

SIMAC NV General terms and conditions of service

1. General terms and conditions of service: scope

1.1 The SIMAC NV General terms and conditions of service shall apply in addition to the SIMAC NV General terms and conditions of sale, if the supplier provides services in the area of ICT, telecommunications and office equipment maintenance (hereinafter the 'equipment').

1.2 The stipulations in the current General terms and conditions of service shall be an integral part of and constitute an addition to the stipulations in the SIMAC NV General terms and conditions of sale and any Special terms and conditions of sale agreed between the client and the supplier. The Special terms and conditions of sale shall prevail in the event that the General terms and conditions of sale or the General terms and conditions of service conflict or are irreconcilable with any stipulation agreed between the supplier and the client.

2. Services

2.1 The supplier shall provide maintenance services for the equipment listed in the agreement. The supplier's maintenance services shall not affect the client's responsibility for the management of said equipment, including checking the settings, its use and the way it is used. The client shall also be responsible for any user instructions and actual use, irrespective of whether he has any authority over the users in question.

2.2 The supplier shall not accept any maintenance obligations for equipment not located in Belgium, unless agreed otherwise in writing.

2.3 The client shall not be entitled to replacement equipment for the time that the supplier is performing maintenance on the equipment.

3. Execution of services

3.1 The supplier shall provide the services to the best of his ability, if needed in accordance with any obligations and procedures established in writing in consultation with the client. The supplier shall carry out his maintenance services to his best efforts, unless and insofar as the written agreement explicitly allots the supplier with a sufficiently described result.

3.2 The content and scope of the maintenance services to be provided by the supplier and any associated service levels shall be set out in a written agreement between the parties. Should any such written agreement be lacking, the supplier will be obliged to resolve any malfunctions, reported in good order to the supplier by the client, within a reasonable period of time and to the best of his ability. 'Malfunction' shall be understood as the non-fulfilment (without interruption) of the equipment's specifications, explicitly provided by the supplier in writing. A malfunction shall exist only if the client is able to demonstrate the same and if said malfunctions can be reproduced.

3.3 The client shall, immediately upon the occurrence of any malfunction concerning the equipment, inform the supplier thereof by submitting a detailed description of said malfunction, drafted by an employee of the client with the necessary expertise.

3.4 The client shall lend the supplier all requested co-operation for the maintenance services, including any temporary interruption in the use of the equipment. The client shall be obliged to grant the staff of the supplier or any third parties designated by the same access to the location where the equipment is installed, lend said persons all the necessary co-operation and put the equipment to the

supplier's disposal for his maintenance services. The supplier may suspend or limit any maintenance work if said requested co-operation is lacking. If the supplier provides any maintenance services based on any information to be delivered by the client, the latter shall prepare said data in accordance with the supplier's conditions and deliver the same on his own account and at his own risk.

3.5 Before offering the equipment to the supplier for maintenance, the client shall take care that a complete and properly functioning reserve copy has been made of all software and data in or on the equipment. Any and all liability of the supplier for corruption and loss of data or software due to maintenance work or caused by the supplier's failure to recommend that the client make a reserve copy of said data or software shall therefore be excluded.

3.6 A qualified employee of the client shall be present for consultation when maintenance work is carried out upon request of the supplier. The client shall have the right to be present at all work executed for his benefit.

3.7 The client shall be authorised to connect any equipment and systems not provided by the supplier to any equipment provided by the supplier and install any software thereon, not provided by the supplier. All costs for examining and resolving any malfunctions resulting from connecting up such equipment not provided by the supplier or from installing any software, equally not provided by the supplier, shall be for the client's account.

3.8 If, in the supplier's judgement, the maintenance of the equipment requires that the connections of the equipment are tested with different equipment or software, the client shall put such different equipment and software as well as any testing procedures and data carriers to the supplier's disposal. The client shall be responsible for ensuring that he has the right to put said equipment, software, testing procedures and data carriers to the supplier's disposal and shall hold the supplier harmless for any claims from third parties resulting from said provision and the use the supplier makes of said equipment and/or software within the framework of his maintenance services.

3.9 The client shall equally put any testing material needed for maintenance purposes but not belonging to the supplier's usual set of tools to the latter's disposal.

3.10 The client shall be responsible for the technical and telecommunications facilities and rooms that are necessary for the equipment to work. It is hereby explicitly agreed that the maintenance services shall not include said facilities, connections and rooms.

3.11 If the supplier's services based on the agreement also comprise so-called stand-by services, the supplier shall keep one or more members of his staff available on the days and at the times specified in the agreement. In said case, the client shall have the right to call on the support of said available employees in the event of urgency or emergency, i.e. if a severe malfunction occurs in relation to the equipment. The supplier shall, however, not be responsible for all interruptions being resolved in said case.

3.12 In the event that the set-up of configurations in relation to any maintenance agreement due to come into effect is unknown, said agreement may only take effect after technical verification, if possible conducted remotely. The price of such technical verification shall not belong to the standard services covered by the maintenance

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agreement and shall be invoiced to the client in accordance with the applicable tariffs.

3.13 Products may be added to or removed from the agreement upon the client's request.

Any addition shall require approval by the supplier, who may request that the concerned product is made ready for operation before it may be added to the agreement.

The client shall only have the right to remove products, on condition that said products are not part of any configuration, considered as one whole. Removing any product shall be done by terminating the maintenance agreement for said product in writing with ninety days' notice. The removal of products shall not give rise to any right to credit on the account for the remaining contractual period.

Any applicable prices shall be established in mutual consultation before adding any products to the agreement.

The supplier shall reserve the right to remove any products from an agreement when there are no longer any spare parts available for them and/or when their manufacturer does not longer carry out any repairs.

