**SPECIAL TERMS AND CONDITIONS FOR THE PROCUREMENT OF SOFTWARE DEVELOPMENT SERVICES OF MAKEDONSKI TELEKOM AD - SKOPJE**

1. **Area of Application**
2. These Special Terms and Conditions shall apply to the procurement of software development services (programs and systems), including also other related services, such as training, customer support and additional software support services by Makedonski Telekom AD - Skopje (hereinafter referred to as: **MKT or the Purchaser**).
3. The application of the Special Terms and Conditions herein shall be defined in the specific Purchase Order.
4. The Purchase Order shall obligatorily specify the application of these Special Procurement Terms and Conditions, and in such case the General Terms and Conditions shall be applicable only to the part which has not been regulated under the Special Terms and Conditions herein.
5. The acceptance of the Purchase Order by the Vendor shall denote full acceptance of the Special Terms and Conditions herein, the General Procurement Terms and Conditions in the section which is not regulated under these Special Terms and Conditions, as well as the orders and the data in the Purchase Order itself.
6. Any difference or amendment of the Special Terms and Conditions herein submitted by the Vendor shall be inapplicable unless such deviations have been agreed and accepted by the Purchaser and the Vendor.

1. **Integral parts of the Special Terms and Conditions**
2. The following documents as per the order and the priority of importance shall be defined as follows:

* The Purchase Order:
* The offer including the Specification and all agreed technical documents;
* These Special Terms and Conditions for the Procurement of Software Development Services;
* General Procurement Terms and Conditions
1. **Quality management, environmental protection**
2. The Vendor shall be obliged to adhere to the Purchaser's requirements for quality management and environmental and nature protection and promotion.

The Vendor, upon the performance of the scope of the procurement, shall be obliged to apply a system for quality management and environmental and nature protection and promotion in accordance with all applicable legal regulations in the Republic of Macedonia and the international standards pertaining to environmental protection.

1. The Vendor shall be obliged, if imposed by the legal regulations for environmental protection, to recover, free of charge, the packaging material and to collect and destroy it properly.
2. Upon the request of the Purchaser, it shall be obliged to provide a proof that such destruction is in compliance with the legal regulations in the sphere of environmental protection.

If the Vendor fails to comply with the foregoing obligation, the Purchaser shall be entitled to have the collection and the destruction of the packaging material effected at the expense of the Vendor.

1. **Obligations of the Purchaser and the Vendor**
2. The Purchaser shall be obliged to precisely define in the Contract the subject of the service requested by the Vendor;
3. The Vendor shall be obliged, upon the Request of the Purchaser, to timely perform the services that constitute the subject of the purchase order;
4. The Vendor shall be obliged to provide proof that the software is with the prescribed quality and in compliance with the technical requirements and standards pertaining to this type of software and that it is in a functional condition;
5. The Vendor shall issue a confirmation regarding the functionality of the programmes and the systems subject of the purchase order;
6. The Vendor shall be obliged to inform the Purchaser of any changes in the sphere of science and technology as regards any new products introduced on the market that could have an impact of the implementation of the subject of the Contract;
7. If the Vendor recognizes that any performance requirement cannot be met (e.g. defective, incomplete, unclear, impracticable), or that due to the progress of works an adjustment of the specifications or of the periods for performance has become necessary, the Vendor shall notify the Purchaser without any delay in writing about the above, indicating the reasons and any recognizable consequences;
8. The Vendor shall not be entitled to any claim to an extension of the stipulated period for performance, unless otherwise agreed;

1. The Vendor shall present detailed written documentation on the results of the work thereof;
2. The Vendor shall be obliged, upon the request of the Purchaser, to submit all information related to the subject of the purchase, as well as alternative solutions along side an assessment thereof, which shall be relevant for the undertaking and planning of the next steps in the performance;

