

# SICK General Terms and Conditions of Purchase for IT Services (AEB IT SICK)

(As of May 2023)

1. **Subject Matter and Scope**
  - 1.1. These General Terms and Conditions of Purchase for IT Services ("AEB IT SICK") apply to the provision of services in the area of information technology, such as the creation, configuration, customization, extension and editing of software and software systems (standard as well as individual software), including services related to IT infrastructure, as well as IT support services ("IT Services") contracted by (i) SICK AG, Erwin-Sick-Str. 1, 79183 Waldkirch, or (ii) a German affiliate of SICK AG as defined in sections 15 et seq. AktG [German Stock Corporations Law], (each referred to as "SICK").
  - 1.2. Individual agreements, orders, tender documents and the technical part of the contractor's quotation shall also apply and, insofar as such documents exist, shall be part of the contract.
  - 1.3. In the event of discrepancies, the aforementioned contract documents, where applicable, shall apply in the following order of precedence:
    - (1) individual agreements
    - (2) orders of SICK
    - (3) these AEB IT SICK
    - (4) tender documents of SICK
    - (5) the technical part of the contractor's quotation
  - 1.4. Deviating and supplementary General Terms and Conditions of the contractor shall only apply insofar as SICK has expressly agreed to them in writing. These AEB IT SICK shall also apply to all future business with the contractor.
2. **Type and Scope of IT Services**
  - 2.1. The IT Services that SICK may order under these AEB IT SICK can especially include works (*Werkleistungen i.S.d. § 631 BGB [German Civil Code]*) ("Works") as well as services (*Dienstleistungen*). Unless expressly stipulated otherwise in the contract, the German law on contracts to produce a work as set forth in section 631 et seq. of the German Civil Code (§§ 631 ff. BGB) shall apply.
  - 2.2. The scope shall be mutually agreed in the contract.
  - 2.3. Irrespective of section 2.2., the definition and drawing up of the scope may also be part of a (first) (project-) phase (e.g. based on a requirements specification). The contractor is obliged to define and draw up the scope in a manner ensuring that it is complete, meets the requirements of SICK, and enables a third party - upon appropriate familiarization, if necessary - to implement the services based on the scope set out in writing (e.g. target specification).
  - 2.4. SICK may request changes to the IT Services at any time. SICK shall only be obliged to pay any additional cost resulting from the implementation of such changes if the contractor has informed SICK of such additional cost in advance and SICK has approved such additional cost in writing.
  - 2.5. This also applies if the collaboration is implemented in an agile manner and the scope is continuously further specified, respectively further developed.
3. **Contact Persons, Reporting**
  - 3.1. Upon request of SICK, the contractor as well as SICK shall each appoint a contact person. The contact persons shall regularly discuss and coordinate the content and implementation of the IT Services and share all other necessary information. The contact person appointed by the contractor shall be ultimately responsible for planning, coordinating and monitoring the implementation of the IT Services.
  - 3.2. Upon request, SICK may interview the key employees of the contractor prior to their participation in order to verify their qualification ("Key Personnel").
  - 3.3. For quality assurance reasons and due to the sensitive nature of the cooperation, SICK attaches great importance to continuity during the fulfillment of a contract. Therefore, the contractor may only replace its contact person and/or its Key Personnel with the approval of SICK. SICK will give its approval if the replacement of the previous contact person and/or Key Personnel is necessary for mandatory organizational reasons and the contractor offers a qualified substitute. The contractor shall bear any additional expenses arising out of this replacement (e.g. training period).
  - 3.4. The contractor shall be obliged to regularly (at least monthly) provide written status reports.
4. **Acceptance**
  - 4.1. To the extent that Works are provided, written acceptance in accordance with this section 4 shall be required.
  - 4.2. The performance under the contract can be divided into individual (project) phases that must be completed by milestones. In such case, SICK shall determine if individual (project) phases / milestones are to be accepted separately ("Partial Acceptance"). Unless agreed otherwise, the provision of the ongoing IT Services may only be continued after Partial Acceptance of the previous milestone. Upon completion of all milestones, respectively all (project) phases, SICK will declare final acceptance in writing, provided that the performance corresponds to the contractual agreements ("Final Acceptance"). The risk shall pass to SICK only upon Final Acceptance. The contractor shall give written notification of readiness for Partial Acceptance as well as for Final Acceptance within reasonable time, but no later than 10 business days prior to the contractually agreed completion date. Partial Acceptance of all (project) phases / milestones shall not constitute Final Acceptance. Furthermore, productive use shall also not constitute Final Acceptance.
- 4.3. If the collaboration is implemented on an agile basis, the following regulations shall prevail:

