



**Additional Contract Terms For IT Services (ACT-IT)**  
**SITA Airport IT GmbH**  
**Parsevalstrasse 7a, 40468 Düsseldorf**

**1 Content overview:**

The headings that precede the various provisions in the contract documents are only intended as a specific overview. They are not to be regarded as a conclusive ruling on the designated subject.

1	Content overview:.....	1
2	Terms and Definitions.....	2
3	Contract terms, priority and order.....	3
3a	MiLoG (Minimum Wage Act) and AEntG (Act on Mandatory Working Conditions for Workers Posted Across Borders and for Workers Regularly Employed in Germany) .....	3
4	Product names in the service specification .....	4
5	Optional items / contingency items.....	4
6	Presentation of the offer calculation .....	4
7	Prices, travel costs, expenses .....	4
8	Changed or additional services .....	4
9	Increased or reduced services .....	5
10	Packaging.....	5
11	Implementation documents .....	5
12	Promotion, disclosures .....	6
13	Implementation .....	6
14	Outsourcing to subcontractors.....	6
15	Language.....	6
16	Hindrance and interruption to the service.....	7
17	Liability/insurance .....	7
18	Contractor delays .....	7
19	Contract termination by the Contractor/Client .....	7
20	Penalty.....	8
21	Risk sharing / transfer of risk.....	8
22	Acceptance.....	8
23	Claims for defects / limitation period .....	8
24	Invoicing, discounts .....	9
25	Work done on hourly rates .....	9
26	Payments and payment requests .....	10
27	Security services .....	10
28	Breach of third party property rights .....	11
29	Usage rights/property rights .....	11
30	Data protection, duty of confidentiality .....	11
31	Ensuring IT security.....	12
32	Lifecycle Management.....	12
33	Assignment, offsetting, transfer of the contract to customers/the Client's successors.....	12
34	Representatives, authorisations .....	13
35	Airport security, access permit requirements and costs.....	13
36	Correspondence .....	13
37	Place of fulfilment, place of jurisdiction, applicable law, miscellaneous.....	13

## 2 Terms and Definitions

The terms and definitions below will be used for the contractual relationship and its various components.

“**Client**” is SITA Airport IT GmbH, being the client and party placing the order (“**SAIT**”).

“**Contractor**” is the contract party to whom the Client is assigning the implementation of the agreed services.

“**Working days**” or “**WD**” are the weekdays, Monday to Friday, with the exception of statutory bank holidays in NRW.

“**FDG**” is Flughafen Düsseldorf GmbH or any company associated with FDG that is named as a customer in the agreement concerned. FDG procures IT services from the Client, for whom the Contractor will be a subcontractor.

“**Customer**” is any end customer using the service that is the subject of the contract, particularly the Client but also the Client's customers, such as FDG.

“**ACT**” with or without the adjunct “**IT**” and also abbreviated to “**ACIT**” stands for these Additional Contract Terms and their annexes.

“**Operating period**” is the period of time during which the Contractor provides a service, including all the agreed components, for use by the customers.

“**Service hours**” for a service is the period of time within the operating period during which the Contractor ensures the use of systems and services by the customer in compliance with the relevant agreed service levels and within which the Contractor's User Help Desk (“**UHD**”) is available for this service. In principle, maintenance windows shall lie outside of service hours, and they may only lie within service hours after the Client has given their explicit consent, in writing.

“**Readiness**” is a service that shall be provided during a period outside of service hours.

“**Response time**” is the maximum time period that may elapse from the receipt of a fault report by the Contractor (e.g. UHD) or from the Contractor's own detection of a fault up to the initial, competent reply to the Client or up to the initiation of competent remedial measures.

“**(System) availability**”: The relationship, in percentage terms, between the actual operating period reduced by the downtime outside agreed maintenance windows and the agreed operating period for a service.

“**Resolution time/ restore time**” is the time between the Contractor's receipt of a fault report and the actual resolution of the fault for the Client. The resolution time / restore time starts with the Client's submission of a full fault report. The resolution time / restore time ends with the elimination of the system impairment for the customer concerned. Should the restore require the system to be taken out of service, this shall only be done if the Client gives their consent. The restore time shall only be measured within the relevant service hours. In all cases, the Contractor undertakes to make the system fully functional.

“**Downtime**” is the period of time in which the relevant service is not available for the customer's use within service hours due to a fault. The downtime of the services provided shall begin with the occurrence of the fault and, providing there is no continuous monitoring by the Contractor, from the reporting of the fault to the Contractor. The downtime shall end with the elimination of the underlying fault and the Contractor's notification of this fact, providing the Client accepts the service restoration is fault-free, otherwise with the Client's acceptance.

“**Incident**” or “**Fault**”: Unscheduled interruption / fault in the delivery of a service or reduction in the agreed quality of the delivery of a service. The failure of a configuration item without any impairment to a service shall also constitute an incident. Incidents are prioritised is based on **Annex 1 “Fault Class Model”**.

“**Defect**” Defect classification relates to negative deviations from contracted work results, e.g. development services, in contrast to incident classification, which relates to a deviation from the agreed operating service.

Defects are classified in **Annex 1 “Fault Class Model”**.

“**Maintenance windows**”: Maintenance window refers to a period agreed in advance in accordance with the applicable provisions of the contract, in good time and in any case outside of work to remedy malfunctions, during which planned work to maintain and improve systems can take place.

