

IT2018 EKT – SPECIAL TERMS AND CONDITIONS FOR DELIVERIES OF SOFTWARE USING AGILE METHODS

1 SCOPE OF APPLICATION

- 1.1 These special terms and conditions shall apply to the deliveries of software or parts thereof in projects using agile methodologies.
- 1.2 In addition to these special terms and conditions, the IT2018 YSE general terms and conditions shall apply. In case of discrepancy between these special terms and conditions and the IT2018 YSE general terms and conditions, these special terms and conditions shall take precedence.
- 1.3 These special terms shall not apply to maintenance, support or development work provided after acceptance of delivery, and the provision of such services shall be agreed on separately in writing, if necessary.

2 DEFINITIONS

- 2.1 **Backlog** means a prioritised list of functionalities or other features initially planned to be included in the release(s) that the parties may agree to remove, add or change during iteration.
- 2.2 **Delivery** means the tasks relating to the design, specification, implementation, testing and deployment of the releases or other tasks separately agreed in connection with a project as a result of which the agreed releases will be delivered.
- 2.3 **Error** means that a release or delivery does not correspond to what has been agreed by the parties or a situation in which a release is not compatible with one or several releases included in the same delivery.
- 2.4 **Iteration** means a part of the project with a limited duration, such as a phase in accordance with the agile method used in the project, in which functionalities or other features included in the backlog or otherwise agreed upon will be implemented. The iterations can be described in more detail also in the project plan.
- 2.5 **Project** means a project consisting of one or several iterations implemented using an agile method where the customer orders and the supplier delivers the delivery. The project can be described in more detail in the project plan.
- 2.6 **Project plan** means a plan, if any, created for the project by the parties that describes the project, releases, iterations, resources and schedule as well as the tasks of the parties relating to the delivery.
- 2.7 **Release** means software or part of software or other outcome created as a result of one or several iterations.
- 2.8 **Standard software** means software or software component marketed or licensed to several customers and the instructions or other documentation and potential media related to the standard software in question.
- 2.9 **Working method** means practices and procedures to be applied in the delivery of iterations as well as other methods used by the parties in the project.

3 GENERAL RESPONSIBILITIES OF THE SUPPLIER

- 3.1** The supplier undertakes that all tasks for which the supplier is responsible in accordance with the applied working method and otherwise within the scope of delivery will be performed in conformity with the agreement, with due care and with the professional skill required for the tasks.
- 3.2** The supplier undertakes to collaborate with the customer in such a way that the customer is able to carry out the tasks within the scope of the delivery for which the customer is responsible in conformity with the agreement.
- 3.3** The supplier is also responsible for ensuring that the delivery corresponds to what the parties have agreed upon.

4 GENERAL RESPONSIBILITIES OF THE CUSTOMER

- 4.1** The customer undertakes that all tasks for which the customer is responsible in accordance with the applied working method and otherwise within the scope of delivery will be performed in conformity with the agreement and with due care.
- 4.2** The customer shall, in the agreed manner, provide the supplier with sufficient and correct information in order to perform the work included in the delivery. The customer shall be responsible for the information and instructions provided to the supplier and for ensuring that the delivery is suitable for its intended use by the customer.
- 4.3** The customer undertakes to collaborate with the supplier in such a way that the supplier is able to carry out the tasks within the scope of the delivery for which the supplier is responsible in conformity with the agreement. Unless otherwise agreed in writing, the customer must prioritise the backlog.

