



# General Terms and Conditions for the Purchase of Standard Software of E.ON IT Italia S.r.l.

As of: April / 2009

## 1 Subject matter of Agreement

- 1.1 These Terms and Conditions shall apply to the perpetual assignment and use of standard software against one-time payment of compensation.
- 1.2 If the Contractor's confirmation of the order deviates in its terms from E.ON IT's Terms and Conditions, nevertheless only E.ON IT's Terms and Conditions shall apply even if E.ON IT fails to object to the Contractor's deviating terms. Deviations from or additions to E.ON IT's Terms and Conditions shall only be valid to the extent E.ON IT has expressly acknowledged them in writing.

## 2 Definitions

- 2.1 All companies referenced in the E.ON Group company overview belong to the "E.ON Group" within the meaning of these Terms and Conditions. That company overview may be accessed via the Internet at: [http://www.eon-einkauf.com/fundamentals/en/html/index\\_fundamentals](http://www.eon-einkauf.com/fundamentals/en/html/index_fundamentals). In addition, E.ON IT will provide the company overview by post, e-mail or facsimile upon request.
- 2.2 "Right of use" within the meaning of these Terms and Conditions are rights of exploitation covering all possible types of use under title III chapter II of the Italian Copyright Act [*legge 633/41 and modifications*] and the right to further develop the standard software.

## 3 Orders and order confirmation

- 3.1 Orders will be valid only if they are placed in writing. Oral ancillary agreements in respect of orders shall only be binding if they are confirmed in writing. The foregoing shall also apply to amendments and supplements to orders made subsequently.
- 3.2 The Contractor shall without undue delay provide E.ON IT with written notice of any changes and extensions to the scope of the goods and services if, during the course of performance, such changes or extensions are found to be necessary. They will require the prior written consent of E.ON IT.

## 4 Type, scope and quality of goods and services

- 4.1 The Contractor shall supply complete and clear documentation relating to the standard software. The Contractor shall supply the documentation for the standard software in Italian or English and in printed or printable form. E.ON IT may reproduce the documentation as needed.
- 4.2 The standard software shall have been examined for viruses using a current virus detection program prior to its delivery to E.ON IT. The Contractor hereby represents that its examination of the standard software has not revealed any indications of viruses, worms, Trojan horses or the like.
- 4.3 The Contractor shall alert E.ON IT without undue delay where risks or the potential for additional expense could arise from applying the defined specifications or defined standards or from the software tools used or from interactions between them, or where such risks or potential for additional expense become the subject of publications or the Contractor otherwise gains knowledge thereof. The Contractor shall advise E.ON IT with respect to possible solutions.

## 5 Deadlines for providing goods and services

The Contractor shall inform E.ON IT without undue delay and in writing, where circumstances arise or where it becomes aware of circumstances in which agreed deadlines cannot be met.

## 6 Place of performance, passage of risk and passage of title

- 6.1 The place of performance for the supply of standard software shall be such delivery address as is stated in the order. The place of performance for payment is Milan.
- 6.2 Delivery of the standard software shall be deemed to have been completed when the software has been received at the place of performance and E.ON IT has concluded its own functional testing thereof without encountering any problems. E.ON IT carries out its functional testing within 12 business days of its receipt of the standard software.
- 6.3 Upon the successful completion of the functional testing, title and risk shall pass to E.ON IT.

## 7 Right of use

- 7.1 The Contractor hereby grants E.ON IT a non-exclusive, transferable, perpetual and geographically unlimited right of use, entitling it to use or permit others to use the standard software in any system environment it wishes.
- 7.2 This right of use pursuant to sec. 7.1 shall include the right to lease the standard software within the E.ON Group whereby the lessee shall be authorized to grant a sublease to another E.ON Group company.  
Such right to lease shall be granted only in accordance with the contractually agreed volume of usage.
- 7.3 The right of use pursuant to sec. 7.1 also encompasses the right to make the standard software available to E.ON Group companies for their use via 'application service providing' (or comparable forms of use).
- 7.4 The right of use pursuant to sec. 7.1 also encompasses the right to make the standard software available on a software distribution platform in order to automate its installation and de-installation processes. The Contractor agrees that E.ON IT may use a single, user-independent license key for all installations.

This type of software installation shall be effected in accordance with the contractually agreed volume of usage.

