



**General Business and Insurance Terms and Conditions  
of ÖWD Österreichischer Wachdienst Security GmbH & Co KG,  
the ÖWD Security Systems GmbH & Co KG,  
the ÖWD Cleaning Services GmbH & Co KG,  
and  
the ÖWD Insurance Services GmbH  
(abbreviated ÖWD Security & Services)**

**Terms and Conditions, Version 01/2022**

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**Valued contracting partner,**

**We are pleased to be able to count you among our clients.**

**ÖWD offers you service, installation and brokerage of insurance products which require different contract terms and conditions.**

**We summarised these terms and conditions for all types and variants of contracts in one document. The Joint Contract Terms and Conditions are valid for each type or variant of contract. For your contract, only those terms and conditions which comply with contract types and variants specifically requested by you additionally apply.**

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## **A. Joint Contract Terms and Conditions**

### **1. Jurisdiction**

All legal relations between client and contractor (ÖWD) are subject to these "Joint Contract Terms and Conditions" as well as to the Special Conditions of each agreed upon contractual service. These terms and conditions also apply to future amendments and follow-up orders, even if no reference hereto is explicitly made in a particular case. ÖWD is hereafter to be understood as the definite contractual partner of the client.

### **2. Range of Services**

The establishment of the agreed upon range of services is to be defined by the contracting parties in the form of a written agreement, which serves as the basis for the contract fulfillment. If services agreed upon are not established in writing, ÖWD will render services at its own discretion according to criteria of expediency. In emergency cases in order to ensure sufficient protection to buildings is ÖWD entitled to engage and invoice extra security personnel.

### **3. Written Notice, Alterations to Contract**

Alterations to the Joint Contract Terms and Conditions cited here and/or to the services agreed upon with the client must be, without exception, completed in writing and shall be deemed as part of the contract. This pertains to all subsidiary agreements, later changes or amendments to previously existing contracts. The requirement for the written form may only be waived in writing. Agreements with ÖWD personnel are not valid.

### **4. Terms and Conditions of the Client:**

The client's terms and conditions are not valid. Upon placement of the order with ÖWD, the client's terms and conditions are therefore deemed rejected for this contract and all future contracts, even if the general business and insurance terms and conditions should not form the basis of the order in individual cases. These general business and insurance terms and conditions are accepted upon the placement of the order by the client.

### **5. Performance of Services**

ÖWD uses its employees as agents for the agreed upon service. The selection of personnel and the right to issue directives, except in cases of imminent danger or unless explicitly agreed otherwise, lie with ÖWD. The Temporary Employment Act (Arbeitskräfteüberlassungsgesetz) does not generally apply to the personnel of ÖWD, except if explicitly otherwise agreed upon in the contract. No transfer of holdings or business units shall be established through contractual relations between contracting parties.

### **6. Subcontractors**

ÖWD reserves the right to enlist other commercial companies to fulfil its duties.

### **7. Conclusion of Contract, Length of Contract**

The contract fundamentally becomes effective with ÖWD's written offer and with the client's written acceptance of the offer. Additional verbal agreements are not valid. In cases of changes to the offer by the client, the agreement only becomes effective if ÖWD approves this change in the form of an order confirmation. Insofar as it concerns continuing obligation and nothing else is otherwise agreed upon in writing, all contracts are valid for a period of five years, unless another length is deemed as agreed upon in the Special Conditions. If a contract with a certain period of validity is not terminated in writing at least three months before the end of the contract, it shall be renewed for the hitherto existing contract period.

### **8. Early Termination of Contract**

In cases of continuing obligation, upon complete relinquishment of a contractual property, the client may - provided that no assignment occurs - withdraw from the contract early with three months' period of notice. If it simply concerns relocation, the services are to be resumed at the new location as long as ÖWD does not object. ÖWD is to be made aware of such changes promptly in writing. If the range of services or the service description changes upon relocation, ÖWD reserves the right to adjust the service charge agreed upon accordingly. Due to economic reasons, ÖWD reserves the right to terminate the contract with a period of one month's notice. However, the company is required to do whatever possible to secure the services of another commercial company. Upon default of payment despite an extension, ÖWD may terminate the contract effective immediately. Upon early termination of the contract, the client must pay back the price reductions which were guaranteed due to the place of performance or a longer contract period. This section does not apply to the Insurance Services Division.

### **9. Disruption of Service**

If unforeseen events necessitate, the planned services may be suspended. In particular, in cases of force majeure, strike or war, ÖWD may suspend or alter services accordingly if their performance is hindered by these events. The client is not required to pay the service fee for the duration of the suspension.

### **10. Prices and Terms of Payment**

All prices are exclusive of value added tax. All additional costs of the order, such as the costs of carriers and forwarders, including duties, other border taxes, etc., are to be paid by the customer.

Obvious miscalculation and/ or mistakes in writing can be corrected by either party to meet usual market prices. This applies as well to Section 11 of the Joint Contract Terms and Conditions.

With the exception of advance payment invoices, all invoices are payable when claims - such as notice of defects - are made, within eight days after the invoice date without deduction. ÖWD is furthermore entitled to issue partial invoices regarding (partial) services provided.

For continuous obligations, the payment is due in advance each month without deductions, unless otherwise agreed upon in writing. Invoicing can also take place electronically. Set-offs or retentions of the amount invoiced are excluded unless these claims are explicitly recognised or legally established in court.

