the service provider or such proceedings are rejected for insufficiency of assets,
e) the service provider goes into liquidation or
f) the service provider suspends business operations entirely or partially.

In the event of termination for cause by uvex, the service provider is obligated to provide compensation for losses thereby incurred. The obligation to pay damages includes in particular also contract performance by uvex itself or a third party.

7. (Partial) right to withdraw

If the IT services are to be provided in individual sections (e.g. milestones) or are logically separable into individual sections (e.g. on the basis of various services), after the completion of each individual section uvex is entitled to a (partial) right to withdraw based on the impossibility of contract performance, default or breach of duty by the service provider as well as force majeure. uvex will inform the service provider that it will exercise its (partial) right to withdraw in writing. The service provider will then be compensated for the IT services provided as agreed until the (partial) withdrawal. No further claims by the service provider, in particular for compensation for damages exist.

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8. Issuance / deposit

If the service provider provides individual IT services for uvex (e.g. customizing per code), it shall issue the source code including associated technical documentation to uvex.

In all other cases, if uvex so requests, the service provider will store the software source code and the associated technical documentation on suitable data storage media and deposit it with a notary or a suitable provider of such services ("escrow service provider") to be named by uvex.

Without being requested to do so, the service provider will notify uvex in writing when a newer version ("update") of the source code or of the documentation is available. uvex will then decide whether the new version should be deposited. If and to the extent that uvex decides on a deposit, the service provider will carry out the deposit without delay.

For each deposit and each change of the source code and the technical documentation uvex is granted the right in the presence of a vicarious agent of the service provider to determine whether the data are completely stored on the data storage media or commission the service provider to undertake the examination. uvex will bear all costs associated with the deposit and the change of data storage media.

In the following cases the service provider grants uvex the irrevocable right, unrestricted in terms of time, to access the source code and the documentation and further develop it itself or by third parties and states its approval with immediate effect of issuance of the data storage media by the notary or escrow service provider to uvex:

a)   insolvency proceedings are instituted regarding the assets of the service provider or such proceedings are rejected for insufficiency of assets,
b)   the service provider goes into liquidation,
c)   the service provider suspends business operations entirely or partially,
d)   a majority of corporate holdings in the service provider are transferred to a third party or
e)   the rights to the source code or the associated documentation are transferred to a third party.

In addition, the notary or escrow service provider is also entitled to issue the data storage media upon joint written instructions from uvex and the service provider.

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9. References/publications

The service provider is entitled to use uvex as a reference only upon written approval from uvex.

Publications that detail the collaboration with uvex or IT services provided or to be provided must be approved in advance by uvex in writing while submitting a draft of the planned publication.

10. Severability

If any provision of these Special Terms and Conditions is deemed to be invalid as a whole or in part, this shall not affect the validity of the remaining provisions. The parties shall replace the invalid provision with a legally valid agreement that comes as close as possible to the economic purpose and intent of the invalid clause.

As of 07/2015

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