The IT Services shall be always subject to a Final Acceptance. A confirmation of any partial performance, concepts, developments, specifications or milestones shall constitute neither Partial nor Final Acceptance. Such confirmation shall only indicate that the contractor may continue the provision of the IT Services within the agreed scope. In the Final Acceptance test, the contractor shall demonstrate that the entire IT Services meets all agreed requirements (e.g. in the product backlog (item), etc.) under conditions equivalent to productive operation. In particular, functions that can only be tested upon complete integration of the IT Services, as well as the functioning of the whole system shall be tested. Acceptance tests shall not constitute productive use of the IT Services; also, productive use shall not constitute Partial or Final Acceptance.
5. **Dates of Delivery, Delay**
  - 5.1. The agreed dates are binding and must be met by the contractor. If the contractor is unable to meet an agreed date, the contractor shall inform SICK thereof without delay, stating the reason for and the expected duration of the delay.
  - 5.2. In the event of a delay, SICK may claim a contractual penalty amounting to 0.2% of the total order value per business day but not exceeding a total of 5% of the total order value. The contractual penalty may be claimed by SICK until the due date of the final invoice. SICK shall also be entitled to all statutory rights and claims. The contractual penalty will be credited to claims for delay damages.
  - 5.3. Where the contractor provides Works, SICK may, at its discretion, also withdraw from the respective part of the contract or from the entire contract, if the contractor fails to meet a deadline for Partial Acceptance or Final Acceptance, or fails to achieve readiness for acceptance, despite a period of grace notified by SICK.
6. **Prices, Invoicing and Payment**
  - 6.1. The agreed prices and/or daily rates are fixed prices; they include all IT-Services, costs and expenses of the contractor, such as costs for material, travel and accommodation. If in one day, less than 8 hours of IT Services are provided, the agreed daily rate shall apply pro rata temporis. In case the IT Services are invoiced on a time and materials basis, 50% of the travel time for trips approved in advance shall be considered billable working time.
  - 6.2. Unless agreed otherwise, invoices are accepted in electronic form only. Please contact [pdf-invoices.org@sick.de](mailto:pdf-invoices.org@sick.de) to register for the PDF invoicing procedure.
  - 6.3. Invoices must meet the requirements of tax law and must include the relevant SICK order number. The invoice recipient must be the SICK company specified in the order. The contractor is responsible for all consequences resulting from non-compliance with these obligations.
  - 6.4. Proof of provision of the IT Services and other verification documents must be submitted with the invoice.
  - 6.5. Payment periods begin as of the receipt of a correct invoice; however, unless agreed otherwise, in the case of Works at the earliest upon Final Acceptance, and in the case of services after the provision of such services.
7. **Warranty**
  - 7.1. The contractor shall provide the IT Services in the highest quality and in compliance with the current state of the art in science and technology, including current programming standards as well as specific SICK requirements (e.g. SICK programming manual).
  - 7.2. Where Works are provided, the warranty period shall be two years as of Final Acceptance by SICK. If the contractor does not remedy the defects notified by SICK within a reasonable period set by SICK, SICK may, at the contractor's risk and expense, rectify the defects itself or have it rectified by third parties. In cases in which immediate rectification is reasonably necessary (e.g. due to particular urgency, danger to operational safety or of imminent occurrence of disproportionate damages), no prior notice shall be required. In such cases, the contractor should be informed in advance if possible.
  - 7.3. If the provision of services has been agreed upon in the contract, and such services have not been provided properly in compliance with section 7.1, the contractor shall remedy the services free of charge within a reasonable time period set by SICK. The warranty period for services shall be 12 months as of service performance.
  - 7.4. The contractor also warrants that no intellectual property rights or copyrights of third parties are infringed in connection with its IT-Services and the work results. If the contractor has, or gains, knowledge of any such rights, the contractor shall immediately inform SICK thereof in writing. If a claim is brought against SICK by a third party based on an (alleged) infringement of intellectual property rights or copyrights, the contractor shall, at SICK's sole discretion, either obtain an according license for SICK or modify the performance free of charge for SICK (in compliance with the contractual agreements) in a way that the third-party rights are no longer infringed. Upon first request, the contractor shall indemnify and hold SICK harmless from all claims and costs (including lawyer's fees) arising out of an infringement of third-party rights attributable to the contractor.
  - 7.5. In all other respects, the statutory provisions shall apply.

