

# AVECTRIS

## GENERAL TERMS AND CONDITIONS

### 1 Scope and application

1.1 These general terms and conditions ("GTC") regulate the conclusion, contents and execution of agreements relating to IT Services such as consultancy services, project services and services between Avectris AG ("Avectris") and the "Customer", hereafter referred to individually as a "Contracting Party" and together as the "Contracting Parties".

1.2 These GTC and the "Avectris Code for business partners" ("Code") in the current version are integral parts of the agreement.

1.3 These GTC and the Code shall apply unless agreed otherwise in writing in individual cases. General business or delivery terms and conditions of the Customer shall not apply, even when reference is made to them in the offer or related documents.

1.4 If there is a conflict between the agreement, these GTC and the Code, then the agreement shall have first priority, the Code shall have second priority and then the GTC shall have third priority.

### 2 Definitions

2.1 **"IT Services"** are the services that have been contractually agreed with the Customer, in particular consultancy and project deliverables and services. The nature and scope of IT Services are derived from the agreement and any offers referred to therein.

2.2 **"Consultancy Services"** are general consulting services, analyses, training, coordination, evaluations, strategic planning, support for acceptances, programming, etc. The actual content of the consultancy services is derived from the agreement and any offers referred to therein.

2.3 **"Project Services"** are in particular programme developments, programme adjustments, migrations and system integration services carried out under the direction of Avectris. The actual content of Project Services is specified in the agreement and any offers referred to therein.

2.4 **"Services"** are repeating, defined services for which operational services, maintenance and repair are done under the supervision of Avectris. The specific content of the services depends on the agreement and any offers referenced therein.

2.5 **"Information Technology Systems"** are all equipment, including hardware, software, systems, cables and

facilities provided by Avectris and made available to the Customer.

2.6 Consultancy Services, IT Services, Project Services and Services are referred to hereafter together as "Services".

2.7 **"Third-party Cloud Services"** are cloud services provided by a third party [e.g. Microsoft Azure]. Provided there is no express provision to the contrary, Avectris serves as an underwriting agent when third-party cloud services are involved. It shall represent the Customer vis-à-vis the third party, yet the agreement with the third party shall be concluded directly between the third party and the Customer.

### 3 Offers and placing orders

3.1 Services by Avectris are based on technical specifications, project orders or written offers where Avectris refers to these GTC. If no technical specifications are available or the requirements specified in the request for offers are insufficient, the Customer may order Avectris to prepare these prerequisites in cooperation with the Customer on a fee basis.

3.2 Unless otherwise stated in the offer, Avectris shall be bound for 30 days from the date of the offer. The Customer shall recognise the application of these GTC from the time of submission of a written offer or, lacking this, at the latest when an order is accepted.

3.3 Changes or supplements to this agreement shall be made in writing.

### 4 Execution

4.1 Avectris shall ensure that the products delivered and contractual Services meet the agreed specifications as well as the specifications that the Customer in good faith may assume without any special agreement according to the current state of the art when the agreement is signed [unless otherwise derived from the agreement].

4.2 The Project Services shall be executed in accordance with recognised project management methods.

4.3 Avectris shall regularly inform the Customer about the work progress status. Upon request from the Customer, Avectris shall at all times give account of its business management and hand over all files, such as interim reports, calculations, etc., that it has prepared within the scope of the agreement.

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**IT. Simply personal.**

4.4 Avectris shall immediately notify the Customer of all circumstances that may endanger fulfilment of the agreement. Avectris shall also inform the Customer about all further developments that may make it advisable to change the Services for technical or economic reasons.

4.5 Avectris undertakes, on behalf of itself and its staff, to comply with the operational rules of the Customer, particularly the house rules, as long as such rules were communicated to Avectris in writing before the agreement was concluded.