“**Major Release**”: A software update which includes both previous extensions, patches and fixes and other areas with significant new functionalities and/or options for software and replaces previous minor releases, patches and

fixes. Major releases usually increment the software version number by one whole digit (e.g. from version 5.7 to 6.0).

**“Minor release”**: A software update which includes lesser extensions, patches and fixes, but no areas with significant new functionalities and/or options for software. Minor releases usually increment the first decimal place of the software version number (e.g. from v5.7 to v5.8).

**“Update”**: Umbrella term for any change to a platform, a piece of software or its components which includes fixes, patches, hotfixes and minor releases.

**“Upgrade”**: Changing a platform, piece of software or its components to a higher quality (relative to an update) configuration or capability, including major releases.

**“Patch”**: A correction provided for a piece of software or an application in order to eliminate errors and/or functional faults, usually more extensive than a fix, but less extensive than a minor release.

**“Source code”**: A program's code in the editable version of the programming language.

**“Release”**: The development status of a system or application; a compilation of all the changes made to logically related IT components into one delivery unit which is to go live at a defined point in time, particularly hardware and software components and documentation.

**“Workaround”**: A roundabout way to avoid any known faulty behaviour in a technical system, i.e. a useful procedure which does not eliminate the problem itself, but avoids its symptoms via some additional work.

### 3 Contract terms, priority and order

3.1 The contract terms include:

- 3.1.1 the Client's written order;
- 3.1.2 any minutes from negotiations;
- 3.1.3 the Client's invitation to submit a bid, including the service specification / performance specification;
- 3.1.4 any Client's bid conditions;
- 3.1.5 any of the Client's Special Contract Terms;
- 3.1.6 these ACT-IT;
- 3.1.7 FDG's airport usage regulations, which may be viewed via the Client;

3.1.8 the offer, filled in by the Contractor;

3.1.9 the technical and business provisions for the relevant services, technical delivery terms;

3.1.10 the rules generally accepted within the technological area (including any interrelated organisational rules) which (i) correspond with what technical experts believe to be correct and, moreover, (ii) have been tried and tested in practice.

3.1.11 the relevant customer's anti-corruption guidelines, which can be viewed via the Client and which the Contractor shall comply with to the extent that they will undertake no acts or omissions vis-à-vis the Client's employees, or the employees of the customer concerned (in particular FDG), or vis-à-vis any persons associated with those employees which would constitute a violation of those guidelines by the employee.

3.1.12 These contractual elements shall apply – should any overlap or contradiction arise – in the above order (collectively referred to as the **“contract terms”**).

3.1.13 Should there be any doubt about the priority of contractual elements which cannot be clarified using the contract terms themselves, the two parties undertake to come to an agreement that removes the doubt, which can be inserted into the contract as seamlessly as possible, and which is just and reasonable to both parties.

3.1.14 Any contract terms or other general business terms used by the Contractor shall not be applicable insofar as they conflict with the parties' other agreements, including these additional Client contract terms.

#### **3a MiLoG (Minimum Wage Act) and AEntG (Act on Mandatory Working Conditions for Workers Posted Across Borders and for Workers Regularly Employed in Germany)**

3a.1 Minimum wage: The Contractor undertakes to pay, on time, all employees working in Germany at least the minimum wage as set by the MiLoG or the AEntG at the relevant applicable rate.

3a.2 Subcontractors: The Contractor undertakes to only deploy subcontractors to deliver the contracted services with the prior consent of the Client, and to get these, similarly, to undertake to only assign the services they have been assigned to any other subcontractors after, in turn, obtaining the Client's consent.

3a.3 Sanctions: Any culpable breach of obligations under MiLoG or AEntG by the Contractor, their subcontractors and employment agencies shall entitle the Client to immediately terminate the contract.

3a.4 The Contractor undertakes to indemnify the Client against any third party claim filed against the Client due to any breach (including any no-fault breach) of obligations ("breach of duty") under the MiLoG or AEntG by the Contractor themselves or by any direct or indirect subcontractor. This indemnification commitment shall apply explicitly both to the Client's guarantor liability resulting from such a breach of duty under the MiLoG or AEntG (including any demands made by social insurance agencies or financial authorities) and to the costs of legal proceedings or legal defence, including if the Contractor is blameless.

3a.5 The Contractor undertakes to reimburse the Client for any fines imposed on them due to breaches of the MiLoG or AEntG by the Contractor or their subcontractors.

#### **4 Product names in the service specification**

If a name for a certain product for a service or part-service in the service specification is used with the adjunct "or equivalent", and if the possible / requested bidder details are not specified in the bid, the product named in the service specification shall be deemed to be agreed.

#### **5 Optional items / contingency items**

5.1 If the service specification envisages optional items (alternative items) for optionally implementing a service, or contingency items (possible items) for implementing a service that shall only be required in case of need, the Contractor undertakes to implement the services described in those items as directed by the Client.

5.2 The Client may also make their decision after awarding the contract. A start may only be made on implementation and its preparations when the Client has given a specific written request.

#### **6 Presentation of the offer calculation**

6.1 If so requested by the Client, the Contractor undertakes to present, in a sealed envelope, a price calculation (costing) based on the last contract prices offered, within two weeks from the order being placed.

6.2 The price calculation (costing) must be of a quality such that each individual price is transparent. If price breakdown forms are submitted as an annex to these Additional Contract Terms, they must be used.

