**SPECIAL TERMS AND CONDITIONS FOR SOFTWARE MAINTENANCE**

**OF MAKEDONSKI TELEKOM AD – SKOPJE**

**1 Area of Application**

1. The Special Terms and Conditions (hereinafter referred to as: “Special Terms and Conditions”) set forth below shall apply to the maintenance of the programs for the systems and devices, including the other related services by Makedonski Telekom AD - Skopje (hereinafter referred to as MKT or the “Purchaser”); they shall not apply to the development and further development of individual software or - unless otherwise agreed - maintenance services commissioned in connection with the software development.
2. The application of the Special Terms and Conditions herein shall be defined in the specific Purchase Order.
3. 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.
4. 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 part which is not regulated under these Special Terms and Conditions, as well as the orders and the data in the Purchase Order itself.
5. Any difference or amendment of the Special Terms and Conditions herein submitted by the Vendor shall be inapplicable unless such deviations are agreed and accepted by the Purchaser and the Vendor.

**2 Integral parts of the Special Terms and Conditions**

1. The following documents constitute an integral part of the contract, with priority as defined below:

* Purchase Order
* Specification of services (maintenance certificate)
* these Special Terms and Conditions for Software Maintenance
* General Procurement Terms and Conditions
1. **Quality management, environmental protection**
2. The Vendor has to adhere to the Purchaser's requirements for quality management and environmental protection and promotion.

 In the course of the performance of the scope of the procurement, the Vendor shall be obliged to apply a quality management and environmental protection and promotion system in accordance with all valid legal regulations in the Republic of Macedonia and international standards pertaining to the protection of the environment.

1. If so required by the legal regulations pertaining to the protection of the environment, the Vendor shall be obliged to recover, free of charge, the packaging material and to collect and dispose of it properly.
2. Upon a request of the Purchaser, proof of such disposal in compliance with the legal regulations in the area of environmental protection is to be furnished. If the Vendor fails to comply with this obligation, the Purchaser is entitled to conduct the collection and disposal of the packing material at Vendor's expense.
3. **Service period, termination**
4. The commencement of the service period and the duration of the service period shall be contractually determined. The minimum service period shall be 1 (one) year, unless otherwise required by the Purchaser, or otherwise regulated under the contract. After the expiration of the minimum service period the contract shall be extended automatically for an additional 1 (one) year period (counted subsequently, in continuity) or for a following period shorter than 1 (one) year upon a previous request of the Purchaser, submitted 30 (thirty) days prior to the expiry of the minimum service period, unless it has been previously terminated or unless termination of the contract is requested within 30 (thirty) days prior to the expiry of the annual minimum service period. In any case, in the course of any calendar or current year in which the maintenance is performed, the contract may be terminated by the Purchaser or the Vendor by giving a 3 (three) months notice period or by the expiry of the quarter (as a notice period), without an obligation for further payment or expenses on the part of the Purchaser. Shorter or longer termination periods (notice periods) may be agreed.
5. Any termination - including any termination prior to the expiration of the stipulated service period - shall be permissible with a notice period of three (3) months or with the expiry of the quarter (as a notice period) or with a notice period of one (1) month, if the existing devices or programs, which are necessary for the use of such programs, are terminated or are put out of operation. It is a precondition for the above, that such termination or putting out of operation of devices or programs could not be foreseen under the Special Terms and Conditions herein at the time of the conclusion of the contract/purchase order and that the continued use of the licensed programs is not possible or is economically unjustifiable.

 **5 Type and Scope of the Services**

(1) The Vendor shall maintain the programs in accordance with the purchase order and the Special Terms and Conditions herein. This shall also include the removal of program and program documentation defects; subject to use as provided in the contract, the programs must perform as determined in the specification of the services.

(2) The Vendor shall be obligated to immediately notify the Purchaser about generally important changes to programs known to him, the programs which the Purchaser uses, as well as about other information related to the programs; the details may be agreed in the specification of services.

(3) The Purchaser may request from that the Vendor to provide new program versions, including program documentation, provided that the Vendor is entitled to dispose of such program versions and program documentation. If necessary, the Vendor shall be obligated to familiarize the Purchaser's personnel in due time with the new program version. The Vendor may request remuneration for such training and for the new program version; this shall not apply, if maintenance against monthly remuneration has been agreed upon and if the new program version does not result in a performance improvement.

