

GENERALPURCHASING CONDITIONS for IT SERVICES (AEB IT)

Version 1.3 October 2016

1. Definitions

Within the framework of these general purchasing conditions for IT services and the individual contracts, the following terms have the meaning hereinafter assigned to them, insofar as it does not follow from the context of their use that they should be understood differently:

'AEB IT' means these General Purchasing Conditions for IT Services;

'State of the art' covers all technical knowledge acquired up to the present that has been incorporated into operational practice and that is generally recognised.

'Workdays' means the days from Monday to Friday exclusive of national holidays;

'Contractor' means the person or the company with whom or which Zalando concludes the contract;

'Data' means all materials, documents and information, in whatever form;

'Individual contract' means the contractual document signed by parties of which these general purchasing conditions for IT are a part, excluding these general purchasing conditions for IT but including all other documents.

'Cardinal obligation' means an obligation whose fulfilment is a prerequisite for the proper execution of the contract and upon the adherence to which the contracting party relies and may rely;

'Contract' means the individual contract including all its appendices, particularly including these general purchasing conditions for IT services;

'Contractual services' means the totality of the goods and services to be provided by the Contractor in accordance with the contract;

'Zalando' means Zalando SE, Valeska-Gert-Straße 5, 10243 Berlin;

2. Scope

2.1 These general purchasing conditions for IT services apply to all contracts with which Zalando provides IT services in accordance with the order envisaged in the respective individual contract. This covers in particular the following types of contracts:

- Purchase of standard software;
- Rental of standard software;
- Software-related project contracts, in particular for adaptation, implementation and/or development of software;
- Maintenance of software;
- Purchase of hardware;
- Maintenance of hardware;
- Any combinations of the above types of contracts;

2.2 These general purchasing conditions for IT services also apply as a framework agreement for future contracts for the acquisition of IT services with the same Client, without Zalando having to refer to these in individual cases, unless Zalando agrees at future provision processes upon the inclusion of an updated version of these general purchasing conditions for IT services.

2.3 Deviating, conflicting or supplementary general conditions of the Contractor are only then and to such an extent part of the contract as Zalando has specifically agreed upon their validity in writing (paragraph 3.1)3.1 This approval requirement also applies if Zalando assumes contractual performance unconditionally in the knowledge of the general business terms and conditions of the Contractor.

2.4 Individual agreements with the Contractor concluded in individual cases (including secondary agreements, additions and changes) take precedence over these general purchasing conditions for IT services. A written contract or written confirmation by Zalando is the criterion for the contents of such agreements.

2.5 References to the application of statutory provisions only serve the purpose of clarification. Therefore, even with such clarification the statutory provisions apply, insofar as these are not directly changed or specifically ruled out in these general purchasing conditions for IT services.

3. Written form

3.1 Insofar as a declaration based on a contractual agreement is to be submitted in writing, the written form is a requirement for effectiveness. Written form means written form within the meaning of § 126 BGB (Civil Code).

3.2 Legally relevant declarations and notices that are issued by the Contractor to Zalando require the written form.

4. Several contractors

4.1 With a contract with two or more contractors, each of them shall be jointly and severally liable for the fulfilment of the contract.

5. Subcontracts

5.1 Insofar as nothing to the contrary is stated in the individual contract, the Contractor is only authorised to use subcontractors with the prior written authorisation of Zalando.

5.2 Even if he uses subcontractors, the Contractor remains fully liable for the fulfilment of the contractual services.

5.3 If the Contractor intends an - even partial - transfer of

contractual services to a subcontractor, he must inform Zalando in a timely manner, but at least two weeks before the planned commencement of the current work, in writing, of the name and address of the relevant subcontractor as well as the work to be carried out by the latter at the request of the Contractor.

5.4 The Contractor must prepare the agreements between himself and his authorised subcontractors in such a manner that the services of the subcontractor meet the same qualitative and other requirements as the Contractor himself undertakes to fulfil vis-a-vis Zalando. He is in particular also obliged to conclude contractual provisions on confidentiality with the respective subcontractor that are at least as strict as the provisions to which the Contractor himself is obliged to adhere, while, however, ensuring that he can fulfil his obligation on the basis of paragraph 5.6 without a violation of the contract with the subcontractor. The respective subcontractor must deal professionally with the work issued to him in an expert, efficient and dependable manner. At the request of Zalando, the Contractor must provide suitable evidence of this.