## 5 Assistance and cooperation duties of the Customer

5.1 The Customer shall create the conditions within its area so that Avectris can fulfil its obligations under the agreement. It shall, in particular, give Avectris necessary information about operational processes. It shall provide relevant information and make available any specified systems and installations of the Customer. It shall give Avectris any necessary access to its premises and shall make suitable work areas available as needed.

5.2 The Customer shall immediately give notification of all circumstances that may endanger fulfilment of the agreement or that may make it advisable to change the agreed Services.

5.3 The Customer shall bear its own costs related to cooperation duties.

5.4 Where the late, faulty or incomplete fulfilment of the Customer's cooperation duties affects Avectris's rendering of services, Avectris shall be correspondingly released from its obligation relating to Services. After determination of the situation, Avectris shall warn the Customer and shall be entitled to charge for any resulting additional costs according to effective expenses.

5.5 The Customer shall orient Avectris about existing technical or other installations [e.g., water or gas supply equipment] that could be damaged by the installation or operation of the computer system.

5.6 Where Avectris will make installations in the offices of the Customer, the Customer shall inform it about any health or occupational hazards and recommend necessary protection rules.

5.7 Avectris reserves the right to break off the connection to any installations belonging to the Customer or stop providing services on site if it believes that persons are endangered or that property of Avectris or third parties may be damaged, or that would substantially impair the quality of the services. In such a case, Avectris shall immediately inform the Customer.

5.8 With regard to third-party cloud services, the Customer must agree to the terms and conditions of the third party.

## 6 Inspection and acceptance

6.1 **Consultancy Services** shall be deemed provided as soon as Avectris has executed its activities according to

the job description. Any uncompleted orders shall be supplemented or improved in consultation with the Customer and charged according to the expense. Only in the case where it is proved that Avectris provided sloppy consultancy services shall the rectification be made without charge. The Customer shall give Avectris an appropriate deadline for this work in writing.

6.2 **Project Services** shall be deemed provided as soon as Avectris has completed them in accordance with the specifications in the job description and handed them over to the Customer and the following provisions governing acceptance have been complied with. The Customer shall process the acceptance immediately after the Services have been handed over. The acceptance procedure shall be executed in accordance with the acceptance specifications provided in the order. The Customer shall be responsible for executing the acceptance and making any necessary testing data available; Avectris shall provide appropriate support. One of the Contracting Parties shall prepare an acceptance report for signature. It shall record any minor defects to be repaired or why the acceptance must be repeated partly or entirely because of certain major defects. If any defects appear during the acceptance procedure that do not make it impossible to use the agreed Project Services, the Customer shall grant the acceptance without applying a reduction, on condition that repairs are made within the warranty period. If Avectris, despite two appropriate extensions of the repair deadline, fails to make the repairs, the Customer shall be entitled to deduct an amount from the remuneration in agreement with Avectris. Rescission of sale, substitution or compensation are excluded. If the Customer does not execute the acceptance within ten working days plus an extended period set by Avectris, the Project Services shall be deemed accepted. When the Customer has used the Project Services productively without executing the relevant acceptance, the Project Services shall also be deemed accepted without an acceptance report.

6.3 After the installation and start-up of a **Service**, Avectris shall release the Service [release]. The acceptance shall be executed in cooperation with the Customer, which shall be set out in writing in the acceptance report. The above provisions on acceptance of the project shall also apply.

## 7 Staff deployment/provision of services by third parties

7.1 Avectris only deploys carefully selected staff who are trained to meet the requirements.

7.2 Avectris may call on third parties to provide Services under the agreement. It is responsible for the careful selection, instruction and supervision of such third parties.

7.3 The deployment of third parties in projects shall be detailed in the offers and agreements.

## 8 Remuneration

8.1 Avectris shall disclose the cost categories and rates in its offer. The applicable rates shall be specified in each individual agreement.