6.3 Should new prices be agreed upon, or in order to check other contractual entitlements, the Client may open and view the price calculation (costing) after the Contractor has been notified of the fact in good time and been given the opportunity to be present at the viewing. The price calculation (costing) shall then be sealed up again.

6.4 If a price calculation (costing) with the correct content is not submitted within the specified period, or if the price calculation (costing) submitted is, in general, erroneous, contradictory or implausible, the customary local price, which the Contractor must state, shall apply.

#### **7 Prices, travel costs, expenses**

7.1 The unit prices and flat fee prices offered shall be fixed prices throughout the period of execution of the order, providing nothing different is agreed in contract elements that have a higher priority under Clause 3.

7.2 The agreed prices for delivery services shall also include the costs of packing, loading, transport to the delivery destination and unloading, if nothing different is specified in the performance specification.

7.3 Any patent and licence fees shall also be covered by the price for the service, providing they are incurred by the granting of rights of use agreed in the specific case.

7.4 Where unit prices are to be specified, the unit price shall also then be the contractual price if, in the offer, the total amount of an item is not the same as the multiplying of the unit price by the stipulated quantity.

7.5 All the contractually agreed prices shall be exclusive of the statutory VAT applicable at the time.

7.6 Should the Contractor have to draw up offers for the Client during the course of the contract, the work involved in this, being acquisition activity, shall not be separately billable.

7.7 Travel costs and expenses for travel undertaken by the Contractor at the Client's express request – this does not include the Contractor's journeys to the relevant customer to actually provide the service and corresponding return journeys – shall only be reimbursed if the Client has approved them in writing in advance.

#### **8 Changed or additional services**

8.1 The Client is entitled to prescribe changes to the agreed service or additional services. In principle, the Contractor must implement the changed services or additional services. If such changed or additional services are

not necessary for the agreed success of the service, the Contractor is entitled to refuse to implement them if they find the changed or additional services to be unreasonable. If the Client prescribes changes to the nature of the service, or if for other reasons it becomes necessary to implement changed services, the Contractor undertakes to notify the Client of the costs this will incur, taking into account increased and reduced costs and any changes to the schedule, before implementing the (changed) service, in the form of a revised offer. If requested, the Contractor shall provide evidence of the increased or reduced costs caused by changing the service.

Should the Contractor have any concerns about the service change, they must put these in writing to the Client without delay.

8.2 The Contractor is entitled to not implement the service if the Client has not come to any written agreement with them about the impacts in terms of costs and scheduling.

8.3 However, in order to progress the project smoothly, the Client can instruct the Contractor to initially implement the changed or additional service, even if no written agreement about the cost and schedule impacts of the instruction or other reasons has yet been reached, providing the implementation of the services cannot be postponed due to the progress of the project, or the Client at least acknowledges, in principle, claims for increased payments and extending schedules, while reserving the right to review the levels thereof. An instruction of this nature, or an acknowledgement, in principle, of claims for increased payments and extending schedules, should be put in writing. The Contractor has no right of retention due to any dispute over the payment amount for changed or additional services, or when there is a question as to whether a service requested by the Client should be classified as amongst the contractual services due, unless the Client shuts themselves off, deliberately and in breach of their duty to collaborate in clarifying supplementary issues. The regulations relating to doing business for someone without being asked to do so ("GoA" in German) shall remain unaffected.

8.4 Unless otherwise agreed, the hourly rates specified in the contract for time-based labour, or the costs required for procured services, plus reasonable markups for business risk and profit, shall apply to changed or additional services.

## **9 Increased or reduced services**

The agreed unit prices shall apply to increased or reduced services, providing unit prices for such services have been agreed in the contract. If there are no specific price agreements, reasonable prices are to be calculated based on the benchmarks that can be derived from the price calculation (costing) in Clause 6.

## **10 Packaging**

The Contractor shall dispose of packaging materials at their own expense, in compliance with the applicable legal guidelines.

## **11 Implementation documents**

11.1 Where the parties have agreed that the Client will collaborate in this way, the Client will provide the Contractor with the documents required to implement the service. The Contractor undertakes to familiarise themselves with all the implementation documents.

11.2 The Contractor must request the documents required for the implementation within an adequate timescale (usually three weeks in advance) so that the Client can provide them on time so that there is no hindrance or interruption to the service.

11.3 The Contractor's responsibility and liability under the contract shall not be limited by the Client's handover of documentation.

11.4 The Contractor shall procure any generally accessible implementation documents without being entitled to any separate payment.

11.5 In principle, the Contractor shall study and check all of the information, drawings, deliveries and services provided by the client and any other main contractor, and report any concerns to the Client within a reasonable period of time prior to their being used in relation to their work. The Contractor shall be liable for all defects and consequences should they neglect their duty to examine the above and report any concerns, unless they were unable to detect the specific defect. Should the Contractor be unable to carry out a competent check in a specific case, they must notify the Client of the fact in writing in order to avoid liability consequences.

11.6 No later than when invoicing for their work, the Contractor shall give the Client user documentation, including installation and system documents, in a standard electronic format that can be copied and edited, which ena-

bles the staff deployed by the Client to use, operate, administer, maintain and, if the contract permits, revise the service the Contractor has delivered. The cost of providing a copy of the user documentation is included in the contract price.

11.7 The Contractor shall give any implementation documents that they have procured to the Client.

11.8 More detailed requirements relating to the documents to be provided may be found in **Annex 2 “Documentation and Reports”** to this ACT-IT.

