

Special terms and conditions of business for projects (Project STCs)

Chemnitz, January 03, 2019

1 Scope

1.1 These special terms and conditions of business shall apply to the execution of projects by c.a.p.e. IT and the support for client projects that are focused either solely on the introduction of OTRS or KIX or also on the introduction of additional modules that either have been developed by c.a.p.e. IT itself or are freely available as additional modules for OTRS or KIX (referred to in these STCs as "additional modules"). These special terms and conditions of business for projects supplement the general terms and conditions of business.

1.2 OTRS und KIX (hereinafter referred to as the software or object of the service) and the additional modules are open-source systems licensed under the GNU Affero General Public License, Version 3 ("AGPLv3") or rather GNU General Public License, Version 3 ("GPLv3"). This shall also apply if the OTRS or KIX was further developed by c.a.p.e. IT. The licence text of AGPLv3 can be accessed at <http://www.gnu.org/licenses/agpl-3.0.txt>. The licence text of GPLv3 can be accessed at <http://www.gnu.org/licenses/gpl.txt>. Regardless of this, c.a.p.e. IT shall make the licence text available to the client.

2 Subject matter of the contract

2.1 The subject matter of the contract is stated the project offer. The subject matter regarding additional modules is stated in the additional modules service overview and the choice of additional modules made by the client. The parties proceed on the assumption that the services that form the subject matter of the contract are services as defined in Section 611 Paragraph 1 of the German Civil Code (BGB).

2.2 The services consist of support for the technical and specialist introduction of OTRS or KIX and, if applicable, additional modules. However, the checking of the commercial profitability or other aspects of the deployment of OTRS or KIX and additional modules are not part of the service.

3 Special duties of cooperation of the client

The client shall be subject to the following additional duties of cooperation:

3.1 The client undertakes to describe the operating environment. The client shall provide detailed written information concerning the system structure, system extensions and applications (such as KIX and additional modules, interfaces, framework and environmental parameters, as well as the components to be configured, implemented, installed, adjusted and incorporated).

3.2 The client shall provide the contractor's employees with all necessary support during their work. This support shall particularly include the following on the part of the client:

3.2.1 ensuring that the contractor's employees are provided with the necessary information and data for their work in good time;

3.2.2 ensuring that the mutually determined system environment (test environment, hardware, software) necessary for integration/implementation on site is obtained, installed and integrated into its system environment in good time;

3.2.3 providing the contractor with suitable workspaces and work materials on site in good time and free of charge, including but not limited to the provision of a suitable room for workshops and training courses, including a video projector, white board/flip chart and presentation tools;

3.2.4 ensuring that, if needed and by agreement, a qualified employee who has the necessary access authorisations is made available for support;

3.2.5 issuing and setting up the necessary entry and access entitlements for the contractor's employees for the support services;

3.2.6 enabling the necessary network accesses, in particular remote access to all client systems that are necessary for the provision of the support services, i.e.,

3.2.7 making the network connection and any necessary firewall releases available for the entire period of service;

3.2.8 ensuring, for the benefit of the contractor's employees, that its provisions fulfil the statutory health and safety at work regulations, the applicable safety provisions and general safety requirements.

3.3 If c.a.p.e. IT has the duty of configuring, implementing, installing, adjusting and integrating additional modules, the client shall:

3.3.1 provide the spatial infrastructure (electricity, air conditioning and others as expressly agreed);

3.3.2 - perform functionality testing on components that are to be connected.

4 Commencement of the implementation work

c.a.p.e. IT shall only be obliged to provide the services once the client has fulfilled the duties of cooperation incumbent on it.

5 Documentation

c.a.p.e. IT shall document changes to the software by a description of the adjustment and configuration changes only if the parties have expressly agreed to the documentation obligation. The documentation shall be made available to the client. For the additional modules, c.a.p.e. IT shall provide the client with installation and configuration documentation.

6 Service hours

6.1 The service hours specified by c.a.p.e. IT in the offer serve as an orientation for both parties as to the periods of service that are to be expected. Fixed deadlines shall only be such if they are expressly identified as such.

6.2 All services shall be provided from Monday to Friday, 8am to 8pm (standard service hours). The provision of services outside of the above hours shall require a separate mutual agreement and shall be additionally remunerated at the hourly rate plus 50% for optional services. If remuneration according to daily rates is agreed, the full hourly rate shall amount to 1/8 of the daily rate, based a working day of eight hours without taking any necessary breaks into account. c.a.p.e. IT shall document services provided outside of the standard service hours.

6.3 If c.a.p.e. IT is hindered in the provision of services by circumstances for which it is not responsible, the service hours shall be extended by the period of time for which the hindrance exists, plus any necessary restarting time. The existence of such a hindrance shall be communicated to the client, whereby verbal notification shall suffice. For hindrances that are obvious or already known to the client, no notification shall be required in respect of the extension of service times.

6.4 If the client is responsible for the delaying hindrance, it shall bear the costs incurred by c.a.p.e. IT related to the delay in the provision of services.

6.5 Circumstances for which c.a.p.e. bears no responsibility include:

- defective or inexistent cooperative and other prior services on the part of the client;

- other delays originating within the sphere of influence of the client, including the actions of third parties engaged by the client;

- cases of force majeure.

6.6 Time limits specified by c.a.p.e. IT for the provision of services shall only start on the day of the technical and commercial clarification of all matters related to the order.

7 Change requests

7.1 Before the conclusion of the project, the client shall be entitled to request changes to the contents and/or scope of services (hereinafter "Change Request"). A Change Request exists if c.a.p.e. IT is required to provide services that are different to or beyond those services that are listed in the project offer.

