

## General Terms and Conditions (GTC)

Valid as of: 01.02.2022

### 1. Scope of application and validity

1.1 These General Terms and Conditions («**GTC**») govern the entry into, the content and performance of contracts for IT services between one or more entities of the Aveniq Group (consisting of Aveniq AG, Aveniq Avectris AG, Aveniq Comicro AG, Aveniq ERPsourcing AG and Aveniq Logicare AG, hereinafter each individually and collectively referred to as «**Aveniq**») on the one hand and the Customer on the other hand (Aveniq and Customer hereinafter individually referred to as a «**Party**» and collectively the «**Parties**»).

1.2 The GTC as well as the "Aveniq Code of Conduct for Business Partners" ("**Code of Conduct**") in the version applicable at the time of the entry into the contract form an integral part of the contractual relationship between Aveniq and the Customer.

1.3 These GTC and the Code shall apply unless expressly agreed otherwise in writing in the contract. If there are any contradictions between the contract, the GTC and the Code, the Contract shall prevail first, the Code second and the GTC third. The Customer's general terms and conditions or general conditions of purchase shall not apply, even if they are referred to in an order form or in other documents.

### 2. Definitions

2.1 "IT Services" shall mean the services contractually agreed with the Customer, in particular consulting, project services or other services. The type and scope of the IT services provided by Aveniq are set out in the contract and in any offer referenced therein.

2.2 "Consulting Services" shall mean general consultancy, analyses, training, coordination services, evaluation consultations, strategic planning, acceptance support, etc.

2.3 "Project Services" are in particular software developments, software modifications and customizations, migrations and system integration services which are carried out by Aveniq.

2.4 «Other Services» are recurring, defined services for which operating services, maintenance and support are provided by Aveniq.

2.5 «IT Equipment» shall mean the aggregate of the equipment, including hardware, software, systems, cables and installations, provided by Aveniq and made available to the Customer.

2.6 «Third Party Cloud Services » shall mean services provided by a third party (e.g. Microsoft

Azure) as a cloud offering. Unless expressly agreed otherwise, Aveniq acts as agent when integrating third-party cloud services. Aveniq represents the Customer vis-à-vis the third party, whereby the contract with the third party is concluded directly between such third party and the Customer.

### 3. Offers and Placing of Orders

3.1 IT Services are offered by Aveniq on the basis of a performance specification, a project order or a written offer. If no performance specifications are available or if the specified requirements are not sufficient to provide an offer, the Customer may mandate Aveniq to develop the basic principles in a preproject against separate remuneration.

3.2 Unless otherwise specified in the offer, Aveniq shall remain bound for 30 days from the date of the offer. By submitting a written order or, at the latest, by accepting an offer, the Customer acknowledges the applicability of these GTC.

3.3 Amendments or supplements to the contract shall be made in writing.

### 4. Provision of Services

4.1 Aveniq warrants that the products and contractual services delivered by it meet the agreed specifications and the specifications the Customer may expect in good faith, even without a special agreement, according to the respective state of the art at the time of the entry into the contract (unless otherwise stated in the contract).

4.2 Project Services are carried out using recognised project management methods.

4.3 Aveniq shall notify the Customer of all circumstances that jeopardise the fulfilment of the contract. Aveniq shall also inform the Customer of any developments that make a change in the services appear appropriate for technical or economic reasons.

4.4 Aveniq undertakes to comply with the Customer's operational regulations, in particular the house rules, provided that these have been communicated to Aveniq in writing prior to the entry into the contract.

### 5. Support and Cooperation Obligations of the Customer

5.1 The Customer shall create the conditions within its sphere of influence to enable Aveniq to fulfil its contractual obligations. In particular, he shall provide Aveniq with the necessary information on operational processes. He shall provide all relevant information and make available any specified Customer installations. He shall grant Aveniq the necessary access to his premises and provide suitable workstations if required.

5.2 The Customer shall immediately notify Aveniq of any circumstances that jeopardise the contractual performance or make a change to the agreed IT Services appear appropriate.