## **12 Promotion, disclosures**

The Contractor may only make disclosures about the service with the Client's prior approval. Disclosures in this sense includes disclosing the description of the service, disclosing drawings, invoices or other documents, and photographic, film, radio and television recordings.

## **13 Implementation**

13.1 Before starting to implement the service, the Contractor thoroughly fully familiarise themselves with the requirements that are of importance to implementing the service.

13.2 The Contractor shall deliver their services in such a way that no third-party property rights are breached when the Client uses the service properly or when customers use contracted services properly. Similarly, the Contractor shall deliver its services in such a way that no legal obligations are breached when they are used properly.

13.3 Irrespective of any confidentiality agreement drawn up between the parties, the Contractor undertakes to only communicate the content of the contract to a third party if, and to the extent to which, this is vital for the fulfilment of the contract.

13.4 The Contractor undertakes to notify the Client without delay, when requested (at least in writing), of such circumstances that affect the implementation of the services as specified in the contract. For this purpose the Contractor shall provide the Client with adequate amounts of electronic copies of relevant documents.

13.5 The Client is entitled to given the instructions that are necessary to coordinate the Contractor's services with any subcontractor employed by the Client. Should this change the content of the service owed by the Contractor,

this shall constitute a changed service in the sense of Clause 8. Otherwise the Contractor shall remain duty-bound to suitably coordinate their service area with all other companies

13.6 The Contractor shall examine any deliveries made by the Client, and by third parties instructed by the Client, when they are received, in terms of their nature, extent, number and identifiable defects, and notify the Client and the sender of any objections without delay.

13.7 Should the Client so request, the Contractor undertakes to keep daily reports that show which employees have provided which service, so that they can be assigned to the Contractor's invoice, and to provide the Client with a copy; details are to be specified separately.

## **14 Outsourcing to subcontractors**

14.1 The Contractor may only outsource services to subcontractors with the Client's prior explicit approval (consent), and then only to those subcontractors that are competent, effective and reliable. This also involves the Contractor complying with their legal duty to pay taxes and social security contributions, satisfying requirements under commercial law, and providing adequate insurance cover.

14.2 Before the planned assignment, if the Client so requests, the Contractor shall disclose and provide the nature and scope of the services, as well as the intended subcontractor's name, address and professional association (including membership number) and, potentially, their work permit.

14.3 Moreover, the Contractor shall ensure that subcontractors they have been given permission to use do not, in turn, outsource the work they have been assigned without written consent from the Client.

14.4 Should subcontractors and third parties come into contact with personal data, it is vital that data protection regulations shall apply to the deployment of such persons.

## **15 Language**

15.1 All the pronouncements the Contractor makes (e.g. statements, invoices, letters) shall be formulated in the German language.

15.2 While the services are being implemented, the Contractor shall ensure that there is always one person present who enables communication to take place in Ger-

man. Should the Contractor fail in this duty, despite warning from the Client, the Client shall be entitled to draw upon an interpreter at the Contractor's expense.

#### **16 Hindrance and interruption to the service**

16.1 Should the Contractor feel that their proper implementation of the service is being hindered, the Contractor shall notify the Client of the fact without delay and in the way described below. Should they not provide such a notification, they shall compensate the Client for any resulting losses; however this shall not apply if the Contractor was not responsible for not providing the notification.

16.2 Notifications of hindrances and interruptions must include details of the hindrance, cause and effects plus the schedule delays and losses that are likely to result.

#### **17 Liability/insurance**

17.1 The Contractor shall indemnify the Client against any third party claim made as a result of damaging impacts that fall within the Contractor's area of responsibility when they are first requested to do so. This shall not apply to damaging effects that are unavoidable despite proper implementation.

17.2 The Contractor is also responsible to the Client for compliance with all security regulations, and must take all the measures required to protect persons and property, and maintain those measures. Should there be any threat to the life or health of people, to objects related to the service, or to other property, including the other systems working with objects related to the service, the Contractor shall use due discretion and take such measures as are required to protect against such threats, without being specifically instructed to do so by the Client. Insofar as is possible within the process of protecting against these threats, the Contractor shall agree such measures with the Client before taking them. To the extent that the above mentioned threat protection could impact on the security of the airport's operations and flight operations, the Client's relevant security bodies are in all cases to be notified and involved without delay.

17.3 The Contractor shall ensure that they have suitable insurance protection against any liability claims that may arise while implementing the order. The Contractor shall ensure that any subcontractors that they have been given permission to employ also have adequate insurance protection.

#### **18 Contractor delays**

The Contractor undertakes to notify the Client in writing (text is sufficient) without delay if the delivery of the service is threatened by any delay.

#### **19 Contract termination by the Contractor/Client**

19.1 The Contractor may only terminate the contract if there is a compelling reason. Termination is permitted in its entirety. Should the Contractor terminate the contract because the Client has failed in a duty to collaborate, if the Client's duty to collaborate is not explicitly agreed in the contract, the Contractor must provide evidence that they are, consequently, unable to deliver the service as specified in the contract because, due to the nature of the collaboration act, only the Client may do this.

