



## **General Terms and Conditions of Sale**

Bechtle Suisse SA, branches of French-speaking Switzerland, Software Division  
January 2020

### **1 General**

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#### **1.1 Subject matter and scope**

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Bechtle Suisse SA branches in French-speaking Switzerland, software branch in Carouge and Morges (hereinafter referred to as "Bechtle") offer its customers a wide range of IT services and products, specialising in the area of software licences. The services are defined in individual offers or contracts between Bechtle and the Customer. These documents specify in particular the nature of the services to be provided by Bechtle, their scope, duration and remuneration. Even after the order has been confirmed, Bechtle is entitled to withdraw from contracts in whole or in part if it believes that the claim arising from the payment of the purchase price is at risk. There is no obligation to present the Customer with supporting documents. These General Terms and Conditions of Sale (hereinafter referred to as "T&Cs") shall be deemed to be an integral part of the contract as soon as the Customer accepts Bechtle's services. The Customer's terms and conditions of purchase and other terms and conditions shall only apply if Bechtle has expressly accepted them in writing, provided that they do not contradict these T&Cs.

Paragraph 1 et seq. of the first section of these T&Cs contain the general provisions that apply to all services provided by Bechtle. The following sections (paragraph 2 et seq. and paragraph 4 et seq.) define the specific contractual services. These T&Cs will enter into effect on 15 September 2018 and replace all previous versions. Bechtle reserves the right to change these T&Cs at any time. In the case of a contract with successive performance, Bechtle reserves the right to terminate the contract early in exceptional cases, with effect from the date on which the new version of the T&Cs comes into force.

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#### **1.2 Bechtle performance**

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Bechtle will provide its services in accordance with the rules set out in these provisions and the conditions set out in the individual contracts. Bechtle shall fulfil its contractual obligations in a professional and diligent manner.

Bechtle may engage third parties to perform services.

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#### **1.3 Customer obligations**

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The Customer undertakes to provide Bechtle with all necessary information free of charge and with all operational, personnel, organisational, technical and other resources available to Bechtle for the provision of services.

The selection, configuration, implementation and use of the products, as well as their qualification for the Customer's intended use, are the sole responsibility of the Customer.

The Customer is solely responsible for implementing the necessary security measures to protect the stored data from possible destruction.

Delays and additional costs incurred by Bechtle as a result of late or improper fulfilment of preparatory activities and other compulsory contributions shall be borne in full by the Customer.

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#### **1.4 Prices, price revisions and payment terms**

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The prices mentioned in the offers are based on the data known at the time the offers were drawn up and only concern the services mentioned in the offers.

Unless otherwise agreed, prices are net, in Swiss francs, excluding value added tax, for items that ship from a Bechtle warehouse.

These prices are exclusive of value added tax, which is calculated according to the rate applicable in Switzerland at the time the invoice is issued.

The terms of payment stated on Bechtle's invoices and/or in framework agreements shall take precedence over these terms. In the absence of such conditions, Bechtle's invoices are to be paid within 10 days of the invoice date, net and without discount. Unjustified reductions will be charged with an administration fee.

In the event of default, Bechtle is entitled to charge a default penalty of 5% per annum from the date of the first reminder as well as collection and administration costs. The Customer shall incur a CHF 30 compensation payment for each reminder letter.

The Customer is not entitled to lodge any responses to Bechtle's claims.

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### **1.5. Liability**

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Bechtle is only liable for direct damage if it can be proven that it is the result of gross negligence or an intentional act on the part of Bechtle. Liability for verifiable damage resulting from minor negligence is always limited to the amount of the remuneration agreed for the contractual service in question, but not exceeding a maximum of CHF 100,000. In the case of an order comprising several parts or projects, Bechtle cannot be held liable beyond the amount of the fee to be received by Bechtle for the part or project concerned.

Bechtle cannot be held liable for any damage in excess of these amounts, regardless of the nature of the damage. In particular, Bechtle does not accept any liability for loss of data, expenses for data recovery, loss of production, loss of use, lost savings, loss of orders, loss of profit or any other direct or consequential damage. In particular, Bechtle does not accept any liability:

- a) if the Customer has not carried out preparatory activities or other compulsory contributions that are necessary for Bechtle to perform the contract, or has done so incorrectly or late, or has not provided or maintained the environment required for Bechtle's performance;
- b) if obstacles occur which are not the direct responsibility of Bechtle, such as major breakdowns, late or incorrect deliveries (e.g. hardware or software) or administrative measures;
- c) in the event of delays in delivery for which Bechtle is not responsible.

