General Terms and Conditions

(2023/01/01)

1. Introduction

The following terms and conditions are binding, unless agreed to the contrary in writing. Hereinafter, Communardo Switzerland ag shall be referred to as Communardo Switzerland.

2. Subject of the contract

The subject of the contract is

- Design and consultation
- Development, improvement and integration of web-based applications
- Granting or supply of licenses for computer programs
- Maintenance and support of web-based applications
- Project implementation and management
- Training and courses
- General guidelines on internet usage

3. Training

3.1 Cancellation

For any cancellations that are received less than 5 days before the start of the course, 100% of the course fee will be charged. Should the cancellation be made prior to this date, you will have the opportunity to attend the next course free of charge or to arrange another course date. If a planned course that you have booked cannot take place due to force majeure (e.g. the course instructor falls ill or has an accident, etc.), then the course will be rescheduled for a later date. If you do not wish to attend later, we will refund the course fees that you have already paid in full.

3.2 Copyright

The documents created by our company are only intended for personal use by course participants and shall remain our intellectual property. Course participants agree not to copy any software that falls under copyright protection, nor to remove it from our premises. Documents and learning content may be reused and further developed by Communardo Switzerland.

4. Services

Services are generally charged according to time and effort, without the inclusion of any guarantee or warranty. However, it may be the case that services are expressly offered for a flat fee.

The following are deemed billable services:

- Time spent working at the customer's site / travel time
- Preparatory work, information procurement, documentation
- Telephone support
- Logging of the work carried out, management of ongoing issues
- Project management, collaboration, discussion of projects, accounting, technical clarifications
- Remote online support

The following services are not billable:

- Price enquiries and clarifications
- Invoicing and quotations

5. Rates

Information technology and consultation services are charged at the rates (plus VAT) set out in our general terms and conditions.

6. Quotations

Quotations are always provided free of charge. This does not apply to any responses to technical specifications, which will be invoiced at the applicable rates. The fees for those services listed in the quotations are estimates. Quotes are generally valid for 30 days.

7. Delivery

The delivered goods or services may differ from the quotation document, provided that they meet or include the requirements of the ordered goods.

8. Deadlines and dates

Dates and delivery periods shall only be binding to Communardo Switzerland if and insofar as we have provided an express guarantee of this. Changes to dates and delivery periods are binding to the extent that they have been expressly confirmed in writing by Communardo Switzerland.

9. Acceptance

Logs, business specifications, technical specifications, design proposals, exposés, scripts, images, written material and suchlike are deemed approved by the customer if they have been submitted for acceptance by Communardo Switzerland and the customer has not, within a period of 14 days, submitted a request in writing for omissions and/or defects to be rectified, or if the customer moves on to a further project stage or implementation phase. The same shall apply if the customer delivers written or image material to Communardo Switzerland. If it is, nonetheless, necessary to make changes after the customer's acceptance, Communardo Switzerland shall invoice this additional work at the cost rate agreed in the project contract, or at the rates specified in our general terms and conditions.

10. Payment terms

General:

- Software & hardware up to CHF 10,000.00: upon delivery, strictly net
- Software & hardware above CHF 10,000.00: 50% within 10 days after confirmation of the order; 50% within 10 days from delivery, strictly net
- Services: 10 days after invoicing, strictly net
- Maintenance agreements: before the start of the contract
- Training: before the start of the training

Should the customer violate the terms of payment as determined in the contract, or the above-mentioned terms of payment, Communardo Switzerland is entitled to charge default interest of 8%. The cost of a reminder is CHF 50.

11. Invoicing disputes

If the customer disputes the conformity of an invoice or a partial amount of an invoice drawn up by Communardo Switzerland, the customer must immediately inform Communardo Switzerland of this in writing and provide Communardo Switzerland with the relevant documentation. The customer must pay the undisputed part of the invoice by the due date at the latest. If the customer does not submit a complaint about the invoice to Communardo Switzerland by the due date at the latest, the invoice shall be deemed to be approved. In the event of disputes pertaining to the conformity of an invoice where the customer wins the dispute, Communardo Switzerland will credit the customer with the corresponding amount on their next invoice. If such disputes end in favour of Communardo Switzerland, the customer is obliged to pay Communardo Switzerland the corresponding amount within 10 days (maturity date). If disputes concerning the conformity of an invoice cannot be settled amicably within 30 days, both parties shall be entitled to pursue their claim by taking legal action.