8.2 All prices are exclusive of the current statutory value-added tax.

8.3 Remuneration shall be on the basis of fixed prices or on a time basis with an upper limit (cost ceiling).

8.4 All invoices shall be paid without deductions at the latest 30 days after receipt of the invoice.

8.5 If Avectris provides the Services on a time basis, then it will deliver the report to the Customer together with the invoice.

## 9 Rights

### 9.1 Property and usage rights

9.1.1 All rights to hardware, software, standard and individual software, including the source code, programme description and documentation in written or machine-readable form that have been provided to the Customer within the scope of its services, shall be the property of Avectris or its licensors. Insofar as third parties are entitled to rights, Avectris guarantees that it is in possession of the necessary rights of use and sale.

9.1.2 The Customer shall be granted a non-exclusive and non-transferable right of use and application within the scope of the agreement for the term of this agreement. The right to rent out or make distribution copies of the supplied software to third parties and the right to copy or change it is expressly excluded. Transfer of licenses requires the consent of Avectris. Software that is not licensed from Avectris is subject to the licensing terms of the manufacturer, which will be provided to the Customer upon request.

9.1.3 The Customer shall be responsible for the proper licensing of all software products that it makes available to Avectris for the provision of Services within the scope of the Customer's installations. In particular, the Customer shall ensure that it complies with any provisions regarding the transfer of licenses issued by licensors. It shall release Avectris from any third-party claims based on alleged or proven licensing violations, where such violations are not due to the fault of Avectris.

### 9.2 Rights to work results from orders and projects

9.2.1 Unless otherwise stated in the agreement, all intellectual property rights to work results within the scope of the agreements shall belong to the Contracting Party that has created the rights.

9.2.2 The Contracting Parties grant each other the usage right free of charge for the term of the agreement to the extent necessary to fulfil the agreement. Both Contracting Parties shall receive a usage, adaptation and application right, unrestricted by time or place, to work results that are created within the scope of the Project Services.

9.2.3 If such rights are created together, they shall belong jointly to both Contracting Parties, whereby each Contracting Party is entitled to exercise its rights independently of the other.

9.2.4 Ideas, procedures and methods that are developed in the course of the provision of the service by Avectris in collaboration with the Customer shall belong to both Contracting Parties jointly and may, subject to the intellectual property rights of the other Contracting Party and the preservation of confidentiality pursuant to Clause 11, be used and exploited by them as they wish and independently of one another.

## 10 Warranty

### 10.1 Material warranty

10.1.1 Avectris guarantees that

- a) it will provide the services carefully and in compliance with the agreement;
- b) it will comply with the specifications and the service levels agreed in the individual agreements;
- c) its products exhibit the expressly guaranteed features when used according to the terms of the agreement and have no defects that prevent or substantially restrict their suitability for the agreed use.

10.1.2 If there are any defects, the Customer may request that they be rectified at no charge. Avectris shall rectify the defect within a reasonable period of time and shall bear all resulting costs.

10.1.3 If Avectris does not take the requested corrective action or does not do so in good time or successfully, the Customer shall be entitled to deduct a corresponding amount from the remuneration. Rescission of sale, substitution or compensation are excluded.

10.1.4 If project services are provided inadequately, the Customer shall have the right to request that the situation is rectified at no charge within a reasonable period of time. If the defect cannot be corrected within this period, the Customer shall set a new deadline for correction of the defect in line with the cause of the defect. If the defect cannot be corrected, in place of the statutory claims, the Customer may:

- a) request an appropriate reduction of the agreed remuneration for the project service in the event of defects that are minor or that hinder the service (i.e. defects classified as 'low', 'medium' or 'high');
- b) withdraw from the project agreement or from the corresponding project service in the event of significant defects (i.e. defects classified as 'critical'). Services or parts thereof that have already been provided mostly without defects and are acceptable for use by the Customer must be paid for in full and shall not be affected by a withdrawal from the agreement. Claims for damages pursuant to Clause 12 remain unaffected. The Customer shall have no claims to substitute performance.