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### **1.6. Confidentiality**

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Both parties mutually undertake to protect the confidentiality of all facts, concepts, processes, documents, data and information ("Confidential Information") of which they have become aware in the course of the preparation and execution of the contract and which relate to the professional sphere of the other contracting party and in respect of which there is a particular confidentiality interest for one of the parties.

The parties shall treat Confidential Information with the same care and discretion as if it were their own Confidential Information. The parties shall ensure that such Confidential Information is not used improperly or without permission by themselves, by ancillary staff or by mandated third parties or made available for unauthorised use in any way.

The Customer will treat the data of the personnel employed by Bechtle as confidential in accordance with the provisions of the data protection legislation.

This duty of confidentiality will continue after the contract between Bechtle and the Customer has expired, provided that this is justified by a legitimate interest.

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### **1.7 Change management**

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Throughout the duration of the individual contract, the parties may, at any time, propose changes to the agreed services in writing. If the Customer requests a change, Bechtle is obliged to inform the Customer within a reasonable period of time whether the desired change is possible and, if so, what the contractual consequences are, particularly with regard to price, quality and deadline. If certain aspects need to be clarified, the Customer will bear the costs and expenses incurred by Bechtle. Any change to the agreed services shall be deemed to be binding and contractual from the moment that both parties have signed an amendment to this effect.

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### **1.8 Contract expiration**

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Unless otherwise agreed, and insofar as it is a successively executed contract concluded for an indefinite period, termination is possible at any time at the initiative of either party, with effect from the end of the month, subject to three months' notice.

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### **1.9 Headhunting of staff**

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Each party undertakes not to recruit employees of the other party, whether or not they are involved in the performance of the contract, either for its own account or for that of third parties, or to have them indirectly recruited through third parties. During the entire duration of the contract and for a period of one year after its execution, it is forbidden to use employees of the other party in any form whatsoever, unless mutually agreed in writing by the parties.

In the event of non-compliance with this obligation, the party in breach shall immediately pay the other party a penalty equal to the gross annual salary of the headhunted employee, and not less than CHF 50,000. The exercise of a right to compensation remains reserved, although the contractual penalty and the actual execution of the right must be taken into account.

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### **1.10 Data protection**

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The Customer agrees that Bechtle may process product data, such as sales prices, quantities and Customer names and addresses, as part of the periodic reporting process and pass this on to its manufacturers/suppliers, who may be located abroad.

The Customer also agrees that Bechtle may, under certain circumstances, process and disclose Customer data to a credit guarantee company commissioned by Bechtle in the context of a credit check or that Bechtle may process such data for the calculation of credit and market risks. The Customer also authorises Bechtle to process and analyse the Customer's data in order to offer the Customer other products and services, also provided by third parties, which may be of interest to the Customer, or to send information to the Customer's postal or e-mail address. Bechtle may also pass on the aforementioned Customer data to other companies within the Bechtle Group for the same purpose.

Read more information on data protection at: [www.bechtle.ch](http://www.bechtle.ch).

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### **1.11 Handover**

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Either party may assign rights and/or obligations arising from the individual contract with the written agreement of the other party. Bechtle reserves the right to assign or sell financial claims against the Customer (e.g. factoring) to third parties, who may be located in Germany or abroad.

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### **1.12 Necessity of written form**

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All annex agreements, amendments, additions and substantive declarations must be in writing to be valid.

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### **1.13 Severability clause**

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Should individual provisions be or become null and void, the validity and observance of the other provisions shall not be affected. In such a situation, the null and void provision must be reinterpreted or amended in such a way as to bring it into line with the original purpose of the provision, in accordance with the rules.

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### **1.14 Applicable law and place of jurisdiction**

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The contracts and the T&Cs are governed exclusively by Swiss law.

The place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is the location of Bechtle's principle office. However, Bechtle reserves the right to take legal action against the Customer in the the location of the Customer's registered office/place of residence.