3.14 The supplier shall be informed without delay in writing if the client moves one or more products to a different location than the one indicated when the maintenance agreement for said products was concluded.

If the products are moved to a location inside Belgium, the maintenance agreement shall remain in full effect, provided that the supplier has the right to adjust his response times and maintenance prices.

If, however, the products are moved to a location outside Belgium, the supplier shall have the choice, either to continue the maintenance agreement under adjusted terms and conditions or to terminate said agreement.

In the event that the supplier assists in the move and re-installation of said products upon request and for the account of the client, the supplier shall not accept any liability whatsoever for any damage or the fact that said products no longer function properly, unless the entire testing process, from disconnection and disassembly to putting into service again, is carried out by his own employees.

4. Service Level Agreement

4.1 Any agreements concerning service levels (hereinafter 'Service Level Agreement' or 'SLA') shall always and only be explicitly entered into in writing. When making such an agreement, the client shall always inform the supplier of any circumstances that could affect the provision of services and availability thereof. Should any agreement concerning service levels be made, then any availability shall be measured under exclusion of any previously announced periods of disconnection due to maintenance as well as any circumstances outside the supplier's control, though taking into account the service as a whole for the duration of the agreement. The availability measured by the supplier shall apply as evidence, under reservation of any evidence to the contrary.

4.2 The supplier shall not be liable, operationally or financially, for problems, malfunctions, damage or consequential damage caused by any third-party equipment, services or data and/or telephone lines that are part of the ICT infrastructure, wholly or partially given to the supplier in maintenance. The SLA service requirements, such as response times, call-to-fix times or uptime guarantees, etc. may not be called on in the current cases.

In the event that the supplier maintains any service or product for the benefit of the client, who obtains or has obtained said service or product from a third party, the supplier's liability vis-à-vis the client shall never exceed the liabilities that may be recovered from said third party. Said limitation shall not apply to any damage or that part of the total damage, as the case applies, which was directly caused by the supplier's negligence or action. Should such damage occur, the supplier shall apply all his efforts to limit said damage as much as possible and to recover the same from said third party for the benefit of the client.

5. Duration

5.1 The agreement shall be entered into for any duration agreed between the parties. In the absence of any duration specifically agreed between the parties, the duration of the agreement shall be three years. The term of the agreement shall be automatically renewed for the duration of the initial term, unless the client or supplier terminate the agreement in writing with three months' notice before the end of the term in course.

5.2 The commencement date shall determine when the maintenance agreement shall take effect for the equipment delivered.

Unless expressly agreed otherwise, the commencement date shall be the one whereon the configuration is ready for the material to be put into operation, irrespective of whether the client actually does so and/or still needs to conduct any (data) migration. If no installation services are necessary, the commencement date shall be the one whereon the materials are delivered to the client.

6. Maintenance fees and payment

6.1 Unless agreed otherwise, the maintenance fee shall not include:

- any costs for (the replacement of) consumables, such as batteries, stamps, ink (cartridges), toner products, cables and accessories;
- any costs for (the replacement of) spare parts and maintenance services for resolving malfunctions caused wholly or partially by repair attempts by other parties than the supplier;
- any work pertaining to the complete or partial inspection of equipment;
- any modifications to the equipment;
- moving and re-installing equipment or any work as a result thereof.

6.2 If any agreed invoicing schedule is lacking, any and all fees in relation to equipment maintenance shall be owed each calendar month in advance.

6.3 Unless agreed otherwise, any and all fees for maintenance shall be owed from the commencement of the maintenance agreement.

Any maintenance fees shall be owed, irrespective of whether the client is using the equipment, has put the same into use or makes use of the possibility for maintenance.

6.4 Indexation

The supplier shall adjust the prices as follows at the start of each calendar year:

$$E = \frac{E_o(x)(0.80 S + 0.20)}{S_o}$$

E = Adjusted monthly fee
E_o = Base monthly fee

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S = Agoria Country Average - reference fees EUR/h
+10 employees in effect in the last month of the
trimester

So = Agoria Country Average - reference fees EUR/h
+10 employees applicable on the commencement date
of the agreement.

7. Exclusions

7.1 Shall not belong to the supplier's obligations based on the maintenance agreement: any work done to examine or repair malfunctions resulting from or connected to any incorrect or improper use of equipment; outside causes, such as defects in communication lines, network connections or electric supplies; or connections to equipment, software or materials not covered by the maintenance agreement.

7.2 The supplier's maintenance obligations shall not comprise either: any work done to examine or repair malfunctions resulting from or connected to changes to the equipment, not made by or on behalf of the supplier; the use of the equipment contrary to the applicable conditions; and the failure of the client to carry out timely maintenance on any equipment.

7.3 Unless agreed otherwise, the supplier's maintenance obligations shall not comprise either: any work done to examine or repair malfunctions resulting from or connected to software installed on the equipment.

7.4 Should the supplier nonetheless conduct any investigation and/or maintenance work in relation to the stipulations in sections 7.1, 7.2 and 7.3 above, the supplier shall be entitled to invoice the costs pertaining to said work in accordance with his usual tariffs. The aforementioned shall not affect any fees which the client already owes for maintenance services.

7.5 The supplier shall never be obliged to carry out any repairs that are the result of malfunctions and/or maintenance, corrupted or lost data.

8. Miscellaneous

8.1 The supplier shall not be responsible for the fact that any equipment he is to maintain will function without interruption, without any other defects or that all defects are rectified.

8.2 The client shall bear all risks concerning loss or theft of or damage to the equipment for the time that the supplier has the same under his care for maintenance purposes. It shall be the client's responsibility to insure himself against said risk.