1. After the submission of the documentation, the Vendor shall be obliged to analyze it into details together with the Purchaser;
2. The Vendor shall be obligated to inform the Purchaser about the state of the works and about any intermediate results;
3. The Vendor shall be obliged, upon the request of the Purchaser to enable insight in the respective operational documentation and, if applicable, to demand copies thereof;
4. The Vendor and the Purchaser shall appoint contact persons for professional and commercial purposes, via which the entire communication pertaining to the performance of the subject of the Contract shall be effected.
5. If any employee of the Vendor, to whom the task of the performance of the subject of the Contract has been assigned, needs to be replaced by another employee, the additional costs associated with such replacement (e.g. vocational adjustment) shall be borne by the Vendor.
6. The Purchaser may request an urgent replacement of any employee of the Vendor if such employee has violated any of the contractual obligations.
7. Any costs incurred through such replacement shall be borne by the Vendor.
8. To the extent to which the performance of the duties requires the provision of resources by the Purchaser, the type, the quantity and the time of the provision of such resources shall be stipulated in the project specification.
9. **Request for changes in the service performance**
10. During the term of the Contract, the Purchaser may request in writing a change in the subject of the Contract, i.e. in the ordered service.

If within 21 calendar days as of the receipt of any such request for change (in the event of projects the duration of which is less than 3 months, such deadline shall be 10 days) the Vendor does not reject any such change as unreasonable or objectively unfeasible, it shall become a part of the Contract.

1. In the event when the Vendor establishes that the changes in the performance of the services requested by the Purchaser may be implemented, it shall be obliged to present to the Purchaser a test offer (Proof of Concept).

Such test offer is to comprise at least the following information:

a) duration of the test;

b) a detailed list of the costs of the test;

c) impact on the existing Contract.

If the Purchaser consents to such offer, it shall be obliged to notify the Vendor thereof in writing.

1. If the request of the Purchaser for a modification in the performance of the services has an impact on the scope of the purchase order in such a manner that it imposes a significant change thereof, the Vendor shall be obliged to notify the Purchaser in a written form as regards the conditions that are to be modified and the consequences that would be given rise as a result of the modifications.

In other cases, the required modifications shall be implemented within the framework of the existing Contract.

1. The Vendor shall be obliged to adjust the scope of the purchase order in line with the new requirements for modifications in the performance of the services set by the Purchaser.

If the said adjustment fails to come into existence within 21 days as of the receipt of the request or within a different period of time stipulated between the Purchaser and the Vendor, then the service shall be continued on the basis of the existing Contract, unless such Contract is terminated by the Purchaser.

1. The Purchaser may request in writing for any work affected by the change of performance of the services to be suspended until the adjustment of the Contract is implemented.
2. If the performance of the services is not suspended by the Purchaser and if the Vendor realizes that the work to be performed between the receipt of the request for change and the adjustment of the Contract is not usable, provided that the change is implemented, it shall notify the Purchaser thereof without any delay in writing.
3. If the Purchaser has caused the suspension of the performance of the work in writing, the period for performance shall be extended by the number of calendar days on which the performance of the services was suspended due to the request for change.
4. **Right of use**
5. After the implementation of the services, the Purchaser shall become the owner of the software, as well as of the source code thereof, in terms of which the Vendor shall be obliged to submit the code alongside the technical documentation.
6. Unless otherwise agreed, the Purchaser shall acquire an exclusive, irrevocable, and - in terms of time and geographical scope - unlimited, gratuitous and transferable right to use the services performed within the framework of the Contract in any possible method of exploitation.
7. The Purchaser shall in particular acquire the right to copying, dissemination, presentation, modification and adaption of the software by the Vendor.
8. The Purchaser shall be entitled to grant to third parties non-exclusive or exclusive rights of use in respect of individual or all rights granted thereto or to transfer the obtained rights as a whole or parts thereof or to directly or indirectly market the above, in either case without the prior consent of the Vendor.
9. The Vendor shall require the Purchaser’s prior approval for the publication of any results of the Contract.
10. The Vendor’s rights to use the tools, which are used thereby in general and which have not been developed within the framework of the contractual stipulation, shall remain unaffected.
11. To the extent to which the Vendor wishes to use any components developed within the framework of the Contract and compensated by the Purchaser, this shall require a written agreement with the Purchaser.
12. **Delivery of programming services**
13. The purposes of the provision of the services subject of the purchase order, it is indispensible to previously achieve the functionality of the programs in accordance with the project specification.

