

## 1. Scope and application

These General Terms of Business (GTB) shall assume definitive subsidiary validity in the absence of individual contract agreements between customers (hereinafter: «customers») and synesix solutions AG (hereinafter: «synesix») and shall be valid for all services, products and third-party products distributed by synesix. The GTB shall form an integral part of all contracts concluded between the customers and synesix, unless agreed expressly otherwise. Any provisions deviating from the GTB shall only become legally binding if they are expressly offered or expressly accepted in writing by synesix.

## 2. Service description

synesix offers services in the following fields: business model and service development, technical counselling, sales and marketing, production management, and product-related services. The content and scope of individual services and products shall be determined by the service descriptions contained in the relevant contracts, agreements, order confirmations and specifications (hereinafter: «service descriptions»). The content agreed in detail in these service descriptions shall prevail over the GTB. The information provided by the manufacturer shall apply for third-party products. The services of synesix shall be performed in return for payment on a time and material basis and without any responsibility for a specific result, unless expressly agreed otherwise.

## 3. Entry into force of contracts

All information provided by synesix in brochures, price lists and other publications, as well as information available on-line, shall be non-binding and only represent an invitation to request a quotation, unless expressly stated otherwise. Any contract shall enter into force upon the date of signature by the parties and no later than upon commencement of the service or delivery of the product or third-party product. If services, products or third-party products are ordered verbally, such orders must under all circumstances be confirmed in writing and shall be considered to have been legally submitted, if they are not cancelled immediately after receipt of the confirmation by the customer. Quotations shall be binding during the period specified by synesix. If no such period is specified, the quotation shall remain valid for 30 days after the date of the quotation. The current daily price of the third-party manufacturer valid when the order was placed shall apply for quotations for third-party products.

It shall not be permitted to supply customers via a third party or make deductions from outstanding invoice amounts either by offsetting such amounts against any counter claims or for other reasons.

## 4. Prices, charges, rates and terms of payment

### 4.1 General provisions

The customer shall pay for the individual services, products and third-party products the price determined in the relevant contracts, agreements and order confirmations and/or price lists. All prices and payments are – unless otherwise indicated – exclusive and strictly net in Swiss Franks. In addition, VAT and other expenses (duties, shipping and packaging costs, insurance, etc.) shall be invoiced to the customer for the appropriate amount. All additional costs, particularly material costs, own expenses, marketing costs and expenses for third parties, which are not explicitly incurred by synesix, shall be borne by the principal.

### 4.2 Fixed prices

If the performance of a service is agreed for a fixed price in the service description, this fixed price shall be based on the basic principles known when the agreement was concluded. Section 4.7 (below) shall continue to apply (price adjustment). If these basic principles should change significantly during execution of the project, and this could not have been foreseen by synesix, synesix shall be permitted to adjust the fixed price. Unless otherwise agreed, synesix shall invoice for 50% of the fixed price when the order is placed and the remaining 50% halfway through the project. All additional services shall be charged on a time and material basis each month.

### 4.3 Hourly rates

The applicable hourly rates for services shall be determined by the individual agreement.

#### 4.4 Travel expenses

Travel expenses shall be calculated in the form of lump sum allowances plus VAT. Lump sum travel allowances include transport costs and time expenditure for one person.

#### 4.5 Terms of payment

All invoices and claims of synesix against its customer shall be immediately payable and must be paid without deductions before the date indicated on the invoice form under «payment agreements». If no date is indicated, the amount owed to synesix must be paid without deductions within 30 days of the invoice being presented. Any representations or justified objections must be raised within the stated payment period and under all circumstances no later than 30 days after the invoice date. After this period has elapsed the invoice shall be considered approved. The payment date shall also be the expiry date. If a customer fails to pay the invoice or raise objections against it prior to the date indicated on the invoice form under the terms of payment or, in the absence of such a date, within 30 days of the invoice being presented, default interest of eight per cent (8 %) per year shall be payable from the payment date, together with the payment of dunning fees, without any further notice of default being necessary. In the event of default in payment on the part of the customer, synesix shall be entitled, without any further reminder, to suspend its service without any compensation, without prosecution and to arrange for outstanding payments to be collected by a third party at the expense of the customer. Deductions from the payable invoice amounts shall not be permitted either through offsetting against any counter claims or for other reasons.