5.3 The Customer shall create the preconditions for the fulfilment of the contract within its sphere of responsibility and shall perform its duties to cooperate at its own expense.

5.4 Insofar as the untimely, incorrect or incomplete fulfilment of the Customer's obligations to cooperate affects the provision of Aveniq's services, Aveniq shall be released from its contractual obligations to the corresponding extent. Aveniq shall issue a warning to the Customer upon discovery and shall be entitled to charge the additional costs and expenses incurred by Aveniq.

5.5 The Customer shall inform Aveniq of any existing technical or other facilities (e.g. water or gas supply facilities) that could be damaged during installation or as a result of the operation of the IT system.

5.6 If Aveniq is to carry out installations on the Customer's premises, the Customer shall notify Aveniq of any health and work risks and recommend the necessary protective measures.

5.7 Aveniq reserves the right to interrupt the connection to all Customer installations or to discontinue the provision of services on site if, in its opinion, these could endanger persons or cause damage to the property of Aveniq or third parties or if the quality of the services would be significantly impaired. Aveniq shall inform the Customer immediately in such cases.

5.8 In the case of cloud services provided by third parties, the Customer must agree to the relevant terms and conditions of such third party.

## 6. Testing and Acceptance

6.1 Consultancy Services shall be deemed to have been rendered as soon as Aveniq has performed its activities in accordance with the order description. Incomplete services will be completed or improved in consultation with the Customer and the costs incurred will be charged. Only in the event of demonstrable negligence in the provision of consulting services by Aveniq, shall Aveniq be obligated to rectify the situation free of charge. The Customer shall grant Aveniq a period of grace in that is reasonable under the circumstances.

6.2 Project Services shall be deemed to have been rendered as soon as Aveniq has completed them in accordance with the specifications set out in the Project Order and handed them over to the Customer and the following acceptance provisions have been complied with. The Customer shall carry out acceptance immediately after handover of the Project Services. The acceptance procedure shall be in accordance with the acceptance specifications as specified in the project order. The performance of the acceptance and the provision of the necessary test data shall be the responsibility of the Customer; Aveniq shall provide the Customer with appropriate support in this respect.

An acceptance report shall be drawn up and signed by both Parties. It shall record minor defects which are to be rectified and major defects which require the acceptance to be repeated in whole or in part. If, during an acceptance, defects are found which do not prevent the use of the agreed Project Services, the Customer shall grant the acceptance without claiming a price reduction, subject to rectification of the defects within the warranty period. If Aveniq fails to remedy the defect despite having been granted a reasonable grace period twice, the Customer shall be entitled to a reduction of the remuneration of a value agreed with Aveniq. Rescission, substitute performance or claims for compensation shall be excluded. If the Customer does not carry out the acceptance within 10 working days and a grace period set by Aveniq, the Project Services shall be deemed to have been accepted. Insofar as the Customer uses Project Services productively in whole or in part without carrying out the relevant acceptance, the Project Services shall also be deemed to have been accepted without the need for an acceptance protocol.

6.3 After installation and commissioning of a Service, Aveniq releases such Service (Release).

## 7. Personnel Leasing

7.1 The leasing out of personnel by Aveniq is governed by the Federal Act on the Placement of Workers and the Leasing Out of Personnel. Aveniq is responsible for the necessary permits and contracts for the personnel deployed, as well as for the required registrations with the social insurances.

7.2 In the case of personnel leasing, Aveniq shall only be liable for the careful selection (professional and personal suitability) of the personnel. The Customer is responsible for the correctness and appropriateness of the assignments given to the leased personnel as well as for the supervision and control of the services to be provided by them.

## 8. Deployment of Personnel / Service Provision by Third Parties

8.1 Aveniq only employs carefully selected personnel who have been trained to meet the requirements.

8.2 Aveniq is entitled to have services performed by third parties. It is responsible for the careful selection, instruction and supervision of such third parties.

8.3 The use of third parties in Projects is listed in the offers and contracts.

## 9. Remuneration

9.1 Aveniq shall disclose the cost types and cost rates in its offer. The applicable rates will be agreed in the respective contract.

