

## General Terms and Conditions (TERMS) for the Purchase of SWITCH Services

### 1 Purpose and Scope

These General Terms and Conditions include the General Legal Terms and Conditions for the Purchase of SWITCH Services by SWITCH's **Contractual Partners** as well as their **End Users**.

They do not apply for the registration and administration of domain names or for other services provided by SWITCH, which have their own general regulations.

### 2 Definitions

SWITCH's **Contractual Partners** are persons who are not SWITCH Community organisations in accordance with the definition below.

**SWITCH Community organisations** are teaching or research organisations that have a statutory basis or fulfil a public function, whereby SWITCH's foundation board decides conclusively on an affiliation.

**End Users** are persons who use a SWITCH service directly or indirectly via the Contractual Partners.

SWITCH and the Contractual Partners hereinafter are referred to in each case as **Party** or **Parties**.

### 3 Relevant Documents and Order of Precedence

The relevant contractual provisions on the use of a SWITCH service consist of the following documents as currently amended:

- These General Terms and Conditions;
- The currently applicable Service Agreement for SWITCH services; as well as
- The Service Specifications applicable to the corresponding service.

By using SWITCH services, the Contractual Partners acknowledge the currently relevant contractual provisions.

In the event of a contradiction between the relevant documents, the Service Specification takes precedence over the Service Agreement, which in turn takes precedence over these General Terms and Conditions.

## 4 Parties' General Obligations

### 4.1 Observance of the conditions of use by End Users and further Third Parties

The Contractual Partner is responsible for ensuring that it and its End Users as well as any third parties which use SWITCH's services without an own contract with SWITCH but use them with the Contractual Partner's approval (hereinafter "third party") use SWITCH's services in accordance with the relevant contractual provisions in accordance with item no. **Error! Reference source not found.** as well as the applicable statutory provisions. The permitted use of services in accordance with item no. 5.1 by End Users or further third party shall be attributed to the Contractual Partner.

For services that are made available directly to the End Users, SWITCH shall implement a solution in which the End Users consent to the essential provisions in advance.

The End Users shall have no own legal claim to the performance of the service against SWITCH.

### 4.2 Duties to cooperate

The Contractual Partner shall ensure that the necessary preconditions are met so that SWITCH can supply its services. This comprises among other things designation of contact persons, collaboration in the evaluation of faults, collaboration in the use and further development of existing services, particularly through notification of the operational requirements and the technical outline conditions, active comments on current matters, protocols, questions and work results. Where this is necessary for the purchase of the services, the cooperation also comprises the accommodation of SWITCH's computer systems.

The Contractual Partner shall take the necessary measures to ensure that the requirements under these general Terms and Conditions and the Service Specifications are met and prohibited use of SWITCH services is prevented. In particular, the Contractual Partner undertakes to commit its End Users with binding force to compliance with the provisions of these General Terms and Conditions and the SWITCH Service Specifications. The same applies for any further third parties, which use SWITCH's services without an own contract with SWITCH but with the Contractual Partner's approval.

The Contractual Partner and its End User are obliged to support SWITCH and the third party collaborating with SWITCH in the clarification of prohibited use and cases of damage and loss.

### 4.3 Assignment and set-off

One Party's assignment of claims to the other Party shall require the prior written consent of the Party concerned.

The set-off of receivables pursuant to article 120 Swiss Code of Obligations (OR) is not permitted unless otherwise provided in a prior written agreement of the Parties providing otherwise.

## 5 Use of SWITCH Services

### 5.1 Permitted and prohibited use

Use of a SWITCH service shall be in accordance with the currently relevant contractual documents (in accordance with item no. **Error! Reference source not found.**) and statutory requirements.

Use of a SWITCH service is not permitted, particularly if it

- a) Disrupts or damages other Contractual Partners or their End Users;
- b) Adversely affects the operation of SWITCH services and/or the functioning of partner networks;
- c) Bears no relationship to the Contractual Partner's area of activity; the Contractual Partner shall lay down provisions on the extent to which private and/or commercial use of its infrastructure as well as the SWITCH services by its End Users or a third party is allowed;
- d) Is intended for mailing of unsolicited advertising or other bulk mailings (spamming) or for use for preparing or carrying out illegal activities.

