



## Terms & Conditions

Bechtle Schweiz AG, Branch office Swiss German, Branch Software

Valid as of January 2020

### 1. General

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#### 1.1 Subject matter and applicability

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Bechtle Schweiz AG, Branch office Swiss German in Mägenwil with branch offices in Rotkreuz, Bern, Pratteln, Basel, St. Gallen and Regensdorf (hereinafter referred to as «Bechtle») offers its customers a comprehensive service and product offering in the field of information technology, in particular with respect to software licences. Performance and consideration are defined in specific offers and individual contracts between the customer and Bechtle, which govern, in particular, the nature of the performance to be provided by Bechtle as well as its scope, duration and remuneration. Even after an order has been confirmed, Bechtle has the right to withdraw from contracts, in whole or in part, if it believes there is a risk that payment may not be made. No obligation exists to submit relevant documents to the customer. As soon as the customer accepts performance by Bechtle, these General Terms and Conditions (hereinafter referred to as “T&Cs”) are considered as part of the terms of the individual contract. Any customer terms of purchase or other terms apply only if and to the extent that they have been expressly accepted by Bechtle in writing and do not conflict with these T&Cs.

Section 1 et seq. of these T&Cs contain the general provisions which apply to all cases in which Bechtle provides performance. Sections 2 et seq. through 4 et seq. contain the provisions for specific contractual performance. These T&Cs will enter into effect on 15 September 2018 and replace all previous versions.

Bechtle reserves the right to amend these T&Cs as well as other terms at any time. In the case of continuing obligations, Bechtle reserves the right to terminate the contractual relationship early with effect from the date on which the amended T&Cs enter into force.

#### 1.2 Bechtle performance

Bechtle provides performance in accordance with these provisions and the terms agreed in the individual contracts. Bechtle fulfils its contractual obligations professionally and with due care.

Bechtle is authorised to subcontract to third parties when providing performance.

#### 1.3 Customer obligations

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The customer undertakes, free of charge, to supply Bechtle with the necessary information and to ensure and maintain all the operational, staff, organisational, technical and other prerequisites within its environment so that Bechtle is able to provide performance.

The customer has sole responsibility for the selection, configuration, deployment and use of products, as well as their suitability for the customer’s intended purpose.

The customer alone is responsible for the necessary security measures to protect stored data against possible damage.

Delays and additional expenses incurred by Bechtle because the customer failed to meet preparatory or cooperation obligations on time or at all are borne in full by the customer.

#### 1.4 Prices, price changes and payment terms

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The prices stated in offers are based on information available at the time the offer is made and cover only the performance indicated in the offer.

Unless otherwise stated, prices are given net in Swiss Francs, excluding VAT, ex Bechtle’s main office.

Swiss VAT will be invoiced in addition to the rates applicable at the time of invoicing.

The payment terms stated on Bechtle invoices and/or indicated in framework agreements take precedence over these terms. Where no payment terms are stated, Bechtle invoices must be paid net, without any deductions, by the tenth day after the invoice date. Unjustified deductions will be charged subsequently with an additional processing fee.

In the event of late payment, Bechtle is entitled to add a late fee of 5% p.a. from the date of the first reminder plus

collection and processing fees. The customer will be charged an administrative fee of CHF 30 per reminder. The customer is not entitled to set-off any counterclaims against Bechtle's claims.

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### **1.5 Liability**

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Bechtle is only liable for direct damages if it can be proven that they are the result of gross negligence or wilful misconduct by Bechtle. Liability for damages resulting from ordinary negligence or proven damage is limited in all cases to the amount of the remuneration for the corresponding contractual performance, but no more than CHF 100,000. If an order is divided into partial orders or sub-projects, liability is limited to the payment made to Bechtle for the corresponding partial order or sub-project.