In doing so, the Vendor shall carry out a functional test prior to the delivery and provide the Purchaser with written proof of the success in the agreed form and to the agreed scope, at least in respect of the material basic functionality of the programs. The programs must function in a stable manner, and in particular they must comprise a compiling, installation and execution property, as well as be documented.

1. If such proof has not been presented by the delivery at the latest, the Purchaser may refuse the acceptance of the performance.
2. The programme which constitutes the subject of the purchase order must function in secure manner in terms of not undermining the security and the operability of the existing infrastructure.
3. If the systems or devices set forth in the purchase order, including the programs, are not available yet, the achievement of the functionality may be carried out on comparable systems or devices in mutual agreement between the Vendor and the Purchaser.
4. If the Vendor has suitable systems or devices at the disposal thereof, including programs, the above shall, if reasonable, be used for the functional test.
5. In that case, the Vendor shall have the additional costs remunerated, but only if the unavailability of the systems or the devices, i.e. the programs, is not a result of any delay on the part of the Vendor.
6. **Default, delay in performance, improper performance and determination of contractual penalty**
7. In the event of failure to perform the obligation/s by the Vendor, the Purchaser shall be entitled:
* to request performance and to provide an additional deadline to the Vendor during which period a contractual penalty shall be calculated (if such provision of additional deadline does not jeopardise the operation of the Purchaser);
* to terminate the Contract (cancel the purchase order)

In both cases, the Purchaser shall be entitled to seek damage compensation both under the general rules for damage liability in accordance with the Contract Law, and the Special Terms and Conditions herein.

1. In the event of a delay in the performance of the obligations by the Vendor, the legal provisions, the provisions of these Special Terms and Conditions, i.e. the Contract provisions shall apply.
2. If the Vendor is in delay with the performance of the obligations (or in the event of improper performance), the Vendor shall pay contractual penalty as a penalty for the duration of the delay. The Vendor's request for contractual penalty shall not depend on whether the damage has occurred, or whether there is actual danger for the occurrence of the damage. The contractual penalty can be asserted until the final payment has been effectuated.
3. The Purchaser shall charge penalties for the delay in the performance of the obligations arising from these contracting terms and conditions based on a submitted invoice for contractual penalty.
4. The right of the Purchaser to request the payment of contractual penalty does not affect the right thereof the request the performance of the contracting obligation.
5. If the contractual penalty is not defined in the purchase order, in a total amount or otherwise, in the event of a delay in the performance, contractual penalty shall be charged as follows:

The Vendor undertakes to pay a contractual penalty to the Purchaser in the event of a delay in the performance (delivery/service rendering, response times or deadlines for recovery after failures of the systems or devices), in the event of a delay in the performance of other obligations (repair and replacement of inadequate equipment/service) in the amount of 1% (one percent) a day and/or an hour of the value of the purchase order, as well as in the event of an improper performance of its obligations, but not more than 30% (thirty percent) of the total value of the purchase order.

The Purchase Order, i.e. the total amount without VAT, shall constitute a basis for the calculation of the contractual penalty.

If the Purchaser has suffered a damage which exceeds the amount of the contractual penalty, the Purchaser shall request the payment of the difference to the total amount of the damage in accordance with the liability rules.
6. If the part of the products and services that are not provided on time is a sub-quantity - with an unspecified price - of a larger function or price unit, then the price of this larger function or unit shall apply.
7. **Liability**
	1. **Warranty of quality**
8. If the Vendor performs its services in successive phases, at the acceptance of the final perform­ance, if such acceptance takes place, the overall func­tionality shall be tested, in particular in respect of the error-free co-action. The performance shall only be considered as free of defects if the overall functional­ity of the successive phases is given. The period of warranty in respect of the overall functionality shall start to expire with the acceptance of the last successive phase. Starting with the acceptance, the period of warranty shall start to expire and it shall last for 36 months.
9. Hence, the claims shall come under the statue of limita­tions in the context of the warranty of quality of 36 months starting with the acceptance of the performance at the place of the performance or starting with the accep­tance, if such has to take place.