5.5 Here, for the sake of security, the Contractor cedes his claims vis-a-vis the subcontractors whom he hires in association with the contractual services to Zalando, who accepts this cession. This cession does not result in a deferral or other restriction of the obligations of the Contractor. The Contractor is not authorised to refer Zalando to claims vis-a-vis the subcontractor on the basis of the cession for reasons of security. However, the Contractor is authorised to enforce all rights and claims arising from the contracts with subcontractors in his own name until Zalando revokes this authorisation. Zalando may only revoke the authorisation and enforce the claims himself if the Contractor is in default regarding the fulfilment of a cardinal obligation and/or a party has issued a declaration that is aimed at the termination of the contract.

5.6 In case of the revocation of the authorisation according to paragraph 5.5 the contractor is obliged to provide the contract concluded between him and the respective subcontractor including all appendices to Zalando.

5.7 If the Contractor violates an obligation according to paragraph 5.1 or 5.3, Zalando can, after having set a reasonable deadline for fulfilment without this deadline being met, or - in case of the violation of an obligation to desist - withdraw from the contract. A notice or warning is not necessary if circumstances exist which, with consideration of mutual interests, justify Zalando's immediate withdrawal or if Zalando can no longer be expected to adhere to the contract on the basis of the Contractor's violation of an obligation. Any further rights, especially claims for damages, remain unaffected.

6. Prices

6.1 Prices are indicated in euros (EUR).

6.2 The prices include all taxes (except value added tax (VAT), duties and other charges for contractual services and any costs incurred for packaging, insurance and transport of the contractual services to the place of delivery.

7. Payment, settlement and security deposit

7.1 The invoices of the Contractor shall be drawn up with a clear reference to the respective contract in the language of the contract. They must contain detailed and verifiable accounting. Any value added tax amounts are to be specified separately.

7.2 The time from which the Contractor is authorised to issue an invoice basically derives from the individual contract. Insofar as nothing to this effect is regulated in the individual contract, the following applies:

- Insofar as contractual services relate to the production of works or are subject to acceptance for another reason, the Contractor is only authorised to issue an invoice after successful acceptance.
- In case of other contractual services, the Contractor is in principle only authorised to issue an invoice after the delivery or other fulfilment.

7.3 Any payment owed by Zalando is only payable 60 (sixty) calendar days after receipt of an authorised invoice consistent with paragraph 7.1 and 7.2. Payment shall be deemed to have been effected on time if the payment order of Zalando reaches your bank during this period.

7.4 The Contractor may only make a set-off in case of an undisputed or legally established claim. Similarly, the Contractor is only authorised to enforce performance refusal or retention rights insofar as the claim on which he bases the performance refusal or retention rights is undisputed or legally established.

7.5 All set-off, retention and performance refusal rights to the extent permitted by law accrue to Zalando.

8. Reservation of title

8.1 Insofar as the transfer of ownership or the granting of usage rights is the subject of the contractual services, these are unconditional and without consideration of the payment of the price.

9. Use of and liability for data; confidentiality

9.1 The Contractor may use all data provided him by Zalando solely for the fulfilment of his contractual obligations. In particular he is not authorised to release these to or make them accessible to third parties without the prior written authorisation of Zalando. Considered to represent third parties on the side of the Contractor are all parties except (i) the Contractor and his employees and (ii) professional advisers of the Contractor, insofar as these are subject to legal or contractual obligations to maintain confidentiality subject to contractual penalty.

9.2 The same restrictions apply to the use of data that Zalando or the Contractor have prepared in the context of the contract in a new form, even if their individual elements are known to the public.

9.3 The Contractor is obliged to store the data according to paragraph 9.1 and 9.2 and securely, and in case of digital storage to maintain security against access that is consistent with the state of the art. In addition he shall ensure that only such persons have access to these data as require them for the purpose of fulfilment of this contract.