12. Retention of title

The delivered goods remain the property of Communardo Switzerland until the purchase price has been paid in full. Until such time as this happens, Communardo Switzerland shall be entitled to record the retention of title in the retention of title register at the customer's place of residence in accordance with Art. 715 of the Swiss Civil Code. By signing this contract, the customer consents – within the meaning of Art. 4 of the directive of the Swiss Federal Supreme Court concerning the registration of reservations of title–that Communardo Switzerland may register the reservation of title without the cooperation of the customer.

13. Copyright (services/software)

The copyright to the program/developments is not acquired upon delivery and payment of the software programs/developments, but only the right to use the program/developments. The programs/developments remain the property of the manufacturer. Communardo Switzerland explicitly reserves the right to reuse and to further develop the software/developments and learning content that have been delivered.

14. Rights to the work results (services/software)

14.1 Property

Upon full payment of the agreed fees, the work copy becomes the property of the customer. The customer may not use this in any form for commercial purposes. While observing confidentiality obligations, Communardo Switzerland has the right to amend the work in any way, to make copies of it, and to further make use of it.

14.2 Industrial property rights

In the case of pro rate payments for services being made by the customer, all property rights to the work copy shall remain with Communardo Switzerland.

15. Third party software

The customer shall conclude the license agreement directly with the manufacturer. Any guarantees or warranties are made exclusively with this manufacturer. Communardo Switzerland shall not assume any warranty services. Once the software has been installed, the customer is solely responsible for its correct use.

16. Third party hardware

Hardware prices do not include installation, packaging and insurance costs. The manufacturer's warranty conditions apply. Communardo Switzerland shall not assume any warranty service.

17. Solicitation

Mutual written consent is required in the event of solicitation or use of services in any form provided by persons of the other contracting party that are involved in the performance of the contract. Such persons shall be deemed to be employees within an employment relationship, as well as appointed agents. This restriction shall apply throughout the term of the contract and for one year after termination of the employment or contractual relationship.

18. Confidentiality

Communardo Switzerland and the customer, as well as their employees, auxiliary persons and subcontractors, are mutually obliged to ensure the confidentiality of all documents and information which are not public knowledge and which make reference to the business practices of the other partner, and which have become known to them as part of the preparation and execution of this contract. This obligation shall remain in force for as long as there is a legitimate interest in this, even after the contractual relationship has been ended. However, the confidentiality obligation does not apply to information that is generally accessible or already known, nor to information that is obviously or lawfully acquired from third parties without any action being taken in this respect on the part of the person receiving the information. Statutory duties to provide information remain reserved.

19. Liability

In the event that gross negligence can be proven, Communardo Switzerland shall only be liable for direct damages that can be traced back to behaviour or action taken contrary to the terms of the contract by Communardo Switzerland or by third parties consulted by Communardo Switzerland. Any further liability on the part of Communardo Switzerland, its subcontractors and vicarious agents – especially in respect of compensation for indirect, consequential or incidental damages such as loss of profit, loss of earnings or production, loss of data, as well as liability for slight negligence – is expressly excluded insofar as this is legally permissible.

20. Duration and amendment of the contract

20.1

This contract is concluded for an indefinite period, but is subject to the minimum period specified in the contract. The contract may be terminated by either party with three months' notice to the end of a month (for the first time to the end of the minimum contract period), unless the contract contains provisions to the contrary. The contract must be terminated by the sending of a letter to this effect.

20.2

Communardo Switzerland is entitled to dissolve the contract with immediate effect if the customer does not fulfil their material contractual obligations and does not remedy any breach of contract within a grace period of 30 days. Breaches of material contractual obligations shall be deemed to include in particular, but not exclusively:

- Functional errors in the customer data that impair the functionality of
- Communardo Switzerland servers;
- Violation of the valid user guidelines within the framework of this contract;
- Violation of the customer's payment obligations.

20.3

If bankruptcy proceedings are opened against the customer, if the customer is granted a moratorium or if certificates of loss are issued against the customer, if it becomes evident in any other way that the customer can no longer meet their payment obligations or if the customer's company goes into liquidation, Communardo Switzerland has the right to dissolve the contract with immediate effect unless, within 5 days, the customer can provide a bank guarantee covering payment of the fees for at least 3 months.

20.4

Communardo Switzerland reserves the right to change these terms and conditions and the user guidelines if necessary. Any amendments shall take effect on the first possible termination date after the date upon which the amended provisions were notified.

20.5

The customer may only transfer this contract to a third party with the prior written consent of Communardo Switzerland; in the event of this happening, Communardo Switzerland would normally only refuse consent if the third party is in competition with or similar to Communardo Switzerland.

21. Jurisdiction & applicable law

The place of performance and jurisdiction is Zurich. Swiss law is applicable.