19.2 Alongside the reasons given in Clause 3a of these ACT, the Client is particularly entitled to terminate, or withdraw from, the contract if the Contractor offers, promises or grants benefits to persons on the Client's side who are involved in preparing, signing or implementing the contract. Acts by persons the Contractor has contracted, or who are acting for them, are equivalent to such acts by the Contractor themselves. In such cases it matters not whether the benefits are offered, promised or granted to the above mentioned persons or to a third party in their interests. An illegal restraint of trade that also entitles the Client to terminate or withdraw from the contract is to be assumed, in particular, in the case of anti-competitive negotiations that the Contractor conducts with other bidders in relation to

- submitting or not submitting offers,
- the prices to be set,
- tying in other payments,
- markups,
- processor margins and other pricing components,
- payment, delivery and other terms, insofar as they indirectly or directly affect the price,
- setting cancellation fees or compensation payments,
- profit sharing or other levies

and in the case of recommendations – unless they are permitted under Article 22 Para. 2 of the German Act Against Restraints of Competition (GWB).

The above mentioned acts by persons the Contractor has contracted, or who are acting for them, are equivalent to such acts by the Contractor themselves.

Should the Client withdraw from the contract under the above rules they are entitled, but not obliged, to return the services they have received. Should they keep them, they

must reimburse their value. In other cases the statutory laws on withdrawal shall apply.

19.3 The CONTRACTOR's **rights of retention and rights to refuse service** are excluded in relation to the contract agreed. Bearing in mind the critical business dependencies of the customers for the services entrusted to the Contractor, the contract parties expressly agree that the Contractor may under no circumstances exercise these rights. This shall also apply in the case of any extraordinary termination for a compelling reason by the Contractor or in the case of any disputes between the parties (e.g. bearing in mind the entitlement to such a termination or payments allegedly unjustifiably retained). This particularly applies to services relating to KRITIS. Regardless of this, secondary claims such as compensation for damages shall remain unaffected and may be filed subsequently.

## **20 Penalty**

20.1 Where a contract penalty has been agreed, the Client's right to indemnification for damages over and above the contract penalty shall not be affected.

20.2 The contract penalty does not have to be claimed at the time of acceptance, but rather it may also be claimed up until the final payment.

20.3 Where penalties are agreed for interim deadlines, provided they are agreed to be a fraction of the order or invoice amount (e.g. "0.2 % per day", or similar) and not as an absolute amount, they shall always only relate to the Contractor's service percentage to be delivered up to the interim deadline concerned. 5 % of the net final invoice amount shall be deemed to be the upper limit for all contractual penalties that might accumulate under a contract.

## **21 Risk sharing / transfer of risk**

Upon formal acceptance in the sense of the provision below, the risk shall pass to the Client. Up until formal acceptance with prior functionality testing, the Contractor shall bear the full performance and compensation risk, including in any case of damage to, or destruction of, the fully or partly implemented service.

## **22 Acceptance**

22.1 The delivery or service is to be formally accepted. This shall involve putting in writing the acceptance findings (formal acceptance). A written acceptance log of the test results is to be compiled.

22.2 A precondition of the formal acceptance is that the contractually agreed services have been completed as specified in the contract without any defects that are judged to be a hindrance to operations, and that a functional test has been run. Functional tests shall not conflict with the assertion of the defect within the course of the acceptance.

22.3 The formal acceptance shall only be carried out when a written acceptance request has been made.

22.4 The acceptance request, in turn, is conditional upon the provision of all instructions regarding operation, control and use. The provision of the above mentioned documents is one of the key contractual obligations.

22.5 Should there be any defects the nature of which will prevent operations, or not merely present minor hindrance to operations, the Client is entitled to refuse the acceptance. In this case, in the case of delivery services, the Contractor undertakes to take back the contracted objects without delay at their own expense. Alternatively, with all due regard to the interests of the Contractor, the Client can send them back at the Contractor's expense and risk.

22.6 Should the Client justifiably refuse an acceptance which the Contractor has requested, the Contractor undertakes to reimburse the Client for the costs of collaborating in the acceptance meeting.

22.7 Any notional or implied acceptance by commencing usage is excluded.

22.8 Apart from that, the Contractor shall collaborate in the acceptance process and provide the necessary employees and technical equipment (e.g. measuring devices) at their expense. Should the Client justifiably refuse an acceptance which the Contractor has requested, the Contractor undertakes to reimburse the Client for the costs of collaborating in the acceptance testing.

## **23 Claims for defects / limitation period**

23.1 The statutory regulations on claims for defects shall apply. The Contractor's liability for defects shall also extend to packaging, labelling and documents owed.

23.2 The Client's approval for the plans, drawings and calculations, or other documents associated with the services, that the Contractor has presented shall not affect the Contractor's responsibility for delivering the services as specified in the contract.

23.3 After a time limit to remedy the defects has expired in vain, with due regard to the interests of the Contractor, the Client is entitled to send back defective objects at the Contractor's expense and risk.

23.4 The Contractor shall be responsible for all the expenditure required for remedial purposes.

23.5 The time limit for making claims for defects shall begin when the service is accepted and in principle shall be **three years**. The guarantee shall begin upon acceptance.

## **24 Invoicing, discounts**

24.1 Invoices should be labelled as an interim invoice, a partial delivery invoice or a final invoice, and they should be numbered sequentially. Partial delivery invoices may only be issued if expressly agreed in the contract. Furthermore, all invoices and Client documents associated with them should be sent – preferably in an electronic form recognised by the tax office and by email to [kreditoren@sita-airport-it.aero](mailto:kreditoren@sita-airport-it.aero). Duplicates (copies) of invoices should be clearly labelled as such.