(4) At the Purchaser's request and within the scope of what is operationally feasible and reasonable, the Vendor shall adjust the programs to changed or new systems, devices or base software or to changed utilization requirements. The Vendor must adjust or amend the program documentation accordingly. As soon as the individual services required by the Purchaser have been established, such services and consideration for such services shall be agreed in the specification of services or in an addendum; they shall be, however, agreed in a separate contract, if advisable due to the scope of the agreements to be reached or due to the importance of the services to be rendered.

(5) Maintenance shall be performed on the programs listed in the specification of services in their last version as agreed by and between the Purchaser and the Vendor.

(6) If the Vendor or a third party has changed a program, such changed program is only to be maintained if the Vendor agrees. The Purchaser must provide the Vendor with the specifications so that the Vendor can decide whether or not to agree to such maintenance. Within a period of fifteen (15) days, the Vendor shall declare in writing whether or not it will maintain such changed program. The contract/purchase order under the Special Terms and Conditions herein for the maintenance of the program in question may be terminated by the Purchaser if the Vendor refuses to maintain such changed program. It may be terminated by the Purchaser or the Vendor if no agreement can be reached with regard to an adjustment of the specification of services necessary as a result of such program change. The notice period shall be one (1) month to the end of the calendar month.

(7) The program maintenance obligation shall continue to exist if the Purchaser applies such programs to other systems and devices than the systems and devices described in the specification of services.

(8) Should the Vendor offer the Purchaser a new program version in order to avoid or remove defects or in order to avoid downtime of other programs, the system or the devices, the Purchaser shall be obligated to accept such new program version if and to the extent acceptable to the Purchaser. The Purchaser shall be given sufficient time to assess if such new program version acceptance is acceptable to him. If the new program version serves to remedy the industrial property right infringements, it must be accepted immediately; if responsible for such industrial property right infringements, the Vendor shall bear the expenses incurred by the Purchaser as a result of such acceptance; the Vendor shall offer adjustment support and adjust any other programs provided thereby. The Contractor shall be obligated to adjust the program documentation and, if necessary, to familiarize the Purchaser's personnel in due time with the new program version. If necessary, the list of documents required for such defect remedying and contained in the specification of services shall be corrected.

(9) Should the Purchaser refuse to accept a new program version, the following shall apply:

а. The Vendor shall continue to maintain the program version used so far. Such obligation and the obligation to pay monthly remuneration shall end after the point in time when the Vendor has offered the Purchaser the new program version. After expiration of the program main­tenance obligation and for the remainder of the minimum service period the Vendor shall, at its own discretion, remedy defects against consideration on a time and material basis or, if entitled and able to do so, provide the Vendor with the source code and program flowcharts for defect remedy.

b. Apart from that, the Purchaser shall have the right to unilateral termination, without any futher financial liabilities.

(10) Should the Purchaser claim defects, the Purchaser shall inform the Vendor about the nature of such defects. Should the Vendor require any further information, the Purchaser shall provide such further information. In addition to that, the Purchaser shall be obligated to support the Vendor during defect removal to the extent as determined in the specification of services.

(11) The Vendor shall be obligated to immediately commence defect removal with accordingly qualified personnel. The point in time at which such defect removal is to be commenced at the latest, may be determined in the specification of services.

а. If the defects cannot be remedied in a short time, the Vendor shall - if possible and reasonable in respect of such defect's consequences - pro­vide a provisional solution (e.g. temporary error correction).

b. If necessary, the Vendor shall be obligated to adjust the program documentation

(12) The Vendor shall be obliged to keep records of the programs' downtimes, wherein the following is to be stated: time (date and time) of the error message pursuant to item 10, as well as the time when the programs were again ready for economically efficient use after such defect remedy.

(13) If the Vendor can prove that no error existed, the Vendor may request that its expenses incurred as a result of the services rendered due to such error message be compensated in accordance with the remuneration rates generally applied by the Vendor, unless otherwise agreed.

1. **Access**
2. For the purposes of any maintenance activities, the Purchaser shall grant to the Vendor access to the system or to the devices without any delay, taking in­to consideration the conditions in accordance with the local custom, including the conditions for safety operation.
3. For any other activities on the part of the Vendor, access shall be provided under a separate confidentiality agreement, if the confidentiality is not regulated under the special software maintenance contract or constitutes a part thereof.
4. **Place of performance**
5. The place of performance is indicated in the specification of services.

