**SPECIAL TERMS AND CONDITIONS FOR SOFTWARE LICENCE OF MAKEDONSKI TELEKOM AD – SKOPJE**

 **1 Area of Application**

1. The Special Terms and Conditions (hereinafter referred to as: “Special Terms and Conditions” of Makedonski Telekom AD – Skopje (hereinafter referred to as: MKT or the Purchaser) set forth below shall apply to the licensing of standard software (hereinafter referred to as: "programs") including associated documentation and - if contractually agreed - the achievement of the functionality of these programs on certain systems and devices as well as other stipulated performances.They shall not apply to the development of individual software.
2. The application of the Special Procurement 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 have been agreed and accepted by the Purchaser and the Vendor.

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

1. The following documents as per the order and priority of importance shall be defined as follows:

* The Purchase Order;
* The Special Terms and Conditions herein for software licence
* General Procurement 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 complies 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.

**4 Rights of use**

1. The programs stipulated in the Special Terms and Conditions herein shall be licensed to the Purchaser for their intended use. The scope of such intended use, as well as the type and scope of the rights of use shall arise from the Special Terms and Conditions herein or regulated in special Contracts. Unless provided otherwise, the Vendor shall grant a non-exclusive right to the use of the programs set forth in the Special Terms and Conditions herein to the Purchaser, which right shall be unlimited in terms of geographical scope, content and time. The right of use shall be irrevocable and may be transferred by the Purchaser as a whole or in parts to third party without any additional requested consent from the Vendor.
2. The Purchaser shall be entitled to reproduce the programs stipulated in the Special Terms and Conditions herein to the extent that such reproduction is necessary for their intended use. The Purchaser shall be entitled to make copies of the programs stipulated hereunder as back up. Any reproductions of the programs stipulated hereunder, which serve the purpose of proper data protection, shall constitute an integral part of the intended use.

**5 Period of performance, termination**

1. The period of validity of the license and the period of all other performances shall be set forth in the Contract and/or the Purchase Order as being limited in time (medium period of performance) or unlimited in time. It shall commence on the date when the Purchaser has declared the acceptance of the programs. If a minimum period of performance has been stipulated, the contractual relationship shall be renewed after the expiration thereof, unless it is terminated in writing. Either the Purchaser or the Vendor may terminate the Contract with a notice period of 1 to 3 months, depending in the method of payment of the license (monthly or quarterly).
2. Any termination - including termination prior to the expiry of the stipulated minimum period of performance - shall be permissible with a notice period of three months, effective as of the end of a calendar month/end of the quarter pertaining to the programmes whose use is affected by the fact that the existing devices or programmes which are necessary for the use of these programs, are terminated or are put out of operation. It is a precondition for the aforesaid, that such termination or putting out of operation of devices or programs could not be foreseen at the moment of the conclusion of the Contract or confirming/accepting of a Purchase Order and that the continued use of the licensed programs is not possible or economically justified.
3. The license fee (monthly license fee for use of the license for a limited or unlimited time) shall be a fee for licensing of the programmes and defined in details below in the Special Terms and Conditions herein.

 **6 Delivery,** **implementation**

1. The Vendor shall deliver the licenses of the systems or devices which are ready for installation on the defined data carriers. As stipulated in the specification of services which shall constitute an integral part of the purchase order, upon the conclusion of the Contract or acceptance of the Purchase Order, based on the Special Terms and Conditions herein, the Vendor shall deliver the licenses which will legalize the functioning of the systems or devices.

If the Vendor has used test cases, the Vendor must provide them to the Purchaser.

(2) The commencement of the installation works and the date until which the aforesaid is to be completed, at the latest, shall be set forth in the service specification.

1. If the installation is carried out by the Vendor, the cooperation of the Purchaser in the installation is to be set forth in the service specification (e.g. support through personnel).
2. The installation of the programs shall be paid together with the license fee.

**7 Delivery, achieving functionality**

1. If defined in the Agreement, the Vendor is to achieve functionality in accordance with the provisions of the service specification of the systems and devices set forth above and it shall inform the Purchaser when the programs are operative.
2. The commencement of the works and the date until which the aforesaid is to be completed, at the latest, shall be set forth in the service specification.
3. The participation of the Purchaser in the achievement of the functionality shall be set forth in the service specification (e.g. support through personnel).

**8 Acceptance**

(1) After conclusion of a contract or acceptance of a purchase order with the Special Terms and Conditions herein in accordance with Article 6 and achievement of the functionality in accordance with Article 7, testing of the functionality will be performed and depending on the results, the Purchaser perform an acceptance test of the system or devices.

(2) The functionality test shall be considered successful, when it has been established that the systems or the devices are in accordance with the specifications defined in the service specifi­cation and are suitable for their intended use. The duration of the functionality test shall be defined in the service specification. An extension may be stipulated as well. Also, additional accep­tance criteria may be set forth in the service specification.

(3) If during the functionality test deviations from the details given in the service specification have been determined, but if the programs are accepted in spite of this, then such deviations shall be defined as defects in the acceptance declaration.

1. If due to the functionality test the Purchaser considers that the systems and devices are not suitable, the Purchaser shall have the exclusive right to rescind the Purchase Order.