Any further liability by Bechtle for damages of any kind is excluded. In particular, Bechtle assumes no liability for data loss, costs for reacquiring data, production downtime, loss of use, unrealised savings, loss of orders, loss of profit or other indirect or consequential damages. Bechtle also assumes no liability:

- a) if the customer does not meet the preparatory or cooperation obligations required for Bechtle to fulfil the contract, or fails to do so correctly or on time, or if the customer does not provide and maintain the general conditions for Bechtle to provide performance;
- b) if obstacles arise outside of Bechtle's direct scope of responsibility, such as significant operational disruptions, incorrect or late deliveries (e.g. hardware or software) or measures imposed by the authorities;
- c) if deliveries are delayed through no fault of Bechtle.

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### **1.6 Confidentiality**

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Each party undertakes to keep confidential all facts, designs, processes, documents, data and information (hereinafter referred to as "Confidential Information") of which they obtained knowledge while preparing or performing individual contracts, which pertains to the other party's business operations and which either party has an interest in keeping confidential.

Each party will treat the other party's Confidential Information with the same care and discretion as its own. The parties will ensure that Confidential Information is not used in an inappropriate or unauthorised manner by themselves, their agents or any commissioned third parties. In addition, Confidential Information may not in any way be made available to third parties for unauthorised use.

The customer will treat Bechtle's employee information confidentially in accordance with data-protection regulations. These confidentiality requirements apply unaltered even after the contractual relationship between Bechtle and the customer has ended, provided there is a legitimate interest to do so.

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### **1.7 Change management**

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During the term of the individual contract, both parties may propose changes to the agreed performance in writing at any time. If the customer makes a change request, Bechtle will advise the customer within a reasonable period whether the desired change is possible and, if so, what effects the change will have on the individual contract, in particular on price, quality and deadlines. Where detailed clarifications are required, the customer will bear the corresponding costs and expenditure incurred by Bechtle. A change in the agreed performance is only considered as binding if both parties have signed a corresponding additional agreement.

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### **1.8 Termination**

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Unless otherwise agreed and where the existing agreement governs a continuing obligation for an indefinite period, either party can terminate the individual contract at any time by giving three months' notice prior to the end of a month.

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### **1.9 Solicitation of employees**

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The parties undertake not to solicit each other's employees—whether the employees are directly involved in the performance of services or not—either for themselves or a third party, nor to let employees be solicited indirectly by a third party. During the contractual term and for one year following fulfilment of the contract, either party may only employ or use, in any form, the services of the other party's employees if both parties have agreed to it in writing.

In the event of an infringement, the infringing party undertakes to pay immediately a contractual penalty amounting to one year's gross salary of the solicited employee, but no less than CHF 50,000. The right to lodge further claims for damages, against which the contractual penalty is to be set-off, is reserved, as well as the right to have the solicited employee barred from competitive activities during the non-compete period.

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### **1.10 Data protection**

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The customer consents that Bechtle may, for the purpose of periodic reporting, process product-related data, e.g. sales price and quantity as well as the customer's name and address, and transmit this data to manufacturers and suppliers, some of whom may be located abroad.

The customer also consents that Bechtle may process customer-related data to verify the customer's creditworthiness and, where necessary, disclose this data to a credit insurance provider commissioned by Bechtle or use it to calculate credit and market risk. Furthermore, the customer authorises Bechtle to process and analyse its data in order to offer the customer additional proprietary or third-party products or services that may interest the customer, or to send information to the customer's postal or e-mail address. Bechtle may also transmit the aforementioned customer data to other Bechtle Group companies for the same purpose.

Further information on data protection can be found at [www.bechtle.ch](http://www.bechtle.ch).

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### **1.11 Assignment**

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Either party may assign rights and/or obligations arising from the individual contract only with the written agreement of the other party. Bechtle reserves the right to assign or sell its customer-related receivables to third parties in or outside Switzerland (e.g. factoring).

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### **1.12 Written form**

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All supplementary agreements, amendments, additions and statements with legal effect require the written form to be considered as valid.

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### **1.13 Severability clause**

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If any individual provisions are or become invalid or void, the validity and legal force of the other provisions will remain unaffected. In such cases, the invalid provision must be reinterpreted or amended such that it achieves the intended regulatory purpose as far as possible.

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

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Individual contracts and the T&Cs are subject exclusively to Swiss law.