In case of default, 8 percent default interest plus the incurred dunning and recovery costs will be charged. For the first dunning, collection fees in the amount of € 8.00, for the second € 15.00 will be charged. The claim for collection fees and default interest assumes no fault of the customer.

Before payment of the invoiced amounts due, including default interest, ÖWD is not required to provide any further services from any current contract for the duration of the default.

All payments must be made with debt-discharging effect to the bank account specified on the order and/or the order confirmation. Payments will always be credited first against expenses (collection fees, legal costs, etc.), then against the interest and finally against the capital, and this always against the oldest debt. Payments of other invoices by the client are not valid for these transactions.

Bills of exchange will only be accepted as payment by ÖWD only by special agreement. Exchange and discount charges are to be paid by the client.

The client explicitly acknowledges that the ÖWD employees are not entitled to accept payments, and are therefore not authorised to collect payments.

### **11. Complaints, Notice of Defects, Damage Claims**

Complaints, notice of defects and damage claims of any kind (insofar as these are not excluded by the provisions described below), which relate to the fulfilment of the contract, must be immediately, however at the latest within 14 days (as long as not otherwise stipulated in the

Special Conditions) after discovery (as long as not otherwise stipulated in the Special Conditions), disclosed and fully documented in writing (according to Section 25 of the Joint Contract Terms and Conditions) for the purpose of remedy. If these terms are not met, ÖWD is exempt from compensation for damages or for other fulfilment of services. In cases of untimely notification, rights cannot be asserted from such complaints. Only significant violations of contract fulfilment which jeopardise the intended purpose of the job order entitles the termination of contract without notice if ÖWD does not arrange for remedy of the written complaint within a reasonable period of time, at the longest, however, within 7 business days.

### 12. Liability

ÖWD is only liable for damages caused intentionally or by gross negligence, which are caused upon fulfilment of the contract by the company or its personnel - however, only up to the amount of: € 20,000,000— (ÖWD security systems up to € 10.000.000.--) for personal injury and damage to property, in total per case of damage; € 250,000-- for damages from break-ins or robbery per case of damage – provided that it was reported to the security service in accordance with the regulations; € 250,000-- for pure financial losses, per case of damage except for all financial losses atypical for ÖWD; € 5,000,000-- for damage from environmental disturbances, per year. If ÖWD also assumes services outside the security sector in accordance with a contract, the liability is limited to 10% of the quoted maximum amounts. A liability claim exists only if the client has not defaulted on the payment of the fee due at the time of the damage. For insurance services, specific rules, as described in the Special Conditions for Insurance Services, apply.

### 13. Disclaimer of Liability

The liability claim lapses if the client does not immediately report and give proof of the damage and the resulting claims from it – at the latest, however, within 14 days (as long as not otherwise stipulated in the Special Conditions) from the time of knowledge of damage and author of damage – in writing and/or does not pursue the claim in court within three months after rejection. Upon loss of a key, the lost key is simply replaced; no further compensation for damages occurs. ÖWD does not assume liability for other damage besides the cited damage, particularly not for damage for which there is no insurance coverage guaranteed due to the general insurance conditions of the liability insurance. The option of dispute on grounds of gross disparity (laesio enormis) is excluded.

### 14. Proof of Insurance

ÖWD is required to take out liability insurance within the scope of the liability assumed, of which the limits correspond to Section 12. The client can request proof that the insurance has been taken out.

### 15. Contact

The client is required to promptly notify ÖWD in writing regarding any change of address or changes relating to contact persons. If the client fails to do so, notices will be deemed as received if they were sent to the last known address or contact person given.

### 16. Access Authorisation

The keys necessary for job execution and/or for technical equipment are to be provided timely and free of charge by the client in the required quantity. A late or incomplete delivery or refusing to replace access authorisations which are no longer usable do not absolve the client from payment.

### 17. Information Signs/ Decals

At the start of service, ÖWD may – as long as there are no instructions to the contrary – put up the normal signs or decals. The signs and/or decals remain the property of ÖWD. After the conclusion of the job, these signs and/or decals will be removed. ÖWD is not required to restore the facility to its previous state.

### 18. Assignment

The client pledges to inform ÖWD in writing upon transfer of a contractual property to an assignee, at the latest by the handover of property. In cases of a company transfer, the assignee enters into the contract, unless ÖWD objects to this within three months after being made aware of the transfer. Upon death of the client, the assignee enters into the contract, provided that the main purpose of the contract was not for personal needs, such as in cases of guard services for the protection of the client's person. The contract is not affected by an alteration or assignment on the part of ÖWD.

### 19. Employment of ÖWD Personnel/Non-Solicitation Agreement

During the duration of the contract between the client and ÖWD and for one year thereafter, the client may not headhunt or employ personnel, neither personally nor through a third party, who are/were commissioned by ÖWD for execution of services or who were introduced to the client for this purpose. If the client violates this agreement, he is required to pay ÖWD the replacement costs in the amount of an annual gross pay of the employee concerned, at least however a sum in the amount of € 5,000.00. As basis of calculation, the average earnings of the last three months of employment are used.