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## 8. Intellectual Property Rights

- 8.1. The contractor is and remains the owner of its intellectual property rights, copyrights and know-how existing at the time of conclusion of the contract (hereinafter referred to as "Background IP"). The contractor shall inform SICK, unrequested, about the existence of such Background IP insofar as it can be used for the performance and results. Furthermore, the contractor shall, unrequested, inform SICK about the intellectual property rights of third parties, their owners and/or applicants if and insofar as such intellectual property rights must be utilized for the IT Services and results. The contractor shall inform SICK to what extent third parties are entitled to use the Background IP and to what extent the contractor is limited in its use.
- 8.2. Insofar as Background IP or similar rights of the contractor are required to use and exploit the IT Services and the results, the contractor shall grant to SICK the non-exclusive, irrevocable, transferrable, sublicensable license, unlimited in time, place and content, to use and exploit such Background IP or similar rights in all manners of use free of charge and as desired, in particular, to reproduce, distribute, exhibit, modify and process them.
- 8.3. To the extent that the contractor provides software under the contract that is or was not developed specifically for SICK ("Standard Software"), the following regulations shall prevail: The contractor grants to SICK the non-exclusive, irrevocable, transferrable, sublicensable license, unlimited in place and content, to use the Standard Software for the intended purpose. Unless the Standard Software is explicitly provided for a limited time period, the license shall be granted permanently.
- 8.4. All rights, title and interest in and to the IT Services and the results (in particular all inventions, software (source code and object code), application and programming documentation, samples, designs, ideas, user and interface documentation, tapes, lists, etc.) partially or fully achieved by the contractor under the contract shall vest in, respectively shall be assigned to SICK as soon as they come into existence. To the extent the IT Services and the results are eligible for protection by intellectual property rights, SICK is entitled to apply for such intellectual property rights in its own name nationally and internationally, and to pursue or to drop them at any time. For this purpose, the contractor shall provide SICK with all necessary information and refrain from any actions that could be detrimental to the granting of the said intellectual property rights. In the event that the contractor challenges one or several intellectual property rights to the IT Services and results, SICK shall be entitled to terminate the contract with immediate effect. The contractor shall inform SICK about any inventions eligible for protection by intellectual property rights which are achieved by its employees or subcontractors under the contract. Upon request of SICK, the contractor shall, declare to the inventor his claim to such inventions without restrictions and shall, upon request of SICK, immediately assign the rights to such inventions to SICK.
- 8.5. At the latest with completion of the IT Services, the contractor shall provide to SICK a complete set of the documentation specified in section 8.4, including the source code and the corresponding documentation for the use. Notwithstanding the foregoing, the contractor undertakes to provide SICK at any time upon request and without undue delay with the latest version of the source code including the aforementioned documentation.
- 8.6. Insofar as the IT Services and the results are protected by copyrights of the contractor, the contractor shall grant to SICK the exclusive, irrevocable, transferrable and sublicensable license, unlimited in time, place and content, to use and exploit the IT Services and the results free of charge in all manners of use, in particular to reproduce, distribute, exhibit and to modify and process them.
- 8.7. SICK grants to the contractor, against payment of a market-based license fee which will be determined by SICK upon the contractor's request, a non-exclusive, non-transferrable, non-sub-licensable, non-commercial license to the IT Services and results, solely for research and development purposes. Any use of the IT Services and results exceeding the scope of the license pursuant to this section 8.7, shall be subject to the payment of an additional market-based license fee, which will be determined by SICK upon the contractor's request.
- 8.8. SICK reserves all rights, in particular the ownership and copyright as well as the right to apply for industrial property rights, to drawings, calculations, algorithms, technical requirements specifications, data, images, user and interface documentation, tapes, lists, samples and other documentation made available by SICK to the contractor. Such documentation and information constitute Confidential Information of SICK as defined in section 19 and may be used solely within the scope of the contract for the provision of the IT Services.
- 8.9. SICK shall not owe any reimbursement of costs or any additional remuneration for the granting and/or the assignment of the rights in accordance with this section 8.