The place of jurisdiction for all disputes arising directly or indirectly from contractual relationships will be the competent courts in the location of Bechtle's head office. Bechtle reserves the right to bring an action against the customer in the jurisdiction of the customer's head office/residence.

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## **2. Product sale and delivery**

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### **2.1 Subject matter and applicability**

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"Products" refer to software and licence rights offered and sold by Bechtle and, in exceptional cases, also IT devices and accessories.

Bechtle will deliver to the customer the products specified in the offer, order confirmation or individual contract. The type and quantity of products to be delivered are governed by the corresponding individual contract.

Unless otherwise agreed in writing, each individual purchase order is considered as a separate contract of sale.

Any retroactive change to an order must be approved by Bechtle. Bechtle may charge a processing fee if the customer retroactively changes an order.

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### **2.2 Product delivery**

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The order confirmation is authoritative with respect to the scope and fulfilment of the delivery. In the absence of an order confirmation, Bechtle's offer or any other means by which the customer placed its order will be authoritative. This is subject to the products' availability from the supplier or manufacturer.

Unless there is express written assurance to the contrary, delivery dates indicated by Bechtle are to be viewed only as approximate dates. Delivery dates are given in good faith but not guaranteed. This applies in particular—but not only—to delivery delays resulting from supply issues. Bechtle is not liable for delays and the customer will have no entitlement to claim damages from Bechtle. Bechtle will endeavour to come up with reasonable alternatives. If the customer is responsible for delays, the customer will bear the consequences, in particular any additional costs incurred by Bechtle.

Bechtle may make changes to the order confirmation, provided the products fulfil the same functions.

Other order changes or cancellations require the written agreement of both parties. The customer will bear any costs that have already been incurred. Call-off orders subject to a specific time period must be placed within the agreed time period, otherwise Bechtle will arrange for the remaining delivery to be made and invoiced. Bechtle reserves the right to change pricing if delivery is postponed as the result of changes made to the order by the customer.

The return of goods requires Bechtle's written consent. In all cases, software products, licence rights and products that are not part of Bechtle's standard offering cannot be returned. To avoid such products being ordered by mistake, the customer should always verify in advance that this product actually meets their requirements.

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### **2.3 Inspection and acceptance of products**

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Any customer requests to have Bechtle inspect products must be specifically agreed and paid for by the customer. Unless otherwise specifically agreed, the date on the delivery note is considered to be the date of acceptance and performance. The customer must inspect the delivery immediately, but at the latest within eight days, to ensure that it is complete and accurate, and immediately inform Bechtle in writing and in detail of any defects. If this does not occur, the delivery will be deemed to have been accepted.

Products are subject to technical changes made by the vendor.

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### **2.4 Prices and price changes**

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Performance not included in the sales price, such as freight/transport, insurance, installation, startup, training and user support, as well as exceptional costs for packaging and disposal will be paid for by the customer.

Unless otherwise specified, accessories are not included in the price. The product price that will be invoiced is determined at the time of order confirmation or order placement.

In the event of subsequent changes to the calculation basis due to circumstances outside of Bechtle's control, in particular price increases by Bechtle's suppliers, Bechtle expressly reserves the right to adjust prices accordingly.

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### **2.5 Payment arrears**

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If customer payment is in arrears, Bechtle is entitled to stop all further deliveries until all outstanding payments have been settled. The consequences resulting from such suspension of delivery (e.g. damages) will be borne exclusively by the customer. Bechtle is also entitled to proceed in accordance with the general rules of the Swiss Code of Obligations (CO).

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### **2.6 Right of retention**

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Any right of retention or possessory lien held by the customer is fully excluded.

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### **2.7 Retention of title**

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Contractual items remain the sole property of Bechtle until all claims to which Bechtle is entitled against the customer have been fulfilled. The customer is therefore prohibited from selling or encumbering the products before the sales price has been paid in full.

The customer authorises Bechtle to have any retention of title entered in the retention of title register.

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### **2.8 Transfer of benefits and risks**

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Benefits and risk are passed to the customer when the delivery is received at the place of delivery, irrespective of who provides transport and pays the related costs.

