

## General Terms and Conditions of Purchase and Payment for Software Maintenance (ABSP) 08/2010

### 1. Scope/conclusion of contract

The following terms and conditions shall apply to the provision of software maintenance. Purchase orders by Amprion GmbH – hereinafter referred to as “Amprion” - shall be placed according to these terms and conditions as well as any supplementary terms and conditions named in the purchase order or in the functional/technical specifications.

Any deviating terms and conditions of the Contractor shall not become part of the contract even if Amprion has not expressly rejected them in the individual case or the delivery (goods/services) has been accepted. Any confirmations made by the Contractor with reference to its terms and conditions of business shall be herewith contradicted.

### 2. Written form

Purchase orders and agreements and amendments made in connection with such purchase orders shall only be binding where in writing.

### 3. Subcontractors

If the Contractor would like to commission third parties to provide the services, this shall require the prior written consent of Amprion. Correspondingly, this shall apply to the change of or the use of other subcontractors. Amprion shall give its consent unless there are factual reasons for objecting to the use of specific subcontractors, or to any use of subcontractors, in a project. Amprion explicitly reserves the right to award by itself any work to be awarded to subcontractors.

### 4. Code of Conduct

Amprion expressly refers to RWE's Code of Conduct which applies within the RWE Group and may be viewed at the following web address: [www.rwe.com/lieferanten](http://www.rwe.com/lieferanten) (path: <http://www.rwe.com/web/cms/en/2438/rwe/rwe-group/about-rwe/code-of-conduct/>). Amprion expects the Contractor to support compliance with the regulations and principles expressed in the Code of Conduct and, in particular, to commit itself to supporting and implementing the principles on human rights, labour relations, the environment and anti-corruption laid down under the Global Compact Initiative of the United Nations ([www.unglobalcompact.org](http://www.unglobalcompact.org)).

### 5. Applicable provisions

In the event of contradictions, the following shall apply in the order of precedence shown:

- a) The provisions of the individual purchase order together with the specifications and any supplements,
- b) Any framework agreement with appendices
- c) The provisions of these terms and conditions as amended on conclusion of contract,
- d) The supplementary provisions to clause 18 of these terms and conditions – Supplementary Industrial Safety Conditions – as amended,
- e) The Security Policy of the RWE Group as amended on conclusion of contract.

### 6. Scope of performance

The Contractor shall ensure complete functioning of the software during the entire contract period.

#### 6.1 Scope of performance

- a) Except where otherwise agreed by contract, the maintenance services of the Contractor shall include, in particular:
  - Elimination of errors in the programme and in the documentation provided;
  - Telephone “hotline” assistance;
  - Further development of the software and transmission of the current version of the standard version of the programme provided within the scope of the license agreement;
  - Modification to meet mandatory official or legal regulations or requirements;
  - Unsolicited transmission of new documentation or modification of existing documentation (in German and English).
  - Where the programme has been modified by the Contractor, or by Amprion with the Contractor's explicit approval, that version of the programme shall also be subject to the maintenance services.
- b) Moreover, by separate order the Contractor shall also provide the following services:
  - Conversion of the programme to a different operating system, a different hardware system or a different programming language, insofar as the licensor offers a version for that purpose;
  - Required modifications to the programme in the event of changes to the existing operating system by the manufacturer;
  - Additions and extensions to the programme in the scope defined by Amprion, insofar as realisable;
  - Consultancy in all issues of operation or application of the programme, including transfer of operational and application experience from the entire user base;
  - Provision of retraining required due to changes/improvements performed or initiated by the provider.

#### 6.2 Remote access via the Amprion network to protected network areas for external companies (Remote)

Where maintenance services are provided by means of remote access, the following shall be observed:

- Dial-in connections are to be set up exclusively via a central Amprion dial-in point.
- In addition to identification by means of user ID and password, the user must authenticate himself/herself by using a one-time password generated by an identification card. If necessary, the identification card and the associated personal identification number (PIN) will be made available by Amprion.
- The Contractor shall be responsible for ensuring that unauthorised use of the identification card is ruled out. Loss or destruction of the card shall be reported forthwith.
- The use and further organisational measures will be explained to the Contractor on issuance of the identification card.

