

Standard terms and conditions for supply of services, goods, installations and maintenance

1. Scope and applicability

1.1. These standard terms and conditions ("STC") shall govern the legal relations between SUPPLIER and Orange Communications AG, Rue du Caudray 4, Case postale, CH-1020 Renens 1, hereinafter referred to (as "ORANGE"), in connection with services, goods, installations, and maintenance.

1.2. These STC shall take precedence over any standard terms and conditions previously agreed, and over SUPPLIER's standard terms. Acceptance by ORANGE without reservations of the *Contract Objects* shall not imply its acceptance of SUPPLIER's standard terms and conditions.

1.3. The SUPPLIER shall be deemed to have agreed to these STC by its submission of a *Proposal* and/or supply of the *Contract Objects*.

2. Definitions

Contract shall mean the contract entered into or to be entered into by the parties, subject to these STC.

Contract Objects shall mean the provision by SUPPLIER of goods and services, such as (but not necessarily limited to) services, goods, installations, and maintenance, in accordance with a Purchase Order by ORANGE.

Contract Price shall mean the price as set forth in clause 10 hereof, exclusive of Swiss value-added tax (VAT).

Delivery Period and *Delivery Date* shall mean the period and date agreed for the supply of the *Contract Objects*.

Proposal shall mean the SUPPLIER's answer based on the question's description contained in ORANGE's Request For Proposal.

Purchase Order shall mean a binding order in writing for the supply of *Contract Objects* and for any alterations thereto duly signed on behalf of ORANGE.

Request For Proposal ("RFP") shall mean a formal request for a solution proposal from ORANGE to SUPPLIER.

The *SUPPLIER* shall mean the supplier of the *Contract Objects*.

3. Proposal

3.1. ORANGE shall ask SUPPLIER to submit its *Proposal* and/or price quotation. Unless otherwise agreed in writing by ORANGE, the preparation of a *Proposal*, consultations with ORANGE, demonstrations, technical documents, and the supply of samples by SUPPLIER shall be free of charge to ORANGE. SUPPLIER shall submit its definitive *Proposal* in writing by letter, fax, or e-mail.

3.2. SUPPLIER's *Proposal* shall not infringe any duty under Swiss cartel law, nor make any arrangement with any competitor as regards territorial rights, quantities, or prices. **If SUPPLIER**

infringes this duty, it shall owe ORANGE liquidated damages of twenty-five percent (25%) of the *Contract Price*. The payment of liquidated damages shall not relieve SUPPLIER of its contractual duties and shall not be offset against any claim for compensation.

3.3. In its *Proposal*, SUPPLIER shall expressly state in what regard it departs from the specifications set forth in the *Request For Proposal*.

3.4. SUPPLIER's *Proposal* shall remain valid at least for three (3) calendar months from the date of its submission.

4. Conclusion of contract / ordering

4.1. After SUPPLIER has submitted its *Proposal*, ORANGE shall be at liberty either to enter into a *Contract* by a *Purchase Order* without reservation or to call for further and more detailed negotiations.

4.2. Until ORANGE issues a *Purchase Order* and/or enters into a legally valid *Contract*, it has no liability (including pre-contractual liability) to SUPPLIER for any damage suffered by SUPPLIER. In the event of non-selection of the SUPPLIER, then ORANGE is not obliged to state any reason.

4.3. If ORANGE requires delivery, its *Purchase Order* shall be valid only if transmitted in writing. SUPPLIER shall confirm the *Purchase Order* in writing within five (5) working days, failing which ORANGE shall have the right — even if exclusivity has been contractually agreed — to obtain the *Contract Objects* from others.

5. Delivery

5.1. Any ORANGE commitment shall only be valid if made in writing by a valid *Purchase Order*. SUPPLIER shall deliver the *Contract Objects* in the quantity and quality set forth in the *Purchase Order*, in conformity to the specifications, be suitable for their intended use, and be free from apparent or latent defects (also see clause 14).

5.2. SUPPLIER's delivery note shall state the number and date of the *Purchase Order* and include a description of the *Contract Objects*, their quantity (total gross weight, where appropriate) and, if applicable, their dangerous-goods classification as required by law. SUPPLIER shall take back all packaging free of charge and dispose thereof in an environmentally acceptable manner.

5.3. All *Contract Objects* shall be delivered to the address stated in the *Purchase Order*.

5.4. If ORANGE refuses to accept the *Contract Objects* because of defects found, it shall not pay / be liable for the rejected *Contract Objects*.