24.2 The Contractor shall issue invoices no later than two (2) months after the billing requirements for the respective services have been met. Delays must be notified in advance and justified. If the Contractor does not invoice remuneration within twelve (12) months of the billing requirements being met, the remuneration invoiced so late shall be time-barred. Other agreements on the statute of limitations remain unaffected.

24.3 All invoices should specify the scope and value of all services to date following the wording or the numbering (items) in the service specification and listed in that order, divided by unit and quantity, and with net prices (unit prices, fixed sum prices, charge rates, hourly wage supplements). The invoices should be issued with the contracted prices exclusive of VAT (net prices); the VAT amount should be added at the end.

24.4 Payments already made, including the VAT they include which should be shown separately, should each be listed in numerical order and deducted at the end of the invoice.

24.5 Final invoices must include all the Contractor's receivables from the order, including any supplements.

24.6 If nothing else is expressly agreed, any price discount offered shall be deducted when invoicing and in the payments of both unit and fixed sum prices, including in

the case of supplements due to changed or additional services, unless the supplement concerned is the result of an unsuitable Client plan.

24.7 The Contractor should give the order number and, if applicable, the item number as specified in the contract on all delivery notes, shipping documents, packaging addresses, invoices and other correspondence relating to the contract. The Client shall not be responsible for any processing delays they suffer that result from the CONTRACTOR not complying with this undertaking

24.8 The Client may reject any invoices that do not comply with the above provisions. The same applies to delivery notes (in the case of delivery services) and other documents that are to be attached to the invoices to justify payment.

## **25 Work done on hourly rates**

25.1 Should a contract envisage hourly wage rates, the number of hours indicated as possible for this is non-binding. Only the hours actually worked as instructed by the Client shall be paid for. Work shall only be paid for on hourly rates if this type of payment has been expressly agreed.

25.2 The Contractor undertakes to produce daily time sheets for hourly rate working, and to provide them to the Client if requested.

25.3 The time sheets must include the following elements:

- hours worked
- any raw materials, auxiliary and operating materials that are to be reimbursed separately, and any separately agreed reimbursements for providing scaffolding, tools, devices, machinery and similar
- the date
- the nature of the work
- the employees' names
- job, wage or salary group

25.4 Hourly wage invoices must be structured in the same way as the time sheets. Should it become clear, when examining the invoice or by checking it later, that the work accounted for in the hourly pay already belongs to other contracted work or to work associated with that, the work done on the hourly rate shall not be reimbursed.

## 26 Payments and payment requests

26.1 The agreed payment term shall be 30 days from receipt of the invoice and receipt of the goods/service. Decisive in complying with this term is the day on which the Client instructs its bank to make the corresponding payment.

26.2 Where advance payments have been expressly agreed, interim invoices may be submitted in accordance with the progress of the work. The payments already received should be deducted on the interim invoice. Clause 27 shall remain unaffected. Advance payments shall not be deemed to be an acceptance of parts of the service.

26.3 The Contractor shall reimburse the Client for any overpayments without delay. Overpayments, essentially, shall be deemed to be all those amounts that come to the Contractor from the Client's payments to which the Contractor is not entitled at that point in time. In the case of any overpayment, the Contractor must pay interest on the amount to be reimbursed, without VAT, from the receipt of the payment onwards at 9 % above the relevant base rate for the year, unless greater utilisation can be demonstrated.

26.4 The Contractor may not invoke failure of enrichment as defined in Article 818 Para. 3 BGB (German Civil Code) in relation to overpayments claimed by the Client.

## 27 Security services

27.1 Where advance payments have been expressly agreed, the Client shall only make them upon presentation of an advance payment security in compliance with the rule below in the full amount of the sum paid in advance (gross). The advance payment security shall extend to the repayment of the advance payments made until the advance payment has been redeemed by crediting it against payments due as a result of defect-free services provided. The security shall be released without delay upon request once redemption has been made in full.

27.2 Where, due to a separate agreement, the Contractor has to present a contract fulfilment security, this should be presented in the amount of 10 % of the net order total within 14 days after the order being issued, unless an advance payment has been agreed and secured accordingly. In this case, the contract fulfilment security should only be presented when there is no longer a secured advance payment. The security for the contract fulfilment shall extend to the fulfilment of all the fulfilment claims

from the contract and those that substitute for them, particularly to the implementation of the service as specified in the contract up until final acceptance (where an acceptance is not possible or is not to be agreed, up until the service has been finally delivered) including invoicing, claims for defects and compensation for losses, and to the reimbursement of overpayments including interest. Where there are any increases to the payment owed in relation to the order total after the contract has been awarded (e.g. increases in volume, supplementary work, etc.), an owing contract fulfilment security should be topped up accordingly. After acceptance of the entire service including any follow-up work to eliminate any defects identified during the acceptance (where an acceptance is not possible or is not to be agreed, after the service has been finally delivered) the contract fulfilment security shall be returned without delay. If necessary, the contract fulfilment security shall be reduced appropriately after acceptance with only minor continuing claims secured by it until it is returned. However, it must be made clear that the Client is not permitted to, on the one hand, not return a security due to these same claims, while at the same time objecting about any retained (residual) payment and not paying it out (duplicated security).