#### 6.3 Error elimination and user support

The Contractor shall provide support for error elimination and user support (hereinafter uniformly defined as error elimination) according to the following provisions. Error elimination shall also include error identification and error diagnosis.

Mondays to Fridays, from 08:00am to 05:00pm, the Contractor shall maintain a hotline as 1st level support for error reporting by telephone. Reports received there shall be worked on immediately where possible by telephone or via remote access, i.e. the error will be corrected in collaboration with the employee reporting the error. Outside these hotline times error reporting shall be made possible by fax, e-mail or answering machine. If error elimination via remote access is not possible, 2nd level support in the form of on-site support shall be provided forthwith. In the event of errors of priority 1 as described below, error elimination work shall also be performed outside the aforementioned support times (24-hour service).

Errors will be classified in 4 priorities:

- Priority 1: The system is not usable at all (system shutdown) or important data cannot be run, or generate a data loss or data corruption.
- Priority 2: Use of the system is limited. Not all functions are available.
- Priority 3: All functions are usable but with minor restrictions.
- Priority 4: Despite problems occurring, the system is usable without restrictions.

The following response times, feedback times and escalation channels apply to error reports:

Priority 1:	Response within 2 hours after reporting;	Feedback 8 hours after reporting at the latest
Priority 2:	Response within 6 hours after reporting;	Feedback 48 hours after reporting at the latest
Priority 3:	Response within 24 hours after reporting;	Feedback on 4th day after reporting at the latest
Priority 4:	Response within 2 days after reporting	Feedback on 4th day after reporting at the latest

Where the error is reported outside normal support time it shall be deemed reported at the beginning of the subsequent support period. Response shall be deemed as commencement of error identification via remote access or the start of work on site by customer service.

Feedback shall include qualified information concerning the measures already taken, the current status of error identification or elimination and the next steps. Wherever possible, the time to final error elimination is to be estimated without obligation. Where an error has not been finally eliminated by the end of a feedback period, escalation shall take place immediately, as a rule to the next higher superior. Where a period has been defined in days, that period shall end at the end of the respective support time on that day.

Insofar as the Contractor cannot eliminate a reported error by the end of the first feedback period, it shall provide Amprion a workaround, a patch or a comparable temporary solution to preclude the appearance of this error and to make the software usable again. This may also include the provision of an older version of the software, insofar as this does not display the error and can be operated on the existing system without any impediments or with less impediments than the defective version. Should the Contractor fail to eliminate the error within the aforementioned feedback period applicable, Amprion shall be entitled, without setting a further deadline and at the Contractor's expense, to eliminate the error itself or have it eliminated by a third party. The right to assert further damages, as well as to extraordinary termination of contract, shall remain unaffected.

#### 6.4 Contractual penalty

Where the aforementioned response times are not adhered to, a penalty shall be due of 0.28% per working day of the total net annual maintenance charges, but with a maximum of 5% of the total net annual maintenance charges. The right to assert further damages shall remain unaffected.

### 7. Contract duration/termination

Except where otherwise agreed by contract, the maintenance agreement may be terminated by either party with notice of three months to the end of a calendar year, for the Contractor, however, insofar as it is the manufacturer of the software itself, only after the end of a minimum period of 5 years (investment protection). The maintenance contract may be terminated in its entirety or for a certain software product/component. Notice of termination shall be made in writing.

The right to extraordinary termination for serious reasons shall remain unaffected hereby. For Amprion, a serious reason shall exist, in particular, when

- composition or insolvency proceedings covering the Contractor's assets have been filed or opened, or where such proceedings have been denied due to lack of assets,
- the Contractor is in serious breach of contractual agreements and has failed to redress the consequences of such breach, in particular financial losses, without delay and without specifically being called upon to do so, or where such consequences cannot be redressed because of their nature.