### 5.2 Measures in the case of prohibited use

In the event of prohibited use, SWITCH shall hold discussions with the Contractual Partner. In the selection of any measures consideration shall be given to the proportionality of any action to be taken.

In urgent cases of well-founded suspicion of prohibited use pursuant to item no. 5.1, SWITCH may immediately and without prior notification to the relevant Contractual Partner and/or its End User: delete data (e.g. pirated copies, messages with unlawful content), suspend the provision of the service in question to the relevant End User and/or Contractual Partner; as well as to stop access by the relevant Contractual Partner and/or connectivity to the relevant Contractual Partner.

The End User or the Contractual Partner are not entitled to any claims against SWITCH in such cases. SWITCH shall get into contact with the Contractual Partner without undue delay after deletion of data.

### 5.3 Liability in the case of prohibited use

The Contractual Partner may be found liable for all damage and losses that arise through the prohibited use of the SWITCH services by it and/or its End Users. The same applies also for damage and losses caused through further third parties pursuant to item no. 4.1 and 4.2 above. The End User is also liable directly to SWITCH within the scope of the provisions on the use of a service brought to its knowledge.

## 6 Data Protection

Each Party is responsible for compliance with the data protection rules applicable to them by itself.

## 6.1 General data protection declaration

SWITCH as a private law foundation in principle is subject to the provisions of the Swiss Federal Data Protection Act [*Bundesgesetz über den Datenschutz*] (DSG, SR 235.1). SWITCH undertakes to comply with the data protection principles applicable to it in the processing of the Contractual Partners' and their End User's personal data.

Where this is necessary for the provision of service to the Contractual Partners and End Users or for improving the service, particularly the security, data on the use of the services shall be collected and analysed by SWITCH. The analysis shall occur in relation to a person only if this is provided for in a contractual document in accordance with item no. 3 above or this concerns cases of abuse. Processing operations of personal data which extend beyond what is evident from the circumstances shall be shown separately in the Service Specification for the respective service.

Detailed information on the use of certain services by the Contractual Partners may be made available access-protected to the respective Contractual Partners' contact persons registered with SWITCH.

## 6.2 Outsourcing of the processing of personal data

Where SWITCH processes personal data on behalf of the Contractual Partner for which the Contractual Partner is legally responsible, data sovereignty and responsibility for compliance with data protection requirements shall lie with the Contractual Partner.

Where SWITCH is employed as contract data processor it is subject to all official, professional, business, manufacturing and banking secrecy obligations concerning the processed data; it shall oblige its own staff in writing to observe confidentiality requirements. In addition, the supervisory authority of any cantonal data protection officers or other supervisory authority may be extended to SWITCH as contract data processor.

Unless agreed otherwise in the individual Service Specification or other contractual documents in accordance with item no. **Error! Reference source not found.** above, concerning the outsourcing of the processing of personal data, the following principles shall apply:

SWITCH undertakes to:

- a) Process personal data only for the contractually agreed purposes and in accordance with the specifications in the service-specific contractual documents;
- b) Take appropriate technical and organisational measures in order to guarantee the integrity, availability and confidentiality of the information;
- c) Notify the Contractual Partner in a suitable manner about a third party involved in connection with the provision of the service and ensure that the applicable legal provisions regarding the transmission of the personal data to third-party recipients are complied with and particularly ensure compliance with any instructions of the Contractual Partner by the third-party service providers;
- d) Notify the Contractual Partner without delay of any data protection breach or suspected data protection breach;
- e) Support the Contractual Partner in the compliance and upon first request to this effect in the check of compliance with this section and applicable data protection laws by SWITCH or

have this checked by the Contractual Partner or a third party on behalf and by order of the Contractual Partner;

- f) Return or delete the personal data without retaining a copy, and confirm such a deletion, after the termination of the contract or after the Contractual Partner's request to that effect.