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## **2 Product sale and delivery**

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### **2.1 Subject matter and scope**

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The term "products" refers to software and licence rights offered and distributed by Bechtle and, in exceptional cases, to computer equipment and accessories.

Bechtle supplies the Customer with the products specified in the offer, the order confirmation or the individual contract. The nature and quantity of products to be delivered are governed by the corresponding individual contract. In the absence of a written agreement to the contrary, each order shall be considered a separate purchase contract. Any subsequent changes to an order require the approval of Bechtle. If the Customer makes a subsequent change to an order, Bechtle is entitled to charge a processing fee.

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## **2.2 Product delivery**

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The quantity and performance information contained in the order confirmation shall be binding. In the absence of an order confirmation, Bechtle's offer or any other order placement by the Customer shall be binding. Delivery is subject to the availability of the products at the supplier or manufacturer.

The delivery times stated by Bechtle are purely indicative, unless explicitly agreed otherwise in writing. Therefore, the deadlines are given in good faith, but without any guarantee. This applies in particular (but not exclusively) in the event of a delay in delivery as a result of a supply problem at the supplier. Bechtle is not liable for any delays and the Customer is not entitled to claim damages from Bechtle, who will endeavour to find suitable alternatives. The consequences of delays for which the Customer is responsible, in particular any additional costs incurred by Bechtle, shall be borne by the Customer.

Bechtle can make changes to the confirmed order, provided that the products still fulfil the same function.

Any other modification or cancellation of the order requires mutual agreement in writing. Any expenses already incurred will be borne by the Customer. Call-off orders, placed for a limited period of time, must be called off within the agreed period. Otherwise, Bechtle will deliver and invoice the remaining products. If a delivery date is delayed due to a change in the order initiated by the Customer, Bechtle reserves the right to change the price.

Returns require the written consent of Bechtle. Software, licence rights and products that are not part of Bechtle's standard product range are excluded. To avoid such products being ordered by mistake, it is up to the Customer to check beforehand whether the product really meets its needs.

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## **2.3 Inspection and receipt of products**

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If the Customer requires a product inspection by Bechtle, this service will be agreed separately and charged to the Customer. Unless otherwise agreed, the date on the delivery note shall also be the date of receipt and performance. The Customer is obliged to check the quantity and conformity of the delivery without delay, at the latest within eight days, and to notify Bechtle of any defects immediately in writing and in detail. If it fails to do so, the delivery will be considered approved.

The manufacturer may have made technical changes to the products.

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## **2.4 Prices and price revision**

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Services not included in the purchase price, such as freight/transport, insurance, installation, commissioning, training and user support, as well as extraordinary packaging and disposal costs, shall be charged to the Customer.

Unless otherwise agreed, accessories are not included in the price. The price charged for the products is established at the time the order is confirmed or allocated.

Bechtle expressly reserves the right to adjust its prices at a later date if the basis of calculation changes due to circumstances beyond Bechtle's control, such as price increases by Bechtle's suppliers.

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## **2.5 Delays in payment**

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In the event of late payment by the Customer, Bechtle is entitled to suspend deliveries until all outstanding claims have been settled in full. The consequences of the interruption of deliveries (e.g. damages) shall be borne exclusively by the Customer. At the same time, Bechtle can rely on the general provisions of the Code of Obligations.

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## **2.6 Right of retention**

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The Customer shall not be entitled to exercise a right of retention on products from Bechtle.

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## **2.7 Retention of title**

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The goods remain the sole property of Bechtle until all claims against the Customer have been settled. Consequently, the Customer is prohibited from transferring or encumbering products before full payment of the purchase price.

The Customer authorises Bechtle to enter the retention of title in the retention of title register.

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## **2.8. Transfer of use and risk**

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Title and risk shall pass to the Customer upon arrival of the goods at the place of delivery, irrespective of whether either party assumes responsibility for transport and the resulting costs.

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## **2.9 Industrial property rights and software usage rights**

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The terms of use for software published by third parties and supplied by Bechtle are set out in the special terms of the software licence agreement of the software publisher or supplier.

The Customer is informed that the publisher/supplier can demand the withdrawal of the licence and the return of the product in the event of a violation of the terms of use or licence clauses.