In the event of termination for serious reasons for which the Contractor is responsible, however, the latter shall receive only the portion of the remuneration which corresponds to the proportion of the service previously provided, and usable for Amprion, measured against the total service to be provided. Any further claim to remuneration of the Contractor shall be excluded in this case. The Contractor shall be liable for compensation for loss incurred by Amprion as a result of the termination, including any consequential loss.

In the event of a termination pursuant to section 649 German Civil Code (BGB) – with regard to the offsetting of expenses not incurred – the Contractor shall receive only the portion of the remuneration which corresponds to the proportion of the service so far provided measured against the total service to be provided, except where the Contractor can demonstrate that its savings related to the service not provided are lower. Paragraphs 2 and 3 shall remain unaffected.

In the event that the system on which the software is operated is fully shut down, Amprion may terminate the maintenance agreement with notice of 4 weeks to the end of a month.

### 8. Contractor's duties

The Contractor shall provide the service on time and free of defects according to the specifications and the current state of technology and software development. It shall hand over to Amprion all the services and documentation required of it under the contract (e.g. expert reports, organisation charts, drafts, drawings, listings and calculations, IT systems and programmes) and transfer title for them to Amprion.

The Contractor shall employ qualified personnel for all services. At the request of Amprion, the Contractor shall replace individual employees insofar as Amprion puts forward objective reasons for it to do so. Any additional expense related to such employee substitution shall be for the account of the Contractor.

Even insofar as services are provided by Amprion, the Contractor shall exclusively retain the powers to instruct the employees it deploys. The employees shall not be integrated into the operations of Amprion.

#### **9. Collaboration requirements on Amprion**

Amprion shall support the Contractor's work to an appropriate extent. In particular, it shall grant to the Contractor and its deployed employees access to the information and premises necessary for their work.

#### **10. Customer**

In many cases Amprion will not be the final customer of the service, but a third party, usually a company of the RWE Group. This company shall be entitled to request and receive the service as such. Insofar as collaboration by the customer is required, Amprion shall ensure such collaboration is provided. Amprion may empower the customer to carry out acceptances and to issue acceptance declarations.

#### **11. Deadlines**

The delivery times/deadlines of performance indicated in the purchase order shall be binding. The Contractor undertakes to notify Amprion immediately if circumstances occur or are identified which indicate that the delivery time agreed upon or the deadline of performance agreed upon cannot be met.

#### **12. Right to information**

Amprion shall be entitled at any time, following prior notice, to inform itself about the progress of the work. For this purpose, Amprion shall be entitled at any time during normal business hours to visit the Contractor's premises to check adherence to the relevant rules and regulations.

Irrespective of the above, the Contractor shall be obliged to inform Amprion about the work performed and the results achieved in regular intervals in writing. If no times are specified in the individual purchase order, including specifications, the Contractor shall be obliged to provide information on a monthly basis.

#### **13. Rights to use/industrial property rights/inventions**

The Contractor shall permanently grant Amprion a temporally and geographically unrestricted, transferable, non-exclusive, irrevocable right to use the rights that are the object of the respective delivery (goods/services). Amprion shall be particularly entitled to transfer the right to use to the IT service provider. The Contractor shall entitle Amprion and the IT service provider to make the right to use available to the Group companies - and thus also the services specified in the contract.

Insofar as patentable results arise within the scope of project work, the Contractor shall transfer permanently and gratuitously to Amprion the exclusive, transferable, geographically unlimited and irrevocable rights to use and disposal thereof. For programming work, the Contractor shall be obliged to hand over to Amprion the source code for the software created.

The Contractor shall assure that it strictly observes the provisions of the German Employee Invention Act (Arbeitnehmererfindungsgesetz) and that it claims respective inventions within the period provided for. This shall also apply insofar as the Contractor employs no staff of its own, but has employed third parties within the scope of a legitimate employee leasing transaction.