27.3 The Client is entitled to a security deposit for claims for defects to the value of 5 % of the net invoice total on the final invoice. To avoid overpayments, the security deposit is to be made proportionately in relation to the claims for advance payments. The security for claims for defects shall extend to the fulfilment of claims for defects arising after the acceptance (where an acceptance is not possible or is not to be agreed, after the service has been finally delivered) including compensation for losses including recourse claims, compensation claims and exemption claims, and reimbursement of overpayments including interest.

27.4 The Contractor can provide evidence of security deposits owed in the following ways:

27.5 by presenting a suitable monetary bond, which must be an unconditional monetary bond, with no time limit, from an authorised financial institution or credit insurer within the European Economic Area, in which moreover the right to object, appeal and offset (the latter only to the extent that the claims to offset have not been legally established or are uncontested or they are not counter-claims arising from the same legal relationship) is waived.

The place of fulfilment, the place of jurisdiction and the applicable law shall be as specified in Clause 36.

27.6 by depositing money in an escrow account (a joint account) to be set up by the Contractor. The financial institution must be authorised within the European Economic Area.

27.7 Until the security has been provided in line with the above rules, the Client has a right to retain as yet unpaid invoice amounts up to the value of the security owed.

27.8 Where there are various guarantee periods, the Contractor may divide up the security for claims for defects proportionately, based on the order total.

## **28 Breach of third party property rights**

28.1 The Contractor is responsible for their work not breaching any third party property rights. The Contractor shall indemnify the Client and/or the Client's customers against any claims that, nonetheless, exist or arise. The Contractor's duty to indemnify also extends to all expenditure incurred by the Client, and customers of the Client who are using contracted services correctly, or in connection with use by any third party, provided this expenditure has not been caused or increased through the fault of the Client or of customers of the Client who are using contracted services correctly. The Client is entitled to an advance payment of a reasonably estimated amount.

28.2 Should the Contractor see that they can only deliver the contracted service by breaching property rights, they undertake to either change or replace their contract services in such a way that they do not breach property rights yet nonetheless substantially perform the agreed functional and service characteristics in a way which is reasonable to the Client, or to come to an agreement with the property rights owner so that the service can be used as specified in the contract with no breach of property rights.

28.3 The parties shall each notify the other without delay, in text at least, of any third party claims being made for breach of property rights.

## **29 Usage rights/property rights**

29.1 The Contractor hereby transfers to the Client the right to use objects that are copyright protected or protected by other commercial property rights (esp. patents, utility models, trademarks, registered designs or topographies) that have been delivered to the Client or made available to the Client for use (e.g. via remote Internet ac-

cess) in their entirety or in part without the Client's involvement to be used for the contractually intended purpose, to exploit and change themselves or have changed by a third party, or to have completed, including if the contractual relationship is to be terminated prematurely. This shall also apply given the background and in the knowledge of the fact that the Client shall deliver their services to their customers, particularly to FDG and corresponding usage rights shall hereby be granted to those customers too. The Contractor shall transfer to the Client the corresponding non-exclusive, sublicensable, permanent usage rights in relation to the services concerned and to all protectable service results created in connection with service relationships, whereby the remuneration for this is satisfied through the remuneration paid under the contract, so that the Contractor cannot request any separate remuneration for them. The Contractor undertakes to envisage this type of usage rights transfer in their contracts with any designers they might employ, and to provide the Client with evidence of such a rule without delay if so requested.

**30** 29.2 Limited to cloud services provided directly or indirectly by the Contractor, the above-described granting of rights applies to the discontinuation of the cloud service for the use of configuration files, interfaces, tools, scripts and documentation used by the Client and/or its customers, which then constitute digital assets within the meaning of Art. 2 (32) EU Data Act. These rights granted include, in particular, those digital assets that are necessary for a switch to another cloud service. To avoid any misunderstanding, the contracting parties clarify that these rights granted do not relate to service results that are created independently of the specific data and settings of the Client and/or its customers for the further development of the generally used standard of cloud services. In all other respects, the client shall receive a non-exclusive and non-transferable right of use limited to the term of the respective contract in accordance with the terms of the respective contract. **Data protection, duty of confidentiality**

30.1 The parties undertake that all the business, operational and technical matters, data, processes and information that concern the other contract partner and the business operations of the other contract partner, which they are made aware of by the other contract partner, in the present or the future in the course of the contractual

relationship or through the disclosure of data, plans, etc., including beyond the end of any existing contractual relationships and project implementations, will be treated in strict confidentiality, kept secret and not made accessible to any third party, either directly or indirectly. The above duty of discretion shall not exist where the other contract partner has previously agreed in writing to the disclosure of specific information or where there is a legal justification for disclosing such information (e.g. under the German Trade Secrets Act).

30.2 The Contractor shall carefully keep the business and report documents (including handwritten drawings and copies) they are given, prevent them from being viewed without authorisation by any third party, and return them to the Client when requested by the Client after the end of the contractual relationship concerned or after the permitted use has ended; in this respect there is no right of retention.

30.3 The Contractor undertakes to subject all employees who are deployed, and persons who collaborate, on a project or a contract to corresponding duties of confidentiality that satisfy employment law requirements.

30.4 Should the Contractor or their vicarious agents or employees culpably violate the above conditions, the Contractor undertakes to compensate the Client and its customers, FDG in particular, for any resulting losses.