10.1.5 If a critical service level defined in the operating agreement is not met, Avectris must, at its own discretion,

immediately correct the defect or provide a replacement delivery. Parts removed in the course of the correction or a replacement delivery become the property of Avectris. If an attempted correction or replacement delivery is not successful or if it does not occur within a reasonable period of time, the Customer may at its discretion:

- a) continue to request performance of the service; or
- b) demand a reduction of the remuneration. Avectris shall remain obliged to provide the service as contractually specified. There shall be no further liability. If service level credits form part of the individual agreement for operational services, the corresponding service level credits shall be offered in place of a reduction of the payment due.

The Customer is obliged to discuss the new deadline with Avectris before setting it and to take reasonable account of the latter's interests. If Avectris is unable to provide the service as contractually specified by the new deadline set in writing, the Customer shall be entitled to terminate the relevant individual agreement extraordinarily in accordance with Clause 14.2.

## 10.2 Disclaimer of warranty

Avectris shall not be liable under warranty where it is not responsible for defects, particularly in the case that:

- a) the Customer makes unauthorised changes to the agreed conditions of use and operation
- b) the Customer makes unauthorised interventions in the software and such interventions cause changes to the software
- c) defects or claims are derived from the use of the software in connection with other systems, software or data that are not from Avectris
- d) operating errors or careless behaviour by the Customer
- e) defects or claims result from voltage errors in electricity supply or failures
- f) the Customer does not make any backup copies of locally saved programmes and data.

## 10.3 Warranty period

One-time services are covered by a three-month warranty from the date of formal acceptance.

The warranty for ongoing services shall be valid until the completion of each service.

## 10.4 Warranty of title

10.4.1 Avectris guarantees that its Services do not breach any property rights of third parties.

10.4.2 As soon as the Customer becomes aware of a possible violation of property rights, it shall notify Avectris. The Customer shall let Avectris defend itself against any claim and make a settlement within the framework of applicable procedural law, provide all information it has available and give it any support and authorisation to defend itself against such a claim, and shall not settle such legal disputes without prior consent of Avectris.

10.4.3 Avectris's liability with respect to third-party claims for violation of warranties of title shall be limited to claims that result from legally enforceable judgements of courts or arbitration tribunals or, in comparison, that have been resolved by the Customer with the approval of Avectris or where the content has been recognised by Avectris. Avectris shall not dispute claims that are evidently justified. Avectris also shall reimburse the Customer for the reasonable attorney fees resulting from the aforementioned court or arbitration proceedings. Such reimbursement shall be made on condition that the Customer immediately notifies Avectris about such an asserted claim, gives it the authority to defend itself against the claim and resolve it, provides all information it has available and gives it any support and authorisation to defend itself against such a claim, at its own cost, and does not settle such legal disputes out of court without the prior consent of Avectris.

10.4.4 If a third party obtains or threatens to obtain an injunction against the Customer to procure or use certain or all the Services, Avectris shall have the choice of:

- a) replacing the Services with other non-infringing services, or
- b) adapting the Services so that they do not infringe on the rights of third parties,

always provided that the essential contractual functions of the Services are preserved and such replacement or adaptation can be done without significant harm to the Customer's operating processes.

10.4.5 If it is not possible to replace or adapt the Services, then the Customer may cancel part of all of such Services for cause.

10.4.6 Avectris shall not be liable for any acts or claims of breach of contract that result from the use of the computer system in combination with other systems, software or data that were not provided by Avectris.

## 10.5 Warranty for third-party cloud services

With regard to third-party cloud services, only the warranty provisions agreed between the Customer and the third party apply. Avectris rejects any and all warranties against defective titles and quality.