#### 4.6 Extended terms of payment

synesix may demand the implementation of measures in order to safeguard its claims in the form of advance payments, bank guarantees, etc.

#### 4.7 Price changes

synesix reserves the right to adjust prices, charges and rates to the relevant and applicable synesix price lists if the contract has a duration of over one year. The customer must be notified of any price changes at least one month in advance.

### **5. Retention of title**

The products and third-party products supplied by synesix shall remain the property of synesix or the third-party supplier until payment has been received in full and the customer shall not be entitled to sell on or pledge such products. The customer shall be required to contribute to measures for the protection of the property of synesix or the third-party supplier.

The customer authorises synesix or the third-party supplier to enter its ownership in the appropriate title retention register and notify the lessor of the business premises of the customer of the above.

### **6. Deadlines and delivery periods**

Deadlines and delivery periods are non-binding, unless otherwise expressly agreed in writing. synesix shall endeavour at all times to meet the agreed deadlines. However, synesix cannot assume any guarantee for compliance with deadlines and the customer shall not be entitled to assert any claims of whatever nature based on delays. The indication of binding delivery periods and delivery dates by synesix is subject to correct and prompt delivery by subcontractors and manufacturers. In principle, synesix performs its services during normal working hours, from Monday-Friday 9.00 – 12.00 (noon) and from 2.00 – 5.00 pm (business hours), with the exception of local public holidays for the relevant branch of synesix.

### **7. Involvement of third parties**

synesix is entitled to involve third parties in order to fulfil the contract. synesix shall be liable for the services of any third parties involved as it is liable for its own services.

## **8. Obligations of the customer**

### **8.1 Preparatory and support measures**

The customer shall be bound to conduct all technical, operational and personnel preparatory and support measures incumbent upon him in relation to the services to be performed by synesix correctly, promptly and free of charge. In particular, the customer must promptly provide the information and materials required in order to perform the service and grant access to synesix as required for the fulfilment of the contract. The customer shall designate a contact person for synesix, who shall be exclusively authorised to make decisions concerning all operational matters regarding the services to be performed and shall be provided with the necessary time resources. In addition, the customer shall be bound to give immediate notice of any circumstances, events or information, which threaten or even prevent the proper performance of the service. The customer shall give immediate notice of any deviations in the development of the project, errors in performance of the service and other errors, as well as any circumstances highlighting the necessity of corrective measures.

### **8.2 Handling of products, hardware and software**

The customer shall be bound to comply with all instructions of synesix concerning use of products supplied by synesix or hardware and software from synesix and the use of synesix systems and to take all reasonable safety precautions (including for the protection of equipment, which is the property of synesix). synesix must be notified immediately of any change of location. Moreover, the products supplied by synesix and their hardware and software must not be modified by the customer or connected to other equipment.

### **8.3 Use in compliance with legal and contractual requirements**

The customer shall ensure that the services, products and third-party products, for which he has concluded a contract with synesix, are used in compliance with the law and the contract. He shall be bound to comply with all legal requirements and assume sole responsibility for the content of information present on his systems and storage media. synesix does not accept any liability in this respect. The customer shall be bound to hold synesix blameless for all claims of any nature, which are asserted against synesix by third parties in connection with the use of services of synesix by the customer.

### **8.4 Violations of duty**

If the customer fails to fulfil the above-described obligations in full or fails to do so promptly, any responsibility of synesix for any failure to perform services in compliance with the contract shall be cancelled. If any delays or additional costs are incurred, synesix may demand the adjustment of the agreed deadlines and an increase to the payment. If the customer also fails to fulfil his obligations after an appropriate extension period has been granted, synesix shall also be entitled to demand full compensation for any damage incurred. synesix shall also reserve the right to cancel the contract without notice.