5.5. Partial deliveries shall be permissible only subject to prior agreement in writing by ORANGE. ORANGE reserves the right to cancel a *Purchase Order* in part or as a whole if a part delivery is

made without agreement in writing. ORANGE shall not be liable for costs incurred by SUPPLIER because of such cancellation (notably, but not necessarily limited to) any such that may arise for SUPPLIER because of the return of such partial delivery.

5.6. From time to time, SUPPLIER shall keep ORANGE informed of progress. If it seems that it may prove impossible to deliver the *Contract Objects* on time, SUPPLIER shall forthwith inform ORANGE thereof and agree another and binding Delivery Date. By agreeing a new Delivery Date, ORANGE shall not be deemed to have waived any of its rights to claim for default as set forth in clause 6.

5.7. SUPPLIER shall inform ORANGE of any technical and/or other innovations that may become available by the *Delivery Date* and make modifications to the *Contract Objects* necessary or advantageous for ORANGE.

5.8. If ORANGE so requires, SUPPLIER shall at its own charge instruct such staff as ORANGE may designate in the proper use of the *Contract Objects*. The *Request For Proposal* or the *Contract* shall specify the scope of such instruction. In the absence of this information, training shall be limited to instruction on the installation and use of the *Contract Objects*, and on the immediate steps necessary to maintain their value once they have been handed over.

5.9. SUPPLIER shall have the right to call in third parties, such as (but not necessarily limited to) suppliers, subcontractors, and helpers, to assist it in its performance of the *Contract*, always provided that these meet the high standards of ORANGE. Upon request by ORANGE, SUPPLIER shall disclose the names of all such third parties. In its relations with any such third parties, SUPPLIER shall at all times act in its own name and at its own risk and charge. SUPPLIER shall be as responsible for any acts of commission and omission by the aforesaid third parties, notably late delivery and defects, as for its own.

6. Default

6.1. The *Delivery Periods* and *Dates* stated in the *Purchase Order* shall be binding. The *Delivery Period* shall be deemed met if SUPPLIER delivers the *Contract Objects* to the responsible ORANGE personnel, performs the agreed services, and if applicable installs the *Contract Objects* free from defects at the agreed place of performance within the agreed Delivery Period or by the agreed Delivery Date.

6.2. If any period and/or date has been stated for performance of the Contract (expiry-date business), SUPPLIER shall be automatically deemed in default if it fails to comply. In all other cases SUPPLIER shall be deemed in default after a first reminder and expiry of the new deadline granted therein by ORANGE.

6.3. If SUPPLIER is in default, ORANGE may demand immediate compliance with the *Contract* or repudiate the same, without thereby affecting any of its legal rights. SUPPLIER shall in any case be liable for any damage that arises from its failure to deliver within the agreed deadline. **SUPPLIER shall pay ORANGE liquidated damages of four percent (4%) of the value of the *Purchase Order* for each started weekday for which it is in default, up to a total not exceeding twenty percent (20%). The payment of liquidated damages shall not be deemed to relieve SUPPLIER from its contractual duties or be offset against a claim for compensatory damages.**

7. Testing and acceptance of *Contract Objects*

7.1. Upon receipt of the *Contract Objects*, ORANGE shall test them within a reasonable time and inform SUPPLIER forthwith of their acceptance or rejection, as the case may be.

7.2. If ORANGE finds any *Contract Object* to be defective, it shall set SUPPLIER a reasonable period of grace to make good the defect. SUPPLIER shall make good any such defect within the stipulated period at its sole charge. If the *Contract Object* consists exclusively of services, ORANGE shall not be bound to grant SUPPLIER the right to make good defects. The granting of a period of grace for making good defects shall not be deemed to relieve SUPPLIER of liability to pay compensatory damages to ORANGE.

7.3. If within the stipulated period SUPPLIER fails to make good the defect or fails to do so in full, ORANGE may at its sole discretion exercise the following rights:

- a. insist upon compliance with the *Contract*, require compensation for the reduced value of the *Contract Objects*, and claim compensatory damages; if ORANGE so requires, SUPPLIER shall replace the defective *Contract Objects* by new;
- b. refuse acceptance of the defective part(s) of the Contract Objects and claim compensatory damages;
- c. withdraw from the *Contract* and claim compensatory damages for the loss.