#### **14. Acceptance/transfer of risk**

Services provided under contracts for work and services shall be subject to formal acceptance. Acceptance of parts shall not be allowed. Formal acceptance shall be made after trial operation. A detailed procedure of the acceptance test (functional tests/utilisation of test or real data, etc.) shall result from the acceptance specifications that are agreed upon between the parties. The Contractor shall report readiness for acceptance with notice of at least 10 days to the acceptance date. Amprion shall prepare an acceptance record in duplicate. The testing steps carried out and the test results shall be documented therein. Furthermore, all errors occurring during trial operation shall be recorded. Amprion shall send the acceptance record to the Contractor for first signature. The second signature of Amprion shall represent a binding declaration of acceptance. The Contractor then shall receive a copy for its files.

The use or commissioning of such services under contracts for work and services as part of test operation shall not be deemed acceptance. Acceptance shall be deemed to have taken place if Amprion fails to perform the acceptance within six weeks, although the service was provided free of defects or only with insignificant defects.

The risk of coincidental loss or coincidental deterioration shall also transfer to Amprion when Amprion delays the acceptance for reasons for which it is responsible. However, notwithstanding the provisions of para. 2, second sentence, a condition shall be that the Contractor has previously set a date appropriate to the circumstances by which Amprion has failed to meet the relevant collaboration requirements.

#### **15. Remuneration**

The prices named in the purchase order shall be lump-sum, fixed prices, except where invoicing by time and materials at certain hourly rates has been agreed. Except where agreed otherwise, maintenance services shall be invoiced quarterly in arrears. Where no prices are stated, Amprion reserves the right to recognition of the prices calculated subsequently.

Travel time and travel expenses for the Contractor and/or its employees to the regular place of deployment shall not be remunerated separately and shall be deemed reimbursed by the fixed price or hourly rates. Where the Contractor and/or its employees work outside the regular place of deployment, travel expenses shall be reimbursed at a flat rate of € 0.40 per km. Other expenses of the Contractor shall only be reimbursed when agreed in writing in advance.

#### **16. Invoicing and payment**

The invoice shall meet the requirements of sections 14, 14a of the German Value-Added Tax Act (UStG). A single copy of the invoice shall be sent to the invoice receiver stated in the purchase order and to the correspondingly stated invoice address, separately indicating the value-added tax at the rate applicable at the time of delivery/performance.

Prepayments/progress payments made shall be shown individually in the invoice. Any contractor providing building services shall indicate on the invoice the tax number assigned to it by the Tax Office. In case of fixed prices, the Contractor shall require a confirmation of Amprion

regarding the performed services.



Any payments of Amprion shall be based on the following requirements:

1. Proper and complete delivery/performance or acceptance,
2. Provision of the securities/guarantees as agreed in the individual contract,
3. Receipt of a proper invoice in accordance with these requirements,
4. Receipt of proof of quantity and quality (joint measurement, time sheet, certificate of compliance with the purchase order, certificates, acceptance reports, etc.), insofar as they belong to the scope of delivery.

If the aforementioned payment terms are fulfilled, then payment - subject to any agreed deviating payment terms - shall take place 14 days following receipt of the invoice less 3% discount, or 30 days following receipt of the invoice less 2% discount. However, the discount period shall only start after actual fulfilment of these requirements. Discounts can be deducted from progress payments as well as advance payments and final payments. If a discount has already been applied to an advance payment or progress payment, then the discount base amount included in the final invoice shall be reduced by the amount of such advance payment or progress payment and the discount shall only be applicable to the remaining amount. Payments shall always be made subject to adjustment in the event that objections should be made subsequently.

Amprion shall be entitled to invoice to the Contractor or to deduct from the agreed payments a time penalty or percentages of such time penalty. Amprion is not required to claim the time penalty on receipt of the deliveries and/or performance, but may do so until final payment.