5 PROJECT ORGANISATION AND IMPLEMENTATION

- 5.1** The parties shall set up a project and appoint a project group to organise the cooperation between the parties and to implement the agreement. Each party shall appoint their representatives to the project group. The project and the project group will be established in accordance with the agile method used by the parties.
- 5.2** Each party shall for its own part appoint necessary personnel resources for the project and reserve sufficient working time for them for the performance of the tasks. The parties shall define the roles of the personnel resources and agree on the personnel resource's authorisations relating to the tasks. The roles and authorisations of personnel resources are defined in accordance with the agile method used by the parties, unless otherwise agreed by the parties.
- 5.3** The parties may nominate key persons in the agreement. A party may not change the key persons possibly specified in the agreement without the consent of the other party. However, a party is entitled to change a key person named in the agreement if such change occurs due to the termination of that person's employment or to other compelling reasons beyond the party's control.
- 5.4** Each party shall ensure that its project personnel are sufficient for the project meetings and other tasks relating to the project and that such personnel have sufficient expertise, authorisations and knowledge for performing the tasks relating to project.
- 5.5** Each party shall contribute to the implementation of the project with respect to factors under the command or control of the party. Each party undertakes to take such decisions as are necessary for the implementation of the project without undue delay.

6 PROJECT MODEL AND ITERATIONS

- 6.1** The working methods, iterations, schedule and releases of the project will be specified in the agreement or, unless otherwise agreed by the parties, the working methods, iterations, schedule and releases can also be specified in more detail in project documentation during the delivery in accordance with the agile method used by the parties.
- 6.2** At the beginning of the project, the parties may (i) create a project plan that the parties will update to the extent necessary during the course of the project, and (ii) draw up a preliminary backlog. The parties acknowledge that the delivery and its content can be agreed upon one iteration at a time without being required to agree on the content of the entire delivery already at the beginning of the project.
- 6.3** In each iteration, one or several functionalities or other features included in the backlog will be specified and implemented and the release agreed to be implemented in such iteration will be delivered.
- 6.4** Each iteration will be carried out at the agreed location. The customer's project personnel must participate in daily or otherwise recurring project meetings with the supplier's personnel resources.
- 6.5** Unless otherwise agreed in writing, the project will be carried out and the tasks within the scope of the project will be performed in accordance with the agreed agile method by using the supplier's working methods.
- 6.6** The project ends when the parties have fulfilled their obligations agreed upon or when the project has otherwise been agreed to have been ended. Unless otherwise agreed in writing, the customer also has the right to terminate the project at any time with at least 14 days' prior written notice to the supplier. The customer shall pay the supplier for the work performed up until the date of termination of the agreement.

7 REPORTING, DOCUMENTATION AND DELIVERY

- 7.1** The supplier shall provide the customer with up-to-date information on the progress of the project and iterations as agreed. Unless otherwise agreed in writing, the supplier shall report on the progress of the project and iterations in accordance with the agile method used by the parties or at least once per week and at the end of each iteration.
- 7.2** The supplier shall also provide the customer with information on the time used by the supplier's personnel resources in accordance with section 7.1.
- 7.3** The customer shall without undue delay provide detailed observations on the supplier's written notice or report regarding the progress of the project or iteration.
- 7.4** The supplier must draw up and deliver the agreed project documentation to the customer for each iteration. The supplier must provide the customer with a machine readable version and a documented source code version of the software or any part of software included in the release as well as of interface descriptions, if such have been specified.

8 TESTING AND ACCEPTANCE OF DELIVERY

- 8.1** The supplier shall test the release before delivery thereof to the customer. If it has been agreed that a release will be created as a result of the iteration, the supplier shall provide the release to the customer at the end of such iteration or at another agreed date.

- 8.2** The customer shall without undue delay notify the supplier in writing of all defects and errors detected in a release and shall identify such defects and errors in sufficient detail. The release shall be deemed to be accepted unless the customer notifies the supplier of any defects or errors without undue delay.
- 8.3** A missing or erroneous functionality or other feature will either be returned to the backlog in order to be implemented later in an upcoming iteration or be agreed to be removed from the backlog and delivery.
- 8.4** Errors that do not substantially interfere with the use of the release shall not prevent the acceptance of the release. The supplier shall, however, correct such errors without undue delay.
- 8.5** The delivery in its entirety shall be deemed to be accepted, when the last agreed release has been delivered and (a) when the customer notifies the supplier of the acceptance of the delivery in writing; (b) when the supplier has demonstrated that it has corrected all errors reported by the customer in writing which prevented earlier acceptance; (c) if the customer has not presented a written complaint in accordance with section 8.2 regarding an error which prevents acceptance; or (d) if the customer takes the delivery into production use.