The period of the statue of limita­tions shall be interrupted for the number of days in which the Purchaser was not able to use the subject of the procurement due to a defect.

1. The Vendor shall be obliged to eliminate the defect immediately by adequate subsequent activities (replacement, repair or recreation). If the defect cannot be removed in a short time, the Vendor shall be obliged - in so far as possible and ap­propriate in terms of the effects of the defect – to pro­vide a provisional solution.
2. If the defect is not removed even within an adequate time given to the Vendor for subsequent activities, the Purchaser shall be entitled to reduce the price or to withdraw from the contract and to demand compensation in accordance with the legal regu­lations within the defined limitations.
	1. **Liability for violation of intellectual property rights**
3. The Vendor shall indemnify the Purchaser for all claims by the owner of the intellectual property rights, provided that the violation of the intellectual property rights occurs as a result of a breach of the con­tractual performances. In order to enable a further use, the Vendor shall immediately, at the own expense thereof, either change or replace the contractual performances arising from the Agreement in such a manner that the intellectual property right shall no longer be violated and nevertheless the contractually agreed characteristics shall be contained or the necessary licenses shall be provided. If the aforementioned alternatives do not lead to success, the Vendor shall, depending on the Purchaser’s choice, take back the contractual performances in accordance with the Agreement and refund the money paid by the Purchaser or reduce the consideration by the amount that corresponds to the decrease of use by the Purchaser. The foregoing obligations of the Vendor shall apply only if the Vendor is promptly informed by the Purchaser in terms of any claims made against the Vendor, and if all protective measures, including out-of-court proceedings, remain with the Vendor, and if the violation of the industrial property rights is not caused by changes or use within the performance of the works in contravention of the contract/the purchase order and the Terms and Conditions herein.
	1. **Other liability**

The parties shall assume unlimited liability in the case of wilful intent or gross negligence, personal in­juries, acceptance of a guarantee or if an unlimited liability has been obligatorily regulated by law.

For all cases of damage which exceed the amount of the contractual penalty, property or financial damages, the parties shall be liable for an amount up to 150% of the agreed fee, at least up to the amount of the agreed compensation, unless otherwise agreed in a written agreement.

1. **Maintenance of the programmes subject of the purchase order after the expiry of the warranty period**
2. Upon the request of the Purchaser, the Vendor shall perform the maintenance of the programmes and the systems subject of the purchase order also after the expiry of the warranty period.

Such maintenance shall be subject to a separate agreement between the Purchaser and the Vendor.

1. **Receipt**
2. The obligations of the Vendor pertaining to the performance of the services in accordance with the Contract shall be subject to a confirmation of the functionality issued by the Purchaser.

The same shall apply accordingly to any performance stipulated in the Contract within the successive phases..