7.4. If ORANGE claims a reduction of value in the *Contract Objects*, it shall also have the right, at SUPPLIER's risk and charge, either itself to make good or complete the *Contract Objects*, or to transfer this task to a third party of its choice. SUPPLIER shall assist ORANGE therein and notably hand over all documents necessary for that purpose.

7.5. If only part of the Contract Objects supplied is defective, ORANGE shall be at liberty to accept only those parts that are free from defects. As regards the defective *Contract Objects*, SUPPLIER shall proceed in accordance with clauses 7.2 to 7.5.

7.6. SUPPLIER shall make available free of charge to ORANGE all documentation, such as (but not necessarily limited to) documents and copies relevant or belonging to the *Contract Objects* or, as the case may be, to hand these over within five days after (full or partial) delivery of the *Contract Objects*.

8. Transfer of benefit and risk

Benefit and risk shall pass to ORANGE upon final acceptance of the *Contract Objects* as set forth in clause 7. Final acceptance shall require acceptance of all the *Contract Objects*.

9. Changes to goods and services

9.1. Changes to the goods and services shall be valid only if mutually agreed and confirmed in writing by the parties. In response to a variation request by ORANGE, SUPPLIER shall inform ORANGE in writing within five working days after receipt of said request whether the proposed changes are possible and what effects (notably on *Delivery Dates* and prices) they will have on the project.

9.2. If ORANGE requests only minor changes, SUPPLIER shall not have the right to refuse its request.

10. Prices

10.1. Except as may be otherwise agreed, the prices stated in the Contract and/or Purchase Order shall be deemed firm and binding.

10.2. To be valid, any price change shall be mutually agreed and confirmed in writing. If SUPPLIER uses list prices and reduces these before the agreed *Delivery Date* for the *Contract Objects*, the reduced prices shall also apply without specific agreement in writing.

10.3. All prices shall be stated in Swiss francs (CHF) and cover all goods and services necessary for proper compliance with the *Contract*. The agreed price shall notably also include the costs of packing, shipping, insurance, installation, expenses, licence fees, and of all official dues except value-added tax.

11. Permits and import certificates

SUPPLIER shall obtain at its own charge all necessary permits and import certificates.

12. Ethics

12.1. ORANGE requires the SUPPLIER and the SUPPLIER's subcontractors to adhere to ethical standards that match its own and as are described in this Article. The SUPPLIER undertakes to comply with and to require its subcontractors and any person under its control, to comply with all applicable national, European and international rules relating to ethical and responsible standards of behaviour ("the Rules"). The Rules shall be limited to the principles, provisions and undertakings contained in the instruments listed hereafter and any national, European and international legislation implementing these instruments:

- The Universal Declaration of Human Rights;
- The OECD Convention on Bribery;
- The Convention on the Rights of the Child adopted by the United Nations General Assembly (resolution N. 44/25);
- The International Labour Organization (ILO) Convention N. 182 for immediate action to ban the worst forms of child labour, dated 1999;
- International Labour Organization (ILO) minimum age Convention N.138, dated 1973;
- The Stockholm Convention of 2001 on Persistent Organic Pollutants;
- The Montreal Protocol of September 1987 on Substances that Deplete the Ozone Layer;
- The Basel Convention of 1989 on the Control of Transboundary Movements of Hazardous Wastes and their Disposal;

12.2. ORANGE shall be entitled, by itself or through a nominated auditor, to audit the SUPPLIER after prior reasonable written notice, in order to control the SUPPLIER's conformity to the Rules.

12.3. In the event that a failure to comply with the Rules is detected, the SUPPLIER shall upon ORANGE written notice, immediately remedy such failure so that its conduct conforms to the Rules.

12.4. Where the SUPPLIER continues to be in material breach of this clause, within thirty (30) days following receipt of said notice, ORANGE shall be entitled to enforce its right to terminate the contractual relationships with the SUPPLIER with immediate effect.

12.5. The global agreement can be found online at the France Telecom Group website:
http://www.orange.com/en_EN/responsibility/stakeholders/UNI.html

13. Invoicing, payments

13.1. Except as may be otherwise agreed in writing by the parties, SUPPLIER shall not invoice ORANGE for the *Contract Objects* before their final acceptance.

13.2. All invoices shall be addressed to:

Orange Communications AG
Accounting Department
Rue du Caudray 4
Case postale
CH-1020 Renens 1

13.3. All invoices shall contain the following details: number and date of *Purchase Order*, *Contract Object* supplied, component designation and drawing number (if applicable), description, quantity, and weight.