- 9.4 The Contractor must immediately inform Zalando at any time upon the latter's request of all measures taken by him for compliance with the provisions according to paragraph 9.1 to 9.3.
- 9.5 Zalando has the right to demand the return or deletion by the Contractor of all data according to paragraph 9.1 or 9.2 that are in the possession of the Contractor within a suitable period set by Zalando, at the Contractor's expense and risk; in the exercise of its rights Zalando shall consider the legitimate interests requiring protection of the Contractor. If it is impossible for the Contractor to fulfil the contractual obligations without said data, he is obliged to immediately so inform Zalando after receipt of the request to delete them or hand them over. To the extent and as long as he is unable to fulfil the contractual obligations on the basis of an effected deletion or return, he shall be free of his obligation to fulfil said contractual obligations.
- 9.6 The obligations according to this paragraph 9 do not apply to data that are accessible or are made accessible to the public without breach of the obligations of this contract or if the data must be publicised by the Contractor according to the provision of a court or administrative or government authority. The Contractor is obliged to inform Zalando immediately of such a provision and give him the opportunity to dispute the necessity of said publication or to apply for a suitable injunction of confidentiality. The preceding sentence shall not apply to the extent that the Contractor himself is prohibited from the fulfilment of obligations stated therein on the basis of a provision.
- 9.7 The terms of this paragraph 9 remain valid for three years after the termination of the contract. In case of a contract that does not comprise a relationship of long-term obligation, the provisions apply for a period of five years from conclusion of the contract.
- 10. Data security**
Insofar as for the fulfilment of his contractual obligations the Contractor receives access to databases on IT systems from Zalando, he is obliged to assure himself by asking Zalando that these data are properly secured. If this is not the case, he must inform Zalando before the start of said access. Then he may only have access if Zalando explicitly demands this with knowledge of the stipulation.
- 11. Place of fulfilment and transfer of risk; transport and delivery**
11.1 Contractual services are in each instance to be delivered or effected at the place specified in the individual contract. Unless agreed otherwise, the place of fulfilment of the services owed by the parties is in each instance the registered office of Zalando. The risk of accidental loss and accidental deterioration of contractual services only transfers to Zalando with the transfer at the place of fulfilment - or if an acceptance has been agreed upon, upon the acceptance.
11.2 Contractual services are to be delivered duty paid (DDP, Incoterms 2010).
11.3 The Contractor shall be liable for any loss and damage caused during the transport of contractual services to which he is obliged until these have been delivered to Zalando.
- 12. Transfer**
12.1 The Contractor shall check contractual services that he transfers to Zalando, whether in physical or digital form, in advance for faults. Insofar as the contractual services are to be handed over by the Contractor in physical form, he shall also first check these to be sure that quantities are correct. If indicated, he shall make the necessary corrections.
- 13. Liability for material defects**
13.1 The Contractor guarantees that the contractual services are free of defects within the meaning of each individual contract. Insofar as there is no specification of the concept of defects in an individual contract, the statutory provisions apply.
13.2 The Contractor agrees that he will inspect the contractual services, insofar as these comprise the delivery of software (this also includes software present on hardware, such as firmware) before the delivery to Zalando, using a virus-seeking program that is state of the art at the time of delivery, for viruses, worms, spyware, Trojans or other malicious code. He will only deliver the software if his inspection has revealed no evidence of malicious code in the software. Without prejudice to any other rights of Zalando, if there is malicious code present in the software, the Contractor shall immediately provide Zalando with a new copy of the software that is free from malicious code.
13.3 The following paragraphs 13.4 to 13.7 apply only to purchase and service contracts.
13.4 The limitation period for warranty claims is 24 (twenty-four) months, insofar as no longer period is stipulated by law or in the individual contract, and commences on the day of transfer. For partial deliveries, the limitation period commences on the day of transfer of the final delivery. For replacement deliveries, the limitation period commences on the day of transfer of said deliveries. Insofar as the contractual services are subject to acceptance on the basis of a law or a contractual agreement, this takes the place of transfer in the sense of this paragraph 13.3.
13.5 If as part of his warranty obligation the Contractor corrects defects, the limitation period is extended in each instance by the period of time that has passed between the notification of the defect to the Contractor and the defect-free transfer or acceptance of the corrected contractual obligations.