9.2 All prices are exclusive of the applicable value added tax.

9.3 All invoices shall be paid without any deductions within 30 days of receipt of the invoice.

9.4 If Aveniq renders the Services on a time and material basis, it shall provide the Customer with signed reports together with the invoice.

## 10. Intellectual Property Rights

### 10.1 Property Rights and Rights of se

10.1.1 The rights to the hardware, standard and individual software provided by Aveniq to the Customer within the scope of its Services, including source code, program description and documentation in written or machine-readable form, belong to Aveniq or third parties. Insofar as the rights belong to third parties, Aveniq warrants that it has the necessary rights of use and distribution.

10.1.2 The Customer is granted a non-exclusive and non-transferable right of use for the duration of the contract for use and exploitation to the contractually agreed extent. The right to lend or reproduce for the purpose of passing on the provided software to third parties as well as the right to copy or modify is expressly excluded. The transfer of licences requires the consent of Aveniq. Software that is not licensed by Aveniq is subject to the licence terms of the respective manufacturer, which will be made available to the Customer upon request.

10.1.3 The Customer is responsible for the proper licensing of all software products which he makes available to Aveniq as part of the Customer installations for the provision of Services. In particular, the Customer shall ensure that any licence transfer regulations of the licensors are complied with by him. He shall indemnify Aveniq against any claims by third parties due to alleged or proven licence violations, insofar as such violations are not the fault of Aveniq.

### 10.2 Rights to Work Results from Orders and Projects

10.2.1 Unless otherwise agreed in the contract, the intellectual property rights and work results created under the contracts belong to the Party that created such rights.

10.2.2 For the duration of the contract, the Parties shall grant each other the right to use these work results free of charge to the extent necessary for the performance of the contract. Both Parties shall be granted a right of use, processing and exploitation, unlimited in time and place, for work results created within the scope of a Project.

10.2.3 In the case of joint creation, the rights belong jointly to both Parties, but each Party may exercise its rights independently of the other.

10.2.4 Ideas, processes and methods developed in the course of the provision of services by Aveniq in cooperation with the Customer belong jointly to

both Parties and may be used and exploited by them as they wish and independently of each other, subject to pre-existing intellectual property rights of the other Party and subject to the maintenance of confidentiality pursuant to section 11.

## 11. Warranty

### 11.1 Warranty of Quality and Fitness

#### 11.1.1 Aveniq warrants that

- a) it performs its Services carefully and in accordance with the contract;
- b) it complies with the specifications and service levels agreed in the individual contracts;
- c) its products, when used in accordance with the contract, have the expressly warranted characteristics and do not have any defects which nullify or considerably restrict their suitability for the agreed use.

11.1.2 If there is a defect, the Customer may demand rectification free of charge. Aveniq shall remedy the defect within a reasonable period of time at its own expense.

11.1.3 If Aveniq has not carried out the requested rectification of defects at all, has not carried it out in time or has not carried it out successfully, the Customer may make a deduction from the remuneration corresponding to the reduced value. The right to rescission, substitute performance or claims for compensation shall be excluded.

11.1.4 In the case of defective Project Services, the Customer has the right to demand that the defects be remedied free of charge within a reasonable period of time. If the defects cannot be remedied within the grace period, the Customer shall set another grace period appropriate to the cause of the defects. If the rectification of the defect fails definitively, the Customer shall instead of the statutory rights have exclusively the following claims:

- a) in the case of an insignificant or impeding defect (i.e. defect class "low", "medium" or "high"), demand an appropriate reduction of the agreed remuneration for the Project Services;
- b) Withdraw from the project contract or the relevant Project Service in the event of a significant defect (i.e. defect class "critical"). Services or partial services that have already been provided essentially free of defects and can be used by the Customer in a reasonable manner shall be fully remunerated and shall not be affected by any withdrawal from the contract. Claims for damages in accordance with section 12 remain reserved. The Customer shall have no claims to substitute performance.