### 20. Employee Protection

The contract partners agree that security-related care and occupational health care, as well assessments of the permanent places of work for ÖWD employees in the client's business (for example, telephone service, concierge service, site security, etc.), is carried out by the client's institutions. Meeting the requirements of the Waste Management Act (Abfallwirtschaftsgesetz) also falls to the client. ÖWD employee representation capacities remain unaffected by this.

### 21. Data Protection

All data, that was either provided by ÖWD to the client or comes to the knowledge of the client in connection with our business relation may only be used to process contracts.

Herewith the client shall be informed, that data, that is either forwarded by the client to us or comes to knowledge of ÖWD in connection with the business relation, is only used and stored in order to fulfill the contractual services adequately. ÖWD only forwards data to third parties that are contractually bound in privacy protection agreements and only to fulfill either contractual obligations or performing credit checks. Occasionally data will be forwarded to tax accountants, auditors and lawyers.

Individual-related data will only be stored until existing deadlines for warranty or limitation expire, furthermore until settlement of any legal disputes or after 3 years without any contact with clients. All tax related data will be stored in accordance with §§ 207 Abs. 2, 209 BAO for 10 years.

For further information please contact [www.owd.at/datenschutz](http://www.owd.at/datenschutz).

In case data processing is done due to your order, we will fulfill in any case all regulations of Art 28 DSGVO.

### 22. Usage of Software

In case ÖWD uses software for providing its services, clients are not granted any independent licences to use, sell or handover such software to third parties. After termination of the contract clients hat to verifiable finish usage of such software and delete it from its hardware systems in case the software was installed on hardware of the client.

In case clients purchased software from ÖWD that was developed by ÖWD, different rules apply.

### 23. Severability Clause

If one or more provisions of this agreement or specific conditions are or become legally invalid, the other provisions will remain in effect. In such a case, the invalid, contestable or unenforceable provision is to be amended or replaced, so that the intended economic purpose of the invalid, contestable and unenforceable provision is achieved.

## 24. Consumer Protection

The Joint Contract Terms and Conditions, as well as the Special Conditions, have primarily been drafted for legal transactions between companies. For clients who are consumers in terms of the Consumer Protection Law (Konsumentenschutzgesetz), the general and special terms and conditions apply according to the lawfulness of the Consumer Protection Law. In case such a client did not contract in ÖWD premises, the client has the right to revoke the contract within 14 days without giving reasons. He has to clearly declare the usage of the right of withdrawal by informing ÖWD via mail, facsimile or e-mail on his decision to revoke. The client may use the attached form, but he is not obliged to do so. To meet the deadline, it is sufficient to send the message on the last day of the revocation period. The client is advised on the implied warranty.

## 25. Place of Performance, Jurisdiction and Applicable Law:

The place of performance is the registered office of ÖWD.

All disputes arising from the contract, including whether a valid contract has been brought about and whether it has an effect before conclusion and after termination, shall be resolved exclusively by the competent court of the city of Salzburg. It is at the discretion of ÖWD to choose the competent court at the place of the customer's registered office, place of business, usual residence or assets.

The contract (including the general and special terms and conditions), including the matter of whether the contract is valid and whether it has an effect before conclusion and after termination, is subject to Austrian law. The validity of the United Nations Convention on Contracts for the International Sale of Goods is explicitly waived.

## 26. Notifications and Statements

Notifications and statements of the client, which are provided for in this contract or by law, shall be effected by registered letter, telefax (fax confirmation) or e-mail. For the calculation and meeting of deadlines, the date stamp of a post office at the office or place of residence of the respective contract partner is significant.

Complaints in the cleaning services division should be additionally forwarded in writing immediately in other cases of caveat emptor to the e-mail address [cleaningservices@owd.at](mailto:cleaningservices@owd.at).

The client agrees to the use of his name and/or company logo for ÖWD's marketing purposes and reference information. This agreement can be retracted in writing by the client at any time.

## B. Special Conditions for the ÖWD Security Division (BBsec):

### 1. Performance Records

Performance records and protocols (electronic reports) are subject to a charge and can be retroactively requested for a time period of 30 days.

### 2. Adjustment of Prices

ÖWD is, in any event, entitled to adjust the fee to the extent in which a change in wages occurs in the security industry.

Moreover, ÖWD is entitled to raise the fee if other general cost increases occur.

### 3. Change in the Basis for Calculation

If a certain number of hours is ordered by the client, this forms the basis for calculation of the hourly wage for ÖWD; however, if fewer hours are used by the client during the contract period than originally requested, ÖWD reserves the right to raise the determined hourly wage on the same scale as the hours ordered differ from the hours used. This does not apply if the client is the consumer.

## C. Special Conditions for the ÖWD Security Systems Division (BBsys):

### 1. General:

All information in catalogues, brochures, newsletters, advertisements, images and price lists should be seen as approximate. Unavoidable deviations normal in the trade and unavoidable slight technical deviations in quality, colour and designs may not be objected to. Additionally, in cases of minor deviations, ÖWD explicitly reserves the right to construction changes and further developments of its sites in terms of technical and economic optimisation, as well as changes due to technical reasons, especially with regard to changes of legal regulations, during the execution of the contract. Should additional costs arise from this, the client shall be informed in advance.