**8 Acceptance**

(1) The Vendor shall perform the work in accor­dance with the contract/purchase order and the Special Terms and Conditions herein at the stipulated time for acceptance. The same shall apply accordingly to any stipulated performances by successive activities/ stages (if applicable). In the specification the Vendor should provide a description of the incident/fault reporting, clearing and monitoring process(es), including the defined time period and prioritization of the critical levels for incident/fault response and clearance times.

(2) After delivery for acceptance, the Purchaser shall conduct the acceptance test within a period of 30 (thirty) consecutive cal­endar days, unless a different period of time is stipulated in the contract/purchase order and the Special Terms and Conditions herein.

(3) At the acceptance of the final performance by suc­cessive activities/stages, additionally the overall func­tionality of the stipulated performances shall be tested, in particular in respect of their error-free coac­tion.

(4) If the Vendor's performance is in conformity with the contract/purchase order and the Special 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 due to any minor defect. Several minor defects may in their en­tirety constitute a justified ground for refusal of the acceptance.

(5) If the Purchaser fails to declare the acceptance or the justified refusal thereof within a period of thirty (30) con­secutive calendar days or any other agreed period in writing the acceptance shall be deemed executed.

**9 Default, delay in performance, improper performance and determination of contractual penalty**

1. In the event of default in the performance of the obligation/s of the Vendor, the Purchaser shall be entitled:

- to request performance and to provide additional deadline to the Vendor during which period 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 and the maintenance performance)

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 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 in the performance of the obligations (or in the event of improper performance), the Vendor shall pay contractual penalty as penalty for the duration of the delay. The Vendor's request for contractual penalty shall not depend on that whether the damage has occurred, or whether there is actual danger for the occurrence of the damage. The contractual penalty may be defined until the moment of final payment.
3. The Purchaser shall charge the 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 to request the performance of the contracting obligation.
5. If the contractual penalty is not defined in the Purchase Order, in the total amount or otherwise, in the event of delay in the performance, the contractual penalty shall be charged, as follows:
6. The Vendor undertakes to pay contractual penalty to the Purchaser in the event of delay in the performance (service rendering/performance, response times) in the amount of 1% (one percent) a day and/or a hour of the value of the Purchase Order, as well as in the event of improper performance of its obligations, but not more than 30% (thirty percents) 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 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.

1. If the maintenance compensation is defined at annual level, the Purchaser shall determine and calculate the contractual penalty in a manner stipulated under this item of the Special Terms and Conditions. If the Vendor exceeds the agreed times, the Vendor shall be obliged to pay for each completed hour of the excess 0,5% (zero point five percents) of the annual or annualized remuneration, but not more than 10% (ten percents) of the annual or annualized remuneration. The right to initiate further legal claims shall remain unaffected. If the use of the software, i.e. the program is only reduced, the Vendor shall pay a contractual penalty in the amount equal to the reduced use by the Purchaser. If any defects that are subject to a stipulation of a different period of time are not removed within a period of 10 calendar days, calculated starting from the time when the fault report was made to the Vendor, in such a way that the system or devices can be used as intended, the Purchaser may, upon prior written notification (including by e-mail) to the Vendor, call in another maintenance provider. If the Vendor is responsible for the failure to remove the defect, the commissioning of such other maintenance provider shall be at Vendor’s expense. Any additional statutory claims shall remain unaffected by the above, within the limits of Article 15. In particular, in such case, under the Special Terms and Condition herein, the Purchaser shall be entitled to terminate the contract/purchase order without notice. If after such termination any further defects are de­tected, which have been caused by faulty mainte­nance on the part of the Vendor, the removal of the above shall be at the Vendor's expense.

**10 Liability**

1. The Vendor shall be obliged to eliminate the defect immediately by subsequent performances (replacement, repair or recreation). If the defect cannot be removed, the Vendor shall - so far as possible and appropriate regarding to the effects of the defect - provide a provisional solution.

 If the defect is not removed, even within an adequate time given to the Vendor for subsequent perform­ance, the Purchaser shall be entitled to reduce the price or to withdraw from the contract and to demand compensation in accordance with the statutory regulations and in view of item 3.