1. The Vendor shall perform the work in line with the contract/purchase order and the special Terms and Conditions herein within the defined confirmation period. The same shall apply accordingly to any stipulated performance in successive phases.
2. After the delivery for acceptance, the Purchaser shall carry out a technical acceptance test within 30 (thirty) consecutive calendar days, unless a different period of time is pro­vided with a contract/purchase order.
3. At the acceptance of the final performance in suc­cessive phases, additionally the overall func­tionality of the stipulated performances shall be tested, in particular in respect of their error-free co-ac­tion.
4. If the Vendor’s performance is in accordance with the contract/purchase order and the Terms and Conditions herein, the Purchaser shall declare the accep­tance after a successful test. If the performance is accepted in spite of any detected defects, such de­fects shall be noted in the statement of acceptance. The acceptance may not be refused because of any minor defect. Several minor defects may in their en­tirety justify a refusal of acceptance.
5. If the Purchaser fails to declare the acceptance or the justified refusal thereof within a period of 30 (thirty) con­secutive calendar days or any other agreed period in writing, the acceptance shall be deemed executed.
6. **Personnel training, user support**
7. Unless otherwise agreed:
* The Vendor shall conduct the training of the Purchaser’s employees appointed for the use of the programs and the systems that constitute the subject of the Contract up to the extent of necessity in terms of their application and use.
* The Vendor shall provide support to the Purchaser in the use of the programs and the systems subject of the Contract, by providing appropriately qualified personnel;
* The Vendor shall provide support to the Purchaser in the removal of any defects, which are not subject to the warranty of quality, by providing appropriately qualified personnel.
1. **Foreign trade**
* **Exports**
1. For cross-over deliveries of products upon the order of the Purchaser, the Vendor commits to obtain all permits required under export laws at its own responsibility and at its own expense.
2. As far as the Vendor has referred products totally or partly from a third party, it guarantees to have procured these from reliable sources and that these have been exported or imported in compliance with the export regulations of the country of origin/country of dispatch.
3. As regards the foregoing paragraph, the Vendor undertakes that in the course of the implementation of the Contract it shall comply with the applicable laws on foreign trade and payments.
* **Import**
1. The Vendor shall pay all taxes, customs duties, charges and tax burdens which become due in the context of the implementation of the procurement, in particular the import of goods.

Concurrently, turnover tax on imports, value-added tax and directly comparable taxes as “Goods and Sales” or “ Use and Sales”-taxes. shall be included in particular

1. **Naming of the Purchaser as a reference**
2. The naming of the Purchaser as a reference shall require a separate written approval issued thereby which shall be valid until the revocation thereof. The revocation by the Purchaser shall be possible at any time without observing a specified period and without stating any reasons.
3. **Subcontracting**
4. For any engagement of third parties as sub-contractors, written consent from the Purchaser needs to be obtained.
5. Neither the Vendor nor the Purchaser shall assign the rights and obligations arising from these Special Terms and Conditions or the Contract, in whole or in part, without the prior written consent of the other contracting party. Any such assignment shall be null and void and of no force or effect. No permitted or implied assignment of all or any portion of the rights and obligations arising from these Special Terms and Conditions or the Contract shall result with a release of the transferor of its obligations under these Special Terms and Conditions or the Contract without an explicit written release from such obligations by the other contracting party.
6. **Assignment of claims**
7. The Vendor’s receivables towards the Purchaser may be transferred only under an explicit written consent issued by the Purchaser.
8. **Final provisions**
9. Regarding all issues that are not regulated in the Purchase Orders and under these Terms and Conditions of the Purchaser, the provisions of the Contract Law and the laws of the Republic of Macedonia shall apply. In the event of a dispute, the competent court in Skopje, Republic of Macedonia shall rule in accordance with the Macedonian laws.
10. If any of the provisions of the Special Terms and Conditions are not valid in terms of the respective purchase order, the other provisions of the Special Terms and Conditions shall remain valid in terms of the purchase order.
11. The purchase order, the rights and the obligations arising therefrom may not be assigned, transferred or conveyed to any third party, without the prior written consent of the Purchaser and any attempt for assignment or assigned liability by the Vendor to any third party, without the written consent of the Purchaser, shall be null and void.
12. The Special Terms and Conditions shall be considered a valid and binding contract between the Purchaser and the Vendor, unless it is stated otherwise in the purchase order to the Vendor.
13. The Vendor shall be obliged to accept or reject the purchase order within three (3) working days as of the date of its submission to the Vendor, via e-mail, fax or in writing to MKT’s address wherein it shall be deemed accepted in its entirety and in accordance with the Special Terms and Conditions. The commencement of the delivery of part or the whole purchase order by the Vendor shall be considered as acceptance irrespective whether the Vendor has confirmed the acceptance thereof.
14. If the Vendor fails to reject the purchase order within the defined deadline, it shall be deemed that the Vendor has accepted the purchase order.
15. The Special Terms and Conditions herein shall enter into force on the day of its adoption and they shall be applied as of the day of their publication on the official web site of Makedonski Telekom AD - Skopje.

 Makedonski Telekom AD - Skopje

Translated by Lingva Ekspert