## 11 Confidentiality

11.1 The Contracting Parties undertake to keep confidential all facts and data that are neither obvious nor generally available. This obligation must also be imposed on third parties involved in the performance of the agreement. When third-party cloud services are used, the confidentiality obligations of the third party shall be based exclusively on the agreement between the Customer and the third party. In cases of doubt, information and data must be handled confidentially. The duty to maintain confidentiality starts before the agreement is concluded and continues after the contractual relationship ends and after performance of the agreed services. Statutory obligations to provide information remain in effect.

11.2 Avectris may give the facts and main contents of the quote request to potential subcontractors, but shall otherwise treat the quote request as confidential.

11.3 Advertising and publications about specific project Services shall require prior approval in writing of the Contracting Parties, likewise the use of their name as a reference.

11.4 The applicable statutory provisions on data protection shall be complied with.

## 12 Liability

12.1 Avectris shall be liable to the Customer for damage caused by itself, its agents and any subcontractors it hires in connection with the contractual relationship if it cannot demonstrate that neither it nor the agent/subcontractor is responsible for said damage. Unless stated otherwise in the agreement, total liability for slight negligence shall be limited to half the order value; for periodic services, it shall be limited to six monthly payments according to the relevant agreement. For periodic services, the limits shall be calculated as follows: The total of all payments made until the loss event under the relevant agreement, divided by the number of months until that date, times six.

The limitations of liability shall not apply to:

- a) personal injuries;
- b) damage caused by gross negligence or intentionally.

12.2 To the extent permitted by law, Avectris assumes no liability for direct and indirect damage, as well as consequential damage/loss, lost profits, unrealised savings, business interruptions and/or production downtime, additional expenses, lost data and third-party claims.

12.3 Avectris shall inform the Customer in writing in advance about any interruptions in the operation of the system for the purpose of maintenance and modification works. Scheduled interruptions shall be done outside the Customer's working hours, if at all possible. The Customer may not make any claims for reimbursement or damages due to such interruptions. Avectris also is in principle entitled to make free use of the specified maintenance windows.

12.4 The following special rule applies for property damage: the liability of Avectris is limited to a maximum of CHF 1 million per calendar year, to the extent permitted by law.

12.5 The Customer shall be liable for all damage suffered by Avectris resulting from the use of the computer system covered by the agreement in breach of the duty of care or in violation of instructions. The Customer shall be liable for damage to the computer system that is in its custody according to the provisions of the law.

12.6 With regard to third-party cloud services, only the liability provisions agreed between the Customer and the third party apply. Avectris rejects all liability for third-party cloud services.

## 13 Non-solicitation clause

13.1 The Contracting Parties undertake not to actively solicit any employee or other person having a contractual commitment to the other Contracting Party during the term of the agreement plus six months.

13.2 If a Contracting Party hires an employee or other person having a contractual commitment to the other Contracting Party in violation of the above Clause 13.1, then it shall pay a penalty equal to the gross annual wages of that person.

## 14 Termination of contractual relationships

14.1 Any Contracting Party may terminate agreements at any time in writing. Notice must be given 90 days in advance.

14.2 In the event of a material breach of contract, the other Contracting Party may terminate the agreement at any time without notice if the breach of contract is not remedied (presuming it can be) despite providing written notice, threatening extraordinary termination and setting a reasonable deadline for the rectification. This shall not affect the right to claim damages for untimely contract termination. Compensation for loss of profits is excluded.

14.3 In the event of cancellation, remuneration shall be calculated on the basis of the Services performed.

14.4 All documents and work results (both written and machine-readable) that Avectris has received from the Customer shall be returned to the Customer unprompted after termination of the contractual relationship.

## 15 Assignment

Rights and duties under the contractual relationship may not be assigned, transferred or pledged to a third party without the prior written consent of the Contracting Party. This consent may not be refused without reason. The individual companies within a group shall not be considered third parties.

## 16 Applicable law and jurisdiction

16.1 The contractual relationship is subject to Swiss law excluding private international law and the UN Convention on Contracts for the International Sale of Goods.

16.2 The exclusive place of jurisdiction is Baden, Switzerland.