9 DELAY OF DELIVERY

- 9.1** Unless otherwise agreed in writing, a party is not entitled to liquidated damages if an individual release is delayed.
- 9.2** Either party shall be entitled to liquidated damages only if it has been agreed in writing that liquidated damages shall become payable in case the acceptance of the delivery is delayed and the acceptance of the delivery in accordance with section 8.5 is delayed from the acceptance date agreed in writing for a reason attributable to the other party. The liquidated damages shall amount to 0.5% for each beginning week of delay of the price, excluding value added tax, of that part of the delivery whose acceptance is delayed from the agreed time schedule. However, the maximum amount of liquidated damages is 7.5% of the price of such part of the delivery excluding value added tax.
- 9.3** If the delay is caused by a force majeure event, the delayed party shall be released from liability in accordance with IT2018 YSE general terms and conditions.
- 9.4** Section 13 of the IT2018 YSE general terms and conditions shall apply in other respects to liability for damages and limitation of liability.

10 RIGHTS TO RELEASES AND DELIVERY

- 10.1** Unless otherwise agreed in writing, the intellectual property rights to the delivery, releases and documentation and to modifications made by the supplier thereto shall belong to the supplier.
- 10.2** The customer and the companies belonging to the same group of companies with the customer from time to time, as set forth in the Accounting Act, shall have the right to use the delivery, releases and documentation in their operations or in any other operation agreed in writing. Within the scope of the licence, the customer has the free right to make copies and use the delivery, releases and documentation as the basis for subsequent work and the right to make changes thereto or to have such changes made by a third party. The customer may not sell or otherwise transfer the delivery, releases or documentation to any third party for any other than the aforementioned purpose.
- 10.3** The agreement shall not affect the rights related to such materials that the parties furnish to each other in order to complete the delivery.

11 WARRANTY

- 11.1** The supplier undertakes to correct at no cost and without undue delay all such errors in the delivery as are reported in writing by the customer to the supplier during the warranty period. The correction of an error may also be done by providing a workaround or by providing the customer with written instructions on how to bypass the error, if this can be done without causing additional costs or substantial inconvenience to the customer. The warranty period is 6 months from acceptance of the delivery as set out in section 8.5.
- 11.2** Any standard software included in the delivery is subject to the terms of warranty of the respective standard software.
- 11.3** The warranty shall be valid only if the delivery is used in the agreed technical operating environment.
- 11.4** The warranty does not cover the repair of an error caused by (a) use contrary to the agreement, (b) a non-supplier product, or (c) a change or correction made by the customer or a third party to the delivery that has not been approved by the supplier in writing.
- 11.5** If the parties conclude that the correction of the error reported by the customer is not covered by the warranty, the supplier shall be entitled to charge for diagnosis and location of the error in accordance with the agreed pricing principles.
- 11.6** The supplier shall also be entitled to charge the customer for such agreed corrections of errors that are not covered by the warranty.
- 11.7** The warranty shall expire if the customer makes changes to the delivery or has such changes made by a third party and such changes have not been approved by the supplier in writing.
- 11.8** The supplier's liability for errors in the delivery shall be limited to the fulfilment of the warranty obligations under this section 11. Following the expiration of the warranty period, the supplier's liability for errors in the delivery shall be limited to the obligations under the maintenance and support agreement, if any.

12 RECRUITMENT RESTRICTION

- 12.1** Neither party may engage a person who is or has been in the service of the other party and performs or has performed essential tasks relating to the project, or enter into any other agreement or otherwise agree on such arrangement whose purpose is to obtain the work contribution of the person in question, until 6 months have passed from acceptance of the delivery as set out in section 8.5.
- 12.2** In case of a breach of the recruitment restriction contained in section 12.1, the breaching party shall be liable to pay to the other party by way of liquidated damages an amount corresponding to 6 months' gross salary of the person in question.
- 12.3** The recruitment restriction shall not, however, apply if the employment of the person in question has been terminated for a reason attributable to the employer or if the recruitment occurs on the initiative of the person in question in response to a public job advertisement.