- 7.5 If new companies are added to the E.ON Group, then E.ON IT will be entitled to grant these companies permission to use to the standard software.  
If a company leaves the E.ON Group, then any permissions to use which were granted on or before the date of the company leaving the Group shall continue in force and effect. After a company has left the E.ON Group, E.ON IT shall continue to be entitled to grant that company rights of use on a perpetual basis.
- 7.6 The granted right of use to the standard software shall also include all prior releases thereof.
- 7.7 E.ON IT will be entitled to create a copy of the standard software as a backup. The act of copying the standard software, which is done for purposes of duly backing up data, is deemed to be a part of the proper use.
- 7.8 Where E.ON IT is authorized to transfer a right of use to a third party, it may retain a copy of the software for testing and archiving purposes.
- 7.9 The Contractor hereby warrants that the standard software contains no copy protection and lockouts.

## 8 Compensation, prices and invoicing

- 8.1 The total price stated in the contract shall be the full compensation for all contractual goods and services. Payment of compensation shall be due when the Contractor has satisfied its delivery obligations (clause 6.2) and after E.ON IT has received an invoice in verifiable form. The foregoing shall apply *mutatis mutandis* in the case of agreed partial performances.

8.2 The prices stated in the order are deemed to be fixed prices, inclusive of all deductions and surcharges, but are quoted net of the applicable statutory VAT.

8.3 Every invoice must separately itemize the legally applicable amount of VAT. Originals of invoices must be sent in written or text form to E.ON IT in Milan (E.ON IT Italia S.r.l., Accounting/Finance, Via Vespucci 2, 20124 Milano) stating the order number and attaching accounting documentation.

## 9 Warranty

9.1 The Contractor shall deliver the standard software supplied to E.ON IT free and clear of any defects in title or quality.

9.2 E.ON IT is entitled to enforce the full scope of statutory warranty claims.

9.3 The limitation period for warranty claims shall be deemed extended by the period between the notice of the claim and the Contractor's subsequent performance. If the defective standard software is remedied or replaced, in whole or in part, then the limitation period will be deemed to begin anew.

9.4 Elimination and cure of defects shall be deemed to include the delivery of a printed or printable set of instructions for corrections to the documentation, if such action is necessary.

## 10 Notice of defects

The notice period for hidden defects will be 12 days from the date the defect was discovered. Art. 1495 1 paragraph Italian Civil Code shall not apply.

## 11 Infringement of industrial property rights

The Contractor hereby warrants that the contractual services shall not infringe third party industrial property rights or copyrights. The Contractor hereby undertakes to indemnify and hold harmless E.ON IT against any third party claims for infringement of such rights and to hold E.ON IT harmless in other respects.

## 12 Liability

The Contractor shall bear liability pursuant to the provisions of applicable law in cases involving intentional acts or omissions and negligence. He may not rely on art. 1491 second sentence of the Italian Civil Code.

## 13 Insurance

The Contractor must maintain liability insurance coverage on terms and conditions considered customary in the industry (minimum coverage EUR 1.5 million per claim) for the entire duration of the contract, which must also cover losses arising from the manufacture and supply of software. Upon E.ON IT's request, the Contractor shall furnish evidence of its compliance with this obligation; lower levels of coverage in an individual case must be agreed in consultation with E.ON IT.

## 14 Prohibition on assignment and set-off

14.1 Assignments as well as other transfers of rights and obligations of the Contractor are prohibited.

14.2 The Contractor may only exercise a right of set-off against claims of E.ON IT if its own counterclaims are not disputed or have been determined by *res judicata* judgment. The Contractor may not assert a right of retention under the present contractual relationship with E.ON IT on the basis of other contractual relationships with E.ON IT.

## 15 Confidentiality

15.1 The Contractor hereby covenants to treat as absolutely confidential any and all information, to which it becomes privy in connection with the present contractual relationship with E.ON IT, and agrees to use such information only for purposes of performing this contract. Confidential information within the meaning of this provision shall include documents, details, data as well

as other information that have been designated as such or are by their nature to be regarded as confidential.

15.2 The Contractor hereby covenants only to provide such employees or third parties with access to E.ON IT's confidential information as have a need to know it in order to perform the services under this contract and as have previously given an identical written undertaking of confidentiality. The Contractor shall, upon the request of E.ON IT, furnish E.ON IT with evidence of its having imposed this obligation on its employees and third party agents.