Failure to comply with the terms of the licence shall render the Customer liable to the publisher or supplier of the licence.

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## **2.10 Warranty**

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Only those product features for which a guarantee is explicitly stated in the written offer shall be covered.

The warranty offered by Bechtle for products it supplies is based primarily on the terms of the manufacturer's or supplier's warranty. Bechtle is obliged to assign any warranty claims against manufacturers and suppliers to the Customer. The Customer also waives the right to assert statutory warranty claims against Bechtle, insofar as this is permitted.

Subject to the provisions of the manufacturer's or supplier's warranty, the warranty shall in any event be limited to the repair or replacement of the defective products, at Bechtle's discretion, and shall only apply if the products remain in Switzerland or the Principality of Liechtenstein. Bechtle does not guarantee the continuous and trouble-free operation of the hosting platform. No warranty claims can be made for damage caused by:

- a) Insufficient maintenance, in particular if this has been carried out by a person not authorised by the manufacturer/supplier, or
- b) Failure to comply with operating or installation instructions, or
- c) Inappropriate use of the products, or
- d) The use of unapproved parts or accessories, or
- e) Normal wear and tear, or
- f) Improper transport, handling or treatment, or
- g) Modifications or attempted repairs not performed by Bechtle, or
- h) External factors, in particular force majeure (e.g. failure of the power supply or air conditioning, damage caused by natural forces), as well as other reasons for which Bechtle or the manufacturer/supplier is not responsible.)

Warranty services that are not covered by the manufacturer or supplier, as well as additional expenses incurred by the Customer, will be charged to the Customer. If a defect is not described adequately or at all, Bechtle will investigate the defect at the Customer's expense.

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## **2.11 Patents and copyright**

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If a third party makes or asserts claims against the Customer for infringement of patent rights, copyrights or other industrial rights in relation to the delivered products or their use, the Customer is obliged to inform Bechtle immediately in writing and to inform Bechtle without delay of the aforementioned infringements and the claims made. Bechtle will inform the supplier or manufacturer of this information without delay and request them to rectify the situation. The Customer waives any warranty or liability claims against Bechtle.

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## **2.12 Re-export**

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The products sold by Bechtle are subject to national export legislation. Before any re-export of the product, the Customer is obliged to apply for a specific export licence from the manufacturer. If the products are sold, this obligation is transferred to the purchaser.

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## **2.13 Disposal**

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The Customer shall be responsible for the proper deletion of the data and programs on the data carriers to be disposed of.

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# **3 Services**

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## **3.1 Subject matter**

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Bechtle offers its Customers a comprehensive range of IT services, including software licensing.

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## **3.2 Bechtle performance**

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Bechtle will fulfil its contractual obligations by acting diligently and professionally in accordance with the terms of the offer, contract or other written agreements. Bechtle is free to choose the employees who will provide these services, although it will endeavour to take account of the Customer's specific wishes.

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## **3.3 Bechtle's working hours**

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As a rule, Bechtle provides its services on working days, i.e. Monday to Friday from 08:00 to 12:00 and from 13:00 to 17:30. The normal daily working time is 8 hours. Services outside of these times, at weekends or on national and regional public holidays (in the Customer's location) require the consent of Bechtle and will be charged with a surcharge to be determined.

Unless otherwise agreed, the travel time between the nearest Bechtle subsidiary and the place of work for the provision of services shall be regarded as paid working time.

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## **3.4 Deadlines**

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Only the deadlines stated in writing as guaranteed deadlines are binding. These deadlines will be extended as appropriate if impediments arise. Bechtle will only be liable for delays if it can be shown that they are the result of intentional or negligent actions on the part of Bechtle. Unforeseen events and cases of force majeure shall release Bechtle from the obligation to continue the execution of the order for the duration of the disruption and to the extent of the consequences thereof.

In the absence of any other agreement, Bechtle reserves the right to charge the Customer for any additional costs and other expenses resulting from a delay and/or interruption of the project. This does not include project delays for which Bechtle is solely responsible.