### **8.5 Duties of information**

Operational regulations of the principal, in particular safety requirements, working hours regulations and/or site rules can only be respected if synesix is informed of them in writing before the commencement of work.

## **9. Delivery, tests, acceptance and default in acceptance**

### **9.1 Delivery of products and third-party products**

In principal, deliveries shall be performed at the discretion of synesix and at the risk and cost of the customer. Complaints concerning damage, loss or deterioration during transit must be sent by the customer directly to the relevant transport organisation. The customer must confirm receipt of products by signing the delivery note attached to the delivery. The customer shall check deliveries immediately after receipt and submit any complaints in writing within ten (10) days. If he fails to do so, or if he makes productive use of the products supplied, the delivery shall be considered to have been accepted. synesix will forward complaints to the relevant third supplier for processing.

## 9.2 Checks and acceptance of services

The customer must check services provided by synesix immediately after the service has been performed in full or after receipt of notification of operational readiness and give written notice of any complaints or defects within a maximum of ten (10) days. If synesix is responsible for a specific result, defects shall be rectified by synesix according to the provisions of Section 14, Guarantee. Other complaints shall be processed by synesix at the complete discretion of the latter. If the customer fails to perform prompt testing or acceptance or if he makes operative use of the services, the latter will be considered to have been approved and accepted. Smaller defects, which do not significantly compromise the operations of the customer, shall not constitute an impediment to acceptance.

## 9.3 Default in acceptance

If the customer is in default of acceptance, synesix shall be entitled to store goods ordered or provided in connection with services of synesix at the cost and risk of the customer, suspend performance of the service and, after the customer has failed to accept within an appropriate extension period granted for acceptance, to withdraw from the contract. In this event, the customer must pay for all services performed by synesix and compensate for any damages incurred by synesix.

## 10. Intellectual property

### 10.1 Regulation of intellectual property

synesix or its licensors shall continue to hold all intellectual property rights connected with the performance of services and the associated records and documentation. This shall also apply if modifications or additions are conducted by synesix or rights only come into existence during the performance of a service. Provided it is agreed in writing, after full payment of the agreed amount, the customer shall have a non-transferable and non-exclusive right to use the work results, documents, evaluations or programmes created by synesix within the framework of the service descriptions. At the same time, programmes allocated to the customer may only be used on the described facilities, systems and only for the customer's own purposes. Under no circumstances may they be copied, placed at the disposal of or transferred to third parties. The user license of the customer for standard software and documents of third suppliers shall be determined by the provisions of the third supplier. The customer undertakes to comply with these provisions at all times.

synesix has the explicit right to use the information obtained from this project for scientific purposes (incl. publications). The duty of confidentiality shall be considered to have been fulfilled, if synesix converts the relevant numerical data into an anonymised and untraceable form prior to scientific publication.

### 10.2 Violations of intellectual property rights

In the event of violations of use or violation of the intellectual property of synesix, its licensors or third suppliers by the customer, synesix shall reserve the right to terminate the contract without notice for good cause. Rights to compensation and restoration of the legal condition are reserved.

## 11. Intellectual property rights of third parties

### 11.1 Protection against claims of third parties

Any liability on the part of synesix in relation to the customer for violations of property rights of third parties shall be excluded, as far as this is legally permissible. In the case of liability, synesix shall defend the customer against any claims asserted against the customer in connection with the performance of services by synesix due to violation of a Swiss intellectual property right, provided the customer informs synesix without delay in writing of any such claims, and offers synesix exclusive control over any lawsuit and all negotiations for the judicial or out-of-court settlement of the legal dispute and provides assistance in this connection.