The Contractual Partner undertakes and guarantees that

- a) The data processing and the corresponding contracts to SWITCH as contract data processor are in conformity with the law; and
- b) The Contractual Partner has made resp. obtained all necessary reports and permits, notifications to and the consents of the persons concerned.

### **6.3 Right to information and other claims in particular**

The Contractual Partner as client shall reply to incoming information requests from persons concerned on the data processed regarding them in accordance with the applicable statutory provisions. For this purpose, SWITCH shall notify the Contractual Partner of information requests received in connection with their provision of the service or other claims. Unless agreed otherwise with the Contractual Partner, SWITCH shall not reply to any information requests of its own accord. The same shall apply for other claims of a legal nature that are brought to SWITCH'S attention by persons concerned in connection with the processing of their data.

Procedural coercive measures provided by law ordered by competent authorities remain reserved. In such cases, SWITCH shall inform the Contractual Partner as far as legally admissible about the order of such coercive measures.

### **6.4 Data security**

SWITCH shall undertake all reasonable measures to guarantee data security in accordance with the currently recognised state of the art at any time.

If the processing of personal data by a Contractual Partner is outsourced to SWITCH, the Contractual Partner has the right to have the corresponding operating processes explained to it.

## **7 Provision of Services and Termination of Contract**

The appointed date for the start of the service provision shall be agreed jointly in writing between the Parties or disclosed by SWITCH to the Contractual Partners in each case after receipt of the purchase order for the service concerned.

In the absence of written agreement between the parties otherwise:

- a) Services shall be provided to the Contractual Partner for an unlimited period.
- b) Services may be terminated in writing by the Parties by giving six months' notice to 30 June or 31 December in each case, unless provided otherwise by the respective Service Specification. Letter c) below is reserved.
- c) For the SWITCHlan service, a three-year notice of termination period to 31 December in each case shall apply.

In the case of serious defects in accordance with item no. **Error! Reference source not found.**, which are not rectified by SWITCH within a reasonable period after corresponding written request by the Contractual Partner, the Contractual Partner is authorised to suspend the purchase of the corresponding service by giving at least two months' notice of termination with effect to the next following end of quarter. In the event of serious breach of contract by the Contractual Partner that is not rectified within a reasonable period set by SWITCH, SWITCH shall be entitled to the same right of termination.

Termination notices must in principle be given in writing.

## 8 Fees, Billing and Terms of Payment

### 8.1. Fees for services

The fees for the SWITCH services are stipulated in the Service Agreement.

### 8.2. Billing at cost

If a service is billed on a time basis, the actual time spent plus expenses at SWITCH's currently applicable fee and expenses rates is billed.

The branch office shall stipulate the fee and expenses rates. Third party costs are passed on.

### 8.3. Billing

The services are billed quarterly in advance unless otherwise stipulated in the Service Agreement.

### 8.4. Payment terms

Unless agreed informally otherwise, SWITCH invoices are due 30 days from date of invoice. If payment is late the Contractual Partner is automatically in default. Correspondingly, SWITCH is authorised to invoice the statutory default interest of 5% from this time. The right to the other legal default rights is reserved.

## 9 Support

Service-specific support hours as well as contact details are recorded in the service-specific contract documentation. Where no higher availabilities are noted down, the support shall be available from 08.00 a.m. to 05.00 p.m. This does not include federal, cantonal and Zurich city public holidays as well as the dates from 24 December to 2 January inclusive.

Depending on urgency SWITCH may also take measures to maintain good service quality and at its own discretion also outside these periods.

## 10 Warranty

SWITCH shall provide the services with care and according to the state of the art, within the limits of its financial and human resources. However, the scope and the properties of the service provided shall be in accordance with the respective Service Specification. The same shall apply for the

Contractual Partner's resp. End User's specific obligations, such as for example the creation of back-ups.