### 2. Client's Duty to Cooperate:

The development and planning of security systems or parts of security systems (hereafter also referred to as "systems") takes place according to the type and extent of the information, documents and resources which must be completely supplied by the client. This includes special plans, specification sheets, implementation dates, etc. If the client provides ÖWD with false information, the client assumes whole responsibility. ÖWD is not required to check the accuracy of the information provided.

The client agrees to complete the site work before the date agreed for delivery and installation.

For the length of installation, the ÖWD employees are to be provided with a lockable room in which to store their tools and materials. This room is to be free of cost, protected against theft and suitable for electronic equipment.

Should the client not fulfil his duty to cooperate as described in this section, he is required to compensate ÖWD for the damages caused; furthermore, ÖWD is also entitled to cancel the contract and/or to demand compensation for damages due to non-fulfilment, as far as all other legal requirements entitle them to do so.

The client shall provide for all required building permits: he shall indemnify and hold ÖWD harmless in this respect.

### 3. Delivery Date and Delivery:

The given delivery dates are nonbinding; if ÖWD does not meet the delivery dates, the client may demand an explanation from ÖWD, regarding whether ÖWD will withdraw from the order or deliver within a given period. On no account may the client hold ÖWD responsible for any damage that may be caused thereby.

If ÖWD cannot meet the delivery date due to force majeure or other reasons for which ÖWD is not responsible, the delivery date shall be extended as appropriate. Force majeure particularly includes: malfunctions without fault, delay in the delivery of important raw and building materials, strike or lockout, war, natural disasters, etc. In all such cases, the client is entitled to withdraw from the contract after three months have passed since the original delivery date.

ÖWD is also entitled to provide the order placed in partial shipments. In such cases, the payment conditions apply with the stipulation that the payments are to be settled proportionately to the value of the partial shipment.

The energy required for the execution of service, including for the trial operation, is to be provided by the client free of charge.

If the order is to be executed urgently, either due to its nature or upon the client's request, the necessary overtime and/or the additional costs accrued for the expedition of the procurement of materials will be charged to the client.

The client is responsible for the security of the systems delivered by ÖWD or its distributors which are stored or installed at the place of performance; losses and damages are to be paid by the client.

Compliance with the provisions of the Data Protection Act, especially compliance with the reporting and registering requirements, is solely the responsibility of the client.

#### **4. Prices and Terms of Payment:**

If the delivery takes place after the original delivery date agreed upon has passed for reasons attributed to the client, ÖWD is entitled to charge the price that was in effect at the time of the actual delivery date. For the agreed upon prices, it is assumed that the installation may take place immediately after delivery without interruption and that only one trip for the delivery and installation is required. Should additional trips be necessary due to reasons not attributed to ÖWD, ÖWD will charge for the additional costs incurred. The costs for the onsite services are not included in the agreed upon prices.

For long term contracts, the agreed prices for services are only applicable as long as no changes in wages in accordance with the collective agreement occur. In this case, the contractor is entitled to adjust the salary to the degree in which the wage adjustment occurs.

#### **5. Payment and Accounting:**

Upon the signing of the contract, the client agrees to provide an advance payment in the amount of 40% of the order value; this advance payment will be charged upon receipt of the advance payment invoice and is to be paid immediately.

ÖWD is entitled to issue the final invoice with order value minus a previous partial payment (if applicable) as of the date in which the client is required to accept the system.

#### **6. Retention of Title:**

Safety-related systems rented remain the absolute property of ÖWD. The delivered goods remain the absolute property of ÖWD until the full payment of all current and future bills, including fees and interest. The client may neither pledge the delivery item nor transfer it as collateral. In cases of attachment, seizures or other third party dispositions, the client must notify ÖWD immediately and make a list of all items affected. Enforcing the retention of title as well as the pledging of delivered goods by ÖWD is not regarded as withdrawal from the contract. The client shall ensure for the proper maintenance (upkeep and repair) as well as for proper usage during the period of retention of title at his own expense. Should the goods which are under the retention of title be combined with other goods, the client cedes all rights to the combined goods to ÖWD. The client agrees to properly store the goods.

#### **7. Acceptance and Handover:**

The trial operation of the system takes place directly after installation. If the trial operation cannot take place directly after installation through no fault of ÖWD, the client shall be responsible for the costs of a necessary trip by the technician. This also applies in cases in which the agreed installation of the system was included in the total price.

The system shall be accepted immediately after the agreed upon completion and/or immediately after the trial operation. The acceptance shall be confirmed in a log ("the acceptance log"). The client is not entitled to reject the acceptance due to immaterial defects. Should the client refuse the acceptance of the system due to immaterial defects or if he should refuse the trial operation – for whatever reasons – then the system is deemed as already duly accepted upon completion of installation.

#### **8. Service Description, Warranty, Notification of Defects and Liability:**

The security of premises, objects, openings and/or of rooms by detectors ensures that each alarm will be triggered in cases of intrusion in the secured area and/or in cases of physical changes in the secured rooms contrary to the dimensions specified by the manufacturer; the alarm system does not offer additional functions and security measures which prevent an intrusion in particular.

Incorrect or false alarms triggered, as well as alarms which do not go off, particularly due to incorrect use, changes in the environment or due to the effects of the environment cannot be excluded. For such incorrect or false alarms, ÖWD is not liable and has no obligation to pay compensation of any kind.