### 11.2 Freedom to choose the form of restoration of property rights

If intellectual property rights of third parties have been violated or it is the opinion of synesix that this is likely to occur, in the event of liability, synesix may choose either to secure for the customer the right to continue to use the relevant services, to replace or modify the latter so that the violation of intellectual property rights ceases, or to withdraw these services and refund to the customer the payment made by the latter, deducting appropriate compensation for use. The customer shall not be entitled to assert other claims against synesix in the event of violation of property rights.

### 11.3 Violations of property rights in the event of modifications and additions to the service

synesix shall not be actionable for violations of intellectual property rights, if a claim arises from the use of services in accordance with the service description in connection with services, which were not provided by synesix, or if a violation of property rights is due to changes to services provided by synesix by the customer or third parties. The customer also undertakes to hold synesix harmless, if claims are asserted by third parties against synesix due to violations of commercial property rights or unfair competition due to the logos, labels, patterns, brands or other intellectual property rights of the customer used within the framework of the adjustment of products to take account of the company characteristics of the customer.

### 11.4 Violations of property rights by third parties

The provisions concerning the property right violations of this supplier shall apply for violations of property rights caused by deliveries and services of third suppliers. synesix shall not be actionable for such violations.

## 12. Confidentiality

Both parties shall also be bound, beyond the duration of the contractual relationship, to keep secret and to use only within the framework of the contractual relationship all manufacturing and business secrets made accessible to them and all other information, data and documentation received or accepted as labelled confidential in connection with the preparation of quotations, preparations for the performance of services, contract negotiations, drafting of contracts or the fulfilment of contracts. This shall exclude communication of the above with the consent of the other party.

## 13. Data protection

The customers undertake to comply with all applicable data security and data protection regulations. The Swiss Data Protection Act shall apply for business relationships with customers in this and other countries. The communication of confidential information to third parties shall require the prior written consent of the other party. If synesix processes personal data for the customer, the customer shall be bound at all times to accept and fulfil his full responsibility as the holder of this data. He must also determine in particular the purpose and method of such processing of this data. synesix shall be the sole processor of such data and accepts no responsibility based on data protection law for the customer as the holder of this data. synesix shall be entitled, for the purpose of ensuring legal use, to inspect and document all data and information of the customer. The customer expressly declares that he is willing for synesix to transfer abroad and comprehensively process, use or allow the use of all non-confidential information and data concerning the customer.

## 14. Guarantee

### 14.1 Guarantee promise

synesix provides a guarantee to the customer for the correct construction, adequate quality of the materials used and satisfactory execution of the supplied products for one year after delivery. This guarantee shall not release the customer from the obligation to give immediate notice of defects in accordance with Section 14.4. synesix shall only be responsible for a specific result if this has been expressly stated. synesix cannot provide any guarantee that the products that it supplies or systems that it supports can be used without interruption and faults in all the desired combinations.

### 14.2 Limitation of guarantee

The guarantee shall not apply for any defects or disruptions, for which synesix is not responsible, such as natural wear and tear, accident, force majeure, improper use, the intervention of the customer or third parties, excessive use, unsuitable equipment or extreme environmental influences. The guarantee shall no longer apply if a defect is due to the influence of a third party or a malfunction of the infrastructure used by the customer or if the customer or third party interferes with the products supplied by synesix or the hardware or software or manipulate or modify the latter, without obtaining the written consent of synesix. If the customer transports products abroad, synesix shall also be released from any guarantee.

### 14.3 Guarantee cases

If a guarantee case arises, synesix shall rectify all defects at its own discretion (e.g. reworking, replacement deliveries). If synesix is not able to rectify the defects within an appropriate period, the customer shall be entitled to a reduction to the amount paid for the relevant service or, if the reduced value is equivalent to the payment made, to reimbursement of the payment with the deduction of appropriate compensation for the service performed in return for restitution of the relevant service.

#### 14.4 Duty of information

Guarantee claims must be asserted in writing within 10 days of guarantee case arising, describing precisely the defect and circumstances of its occurrence.