13.6 If defects are observed on contractual obligations and if these are not corrected by repair or replacement within a reasonable period set by Zalando, Zalando is authorised, without prejudice to further legal claims, according to its judgment,
 to once again demand the correction of the defect or a new delivery (secondary fulfilment), or
 to retain the defective contractual obligations and to demand a decrease in the contractual price in a ratio consistent with the value that would have existed in defect-free condition versus the value in defective condition; or
- to withdraw from the contract without further deadlines being set and to return the defective contractual obligations, insofar as possible, to the Contractor at the latter's expense.
- 13.7 The statutory provisions (§§ 377, 381 HGB) apply for the commercial inspection obligation and the obligation to give notice of defects with the following criterion: Zalando's inspection obligation is limited to defects that clearly appear during Zalando's incoming goods inspection under external evaluation including the delivery documents as well as at our quality control in sampling procedures (e.g. transport damage, incorrect or short delivery). Insofar as acceptance is agreed or required by law, there is no obligation to inspect. For the rest, it depends on the extent to which an inspection bearing in mind the circumstances of the individual case in the ordinary course of business is feasible. Zalando's obligation to give notice of defects remains unaffected. In all cases Zalando's notice (notice of defects) is considered to have been effected immediately and on time, if it is received by the Contractor within 5 workdays from discovery of the defect.
- 13.8 Further legal rights of Zalando remain unaffected.
- 14. Third party rights**
14.1 The Contractor guarantees that the contractual services are free of third-party rights. If a third party enforces claims against Zalando because the contractual services violate his rights, particularly protective rights accruing to him (such as copyright or patent rights), the Contractor shall indemnify Zalando against these claims and all expenses associated with these claims, unless he is culpable with regard to these. The obligation to indemnify exists regardless of whether the claims were legitimately made or not; notwithstanding this, the fault requirement remains unaffected. It should be noted that the Contractor is free in case of unjustified claims to take recourse from third parties that have raised said claims.
- 15. Contractual penalty**
15.1 If the Contractor defaults with regard to contractual performance, he shall be subject to a contractual penalty; this shall entail for each workday of default 0.2%, but in total maximally 5%, of the net price of the contractual performance affected by the delay. Zalando is authorised to demand the contractual penalty in addition to fulfilment. The right to enforce further damages remains unaffected; however, the amount paid as a contractual penalty will be set off against any possible claims for damages on the basis of delay. Zalando can still enforce the claim for contractual penalty after it has accepted the belated performance until the final payment.
15.2 Possible termination rights of Zalando are not affected by the aforementioned provisions.
- 16. Liability**
16.1 According to the statutory provisions, the Contractor shall reimburse Zalando for all loss and expenses that the latter incurs as a consequence of an imputable violation of contractual obligations of the Contractor.
16.2 Zalando is liable for loss incurred by the Contractor based on a breach of obligation of the former's employees, his legal representatives or agents if these obligations were violated in an intentional or grossly negligent manner. Insofar as a claim for damages against Zalando is based upon simple negligence on the part of Zalando (including the aforementioned persons), Zalando is only liable
 in case of injury to life, body or health; or
 for typically occurring, foreseeable loss if the violated obligation represents a cardinal obligation.
- 17. Changes in the circumstances of the Contractor**
The Contractor shall inform Zalando immediately in writing of any change with regard to his legally binding representatives, his company, his address or his place of business.
- 18. Transfer - cession**
18.1 The Contractor may not transfer the Contract in full or in part without the prior express written consent of Zalando.
18.2 The Contractor may not cede or pledge any claims against Zalando without Zalando's prior written consent. § 354a of the German Commercial Code (HGB) shall remain unaffected.
- 19. Applicable law and disputes**
19.1 This contract is subject to German law. The United Nations Convention on Contracts for the International Sale of Goods (CISG) is not applicable.
19.2 Exclusive jurisdiction in disputes arising out of or in connection with the contract is Berlin.
- 20. Miscellaneous**
20.1 The Contractor might not refer to Zalando and/or the contractual relationship with Zalando neither publicly nor for advertising purposes.
20.2 All communications between the parties shall be made in the language of the contract.
20.3 Should a provision of this contract be or become ineffective, this shall not affect the effectiveness of the remaining provisions. The invalid provision will be replaced by a valid provision which comes as close as possible to the meaning and purpose of the invalid provision.
- * * *