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

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The terms of use of third-party software products supplied by Bechtle are governed by the specific provisions of the software publisher's or supplier's software licence agreement.

The customer acknowledges that the publisher/supplier can demand the cancellation and return of the granted licence if the usage or licence terms are infringed.

The customer will be liable to the software publisher or supplier in the event of non-compliance with the licence terms.

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## **2.10 Guarantee**

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Only those product characteristics that are expressly designated as guaranteed in the written offer are considered as guaranteed.

Bechtle's guarantee for the products it delivers is determined primarily by the applicable manufacturer or supplier warranty provisions. Bechtle undertakes to assign any warranty entitlements it may have against manufacturers or suppliers to the customer. In all other respects, the customer waives—where permissible—its statutory guarantee entitlements against Bechtle.

Subject to the warranty provisions of the manufacturer or supplier, the guarantee, in all cases, is limited to—at Bechtle's option—remedy or replacement of the defective products; the guarantee applies only if the products remain in Switzerland or the Principality of Liechtenstein. Bechtle does not guarantee that hosting platforms will operate free of interruptions or faults. Warranty is excluded in all cases for defects which have been caused by:

- a) Inadequate maintenance, especially when performed by persons not authorised by the manufacturer or supplier; or
- b) Non-observance of the operating or installation instructions; or
- c) Use of the products for purposes other than those intended; or
- d) Use of unauthorised parts or accessories; or
- e) Natural wear; or
- f) Transport, improper handling or treatment; or
- g) Modifications or attempted repairs not performed by Bechtle; or
- h) External influences, in particular force majeure (e.g. power or air-conditioning outages, damage caused by natural forces) and other reasons for which neither Bechtle nor the manufacturer are responsible).

The customer will be invoiced for warranty services not covered by the manufacturer or supplier, as well as additional costs caused by the customer. If faults are described incorrectly or inadequately, the diagnostics performed by Bechtle will be invoiced to the customer.

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## **2.11 Patents and copyright**

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If a third party lodges claims against the customer due to infringement of a patent, copyright or other industrial property right as a result of the products delivered or their operation, the customer must notify Bechtle in writing and without delay of such infringement notices or lodged claims. Bechtle will forward these notices immediately to the supplier or manufacturer and request that the situation be resolved. The customer waives any entitlement to lodge claims against Bechtle on the basis of legal guarantee or liability.

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## **2.12 Re-export**

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Products sold by Bechtle are subject to country-specific export regulations. The customer undertakes to seek a special export permit from the manufacturer before re-exporting products. This obligation must be transferred to the acquiring party in the event that the products are passed on.

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## **2.13 Disposal**

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The customer is responsible for the proper deletion of data and programs on media which is 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, especially with respect to software licences.

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## **3.2 Bechtle performance**

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Bechtle fulfils its contractual obligations through professional, careful work as defined in offers, individual contracts or written agreements. Bechtle is free to select the employees who will provide services but will endeavour to take into account customer requests.

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### **3.3 Bechtle's hours of work**

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As a rule, Bechtle provides its services on business days, Monday to Friday, between 8am and 12pm and from 1pm to 5:30pm. Standard working time is eight hours per day. Performance provided outside these times and on weekends, federal and local holidays at the customer's location require Bechtle's consent and will be subject to an agreed surcharge.

When services are provided, the time spent travelling from the closest Bechtle branch office to the location of service provision will be considered as remunerated working time, unless otherwise agreed.

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### **3.4 Deadlines**

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Deadlines are only binding if guaranteed as such in writing. Such deadlines will be extended appropriately if issues arise. Bechtle is liable only for delays if it can be proven that Bechtle caused them through wilful misconduct or gross negligence. In the event of unforeseen events or instances of force majeure, Bechtle will be released from further performance of the contract for the duration of the obstacle and to the extent of its impact.

Unless otherwise agreed, Bechtle reserves the right to invoice the customer for additional costs and expenses arising from a project delay and/or early project termination. Excluded from this are project delays for which Bechtle alone is responsible.