Unless provided otherwise in the Service Specification, in the event of a verified defect, the Contractual Partner shall have the right to request its rectification within a reasonable period. If such a rectification of defects is not possible, the Contractual Partner shall be entitled to a right to reduce the purchase price after the expiry of the deadline for the rectification of defects.

The Parties in this case undertake to use their best effort to agree on a joint definition of the amount by which the compensation is to be reduced. The duration of the cancellation of the service, resp. the proportionate impairment of the use of the service which is attributable to the defect shall apply in each case in this regard. The claim for damages is excluded.

If SWITCH does not rectify a serious defect or it is not possible to rectify such a defect within the specified period, the Contractual Partner shall be entitled to an extraordinary right of termination in accordance with item no. **Error! Reference source not found..** A serious defect is considered to be a defect that completely eliminates the use of the service for the Contractual Partner.

This regulation shall take precedence over the general liability provision of item no. **Error! Reference source not found..**

## 11 Liability

The Parties are liable towards one another for damage and losses caused intentionally or with gross negligence through the provision of the services to the extent of the fee for SWITCH services for the calendar year of the occurrence of damage or loss owed by the Contractual Partner concerned. The liability for slight and moderate negligence, also concerning the activities of auxiliary persons, is excluded.

SWITCH is not liable towards the End Users.

## 12 Ownership

### 12.1 Intellectual property and licensing

The Contractual Partner shall acquire a non-exclusive, non-transferable and non-sublicensable right of use for itself and its End Users of the software made available by SWITCH in the Contractual Partner's sphere of activity and in accordance with the provisions of the Service Specification. Further or deviating regulations may result from the Service Specification as well as from applicable third party manufacturers' licence conditions.

Unless explicitly agreed between the Parties, no further intellectual property rights shall be transferred to the Contractual Partner. Joint work between the Contractual partner and SWITCH on SWITCH services shall be transferred into both Parties' intellectual property. Both Parties are entitled to the right to use, reproduce, modify, sell and distribute or further develop resp. pass on to a third party all or part of the work results in any manner for themselves or for a third party without the consent of the other Party.

In the case of custom work for the benefit of a Contractual Partner that is not integrated into a SWITCH service, the rights shall be transferred to the Contractual Partner after payment in full.

However, SWITCH is authorised to further develop the ideas, processes used for the development as well as the findings freely and without cost consequences. SWITCH shall receive a royalty-free licence for internal use of the custom work.

For third party manufacturers' products, their licence and other usage provisions shall apply first and foremost. SWITCH shall notify these in a suitable manner to the Contractual Partner as well as where applicable its End Users.

## **12.2 Ownership of computer systems and devices**

Any computer systems and devices made available to the Contractual Partners for the use of the services shall remain SWITCH's property and the Contractual Partners shall not obtain any rights to these beyond the scope of the agreed use. The Contractual Partners are not authorised to carry out alterations to these computer systems and devices without SWITCH'S consent; they are liable for damage and losses arising to these due to improper handling by their employees or third parties.

## **13 Miscellaneous**

### **13.1 Language versions**

These General Terms and Conditions exist in German, French and English versions. All three language versions are equally valid.

### **13.2 Statutory provisions**

For all facts and circumstances not regulated in these General Terms and Conditions the corresponding regulations, particularly of Swiss Code of Obligations (SCO), shall apply.

## **14 Entry into Force of the General terms and Conditions and Amendments**

These General Terms and Conditions enter into force on 1 March 2017. They replace SWITCH's General Terms and Conditions for Services Version 1.0 of 1 August 2009.

SWITCH may amend these General Terms and Conditions and the Service Specification at any time. The Contractual Partner will be notified of the amendment by suitable means. The respective Contractual Partner is responsible for the legally valid notification of amendments to the End User.

## **15 Applicable Law and Legal Venue**

These General Terms and Conditions are governed by Swiss law. The legal venue for all disputes arising in connection with these is Zurich.