(5) If different deadlines for the completion of the works for the purpose of achieving functionality are defined for several programs, which in accor­dance with the Purchase Order and the Special Terms and Conditions herein are intended to co-exist, then the respective functionality test shall be limited to the programs delivered with the succes­sive installations. To the extent necessary, upon the acceptance of the final delivery by successive installations, it shall be confirmed by means of a functionality test, which shall cover all programs, whether the programs co-exist properly.

**9 Program documentation, user support, personnel training, program use**

1. At a certain moment defined in the service specification, the Vendor must provide program documentation, e.g. DP Manual (specification for in­stallation and test, specification for operation), user manual and other program related literature in Macedonian or English; in case of translation, it shall provide the original text, by request, in accordance with the defined date given in the service specification. The provision of additional documents (e.g. program flow charts, as­sembly lists, source programs) shall be stipulated in the service specification, if applicable.

The vendor shall be obliged to submit the complete documentation which proves the right to use the software in accordance with the applicable terms and conditions of the producer of the software at the given moment.

The vendor shall be obliged to submit the documentation that defines the terms and conditions under which the software may be used (End User License Agreement). This should be the case when the licenses are sold to the Purchaser under a special agreement.

(2) Unless stipulated otherwise in the service specification, the Vendor shall, to the extent necessary and in due time for the use of the pro­grams, identify the appointed personnel of the Purchaser for the use of the programme.

(3) Unless stipulated otherwise in the service specification, the Vendor shall train the appointed personnel of the Purchaser for the use of the programme, to the extent necessary and in due time for the use of the pro­grammes.

(4) To the extent stipulated in the service specification, the Vendor shall provide support to the Purchaser through adequately qualified personnel during the use of the programmes and during the fault clearance, not covered by the warranty of quality.

1. The Purchaser shall use, reproduce and store the programmes and program documents in such a manner that they will be secured against any use, repro­duction or transfer which not in accordance with the Purchase Order and the Special Terms and Conditions herein. The possible details may be stipulated in the service specifica­tion.

**10 Program modifications**

(1) If the Contractor modifies any prod­ucts, which are used by the Purchaser, then the Vendor shall notify the Purchaser about such modifi­cations.

(2) The Vendor shall obligatorily provide the Purchaser with all new programme versions, including the program documentation in accordance with Article 9 item 1.

(3) The Customer shall be entitled to make modifica­tions of the programs. Any modification performed by third parties must be approved by the Vendor. It shall provide approval in case of adaptation of the modified systems, devices and basic software, if it does not perform those modifications by itself for certain compensation. The Purchaser shall be entitled to the rights to use such modifications. Upon a request, the Vendor may be granted rights to use those modifications; separate contract shall be concluded for the aforesaid, i.e. a special purchase order shall be issued. All additional rights of the Purchaser in accordance with the Law on Copyrights and other related rights shall remain shall remain unaffected.

(4) Unless stipulated in accordance with Article 9 item 1 pertaining to the license for the source programmes, the Vendor shall provide the Purchaser with the source programmes for modification, including the current explanatory material. If in justified ex­ceptional cases the above is not possible, the Vendor shall be obligated to perform the modifications upon a request of the Purchaser for certain compensation. All details must be stipu­lated separately.

**11 Data carriers**

1. The Vendor shall be responsible for the pro­curement of the data carriers necessary for the re­cording of the programmes. Any data carriers used by the Vendor shall comply with the specifications set forth by the manufacturer of the system or the devices.

 **12 Treatment of programs after the expiration of the right of use**

1. After the expiry of the right of use, the Purchaser shall be entitled to retain one copy of the programme, as well as one copy of the complete programme docu­mentation for testing and archiving purposes.

 **13 Program maintenance after the expiration of the warranty of quality**

1. Upon the expiry of the warranty and depending on the type of the license, the Vendor must provide the right to use of the new versions of the systems and devices which constitute the scope of the procurement, as well as maintenance thereof.

All details must be stipu­lated separately.

 **14 Subsequent granting of unlimited use**

(1) In the service specification, the Purchaser may be granted the right to demand unlimited use instead of limited use.

**15 Application protection, absence of viruses**

1. Prior to the delivery to the Purchaser, the software has been checked by the Vendor, using the current virus detection programme. The Vendor shall guarantee that such check has not shown any damaging func­tions in the software.

**16 Delay in performance, default, improper performance and contractual penalty**

1. In the event of failure to perform the obligation/s by the Vendor, the Purchaser shall be entitled:
* to request performance and to provide 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 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 can be asserted until the final payment has been made.
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 the request the performance of the contractual 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, a contractual penalty shall be charged, as follows:

The Vendor undertakes to pay 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 delay in the performance of other obligations (repair and replacement of inadequate equipment/service) in the amount of 1% per day and/or an 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% 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.
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.

**17 Responsibility**

1. Liability for violation of intellectual property rights

The Vendor shall indemnify the Purchaser from all claims by the holder 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 provide further use, the Vendor shall immediately, at its own expense, 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.

**18 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.

**19 Assignment of claims**

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

**20 Final provisions**

1. 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 in accordance with the Macedonian laws.
2. 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 Terms and Conditions shall remain valid in terms of the Purchase Order.
3. The purchase order, the rights and the obligations arising therefrom 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.
4. 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.
5. 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 the address of MKT 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.
6. 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.

The Special Terms and Conditions herein shall enter into force on the day of its adoption and 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