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

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In the case of one-off services or services provided for a specific period of no more than six months, the prices stated in the individual contract generally apply unchanged. For services provided for longer than six months or for an indefinite period of time, Bechtle is entitled to adjust its prices at any time, in which case it must notify the customer three months in advance. In the event of a price increase, the customer is entitled to terminate the contract within 20 days of notification, with effect from the date of the price change.

Unless otherwise agreed, Bechtle's performance is invoiced periodically (generally on a monthly basis) by time and expense. If a flat-rate fee is agreed, this will cover Bechtle's expenses for the services offered and/or agreed in writing; unless otherwise agreed in the individual contract, the flat-rate fee is due after the contract has been signed. Expenses related to a specific order, in particular travel and accommodation costs, are borne by the customer and will be invoiced according to the actual expenses incurred on the basis of receipts and, for travel by car, per kilometre driven.

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### **3.6 Acceptance and notification of defects**

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#### **3.6.1 General**

In principle, services are deemed to have been provided and accepted when the work result has been handed over to the customer. The customer is required to accept all Bechtle performance immediately after it has been made available and to examine it for defects. The customer must report all defects in writing immediately after their discovery.

#### **3.6.2 Acceptance procedure**

The acceptance procedure will be defined jointly by the customer and Bechtle before acceptance begins, with Bechtle providing relevant recommendations. Acceptance provides proof that the result of the service functions as intended according to the detailed specifications. The acceptance itself falls under the customer's responsibility. Bechtle is required to assist in conducting acceptance.

Acceptance must take place no later than 14 days after Bechtle has notified the customer in writing that the performance is ready for acceptance.

Should substantial defects be revealed during acceptance, the customer is entitled only to the right to remedy or replacement in accordance with and to the extent of the right to remedy provided for in the guarantee.

An acceptance report will be produced for each acceptance and signed by both contracting parties. This report records which immaterial defects are to be remedied, or which material defects have made it necessary to repeat the acceptance in whole or in part.

If, for reasons for which Bechtle is not responsible, the customer fails to conduct an acceptance inspection and sign an acceptance report, the performance will be deemed to have been accepted after 20 full days following provision of the performance.

In all cases, if the result of performance or partial performance is used in a production environment, that result is deemed

to have been accepted even without an acceptance report.

If acceptance fails definitively, the guarantee provisions governing the impossibility of remedy apply accordingly.

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### **3.7 Guarantee**

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Bechtle guarantees that any performance aimed at producing a work result meets the specifications agreed in writing in the individual contracts, and that the performance is free of faults that would significantly void or limit the suitability of the work result for its contractual purpose. Bechtle does not guarantee that the IT system will operate free of interruptions and faults. In particular, Bechtle does not guarantee uninterrupted and fault-free use of the software in all customer-selected configurations.

The guarantee period is six months and begins on the day after acceptance.

Bechtle is required to remedy material and reproducible defects free of charge within one month of receiving notification of defects, through appropriate measures selected by Bechtle. If Bechtle is not able to remedy the defect within the grace period, the customer can request an appropriate reduction of the agreed remuneration per individual contract; in the case of a material defect which prevents the customer from using the work result at all, the customer can withdraw from the corresponding individual contract, in which case the customer will only be entitled to prorated reimbursement of the payments already made for the individual contract.

Guarantee entitlements beyond the right to remedy or withdrawal are expressly and fully excluded. In particular, the customer bears sole responsibility for the correct selection and use of Bechtle products and services and for the results thereby achieved or not achieved by the customer.

Bechtle is released from any warranty if it is not exclusively and verifiably responsible for the defects reported by the customer or if the defects are attributable to third-party causes, e.g. operating errors or interventions by the customer or third parties; changes in the agreed terms of use and operation, in particular with respect to hardware and software; coincidence; or force majeure.

If any of the guarantee prerequisites listed herein are not satisfied, Bechtle is entitled to invoice the customer for its expenses.

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### **3.8 Warranty of good title**

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Bechtle guarantees that it has all the rights necessary to provide performance in accordance with the contract.