1. Liability for Violation of Intellectual Property Rights

The Vendor shall indemnify the Purchaser from all claims by the owner of intellectual property rights if the violation of such rights has occurred as a result of a breach of the contractual performances. In order to enable the further use, the Vendor shall immediately, at the expense thereof, either change or replace the contractual performances in such a manner that the intellectual property right is no longer violated and nevertheless the contractually agreed characteristics are contained or the necessary licenses are procured. If the afore stated alternatives do not lead to success, the Vendor shall, depending on the Purchaser’s choice, take back the contractual performances and refund the money paid by the Purchaser or reduce the consideration by that amount that corresponds to the reduction of use of the Purchaser. The aforementioned obligations of the Vendor shall be valid only if the Vendor is informed immediately by the Purchaser regarding any claims directed against the Vendor, and if all defence measures, including out of court measures remain in the control of the Vendor and if the violation of the intellectual property rights are not caused by changes or use of the contractual performances contrary to the contract/purchase order and the Special 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 is obligatorily regulated by law.

In the event of property or financial damages caused by slight negligence the parties shall be liable for each case of damage up to the amount of 150% (one hundred and fifty percents) of the contractually agreed remuneration, at least up to the amount of EUR 250,000.00 for financial damages and EUR 2.5 (two point five) millions for property damages. For all cases of damage in connection with this agreement the parties shall be liable up to the amount of the agreed remuneration, at least up to the amount of EUR 500.00 (five hundred) for financial damages and EUR 5 millions for property damages.

**11 Subcontracting**

(1) For any engagement of third parties as sub-contractors written consent from the Purchaser needs to be obtained.

(2) 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 a 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.

**12 Transfer of receivables**

(1) The Vendor’s receivables towards the Purchaser may be transferred only under an explicit written consent issued by the Purchaser.

1. **Final provisions**
2. Regarding all issues that are not regulated in the Purchase Orders and under these Special 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 under the Macedonian laws.
3. If any of the provisions of the Special Terms and Conditions is 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.
4. The Purchase Order, the rights and obligations arising there from may not be assigned, transferred or conveyed to any third party, without a prior written consent from the Purchaser and any attempt for assignment or assigned liability by the Vendor to any third party, without a written consent from the Purchaser, shall be null and void.
5. 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.
6. 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 fully accepted 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 of the Purchase Order, irrespective whether the Vendor has confirmed the acceptance of the Purchase Order.
7. If the Vendor fails to reject the Purchase Order within the defined deadline it shall be considered that the Purchase Order has been accepted by the Vendor.

The Special Terms and Conditions herein shall enter into force on the day of its adoption and shall apply as of the day of their publication on the official web site of Makedonski Telekom AD - Skopje.

 Makedonski Telekom AD – Skopje

Annex: Definitions

Annex:Definitions

|  |  |
| --- | --- |
| **Term** | **Definition** |
| Downtime | The period, during which the system or devices do not perform at all or only defectively. |
| Stand-by period | The period, during which availability must be ensured. |
| Operativeness | Unlimited utilizability of the system or the devices. |
| Alternative Solution | System, which - taking into account the Purchaser's configuration - substantially meets the specified performance requirements. |
| Maintenance  | Any preventive services, which are re­quired for the retention of the operative­ness of the IT system or devices (meas­ures for the preservation of the planned status, including inspection). |
| Period / hours / time of utilization | The period, during which the system or devices are used effectively in accordance with their intended purpose - excluding the sequences which are nor used due to mainte­nance purposes. |
| Reaction time | Period of time between fault report and latest start of repair. |
| Provisions, special | These are individual contractual stipula­tions between the Parties, e.g. in a frame­work agreement, a call-forward notice or a written order. |
| Software, included | Software, which is permanently saved on the delivered hardware or which within the framework of contractual use may be transferred only together with the relevant  |

|  |  |
| --- | --- |
| **Term** | **Definition** |
| hardware (e.g. BIOS, operating software). Application software shall not constitute included software, except in case of OEM versions. |
| Support | Support to assist the Purchaser in case of any occurring problems. |
| System integration | Services, where the Vendor must create the overall functionality of the hardware to be installed thereby and of the included software in coaction with the hardware and software platform which is set forth in the specifications and which has already been installed with the net­work neighbourhood. |
| Maintenance and Repair | Services for the maintenance and repair of the hardware. |
| Maintenance times | Date, time and duration of the mainte­nance or repair activities. |
| Maintenance period | Period, during which the maintenance time for the maintenance or repair activities occurs. |
| Restoration period | Period between fault report and restora­tion of the functionality. |
| Time schedule | Duration of maintenance for each system or device. |

 Translated by Lingva Ekspert