In case of accounting of hourly rates, input tax shall be deducted from the travel expenses (fares, accommodation costs, etc.) in accordance with the applicable tax regulations. Place of arrival and return shall be stated for calculation of fares. Any receipts shall be properly and permanently legible.

#### **17. Securities/guarantees**

Securities and guarantees shall be arranged in the individual contract, unless such securities and guarantees can already be requested by Amprion in accordance with applicable law.

#### **18. Third-party property rights**

The Contractor undertakes that all goods and services to be provided by it are unencumbered by third party rights. In the event of an infringement of property rights of third parties, the Contractor shall, at the discretion of Amprion, procure for Amprion the rights to use of the entire system or change the entire system in such a way that it is no longer encumbered by third party rights.

Furthermore, the Contractor shall indemnify Amprion among themselves against all claims asserted by third parties with respect to infringements of property rights. Further claims and rights to which Amprion is entitled under law in this respect shall remain unaffected. Such obligation of exemption shall remain in force for a period of 10 years after time of performance.

#### **19. Liability**

The Contractor shall be liable for any breach of duty and the resulting damage unless the Contractor proves that it is not responsible for such breach of duty. The Contractor shall be further obliged to release Amprion from any claims for damages by third parties submitted to Amprion by such third parties for reasons based on defective delivery (goods/services) by the Contractor, unless the Contractor can prove to Amprion that the Contractor is not responsible for the circumstances that caused the loss. The foregoing provisions shall also apply if the Contractor employs a servant or vicarious agent.

#### **20. Insurance**

The Contractor undertakes to maintain at its own expense an employer's liability insurance and a financial liability insurance for IT risks, each with a coverage of € 5 million per insured event, for the duration of this agreement including the period of limitation for material and legal deficiencies, as well as for the duration of any maintenance agreements.

The specific amount of insurance cover shall not constitute a limitation of liability.

The Contractor undertakes, on first written request, to submit to Amprion a confirmation of coverage from its insurer covering the scope according to para. 1. It furthermore undertakes, on first written request, to prove to Amprion that it has paid the respective premiums to the insurer.

#### **21. Assignment of receivables/setoff**

Without prejudice to an assignment of any financial claim per section 354a German Commercial Code (HGB), the Contractor shall not be entitled to assign receivables from Amprion to third parties, or to have them collected by third parties, except with the prior written consent of Amprion.

Amprion shall be entitled to fully or partially offset any pecuniary claims that are due by the Contractor and asserted by the Group companies Amprion GmbH (Dortmund), RWE Power AG (Essen), RWE Innogy GmbH (Essen), RWE Vertrieb AG (Dortmund), RWE Rheinland Westfalen Netz AG (Essen), RWE Supply & Trading GmbH (Essen), Essent N.v (Arnhem), NL, and/or npower PLC (Swindon), UK, against receivables of the Contractor.

#### **22. Safety stipulations**

In the course of contract execution and implementation, the Contractor undertakes to observe the applicable provisions and recognised engineering standards, especially with regard to occupational health and safety, as well as the provisions applicable under construction, trade and transport legislation (in particular, supervisory and road safety obligations on construction sites and in other working areas); this shall also apply to the applicable environmental protection and waste disposal regulations. Goods and services shall comply with the laws, regulations and directives prevailing at the time of the delivery and/or acceptance.

Machines covered by the German Machine Ordinance (Maschinenverordnung) or electrical equipment covered by the Low-Voltage Directive (Niederspannungsrichtlinie) shall be provided with a CE mark and supplied with operating instructions. The certificate of conformity and the operating instructions shall be delivered to Amprion or the customer of the work. Machines which are not ready for use shall be delivered with a manufacturer's certificate.

In addition to these provisions, the Supplementary Industrial Safety Conditions (ZB/A), as amended, shall also apply.