15.3 All information shall remain the property of E.ON IT. The foregoing also applies to any copies, including where the Contractor has created them.

15.4 The Contractor must return information provided to the Contractor to E.ON IT at the latter's request following complete performance of the contract, in a complete fashion and unbidden, or it must, at E.ON IT's option, destroy the information, except where legal duties of retention otherwise require.

15.5 The Contractor shall inform E.ON IT without undue delay in the event of any indications that any of the terms of this section have been breached.

15.6 E.ON IT may rescind the contract, either in whole or part, if the Contractor does not perform its obligations under this section within a reasonable grace period.

15.7 The obligations under this section shall survive the termination of the contract.

## 16 Data protection and security

16.1 The Contractor is obliged to observe the statutory provisions on data protection and to warrant and monitor compliance therewith. It must also impose these obligations on all such persons as it engages to perform the contract. The foregoing shall apply in particular with respect to compliance with data secrecy obligations. The Contractor covenants that it shall, upon request, furnish E.ON IT's data protection officer with evidence of its having imposed these obligations on its employees and third party agents in the form required pursuant to the provisions of applicable law.

16.2 The Contractor shall process personal data only in connection with E.ON IT's order and its instructions, pursuant to sec. 11 and 12 of the Italian Data Protection Act [*Decreto Legislativo 196/2003*]. The provisions governing order-data processing shall, in addition, apply *mutatis mutandis* where examination or maintenance of automated processes or data processing systems will be carried out by the Contractor and access to personal data cannot be ruled out (sec. 11, 12 Italian Data Protection Act). Authority to determine permissibility of data processing as well as to protect the rights of affected parties under the data protection acts (right of information, correction, deletion, etc.) shall lie with E.ON IT as the responsible body. The Contractor warrants in the context of its contracted data processing services that it shall provide sufficient data protection to ensure the confidentiality, accessibility and correctness of the data and shall itself ensure that the necessary technical and organizational security measures are taken for purposes of data protection under sec. 11 of the Italian Data Protection Act. E.ON IT shall be entitled, at any time, to inspect the Contractor's compliance with its directions in its processing of data as well as the Contractor's compliance with the implemented technical and organizational data protection measures. The Contractor shall furnish such information as is necessary to enable E.ON IT's scrutiny thereof and shall grant it the necessary rights of physical access to the premises as well as of inspection and access to the information. E.ON IT is entitled in individual cases to prescribe further technical and organizational measures in respect of data protection.

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- 16.3 Access to E.ON IT's databases is granted only to the extent and scope necessary for the Contractor to properly perform its instructions.
- 16.4 After the contractual relationship comes to an end, the Contractor may only continue to store or otherwise retain the personal data to which it was granted access where statutory or contractual retention periods so require. Otherwise, the Contractor shall either surrender the personal data to E.ON IT or – following consultation with E.ON IT – destroy the same in a data protection compliant manner.
- 16.5 The Contractor shall inform E.ON IT without undue delay in the event of any indications that any of the terms of this section have been breached.
- 16.6 E.ON IT may rescind the contract, either in whole or part, if the Contractor does not perform its obligations under this section within a reasonable grace period or, by its intentional act or omission or by its gross negligence, commits a breach of the data protection laws or regulations.
- 16.7 The obligations under this section shall survive the termination of the contract.
- 16.8 E.ON IT hereby reserves the right to disclose data of the Contractor provided to it in connection with the engagement to other E.ON Group companies for purposes of Group-wide procurement and to store the same under applicable retention policies or for possible further engagements, including following termination of any contract.

### **17 Written Form**

Unless expressly otherwise agreed above, the contract, any amendments thereto, as well as any contract-relevant declarations, notices and duties of documentation, must be made in writing.

### **18 Publication and advertisement**

Disclosure of the business relationship that exists with E.ON IT is only permitted with E.ON IT's prior written consent. This shall also apply with respect to the publication of data relating to this contractual relationship.

### **19 Jurisdiction and venue**

Jurisdiction and venue shall lie with the courts of Milan.

### **20 Language of contract and governing law**

- 20.1 The language of the contract is English.
- 20.2 Governing law is the law of Italy, excluding application of the UN Convention on Contracts for the International Sale of Goods of April 11, 1980. Customary commercial terms shall be interpreted in accordance with the Incoterms – ICC, Paris, as from time to time amended.