## 9. Insurance

At the latest at conclusion of the contract, the contractor undertakes to maintain a business liability insurance with adequate coverage. The coverage shall be no less than EUR 5 million as lump sum per year and occurrence. Upon request of SICK, and immediately upon any change in the insurance status, the contractor shall provide appropriate written proof thereof.

## 10. Supplier Code, Sustainability

- 10.1. The contractor undertakes to adhere to the principles laid down in the SICK's Supplier Code (available at [www.sick.com/de/en/procurement/w/procurement/](https://www.sick.com/de/en/procurement/w/procurement/)). The contractor shall obligate its subcontractors accordingly.
- 10.2. The contractor further undertakes to provide SICK with data for determining resource efficiency or drawing up an ecological balance sheet (e.g. CO2 emissions, total water consumption, etc.), to the extent that such data are collected on a statutory basis or are available to the contractor without any significant additional effort.

## 11. Termination

- 11.1. SICK may terminate the contract at any time by giving two weeks' notice. In such event, the contractor is entitled to remuneration for the IT Services actually rendered until the termination date. The application of section 648 BGB is excluded.
- 11.2. The right of both parties to terminate the contract for good cause remains unaffected.
- 11.3. In the event of contract termination or expiry, the rights to the IT Services and results shall pass to SICK or must be transferred to SICK in accordance with section 8. This does not apply to the extent a termination for good cause is attributable to SICK.

## 12. Minimum Wage

The contractor warrants that all its employees are paid in accordance with the requirements of the applicable minimum wage laws, collective bargaining agreements and company agreements with employee representatives.

Where the contractor uses sub-contractors to provide Works or services, the contractor shall ensure that the sub-contractors' employees are also paid in accordance with the requirements of the applicable minimum wage laws and other legal regulations and collective bargaining agreements, for which SICK could be held liable. Where the German MiLoG [Minimum Wage Law] applies, the contractor shall indemnify SICK from any claims, in particular such under § 13 MiLoG and § 14 Arbeitnehmer-Entsendegesetz [German Law on Mandatory Working Conditions for Workers Posted Across Borders and for Workers Regularly Employed in Germany], that might arise from an infringement of the MiLoG or of the legal regulations and collective bargaining agreements referring thereto by (a) the contractor and/or (b) a sub-contractor contracted by the contractor for the performance of its contractual obligations. Where other minimum wage provisions apply to the contractor or its sub-contractors, the contractor shall indemnify SICK from any claims filed against SICK due to the infringement of such provisions.

The contractor furthermore undertakes to provide SICK, at any time upon request, with information concerning the fulfillment of the obligations under the applicable minimum wage laws, collective bargaining agreements or company agreements with employee representatives, and with the documentation necessary for the verification.

## 13. Subcontractors

The contractor shall not be entitled to subcontract its contractual obligations or parts thereof to third parties without the prior written permission of SICK. In such case, the contractor undertakes to impose any and all obligations arising out of the contract on any such third party in writing and to submit proof thereof upon request of SICK. Especially the provisions set out in section 8 to 19 must be fully complied with.

## 14. Data Protection

- 14.1. SICK and the contractor shall comply with the respective applicable data protection laws.
- 14.2. If the contractor processes, as a processor, personal data for SICK, the parties shall sign a data processing agreement in accordance with Art. 28 of General Data Protection Regulation (EU 2016/679) based on the template of SICK. The contractor shall notify SICK in written form without delay of such a requirement.