7.2 c.a.p.e. IT shall evaluate the Change Request in terms of the effects on the project, time delays and necessary additional costs, and shall forward that assessment to the client in text form.

7.3 The parties shall agree on a reasonable adjustment of the contents and/or scope of services, service hours and remuneration on the basis of a written amendment or supplementary agreement to be concluded for this case. In the absence of such an agreement between the parties, the agreed service times, remuneration and the contents and scope of services shall always be taken as a basis, whereby the service times shall however be postponed by the amount of time which c.a.p.e. IT has required for reviewing the change request.

7.4 If no agreement is reached between the parties, the project shall continue as originally agreed, whereby the service times shall however be postponed by the amount of time which c.a.p.e. IT has required for reviewing the change request.

8 Remuneration

8.1 c.a.p.e. IT shall receive the remuneration agreed in the offer as a fixed price. Subclause 4.2 of the general terms and conditions of business shall apply.

8.2 In addition to the agreed remuneration, the client shall bear the travel and hotel costs and expenses of the deployed c.a.p.e. IT employees in accordance with the provisions of the general terms and conditions of business.

8.3 If the client terminates the contract prematurely, it shall pay c.a.p.e. IT the full net fixed price, less any expenses saved by c.a.p.e. IT as a result of the release from providing services, but at least 30% of the net fixed price.

9 Open-source software; rights of use for OTRS & KIX

9.1 The granting of rights of use in respect of the patches, updates and upgrades for additional modules provided by c.a.p.e. IT shall be in accordance and depending on the

application with the stipulations and provisions of the AGPLV3 or rather GPLv3.

9.2 The client shall be entitled to use and deploy OTRS, KIX and any additional modules under the terms and conditions of the respective software (AGPLV3 or GPLv3). The client shall purchase the rights of use directly from the copyright holder or the legal owner. The client shall comply with the terms and conditions of the licence when using the software.

9.3 If the services include the provision of OTRS or KIX by c.a.p.e. IT, c.a.p.e. IT shall provide the client with the source code of the initially delivered OTRS or KIX version on request, and shall again provide the full source code with each delivery of a new version.

9.4 c.a.p.e. IT shall be entitled to the exclusive rights of use in relation to generically usable further developments. c.a.p.e. IT hereby grants the client rights of use in relation to generically usable further developments in accordance with and subject to the terms and conditions of the respective software (AGPLV3 or GPLv3).

9.5 c.a.p.e. IT shall identify generically usable further developments by means of labelling in the header of the software file concerned by means of reference to the client (for example, by means of "Thanks to [client name]"). Unless the client objects to the classification of the components concerned in the acceptance protocol, these shall be deemed to be generically usable further developments. The client shall only be entitled to object to the classification as generically usable further developments if it sets out in writing why the component concerned is not to be deemed generic. The contracting parties shall then reach a separate agreement concerning the disputed classifications.

9.6 The parties shall immediately notify each other in writing if claims are asserted against them due to breach of property rights, in particular copyright.

10 Qualitative service disruptions

10.1 If the project services that form the subject matter of the contract fail to be provided in accordance with the contract, or if they are rendered defectively, and if c.a.p.e. IT is responsible for this, c.a.p.e. IT shall be obliged to provide the service in accordance with the contract (for a second time if applicable) without any additional expense to the client and within a reasonable deadline. A complaint issued by the client shall be a prerequisite for the above. The complaint must be made in writing immediately, at the latest within 2 weeks of the problem becoming apparent, and must contain a precise description of the defect, which will allow c.a.p.e. IT to investigate the complaint. If significant elements of the services under the contract cannot be performed, even within a reasonable grace period to be stipulated by the client, due to reasons for which c.a.p.e. IT is responsible, the client shall be able to extraordinarily terminate this contract if the additional statutory requirements under Section 314 of the German Civil Code (BGB) are fulfilled and/or bring a claim for damages in accordance with the provisions of Subclause 6 of the general terms and conditions of business. Further claims against c.a.p.e. IT due to defective services shall be excluded.

10.2 The statutory warranty provisions under Subclause 10.3 shall apply in respect of qualitative service disruptions related to the additional modules.

10.3 Claims due to qualitative service disruptions shall lapse one year after their becoming apparent, however at the latest one year following the full provision of services or premature termination of the contract. The above shall not apply in respect of damages claims connected to injury to life, body or health, or which are due to intention or gross negligence. In such case, the statutory period of limitation shall apply.

11 Proprietary rights

11.1 c.a.p.e. IT shall only be responsible for legal defects in respect of the services if and to the extent that the service provided by c.a.p.e. IT is itself affected. There shall be no obligation to meet claims if material provided by the client or by a third party engaged by the same has been included in the object of service.

11.2 Liability and guarantee exclusions included in open-source licences such as the AGPL or GPL shall remain unaffected in relation to the legal owners, provided that c.a.p.e. IT is not the legal owner.

11.3 The parties shall immediately notify each other if claims are asserted against them due to breach of proprietary rights in relation to the software that forms the subject matter of the contract.

12 Legal consequences in case of delays in the services

In case of delay in a service due to be provided by c.a.p.e. IT, the statutory provisions shall apply as a rule. If the client sets a deadline for performance, c.a.p.e. IT shall be entitled to request a declaration as to whether the client wishes to adhere to the service requirement despite the delay to the service. Until the

receipt of the answer, c.a.p.e. IT shall remain entitled to provide the service.