13.4. Payment by ORANGE shall be made in Swiss francs (CHF) within ninety (90) days after it has received the correctly compiled invoice. ORANGE shall notify SUPPLIER forthwith if an invoice is incorrect.

13.5. Payment by ORANGE shall not be deemed acknowledgment that the *Contract Objects* are in accordance with the *Contract* or free from defects.

14. Warranty

14.1. SUPPLIER warrants that the *Contract Objects* possess the promised properties and characteristics, and contain no defect that reduces their value or impairs their suitability for the intended use. In particular, this provision requires that the *Contract Objects* are state-of-the-art and comply with the technical documents as regards design, materials, workmanship, quality, and other specifications that ORANGE is entitled to assume in good faith to be obvious to SUPPLIER, even if not expressly stipulated or agreed. Furthermore, SUPPLIER shall warrant that the *Contract Objects* comply with legal requirements and applicable industrial standards at the place of performance, notably with SIA standards. **SUPPLIER hereby warrants that it will keep spare parts available for ORANGE for at least ten years after acceptance.**

14.2. The warranty shall be deemed to exclude damage attributable to natural wear and tear or to inadequate maintenance, disregard of operating instructions, and/or use by ORANGE of unsuitable production equipment and/or production facilities. If ORANGE makes any material, such as (but not necessarily limited to) software available to SUPPLIER, to enable SUPPLIER to complete the Contract, and if SUPPLIER claims that the defects are attributable thereto, SUPPLIER shall be required to provide proof thereof.

14.3. **Except as may be otherwise agreed in writing or if the law requires a longer warranty period, the period of warranty shall be thirty-six (36) calendar months from the date of final acceptance. For maliciously concealed defects, the warranty period shall be ten (10) years. Defects shall be notified to SUPPLIER within sixty (60) days of their discovery.**

14.4. The warranty period shall be deemed to recommence afresh for spare-part deliveries, maintenance, servicing, and for the making good of defects under warranty.

14.5. If ORANGE makes a claim under warranty, it shall have the right to retain an amount to cover the defect concerned from any payment due under the *Contract* or other contractual relations between the parties.

15. Liability

15.1. SUPPLIER shall be liable for any damage and for any fault due to any defect in the *Contract Objects*. SUPPLIER shall obtain insurance cover of at least five million Swiss francs (CHF 5m). ORANGE may at any time demand proof of such insurance.

15.2. SUPPLIER shall be liable for any act of commission and/or omission by any helper, supplier, subcontractor, mandatory, and/or other third party it may engage for its performance of the *Contract*, as for its own such acts.

15.3. SUPPLIER's liability for death and personal injury shall be unlimited.

16. Proprietary rights in *Contract Objects* and rights of use

16.1. By its payment of the *Contract Price*, ORANGE shall acquire all proprietary rights in the *Contract Objects*. SUPPLIER shall ensure through written agreements that all proprietary rights, including those of SUPPLIER's in-house or external employees, and of any third party engaged for its performance of the *Contract*, are likewise transferred to ORANGE. If this is not possible, SUPPLIER shall bring this circumstance to the notice of ORANGE when it submits its offer, or in any event not later than before signature of the *Contract*.

16.2. ORANGE shall have absolute freedom as to whether, when, and/or how it uses the *Contract Objects* for processing, and whether it does so in conjunction with other rights or integrates or incorporates them in other rights. SUPPLIER shall be deemed to have declared that the *Contract Objects* may be modified or altered by any third party within the meaning of article 11.2 of the Federal Copyright and Related Proprietary Rights Act (CRA).

16.3. SUPPLIER hereby expressly waives its right to be named as author or creator. SUPPLIER shall ensure through written agreements that all its in-house and external employees, and any third party engaged for its performance of the *Contract*, likewise waive this right. If this is not possible, SUPPLIER shall bring this circumstance to the notice of ORANGE when it submits its offer, or in any event not later than before signature of the *Contract*.

17. Infringement of third-party proprietary rights

17.1. SUPPLIER shall, at its sole charge, defend any claim against ORANGE on account of the infringement of patents and intellectual-property rights, notably copyright, that may be raised in connection with the *Contract Objects* supplied by SUPPLIER. ORANGE shall notify SUPPLIER forthwith as regards any such claim and, as far as possible, shall grant SUPPLIER authority to conduct and settle any such litigation itself. SUPPLIER shall bear the costs and the damages judged payable by ORANGE by final and unappeasable judgment, and any other costs that may arise in connection with such infringement of property rights.