11.1.5 If a critical service level defined in a contract (hereinafter referred to as "**Operating**

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**Agreement**) is not met, Aveniq shall remedy the defect immediately, at its own discretion, by repair or replacement. Any parts removed in the course of rectification or replacement shall become the property of Aveniq. If an attempt to remedy the defect or a replacement delivery fails or if such attempts do not take place within a reasonable period of grace, the Customer may, at its option:

- a) continue to demand performance, or
- b) demand a reduction of the remuneration. Aveniq remains obliged to provide the Services in accordance with the contract. Any further liability is excluded. If the Operating Agreement provides for Service Level Credits, the reduction shall be effected by payment of the corresponding Service Level Credits.

The Customer is obliged to discuss the grace period with Aveniq before it is set and to give due consideration to Aveniq's interests. If Aveniq is not able to provide the Service again in accordance with the contract after the grace period set in writing, the Customer shall be entitled to terminate the relevant Operating Agreement extraordinarily in accordance with section 14.2.

## 11.2 Exclusion of Warranty

Aveniq shall be released from its warranty obligations if and to the extent that defects are not attributable to it, in particular in the case of:

- a) unauthorised changes to the agreed conditions of use and operation by the Customer;
- b) unauthorised interventions in the software by the Customer if the software is changed by such interventions;
- c) defects or claims resulting from the use of the Software in conjunction with other equipment, software or data not originating from Aveniq;
- d) operating errors or negligent behaviour of the Customer;
- e) defects or claims resulting from voltage faults or failures in the supply line; or
- f) if the Customer fails to make backup copies of locally stored programs and data.

## 11.3 Warranty Period

The warranty period for services to be provided on a one-off basis is three months from successful acceptance.

For continuous services, the warranty ends with the completion of the respective service.

## 11.4 Warranty of Title

11.4.1 Aveniq warrants that its services do not infringe any proprietary rights of third parties.

11.4.2 As soon as the Customer becomes aware of a possible infringement of an Intellectual Property Right, it will notify Aveniq thereof. The Customer shall, within the scope of the applicable procedural law, leave the independent defence of the claim and its settlement to Aveniq, provide it with all available information and grant it any assistance and authority to defend against such claim and shall not settle such litigation without the prior consent of Aveniq.

11.4.3 Aveniq's liability for third party claims resulting from breaches of warranty of title shall be limited to claims arising from legally enforceable court or arbitration awards, which have been settled by the Customer with Aveniq's consent or the existence of which has been acknowledged by Aveniq. Aveniq will also indemnify the Customer for its reasonable legal fees arising from the aforementioned court or arbitration proceedings. This is subject to the Customer promptly notifying Aveniq of the assertion of such claim, granting Aveniq the authority to independently defend against and settle such claim, providing all available information at the Customer's expense and providing Aveniq with all assistance and authority to defend against such claim, and not settling such litigation without the prior consent of Aveniq.

11.4.4 If the third party has obtained or is threatening to obtain a prohibition against the Customer from obtaining or using certain or all of the Services, Aveniq will, at its option:

- a) replace the Services with other non-infringing services; or
- b) adapt the Services so that they no longer infringe the rights of third parties,

always provided that the essential contractual functionalities of the Services are preserved and such replacement or adaptation is carried out without significantly affecting the operational processes of the Customer.

11.4.5 If neither a replacement nor an adjustment can be achieved, the Customer may terminate the corresponding service or partial service extraordinarily.

11.4.6 Aveniq shall not be liable for any infringement actions or claims resulting from the use of an IT system in connection with other systems, software or data not provided by Aveniq.

## 11.5 Warranty for Third Party Cloud Services

In the case of third-party cloud services, only the warranty provisions agreed between the Customer and the third party shall apply. Aveniq excludes any warranty of quality and title.

## 12. Confidentiality

12.1 The Parties undertake to keep confidential acts and data which are neither evident nor generally accessible. This obligation shall also be imposed on involved third parties. When using cloud services of third parties, the confidentiality obligations of the third party shall be governed solely by the contract between the Customer and the third party. In case of doubt, facts and data are to be treated confidentially. The confidentiality obligations already exist before conclusion of the contract and also after termination of the contractual relationship or after fulfilment of the agreed services. Statutory duties of disclosure and information remain reserved.