The delivered systems and services performed only offer the level of security that can be expected on the basis of permit specifications, operation/user manuals, instructions from the supplier and other instructions given.

For video surveillance and recording systems, only the features and image qualities which correspond to the product documents given or which are seen in the course of the product presentations are guaranteed.

The client is required to immediately, however at the latest within 14 days after acceptance, report all claims, such as defects in particular, but also damage claims (as long as they are not already excluded in the general or subsequent conditions) in written and sufficiently documented form (regarding this, also see Section 11 of the Joint Contract Terms and Conditions). If these terms are not met, ÖWD is exempt from compensation for damages or for other fulfilment of services.

ÖWD has the right to release itself from all (warranty) claims asserted, such as claims for rescission or price reduction in particular, in which they repair the defective system or provide the missing item in a reasonable amount of time.

ÖWD guarantees that the systems are consistent with the recognised engineering standards at the time of delivery and do not have any faults which negate or reduce the value or the efficiency for the normal use of the product or the use of the product stipulated in the contract. ÖWD cannot guarantee an unlimited supply of replacement parts for certain products. However, ÖWD will inform the client in a reasonable amount of time, at least with three months' notice, if a delivered product will not be further serviced. This information requirement expires ten years after the conclusion of the contract. A warranty for normal wear and tear of working parts is excluded. ÖWD shall provide a warranty of six months for equipment that is commercially utilised. The beginning of the warranty/guarantee period is the day on which the system is accepted. ÖWD shall only be held liable within the scope of mandatory law; the liability for consequential damage shall be excluded completely.

Even during the warranty period, ÖWD is not liable for damages which result from lack of care and/or improper operation not complying with the operation manual, as well as from improper use or circumstances beyond the normal operating conditions. This also applies when an external company not authorised by ÖWD works on the system.

In case the client asks (eg. due to the change of the person in support) to reset codes and passwords to factory settings, ÖWD may invoice any costs arising from such a request.

Due to data security regulations ÖWD only can support the client via tele maintenance in case of an existing service contract.

#### **9. Default of Acceptance by the Client:**

In cases of default of acceptance by the client, ÖWD is entitled to bill for the total order value of the system, exclusive of the assembly costs, but inclusive of transport and other handling costs, as long as the client has been in default of acceptance for more than 14 days.

If the client defaults on the fulfilment of his financial obligations or on the order of an agreed upon security, ÖWD may demand performance and claim damages due to non-fulfilment or – even after the transfer of the system and/or the parts of the system – withdraw from the contract after having granted a reasonable grace period of 14 days. In the latter case, ÖWD is entitled to either claim damages sustained and loss of profit or a 25% cancellation fee, calculated based on the invoiced amount agreed, including the advance payment already made; this fee is not subject to the judicial right of reduction.

#### **10. Data Protection:**

The customer explicitly agrees to ÖWD processing data which was given to ÖWD in the course of placing the order; this particularly applies to the customer's data and data relating to goods and payment transactions.

The customer has been informed about the legal provisions of the current Data Protection Law, in particular about Section 9a Video Surveillance and the reporting, recording and deleting requirements stipulated there.

## 11. Access and Time recording systems

### 11.1 Range of Services and Assessment

The services shall be provided in accordance with the written contract and consist of the delivery of hardware (terminals) and software (time recording, access control Workflow Management, etc.)

The planning of individual organisational concepts and programmes takes place according to the type and scope of the binding information and documents which are to be provided in full by the client. These also include practical test data and test options to the extent needed and are to be provided by the client in a timely manner, during the normal working hours, at his own expense. If the client has already been working in live operation with an operating system that is being made available for testing, the responsibility for securing the real data lies with the client.

The basis for the creation of individual programmes is the written service description, which the client provides or which the contractor prepares for a fee based on the documents and information provided to him.

The service description is to be examined by the client for accuracy and completeness and marked with his approval. Any later requests for changes can lead to separate date and price agreements.

Individually developed software and/or programme adaptations require a programme acceptance by the client four weeks after delivery, at the latest. This will be approved by the client in a log (examination of accuracy and completeness based on the service description accepted by the contractor). If the client allows a time period of four weeks to elapse without accepting the programme, then the delivered software shall be deemed accepted as of the ending date of the time period indicated. If the client uses the software in live operation, the software is deemed accepted. Any defects which are deviations from the written service description agreed upon are to be fully documented by the client and reported to the contractor, who shall strive to repair the defects as quickly as possible.

If there are serious defects that have been reported in writing, which means that live operation cannot begin or continue, a new acceptance is required after repair of the defects. Upon ordering standard programs, the client confirms with the order his knowledge of the range of service of the ordered programmes.

Should it prove in the course of work to be impossible, actually or legally, to execute the order in line with the service description, the contractor is required to notify the client of this immediately. If the client does not accordingly modify the service description and/or does not create the conditions which allow for the execution of the order, the contractor can refuse to execute the order. If the impossibility of execution is due to an omission on the part of the client or to a subsequent change to the service description by the client, the contractor is entitled to withdraw from the contract. The costs and expenses incurred for the contractor's work to date as well as all costs of dismantling are to be reimbursed by the client.

The shipment of programme carriers, documentation and service descriptions shall be at the expense and risk of the client. Additional training courses and explanations desired by the client will be billed separately. There is shipping insurance only upon request of the client.