17.2. If ORANGE is prevented by final and unappeasable judgment from using the *Contract Objects*, SUPPLIER shall, as ORANGE may choose at its sole discretion, obtain for ORANGE the right to continue their use, exchange, replace, or so modify the *Contract Objects* as to avoid infringement of proprietary rights; or

take back the *Contract Objects* and credit or reimburse ORANGE the purchase price or licence fee, less normal depreciation.

18. Duty to secrecy

18.1. Both parties, their employees, and any third parties they engage shall treat as confidential all information communicated by the disclosing party. Except as set forth in clause 17.2 and 17.3, such information shall not be disclosed to any unauthorized third party. The duty to secrecy shall begin upon initiation of contract negotiations and continue in effect for five (5) years after termination of contractual relations. The duty to secrecy shall not apply if there is a legal duty of disclosure.

The following shall not be deemed confidential:

- a. information in the public domain, unless passed on without proper authority; or
- b. information passed on by a third party not subject to a duty to secrecy and if the receiving party could not or did not know the information is confidential.

18.2. Disclosure of information to any third party shall be permissible only if prior to disclosure the disclosing party has been informed accordingly in writing and said disclosure is essential to enable the receiving party to perform its duties under the *Contract*. **If the receiving party passes on any information to its employees or any third party, it shall be liable for the observance of the duty to secrecy.**

18.3. **SUPPLIER agrees that ORANGE may disclose information to its subsidiaries, its parent companies and/or any of the latter's (directly or indirectly controlled) companies, if such companies are bound by a comparable obligation of non-disclosure.**

18.4. The receiving party shall store all confidential information in a safe place and protect it against unauthorized access, damage, and/or loss.

18.5. The receiving party shall inform the disclosing party forthwith if it becomes aware of unauthorized disclosure of confidential information, and shall make every possible effort to have it returned and prevent its further disclosure.

18.6. Upon termination of contractual relations, the receiving party shall at its own charge destroy all confidential data made available by the disclosing party for further processing, including any data supplied in electronic form.

18.7. **Breach of the duty to secrecy shall be a ground for liquidated damages of twenty percent (20%) of the total *Contract Price*, but this shall in no single case exceed fifty thousand Swiss francs (CHF 50'000). The payment of liquidated damages shall not relieve the receiving party of its duty to secrecy and of its liability for compensatory damages payable to the disclosing party. Liquidated damages shall not be offset against compensatory damages.**

19. Use of ORANGE logo or name

The use or exploitation by SUPPLIER of the ORANGE name or logo in any manner or form shall be subject to prior agreement in writing by ORANGE. Except as may be otherwise expressly specified, the application of these STC shall not in any manner be deemed to mean that SUPPLIER acquires any right in the intellectual property of ORANGE or in any such for which ORANGE possesses a licence.

20. Miscellaneous

20.1. SUPPLIER shall not without prior agreement in writing by ORANGE assign any rights and/or duties under the Contract.

20.2. In processing a Purchase Order, SUPPLIER shall strictly observe all relevant accident-prevention and safety regulations, and shall carry out the directives and instructions by ORANGE as regards access to the ORANGE site.

20.3. SUPPLIER shall at its own sole costs obtain all work permits and local official permits necessary to ensure the performance of its contractual duties. SUPPLIER shall likewise perform all its duties arising from taxation and insurance legislation, such as (but not necessarily limited to) Old Age and Surviving Dependants' Insurance [AHV], Disability Insurance [IV], Unemployment Insurance [ALV], Accident Insurance Act [UVG] and Occupational Old-Age, Surviving Dependants', and Disability Act [BVG], and any other required by law or regulation.

21. Applicable law, legal venue

21.1. **Swiss law shall apply exclusively** to any dispute on the interpretation and/or implementation of these Standard Terms and Conditions, and of any contract and/or *Purchase Order* based on its provisions. **The legal venue shall be either Lausanne or Zurich, at plaintiff's choice.**

21.2. The provisions of the Vienna Treaty (United Nations Convention on Contracts for International Trade of 11 April 1980) shall not apply hereto.

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Orange Communications AG
Renens, Switzerland