12.2 Aveniq may disclose the fact and the essential content of a request for quotation to possible subcontractors to be engaged but shall otherwise treat the request for quotation as confidential.

12.3 Advertising and publications about project-specific services require the prior written consent of the other Party, as does their naming as a reference.

12.4 Applicable data protection regulations must be complied with.

## 13. Liability

13.1 Aveniq shall be liable to the Customer for any damage caused by it and its auxiliary persons in connection with the contractual relationship unless it proves that neither it nor the auxiliary persons are at fault. Unless otherwise agreed in the contract, the total liability for slight negligence shall amount to a maximum of half of the order value, in the case of periodic services to a maximum of 6 months' remuneration of the relevant contract. The limit shall be calculated as follows for periodic services: Total of all remunerations paid under the relevant contract up to the event of a loss, divided by the number of months of the term reached up to that point, times 6.

This limitation of liability does not apply to:

- a) personal injury;
- b) damages caused by gross negligence or intent.

13.2 Any liability of Aveniq for indirect or incidental damages, as well as consequential damages, loss of profit, unrealised savings, loss of business and/or production, additional expenses, loss of data and claims by third parties shall be excluded to the extent permitted by law.

13.3 Any liability for force majeure is excluded. In the event of force majeure, Aveniq shall not be in default with its services affected thereby and agreed deadlines and dates shall be extended accordingly." Force majeure" shall mean events beyond the reasonable control of Aveniq or its auxiliary persons which they could not avoid despite exercising due diligence and the consequences of

which they were unable to avert, such as in particular war, warlike conditions, riots, terrorist acts, environmental disasters, epidemics, pandemics, strikes, governmental acts and measures, prolonged failure of the external power supply or cyber-attacks.

13.4 Aveniq shall notify the Customer in writing in advance of any interruptions to system operation for the purpose of maintenance and modification work. If possible, the planned interruptions shall be carried out outside the Customer's working hours. The Customer may not claim for reimbursement or damages in connection with interruptions. Aveniq shall in principle have the right to freely use the defined maintenance windows.

13.5 The Customer shall be liable for any damages caused to Aveniq as a result of the improper or negligent use of the IT system provided according to the contract. The Customer shall be liable for damages to the IT system in the Customer's care in accordance with the statutory provisions.

13.6 In the case of third-party cloud services, only the liability provisions agreed between the Customer and the third party shall apply. Aveniq excludes any liability for third party cloud services.

## 14. Non-solicitation

14.1 The Parties undertake not to actively solicit or entice away any employees or otherwise contractually bound persons of the other Party during their contractual relationship and for six months thereafter.

14.2 If a Party hires and employee or other contractually bound person of the other Party in breach of clause 14.1 the breaching Party shall, unless otherwise agreed, owe a penalty equal to the gross annual salary of the person concerned.

## 15. Termination

15.1 Contracts may be terminated by either Party in writing at any time with effect at the end of a calendar month. The notice period is 6 months.

15.2 In the event of a material breach of contract, the non-breaching Party may terminate the contract without notice at any time, provided that the breach of contract, insofar as it is curable, has not been remedied despite a written notification of breach and threat of extraordinary termination and the setting of a reasonable period of grace. Claims for damages due to untimely termination of the contract remain reserved. Compensation for loss of profit is excluded.

15.3 After termination of the contract, Aveniq shall hand over to the Customer all documents received from the Customer as well as any work results, both written and machine-readable.

## **16. Assignment**

16.1 Rights and obligations arising from the contractual relationship may not be assigned, transferred, or pledged to third parties without the prior written consent of the other Party. Consent may not be unreasonably withheld. Individual companies within a group of companies are not considered third parties.

## **17. Applicable Law and Place of Jurisdiction**

17.1 The contractual relationship shall be governed by Swiss law, excluding the conflict of laws rules and the Vienna Sales Convention (United Nations Convention on Contracts for the International Sale of Goods, concluded in Vienna on 11.4.1980).

17.2 The exclusive place of jurisdiction is Baden (AG), Switzerland.