### 11.2 Copy Right and Use:

The contractor and/or his licensors are entitled to all copy rights to the agreed upon services (programmes, documentations, etc.). The client obtains only the right to use the software, after payment of the fee agreed upon, strictly for his own purposes, only for the hardware specified in the contract and in accordance with the number of licenses acquired. With this contract, the client only acquires authorisation of use. Further distribution by the client shall be excluded, as per copyright law. By participating in the production of the software, the client does not acquire any rights beyond the usage rights set forth in this contract. Any infringement of the contractor's copyrights will result in damage claims, whereby in any such case full compensation is to be paid.

The client is permitted to make copies for archival and data backup purposes on the condition that the software does not contain a specific ban by the licensor or a third party and that all copyright and proprietary notices are transmitted unmodified to the copied versions. Apart from that, the software may only be duplicated if the duplication is necessary for use by the same person. The retranslation of the programme code into other code forms (decompilation) or other types of reverse engineering of the different production stages of the software are only acceptable within the scope of § 69 e Copyright Law.

Should the disclosure of interfaces be required to produce the interoperability of the software, the client is to request this from the contractor with reimbursement of costs. If the contractor fails to meet this request and a decompilation follows in accordance with Copyright Law, the results are to be used exclusively for the production of interoperability. Misuse will result in claims for damages.

### 11.3 Warranty and Liability:

Notice of defects (Section 11 of the Joint Contract Terms and Conditions) are only valid if they concern reproducible defects and, in the case of customised software, are documented in writing after acceptance of the programme.

Expenses for assistance, diagnosis of errors and rectification of defects and faults, that are the responsibility of the client, as well as other corrections, changes and additions, are to be carried out by the contractor and charged to the client. This also applies to remedying defects if programme changes, additions or other interferences have been carried out by the client himself or by third parties.

Furthermore, the contractor does not provide warranty for defects, malfunctions or damage which are due to improper use, altered operating system components, interfaces and parameters, use of inappropriate organisational resources and data carriers (insofar as these are stipulated), abnormal operating conditions as well as to damages caused in transit.

Any warranty provided by the contractor becomes invalid for programmes which are subsequently altered by the client's own programmers and/or third parties.

Insofar as changes or additions to already existing programmes are subjects of the contract, the warranty covers the changes or additions. The warranty for the original programme is not thereby revived.

Due to data security regulations ÖWD only can support the client via tele maintenance in case of an existing service contract.

## **D. Special Conditions for the ÖWD Cleaning Services Division (BBcIe):**

### **1. Range of Service and Assessment**

The services will be carried out according to the agreement. Changes to the service description or scope of services during the length of the contract are to be agreed upon in writing with the contractual partner, without exception. Agreements with the cleaning personnel are not valid. Additional services of a qualitative or quantitative nature (for example, building alterations, trade work, atypical or disgusting messes, etc.) will be additionally charged as cost-plus services (direct labour work) at the price customary for the industry.

Normal cleaning agents and equipment will be supplied by ÖWD, unless otherwise agreed upon. Only cleaning agents which are in accordance with environmental regulations will be used. Water and electricity shall be provided at the workplace by the client, free of charge. Furthermore, the client shall provide for the storage of the cleaning equipment and materials as well as a convenient, lockable changing room for the ÖWD employees. The client shall ensure that the ÖWD service personnel have free access to the rooms to be cleaned. Keys must be provided free of charge.

Any possible losses should be reported in writing immediately. The client ensures that ÖWD can carry out the work without disturbances and without delays. All delays that are beyond ÖWD's control (other professionals working, various instructions from the customer, etc.) will

be charged to the client separately. The monitoring of the constant quality of service is carried out by ÖWD administrators free of charge in irregular intervals on site. In order to make direct communication with the client possible, the client shall inform ÖWD of at least one person who will be an on-site contact person. The client may check the proper implementation of services by ÖWD at any time.

## 2. Length of Contract

A contract for permanent service is generally valid for one year, unless a longer contract length has been agreed upon. If a contract is not terminated in writing at least three months before the end of the contract (according to Section 26 of the Joint Contract Terms and Conditions), it shall be extended by a period corresponding to the previous contract periods in each case. In cases of extra cleaning, the contract is only for the one time execution of the order. Immediately after job completion, the client, together with the person responsible from ÖWD, agree to carry out an acceptance of services and to immediately report in writing – as described in Section 26 - any defects, damages, etc. Damages and defects which are objected to at a later point will no longer be taken into account by ÖWD. If a final inspection does not take place, the contract is considered to be duly completed.

## 3. Warranty and Liability:

Warranty claims of the client are limited to repairs.

ÖWD is liable for competent and proper service. With other losses, warranty and damage claims are to be reported in writing immediately upon completion of the task, describing the defects in detail (according to Section 26 of the Joint Contract Terms and Conditions). There is no warranty or liability claim for damages to the materials to be cleaned which were not of obvious quality before the start of service (for example, previous improper handling, carpets laid with water-soluble adhesive, damages due to insufficient strength of fabric or due to insufficient fastness of dyes and prints, shrinkage, etc.) If the client or someone authorised by the client makes a change to the materials to be cleaned during the contract period without notifying ÖWD, all liability claims are generally cancelled. Consequential damages and damage for which there is no insurance coverage awarded (according to the General Terms and Conditions of Liability Insurance) are excluded from any liability.