If a third party attempts to prevent the customer from using Bechtle's performance in accordance with the contract, citing what it claims to be a better right, the customer must notify Bechtle of this in writing within ten days. Provided the customer advises Bechtle in due time of the third-party claim and supports Bechtle to a reasonable extent at all times, Bechtle will defend the customer against such third-party claims at its own expense. If required, Bechtle will modify its performance so that it does not infringe any third-party rights while meeting all material requirements in accordance with the individual contract. If a performance modification is not possible, but third-party claims have been established, the customer is required to stop using the performance immediately. Bechtle is not required to defend against the lawsuit if an infringement claim is based on the fact that the performance provided by Bechtle was modified by the customer or by a third party not commissioned by Bechtle, or that it was used under conditions other than the specified terms of use.

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### **3.9 Rights to work results**

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Bechtle grants the customer the non-exclusive right to use, as intended and for work purposes, the performance provided by Bechtle as well as the work results produced for the customer in this context. The customer is not entitled to pass on to third parties the work results produced by Bechtle or any further development carried out by the customer, nor may the customer grant third parties any right of use. In the case of performance which, according to the contract, is only to be provided for a limited period, the right of use granted to the customer is limited to the duration of the individual contract.

All rights to any inventions and all copyrights and other intellectual property rights to products, processes, methods, ideas, know-how, plans, documentation, etc. which Bechtle applies, develops, improves or otherwise uses while providing services for the customer belong exclusively to Bechtle and can be used by Bechtle for itself and other customers in whatever manner it wishes.

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## **4 Web presence**

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### **4.1 Intended audience**

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Bechtle's web presence and the offers contained therein are directed exclusively at Internet users in Switzerland.

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#### **4.2 Online content**

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Bechtle accepts no responsibility for the topicality, validity, accuracy, integrity or quality of the information provided on the Internet. Bechtle is not liable for any tangible or intangible damages arising from the use or non-use of the information provided, or from the use of incorrect or incomplete information, unless wilful misconduct or gross negligence by Bechtle can be proven. The notices contained in the instruction manuals provided with products should always be consulted before using any products purchased from Bechtle.

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#### **4.3. Disclaimer with respect to references and links/banners**

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The information provided through Bechtle's web presence may contain links (e.g. hyperlinks) to content from other content providers. Bechtle is only responsible for such content if Bechtle is aware of potentially incorrect, illegal or criminal content and has the technical means to take reasonable steps preventing its use. Bechtle carefully reviewed this content at the time it was posted online, but cannot assess whether the respective content providers are now supplying incorrect, illegal or criminal content through subsequent changes to their content or via additional links. Due to the technical characteristics of the Internet, Bechtle cannot guarantee the completeness or accuracy of the information provided through its web presence. Irrespective of how links to external websites (i.e. outside Bechtle's scope of responsibility) are presented (e.g. as hyperlinks or banners), the respective operators of the linked websites are exclusively responsible for the content thereof. Bechtle hereby expressly declares that no illegal content was in evidence on the linked pages at the time the link was posted. Bechtle has no control over the current or future design, content or authorship of linked pages. Bechtle therefore expressly distances itself from all content of any linked pages that have been altered after the link was posted. Bechtle also declares that it does not adopt the content of linked external sites as its own.

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#### **4.4 Non-binding offering**

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All offerings are non-binding and subject to change. Bechtle expressly reserves the right to alter, expand or delete parts of web pages or the entire offering without prior notice. The customer has no right to the availability of the offering.

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#### **4.5 Copyright and trademarks**

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Bechtle endeavours to respect the copyrights of all graphics, sound, video and text used in any of its publications, and to use in-house or public-domain graphics, sound, video and text. All trademarks and trade names on its website, including those protected by a third party, are subject without restriction to the provisions of the applicable trademark law and to the right of possession of the respective recorded owners. The sole mention of a trademark does not mean that it is not protected by third-party rights. The design and layout of Bechtle web pages are subject worldwide to Bechtle's copyrights insofar as this does not infringe any third-party rights. Any unauthorised use, reproduction or distribution of individual content or pages without the written consent of Bechtle will result in civil and criminal prosecution.