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## **3.5 Prices, price revisions and payment terms**

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In the case of services provided on a one-off basis or for a fixed period not exceeding six months, the prices stated in the individual contract may not, as a rule, be changed. In the case of services provided for a period of more than six months or for an indefinite period of time, Bechtle is entitled to adjust its prices at any time, subject to three months' notice. In the event of a price increase, the Customer has a period of 20 days after notification to terminate the contract if they so wish, with effect from the date on which the new prices come into force.

Unless otherwise agreed, Bechtle's services will be invoiced periodically (usually monthly) on a time basis. If the parties have agreed on a fixed fee, this will cover Bechtle's expenses for the services specified in the offer or in a written agreement. The sum is due upon signature of the contract, unless otherwise stipulated in the contract. Costs relating to the execution of the order, in particular travel and accommodation costs, shall be borne by the Customer and invoiced on the basis of their actual amount, on presentation of receipts, or according to the mileage travelled in the case of journeys made with a personal vehicle.

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### **3.6 Acceptance and claims**

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#### **3.6.1 General**

The service is considered to have been provided and accepted when the result of the work has been handed over to the Customer. The Customer is obliged to accept all services from Bechtle immediately upon receipt and to check them for defects. As soon as a defect is detected, the Customer must submit a written complaint.

#### **3.6.2 Acceptance procedure**

The Customer and Bechtle will agree on the acceptance procedure in advance, with Bechtle making the relevant proposals. The acceptance establishes proof of the fitness for purpose of the work performed in accordance with the detailed specifications. Acceptance itself is the Customer's responsibility. Bechtle is required to make a contribution to the implementation.

Acceptance must take place within 14 days after Bechtle has notified the Customer in writing of the availability of the service.

If major defects are found at the time of acceptance, the Customer may only demand repair or re-supply in accordance with the rights available to them under the warranty.

A report will be drawn up for each receipt and signed by both parties. In this acceptance report, minor defects that need to be repaired will be mentioned, as well as major deficiencies that require the acceptance procedure to be repeated, partially or completely.

If the Customer fails to carry out the acceptance test and sign an acceptance report for reasons beyond Bechtle's control, the acceptance shall be deemed to have been completed after a period of 20 days from the date of delivery.

The productive use of all or part of the services shall always be deemed to be acceptance of the part of the work thus implemented, without an acceptance report being required.

If an acceptance is definitively unsuccessful, the provisions relating to the impossibility of repair shall apply mutatis mutandis in the context of the guarantee.

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### **3.7 Guarantee**

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Bechtle guarantees that the services provided by Bechtle for the purpose of producing a work result comply with the specifications set out in writing in the individual contracts and that they do not have any defects that would prevent or significantly restrict their suitability for the purpose intended in the contract. However, Bechtle does not guarantee the continuous and faultless operation of the IT system. In particular, Bechtle cannot guarantee continuous and trouble-free use of the software in all configurations chosen by the Customer.

The guarantee is six months from the date of acceptance.

Within one month of receiving a complaint, Bechtle is obliged to identify and implement appropriate measures to eliminate major and reproducible defects free of charge. If Bechtle is unable to rectify the defects within the additional period, the Customer is entitled to demand an appropriate reduction in the agreed remuneration for each individual contract or, in the event of a significant defect which prevents the Customer from using the work as a whole, to withdraw from the individual contract in question, although in the event of withdrawal from the contract, the Customer will only be entitled to a pro rata reimbursement of the sums already paid for this contract.

Any claims beyond compensation or termination of the warranty are explicitly and completely excluded. In particular, the Customer is solely responsible for the selection and use of Bechtle's products and services as well as the results achieved or not achieved by the Customer.

In particular, Bechtle shall be released from any warranty if it can be shown that the defects complained of by the Customer are not the sole responsibility of Bechtle, or if they have other causes, such as, for example, operating errors, intervention by the Customer or a third party, a change in the agreed conditions of use and operation, in particular with regard to hardware and software, or by chance or force majeure.

If all the requirements for warranty claims are not fulfilled, Bechtle is entitled to charge the Customer for its costs.

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### **3.8 Legal guarantee**

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Bechtle guarantees that it has all the rights required to provide its services in accordance with the contract.