The option of dispute on grounds of gross disparity (*laesio enormis*) is excluded.

## 4. Prices

The overall cost situation in effect for personnel, material and resources at the time the offer was made is the starting basis for the creation of the prices by ÖWD. All labour costs, all legal operating fees, all collective agreement allowances, all equipment, material and transportation costs as well as insurance costs are included in the prices, except if a cost factor is reported separately. The prices apply to normal working hours on work days. For night hours and overtime, as well as for Sundays and holiday work, additional costs are charged. Lump-sum agreements, which the client can enter into with ÖWD, remain unaffected by these pricing agreements. Lump-sum agreements must be made in writing and will only be finalised after ÖWD inspects the order. Company holidays and long bank holiday weekends have already been taken into account for the monthly fee. Sunday and holiday surcharges are not included. The monthly fee is based on each agreed scope of work and is to be paid completely even when a service does not take place due to reasons for which ÖWD is not responsible; in such a case, ÖWD is not required to provide a substitute service. Upon changes to the scope of service or description of service, which is associated with additional work for ÖWD, ÖWD is entitled to additionally invoice cost-plus services, provided that no new lump-sum is agreed upon.

ÖWD is, in any event, entitled to adjust the fee to the extent in which a change in wages occurs in the industrial cleaning industry.

Moreover, ÖWD is entitled to raise the fee if other general cost increases occur.

## 5. Winter Services

For the Winter Services Division, the following applies (supplementary to the Joint Contract Terms and Conditions as well as to the above): The contract is entered into for an indefinite number of winter periods and may be terminated in writing by each party without reason by 31.07 of each year.

The service provision is based on the statutory provisions (§ 93 of the Road Traffic Act – RTA - *Straßenverkehrsordnung*) as well as, where necessary, valid municipal winter service ordinances and is provided in the period from 1 November until 31 March.

In the period of service referred to, the areas included in the contract will be cleared of snow and ice and/or gritted in cases of black ice.

However, the contractor is not required to remove contaminants in terms of the § 92 RTA. The contractor is not required to eliminate the causes that lead to the formation of ice (from leaking gutters), the accumulation of snow or to contaminants. This also applies for snowdrifts and the formation of ice on roofs (this is to be removed by specialised companies) as well as for the removal of snow and/or ice after a roof avalanche. The contractor is explicitly authorised by the client to remove roof avalanches which are on the area to be cleared for a separate charge of a fee in the amount of at least € 30.00 / hour (a minimum of 1 hour).

The on-site service takes place within an interval of 4-8 hours according to the weather situation. The client has no influence on the working method, time and execution of the cleaning. The complete clearing of snow from the pavement is not required by law. The client therefore accepts the remaining quantity of snow, which will be made safe for traffic with grit. The client is to have the relevant areas ready for snow disposal, otherwise such areas will be chosen by the contractor as appropriate. In these areas, one must anticipate restrictions on the space available due to the snow piles. This will be explicitly accepted by the client.

In cases of force majeure (for example, breakdown of private transport, extreme amounts of snow, snow drifts and constant freezing rain), on schedule clearing within the above mentioned intervals cannot be guaranteed. The assigned work will be executed four hours at the latest after normalisation.

Parking spaces and driveways will normally be maintained by machine. Going over the area manually (for example, between vehicles) is not a subject matter of the contract and must be agreed upon separately.

The fee for a winter period is to be paid as a prepayment promptly after billing. If fee payment in instalments has been agreed upon, the partial payments must be made within the required time limit.

If a (partial) payment is not promptly paid by the due date, the contractor has the right to terminate the winter service contract with immediate effect and to cease services.

The entitlement to payment is independent from the degree of necessary work caused by the weather and also exists in full if the services must remain undone due to circumstances of which the contractor has no control (road work, cleaning by third parties, etc.)

The client is required to clearly indicate borders around green areas and demarcations of areas not to be cleared, which are not obviously evident with snow on the ground, to the contractor or to outline these in the plans submitted. The contractor is not liable for damages to such unmarked areas, green spaces and demarcations as well as for frost damage or damages from permissibly used de-icing agents or grit. The contractor is not required to remove grit from the green spaces.

The contractor is not liable for damages of any type to the ground area which may arise from customary use of clearing equipment (with the machine or manually).

### E. Special Conditions for the ÖWD Insurance Services Division (BBins):

#### 1. The Obligations of the Client

The contractor agrees to create a pertinent risk analysis for the client and to develop a pertinent policy outline based on this. The client

acknowledges that this risk analysis and the policy outline are exclusively based on the client's information as well the necessary documents submitted to the contractor and that false and/or incomplete information by the client prevents the development of a pertinent policy outline.

The contractor is to advise and inform the client professionally and according to the needs of the specific customer and to provide the best possible insurance coverage under the circumstances of the case at hand. The client acknowledges that the protection of the client's interests is generally limited to an insurance company with a branch in Austria and therefore, due to the corresponding increase in cost, foreign insurance companies are only included in cases of an explicit order from the client.