### **23. Anticompetitive arrangements**

Amprion shall be entitled to terminate the agreement without notice or to withdraw from the agreement in case the Contractor is demonstrably involved in anticompetitive arrangements to the detriment of Amprion. In case of termination without notice the Contractor shall only be entitled to a remuneration corresponding to the already provided part of the scope of delivery and performance that is free of defects. In case of withdrawal, the legal regulations shall apply.

### **24. Confidentiality**

The Contractor undertakes to treat as confidential all confidential information and business secrets of Amprion obtained during fulfilment of the purchase order and to use such information only within the scope of order fulfilment. The services provided by the Contractor shall also be deemed business secrets of Amprion.

The Contractor may make the object of a contract accessible to employees and other third parties only insofar as necessary to provide the service ordered; otherwise it shall treat all objects of contracts as confidential. It shall inform all persons to whom it grants access to the object of a contract in writing of the rights of Amprion to such object and instruct them on the requirement for confidentiality. It shall also commit such persons in writing to compliance with the confidentiality requirements.

Other transmission of documents by the Contractor (reports, expert statements and the like) to a third party and any publications in connection with the results of the service provided shall require the written permission of Amprion.

The obligation to confidentiality shall also apply after the end of the contractual term. It shall end ten years after the end of all business relations between the contractual partners based on this agreement.

### **25. Data protection**

(1) Amprion is entitled to collect, process and use data obtained under the contractual relationship within the meaning of the German Data Protection Act (BDSG) in its latest valid version and to pass on such data to companies affiliated with Amprion under sections 15 ff of the German Stock Corporation Act (AktG).

(2) To safeguard operational routines and to meet Amprion's safety requirements, the performance of orders involves the collection, processing and use of personal data whilst observing the provisions of the German Data Protection Act (BDSG). This refers, in particular, to data and images of security components (e.g. ID cards, ID card management systems, time/access and video systems, etc.), of Amprion IT and telco components as well as to infrastructures connected with the same.

The Contractor shall ensure that any ID cards it receives are not abused or shared with third parties. Where applicable, they shall be visibly displayed by the relevant persons on RWE premises; any loss shall be reported to Amprion immediately.

Any information processing and/or telecommunications resources supplied by Amprion (e.g. personal computers, landline telephones, mobile telephones, Blackberries, software, Internet access, e-mail, etc.) may only be used as part of performing an order and shall not be used for private purposes.

The Contractor shall ensure that all its agents entrusted with performing an order (e.g. permanent staff, temporary staff etc.) are instructed concerning the aforementioned points before the performance of work/services and that they are placed under suitable commitments. Any such agents shall subsequently also be placed under an obligation to assume proper conduct and to comply with the relevant RWE regulations.

When engaging subcontractors, the Contractor shall ensure that those subcontractors enter into the same commitments through suitable contracts.

The Contractor shall provide evidence of implementation of these points towards Amprion upon request.

(3) Any details shared by the Client shall not be used for the purpose of advertising or market/opinion research unless written permission has been given for this purpose by the Client or the agreed service allows this explicitly.

### **26. References/advertising**

Without prior consent by Amprion, the Contractor shall not be entitled to use information concerning intended or existing contractual cooperation for reference or marketing purposes. Photography in buildings, on the premises and/or construction sites of Amprion or the customer, and any kind of publication in this respect, shall also be prohibited without the prior written consent of Amprion.

### **27. Place of performance/jurisdiction/choice of law**

Place of performance for goods and services provided by the Contractor shall be the delivery address/place of use indicated by Amprion, or the agreed place of the provision of services.

Unless otherwise expressly provided for by law, the place of jurisdiction for any disputes arising under or in connection with the contract shall be Essen.

The laws of the Federal Republic of Germany shall apply exclusively. Application of the UN Convention on Contracts for the International Sale of Goods shall be precluded.

**28. Disclaimer**

Those general terms and conditions are drawn up in German and English language. In the event of any contradictions or discrepancies between the English and the German version, the German version shall prevail.

Last updated: August 2010