30.5 Where the Contractor is to process personal data in the course of the contractual services, the parties shall draw up a written agreement that includes the minimum requirements under the GDPR (e.g. for commissioned data processing or processing with shared responsibility). The Contractor shall propose agreements required for this purpose to the Client. Where the contract parties do not draw up any bespoke agreement, the statutory minimum requirements, particularly those under the GDPR and the BDSG (German Federal Data Protection Act), shall apply nonetheless.

30.6 The parties agree that any data that the Client transfers and stores shall remain in the possession of the customer concerned. Should the contract come to an end, the Contractor undertakes to participate constructively in the processes described in **Annex 3 “Exit Management”** to these ACT-IT and to fulfil the obligations defined there.

### **31 Ensuring IT security**

The Contractor guarantees to the Client that they will perform a service that will satisfy the generally accepted rules of the technical area (see Clause 3.1.10) and IT security quality standards.

The specifications relating to IT and data security (ITDS) provided in **Annex 4 “Data Security”** to these ACT-IT, and the rights and obligations ruled upon therein, shall apply. Where rules are contradictory, the specifications in **Annex 4** shall take priority.

### **32 Lifecycle Management**

32.1 During the usual lifecycle for the service, the Contractor shall ensure that patches and updates are available, in particular to close security gaps. The Contractor shall provide the Client with updates, in particular security updates, during the lifecycle on its own initiative within reasonable time limits. The Contractor shall also ensure that the Client receives professional manufacturer support during the lifecycle.

32.2 At the beginning of the contract and at the beginning of each subsequent contract year, the Contractor shall inform the Client, on the basis of the information published by the manufacturer, of the scheduled end of support for the technologies (hardware and software) used for the respective customer. In addition, the Contractor shall inform the Client immediately of any announcements made by the manufacturer with less than two years' notice.

### **33 Assignment, offsetting, transfer of the contract to customers/the Client's successors**

33.1 The Contractor may only assign their claims against the Client with the Client's consent.

33.2 The Contractor shall not be entitled to pass on the order they have been awarded to any third party, either fully or partly, without the Client's consent.

33.3 The Contractor is aware that the Client, for their part, has signed a contract with end customers (e.g. FDG) and that the Contractor is acting as a Client subcontractor in this context. Given this background, the Contractor states that they irrevocably consent to the following:

- The Client is entitled to transfer the contractual relationship with the Contractor either to the customer concerned or to a third party designated by the customer to be SAIT's successor.

- The customer concerned or a third party they designate to be SAIT's successor is entitled, if requested by FDG, to enter into the contractual relationship between the Contractor and the Client.

The Contractor is not entitled to conclude this type of contractual relationship with FDG or with a third party FDG designates to be SAIT's successor.

33.4 The offsetting of claims against the Client shall not be permitted. This shall not apply where the claims are uncontested or have been legally established or they are counter-claims arising from the same legal relationship.

### **34 Representatives, authorisations**

34.1 Should the Contractor not be exercising control over the implementation of the service in person, they are inform the Client of their authorised representative upon commencing the implementation of the service, and provide a declaration that they have legally given full authority to their representative with respect to all the decisions associated with the project. The Contractor shall ensure that Client messages can reach them or their representative at all times. The Contractor shall only be authorised to appoint a different representative after consulting the Client.

34.2 Providing nothing different is specified, the Client's project managers and engineers shall not be entitled to put the Client or the Client's customers under any legal obligation, in particular to enter into obligations to make payments (e.g. as a result of ordering supplementary works).

### **35 Airport security, access permit requirements and costs**

For activities requiring access to the aviation security area please refer to the regulations of Düsseldorf Airport (in particular the airport usage regulations), which can be downloaded in their current versions from the website <https://www.dus.com/de-de/businesspartner/avitation/entgelte-und-regularien>.

### **36 Correspondence**

Agreements of any nature must be put in writing to be valid, i.e. they must be at least handwritten or agreed using an advanced electronic signature.

### **37 Place of fulfilment, place of jurisdiction, applicable law, miscellaneous**

37.1 Unless a special responsibility applies as specified in the NRW Ministry of Justice's directive on the judicial responsibility for disputes arising from corporate transaction areas (mergers & acquisitions), information technology and media technology and renewable energies of 22nd November 2021, the parties expressly agree, to the exclusion of other courts of jurisdiction, that any disputes arising from, or in connection with, these ACT-IT or the contract, including disputes relating to their efficacy, are to be resolved by the proper courts in Düsseldorf.

37.2 The place of fulfilment is Düsseldorf.

37.3 Any change to this contract requires the written form, this also applying to the changing of this written form clause. The parties are aware that in practice the law often assumes that the parties can make verbal agreements which implicitly set aside the original agreement on the written form. Being conscious of this practice, the parties expressly agree that the only changes to the contract that shall be effective are those that are put in writing.

37.4 The law of the Federal Republic of Germany, to the exclusion of private international law and the United Nations Convention on Contracts for the International Sale of Goods (CISG), shall be the only applicable law for the contractual and non-contractual relationships between the contract partners.

37.5 Should one of the contract's provisions be or become ineffective, this shall not affect the validity of the rest of the contract. In this respect, the parties undertake to agree without delay a rule that in a legally effective way comes as close as possible to the sense and purpose of the ineffective clause.

37.6 Annexes

The annexes indicated below are a key part of these ACT-IT and the contract agreed between the Client and the Contractor.

Annex 1: Fault Class Model

Annex 2: Documentation and Reports

Annex 3: Exit Management

Annex 4: Data Security