The provision by the contractor of the best possible insurance coverage is carried out in the corresponding processing time, allowing for the price-performance ratio. Therefore, for the choice of insurance, besides the amount of the insurance premium, the professional competence of the insurance company, its discretionary management during the claims settlement, its willingness to be fair, the contract duration, the possibility of dismissals of claims and the amount of excess can be used as assessment criteria in particular.

## **2. The Client's Duty of Disclosure and Duty to Cooperate**

In order to conduct an informed assessment of the individual determining factors and to be able provide the client with the best possible insurance coverage based on the circumstances of the case at hand, the contractor requires all relevant information and documents for the thorough and diligent provision of its services which the client has at his disposal. For these reasons, the client is required to provide the contractor with all essential documents and information for the execution of services in a timely manner, in their entirety and without specific requests for them, as well as to inform the contractor of all circumstances that could be relevant for his services.

Where necessary, the client is required to take part in a risk inspection by the contractor or the insurance company after prior notification and the setting-up of an appointment and to point out special risks on his own.

The information and documents received from the client upon request by the contractor may be left unexamined for their accuracy of content and used as a basis for the further provision of his services to the client. The client acknowledges that an insurance application signed by him or for him by the contractor does not yet result in insurance coverage, but rather still requires the acceptance by the insurance company; this means that a period of time without coverage may exist between the signing of the insurance application and its acceptance by the insurer.

The client, as long as he is not regarded as a consumer under the Consumer Protection Act, agrees to review all insurance documents handed over by the contractor for factual discrepancies from the original insurance application and to inform the contractor of this so that corrections may take place.

The client acknowledges that a damage report or an inspection order does not ensure a coverage or benefit commitment on the part of the insurer.

The client acknowledges that he, as the policy holder, must comply with obligations in accordance with the law and with the applicable insurance conditions in the event of a claim; non-compliance may lead to the insurer's release from his duty to indemnify.

## **3. Notifications to the Insurance Customers, Electronic Correspondence**

The client acknowledges that the transmission of e-mails under certain circumstances can lead to data being lost, distorted or leaked. For such cases, the contractor only assumes liability when he is to blame for this.

## **4. Copy Rights**

The client recognises that every plan created by the contractor, particularly the risk analyses and the policy outline, is a copyrighted

work. All dissemination, changes or amendments as well as sharing with third parties require the written consent of the contractor.

## **5. Liability**

The contractor is only liable for possible damages of the client in cases of intentional fault or gross negligence. Liability for loss of profits is excluded. The liability of the contractor is in any case limited to the statutory insurance amount of the contractor's professional liability insurance.

As long as the client is not a consumer in terms of the Consumer Protection Law, the damage claims against the insurance broker must be made within 6 months of discovering the damage (Section 11 of the Joint Contract Terms and Conditions).

## **6. Confidentiality, Data Protection**

The contractor is required to treat confidential information made known to him because of the business relationship sensitively and to not disclose it to third parties. The contractor must also obligate his employees to adhere to this requirement. Any communication of data is subject to the provisions of the Data Protection Act.

The client agrees to an automation-supported use of his data for the contractor's customer file and in particular for the implementation of marketing activities, in accordance with the relevant provisions of the Data Protection Law. This consent can be rescinded by the client at any time – with no need to state any reasons.

## **F. Special Conditions for the Emergency Service Centre Alarm and Monitoring Systems (BBmon):**

### **1. Emergency Service Centre for Alarm and Monitoring Systems**

An emergency service centre is operated as part of ÖWD Security and Services and is open and staffed around the clock. Upon alarm installation, the range of services in the service regulations, which are determined by the contracting parties according to client specific conditions, are confirmed, otherwise Section 2 of the Joint Contract Terms and Conditions applies. Upon request, ÖWD also provides technical alarm systems. The terms and conditions for the alarm systems or other technical systems are stated separately in writing. In cases of termination of the installation contract by the client, the client is required to immediately stop the transmission of signals at the end of the contract period at his own expense. In cases of breach, the client is required to pay ÖWD an additional compensation in the amount of the previous monthly fee. Nevertheless, the contractual relationship ceases upon termination. The service obligation of the contractor also ceases upon termination. Irrespective of Section 13 of the Joint Contract Terms and Conditions, ÖWD accepts no liability when the functions of the emergency service centre cannot be maintained due to force majeure (sabotage, fire, loss of power, etc.). If the client is not able to provide the selected code word for the purpose of processing the alarm, the emergency service centre notifies the next police station. Any costs incurred by alarm activation, such as cost of the police, are the sole expense of the client.

### **2. Adjustment of Prices**

ÖWD is, in any event, entitled to adjust the fee to the extent in which a change in wages occurs in the security industry. Moreover, ÖWD is entitled to raise the fee if other general cost increases occur.

### **3. Exclusions of Liability**

Damages which arise from technical set-up or due to transmission paths during the connection to the emergency service centre are excluded from liability. It is the responsibility of the client to ensure a stable telephone and/or internet connection to the emergency service centre; ÖWD assumes no liability for the proper alarm transmission, pulse transmission, and/or image transmission in this context. Moreover, ÖWD does not assume liability for the functionality of the equipment and

remote connection provided by the client (in particular, telephone and internet).

#### **4. Privacy Protection**

The client agrees, that ÖWD – for quality reasons only – may record telephone calls with the Emergency Service Centre. Such records will not be forwarded to any third party.