## 15. Open Source Software

- 15.1. "Open Source Software" means any software that is made available to an indefinite number of users, royalty-free, with the right to adaptation and/or distribution based on specific licenses or contractual provisions (e.g. Apache License, GNU General Public License (GPL), Mozilla Public License, MIT License).
- 15.2. The contractor guarantees that the IT Services and results do not contain Open Source Software, unless explicitly approved in advance by SICK in writing. The approval is at the sole discretion of SICK. However, the prerequisite is always that contractor shall provide to SICK all information relevant for the use of Open-Source Software (e.g., source code, license text, version number, any copyleft terms, documentation on modifications, list of open-source files used).

## 16. Cyber Security, Information Security

The contractor shall comply with the SICK Cyber Security Requirements for Suppliers (available at <https://www.sick.com/de/en/procurement/w/procurement/>) to the extent that they apply to the IT Services. The contractor shall also comply with the SICK Information Security Requirements for Suppliers (also available at <https://www.sick.com/de/en/procurement/w/procurement/>).

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## 17. Export Compliance

- 17.1. The contractor undertakes to make available items (goods, software, and technology including services) only in accordance with the applicable customs and foreign trade law. The contractor is obliged to make available to SICK all the information SICK needs for export, import and re-export and all relevant amendments to such information no later than upon delivery or performance and, in any case, on the invoice.
- 17.2. In particular, the contractor shall provide the following information on every line item:
- all applicable export control classifications (provide the respective item classification number or mark the item as not listed) including those under the German foreign trade law, EU Dual-Use Regulation, US Export Administration Regulations (EAR) or the International Traffic of Arms Regulations (ITAR), and the US content contained therein
  - commodity code (HS code)
  - origin of the items (non-preferential origin) and, upon SICK's request, supplier declarations of preferential origin (for European suppliers) or certificates of preferential origin (for non-European suppliers)
- 17.3. Where items are included in an items list, the contractor shall additionally send the export control classifications with the SICK reference number (e.g. item number, order number) to [exportcontrol-data@sick.de](mailto:exportcontrol-data@sick.de) no later than 15 business days prior to the first delivery or performance.

## 18. Assignment of Rights

The contract or individual rights and/or duties resulting therefrom may not be transferred, in whole or in part, to any third party without express written approval of SICK.

## 19. Confidentiality

- 19.1. All business information or technical information of SICK, in particular know-how, samples, designs, ideas, programs, user or interface documentation, tapes, lists, algorithms, software or test results (hereinafter collectively referred to as "Confidential Information"), provided that they are verifiably not publicly known, shall not be disclosed to any third parties and may only be made available to such employees of the contractor who need to be necessarily involved in the fulfilment of the contract objective and have been obliged to confidentiality under terms no less restrictive than those of this contract. Upon request, all Confidential Information (including, if any, all existing copies or records thereof) must be returned without delay or destroyed, and all use must be discontinued.
- 19.2. The contractor shall not use or disclose Confidential Information or trade secrets within the meaning of Directive (EU) 2016/943 resulting from the observation, study, disassembling, decompiling, reproducing, reengineering and/or reverse engineering or testing of any publicly or non-publicly available product or item of SICK obtained in connection with the contract or otherwise.

## 20. Miscellaneous

- 20.1. If a provision of these AEB IT SICK or other agreements based on these AEB IT SICK are or become ineffective or unenforceable, the validity of the remaining provisions of these AEB IT SICK shall remain unaffected. The parties are obliged to replace the ineffective or unenforceable provision by a valid provision that comes closest to the economic effect.
- 20.2. This contract shall not constitute create a civil law partnership (*Außengesellschaft bürgerlichen Rechts*). The Parties do not jointly participate in legal relations (externally) and do not establish any joint rights and obligation towards third parties.
- 20.3. Place of performance shall be the place of performance specified in the order or otherwise SICK's place of business.
- 20.4. Exclusive place of jurisdiction for all disputes arising directly or indirectly out of this contractual relationship shall be SICK's place of business. SICK is also entitled to bring legal action against the contractor at a court located at the contractor's place of business or branch, or at a court at the place of performance.
- The contractual relationship is governed exclusively by the laws of the Federal Republic of Germany. The application of the UN Convention on the International Sale of Goods (CISG) is excluded.

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