Services provided by synesix, which extend beyond the framework of guarantee claims of the customer, shall be performed by synesix, if possible, and invoiced according to the relevant and applicable price lists.

#### 14.5 Acceptance of goods deliveries

If synesix supplies goods or other work, the latter must be accepted within 10 days of delivery by the customer and checked for conformity with the order and any specifications. If no defects are reported within the above-mentioned period, it will be considered that the goods have been accepted.

#### 14.6 Guarantee provisions of third manufacturers

The guarantee provisions and terms of business of third manufacturers shall apply exclusively for services and deliveries performed by the latter.

### 15. Liability

#### 15.1 General provisions

Any liability of synesix shall be excluded, in the case of intent or gross negligence.

#### 15.2 Exclusion of additional liability

In particular, any liability or obligation shall also be expressly excluded in connection with the performance of services by synesix for indirect damage, consequential damage such as loss of profits, unrealised savings, additional costs or claims of third parties or loss of data both for damages caused by delayed delivery within the framework of what is legally permissible. Nor shall synesix be liable for damages caused by accident, force majeure, third parties or non-contractually.

#### 15.3 Liability of third manufacturers

In the case of third products, the provisions of the manufacturer shall apply. synesix declines any liability for claims arising from the failure or malfunction of third-party products (for example, service costs for the removal or installation of software or hardware). synesix shall not be liable in any way for the performance of services by third suppliers. synesix may, in consultation with and at the cost of the customer, assert contractual claims against third suppliers.

### 16. Force majeure

If a party is not able, despite all care taken, to fulfil its contractual obligations due to force majeure events, such as mobilisation, war, sabotage, strikes, lock-outs, revolution, official measures or orders, embargos, new standards, customs restrictions, floods, storms, fire and other elementary events or any other unforeseen influences, the fulfilment of the contract shall be deferred according to the nature of the event.

### 17. Export

The export of products, which are covered by an export ban imposed by the import/export office of the Federal Department of Economic Affairs or corresponding foreign authorities, shall be forbidden. The customer undertakes to comply with any such export bans.

## **18. Amendments and cancellations**

### **18.1 Amendments**

Unless otherwise agreed in the service descriptions, the parties may at any time agree in writing to make changes to the service description. Otherwise, synesix shall notify the customer promptly of any amendments to the GTB and the terms of orders, contracts and agreements. Any changes shall entitle the parties to terminate the contract within the proper cancellation period. If the contract is not cancelled within this period, any amendments will be considered to have been approved by the customer.

### **18.2 Cancellation**

Contracts concluded for an indefinite period can be cancelled by either party in writing subject to a notice period of three months. The duration of fixed-term contracts shall be tacitly extended by a further year, if the contract is not cancelled subject to the notice period of one month prior to expiry of the term of the contract. This shall not affect any other agreements between the parties. synesix may at any time cancel contracts without notice by notifying the customer and/or suspend its services and deliveries, if the customer violates a significant provision of the contract, in connection with the use of services provided by synesix, conducts or tolerates illegal or objectionable activities, defaults in the payment of invoice amounts, become insolvent, if compulsory enforcement measures are taken against him or his financial status otherwise changes in a way that threatens the rights of synesix.

## **19. Severability clause**

If any individual provisions of these GTB should be invalid or ineffective, this shall not affect the effectiveness of the remaining provisions and the GTB as a whole. The parties shall endeavour in such an event to replace the invalid or contestable provision with another valid and enforceable regulation, which approaches as closely as possible the legal and economic content of the deleted provision. The same shall apply for the completion of gaps in the contract.

## **20. Applicable law and jurisdiction**

All legal relationships between the customer and synesix shall be governed by Swiss law. The application of the «Vienna Convention» (UN Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980) shall be excluded.

**The exclusive place of jurisdiction shall be Basel, Switzerland.**

**Last updated: October 2008**