If a third party attempts to prevent the Customer from using Bechtle's services according to the terms of the contract on the basis of an allegedly better right, the Customer must declare this in writing within ten days. Bechtle will defend the Customer against such third-party claims at its own expense,

provided that the Customer has notified Bechtel in good time and provides reasonable support at all times. If necessary, Bechtel will modify its services in such a way that they comply with all the essential requirements of the contract without infringing the rights of third parties. If a change in the service is not relevant, insofar as the requirements of third parties are established, the Customer shall be obliged to suspend the use of the service without delay. However, Bechtel is not obliged to respond to the complaint if the claims are based on a breach of duty due to the fact that the service provided by Bechtel was altered by the Customer or by a third party not commissioned by Bechtel, or that it was provided under conditions other than those specified.

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### **3.9 Right to work results**

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Bechtel grants the Customer the non-exclusive right to use the services provided by Bechtel and the results of the work performed by Bechtel for the Customer for commercial purposes in accordance with the intended purpose. The Customer shall not be entitled to pass on the results of Bechtel's work or any further processing carried out by the Customer to third parties or to grant a right of use to third parties. In the case of services which, according to the terms of the individual contract, are only to be provided for a limited period of time, the right of use granted to the Customer is limited to the duration of the individual contract.

All rights to any inventions, copyrights and other industrial property rights to products, processes, methods, ideas, know-how, concepts, documentation, etc., which have been used, developed, improved, utilised or otherwise implemented by Bechtel in the performance of services for the Customer, are the exclusive property of Bechtel and may be used by Bechtel for itself or other Customers as it sees fit.

## **4 Website**

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### **4.1 Target audience**

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The Bechtel website and the offers it contains are intended exclusively for internet users in Switzerland.

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### **4.2 Content of online offer**

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Bechtel does not guarantee the topicality, accuracy, correctness, completeness or quality of the information published on the internet. Bechtel is not liable for any material or non-material damage arising from the use or non-use of the information provided or from the use of incorrect or incomplete information, unless Bechtel can be proven to have acted intentionally or negligently. Before commissioning products purchased from Bechtel, the instructions in the accompanying operating manuals must always be observed.

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### **4.3 Exclusion of liability for references, hyperlinks and banners**

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The information published on the Bechtel website may contain references (e.g. in the form of hyperlinks) to content provided by third parties. Bechtel can only be held liable for such content if Bechtel was aware of the fact that the content may be inaccurate, illegal or objectionable, if it was technically possible for Bechtel to prevent the dissemination of the content and if it was reasonable to expect Bechtel to take such action. Even though Bechtel carefully checks this content when it is placed on its website, there is no guarantee that these providers will not subsequently offer incorrect, unlawful or objectionable content by changing their content or incorporating new links. Due to the technical nature of the internet, Bechtel cannot guarantee the completeness or accuracy of the information provided on its website. Regardless of the form of the links to these external websites (e.g.

hypertext links or banners), over which Bechtel has no control, the operators of these websites are solely responsible for their content. Bechtel certifies that it did not identify illegal content on the pages concerned when the links were inserted onto its website. Bechtel has no influence on the current and future design, content or authorship of the linked pages. Bechtel therefore expressly distances itself from all content published on websites that may have been changed after the links or references to them were posted. Bechtel also wishes to make it clear that it does not identify with the content of third-party websites.



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#### **4.4 Non-binding offers**

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All offers are without obligation and non-binding. Bechtle reserves the right to change, supplement or delete parts of the offer or the entire offer without prior notice. The Customer shall not be entitled to any claims regarding the availability of the offer.

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#### **4.5 Copyright and trademark law**

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Bechtle endeavours to respect the copyrights of the graphics, sound documents, video sequences and texts used in all publications, to use its own graphics, sound documents, video sequences and texts, or to use royalty-free graphics, sound documents, video sequences and texts. All logos and trademarks featured in the internet offering and, where applicable, protected by third parties, are subject without restriction to the provisions of the applicable trademark law and the rights of the registered owners. The fact that a trademark is merely cited does not mean that it is not protected by the rights of third parties. The design and layout of the Bechtle website are protected worldwide by copyright held by Bechtle, insofar as this does not affect the rights of third parties. Any use, reproduction or transmission of the contents or pages of this website, even in part, without the written consent of Bechtle will result in civil and criminal proceedings.