

# General Terms and Conditions (TC) of Isarsoft GmbH

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This document is a courtesy translation. The German version of these terms shall be the legally binding version.

## **1 Remuneration, Payment, Reservation of Rights, Deadlines**

**1.1** Unless otherwise agreed, remuneration is calculated on a time-and-materials basis at the provider's prices generally valid at the time the contract is concluded.

Remunerations are net prices plus statutory value-added tax. The provider may invoice monthly. Where services are remunerated on a time-and-materials basis, the provider shall document the type and duration of the activities and submit this documentation with the invoice.

**1.2** As a rule, all invoices are payable to the designated account, without deduction, no later than 14 calendar days after receipt.

**1.3** The customer may set off or withhold payments due to defects only to the extent that it actually has monetary claims due to material or legal defects of the performance. For other defect claims the customer may withhold payments only in a proportionate amount taking the defect into account. Section 4.1 applies accordingly. The customer has no right of retention if its defect claim is time-barred. Apart from that, the customer may only set off undisputed or finally adjudicated claims or exercise a right of retention.

**1.4** The provider retains title and rights to be granted in respect of the performances until full payment of the remuneration owed, taking into account justified defect-related retentions pursuant to Section 1.3 sentence 2. Furthermore, the provider retains title until all of its claims arising from the business relationship with the customer have been fulfilled. The provider is entitled, for the duration of any payment default by the customer, to prohibit the customer from further using the performances. The provider may exercise this right only for a reasonable period, generally not more than six months. This does not constitute a withdrawal from the contract. Section 449 para. 2 BGB remains unaffected. If the customer or its buyers return the performances, the provider's acceptance shall not constitute withdrawal unless the provider has expressly declared withdrawal. The same applies to seizure of goods subject to retention of title or rights to such goods by the provider. The customer may neither pledge items or rights subject to retention of title nor assign them by way of security. Only as a reseller is the customer permitted to resell in the ordinary course of business under the condition that the customer has effectively assigned to the provider its claims against its buyers in connection with the resale and that the customer transfers title to its buyer subject to payment. By concluding this contract, the customer assigns to the provider, for security purposes, its future claims

against its buyers in connection with such resales; the provider hereby accepts the assignment. To the extent the value of the provider's security rights exceeds the amount of the secured claims by more than 20%, the provider will, at the customer's request, release a corresponding portion of the security rights.

**1.5** In the event of a permissible transfer of rights of use to deliveries and services, the customer is obligated to impose the contractually agreed restrictions on the recipient.

**1.6** If the customer fails to settle a due claim in full or in part by the contractually agreed payment date, the provider may revoke agreed payment terms for all claims. The provider is further entitled to perform additional services only against advance payment or security by a performance bond from a credit institution or credit insurer licensed in the European Union. The advance payment shall cover the respective billing period or—in the case of one-off services—their remuneration.

**1.7** In the event of the customer's economic inability to fulfill its obligations toward the provider, the provider may terminate existing bilateral contracts with the customer by withdrawal and continuing obligations by termination for cause with immediate effect, including in the event of a bankruptcy filing by the customer. Section 321 BGB and Section 112 InsO remain unaffected. The customer will inform the provider in writing at an early stage of any impending insolvency.

**1.8** Fixed performance dates shall be agreed exclusively in expressly documented form. The agreement of a fixed performance date is subject to the condition that the provider receives the services of its respective upstream suppliers on time and in accordance with the contract.

## **2 Cooperation, Duties to Cooperate, Confidentiality**

**2.1** The customer and the provider shall each designate a responsible contact person. Unless otherwise agreed, communication between the customer and the provider shall take place via these contact persons. The contact persons shall promptly make all decisions relating to contract performance. The decisions shall be documented in a binding manner.

**2.2** The customer is obliged to support the provider as required and, within its operational sphere, to create all conditions necessary for proper performance of the order. In particular, it shall provide necessary information and, where possible, enable remote access to the customer's system. If, for security or other reasons, remote access is not possible, deadlines affected thereby shall be extended appropriately; the contracting parties will agree on an appropriate arrangement for further effects. The customer shall also ensure that qualified personnel is available to support the provider. Where the contract provides that services can be provided on the customer's premises, the customer shall, at the provider's request, make sufficient workstations and work equipment available free of charge.

**2.3** Unless otherwise agreed, the customer shall ensure proper data backup and contingency planning for data and components (e.g., hardware, software) appropriate to their type and importance.

**2.4** The customer shall report defects without undue delay in a comprehensible and detailed form, stating all information useful for recognizing and analyzing defects. In particular, the work steps that led to the occurrence of the defect, the manifestation of the defect, and its effects shall be indicated. Unless otherwise agreed, the provider's corresponding forms and procedures shall be used for this purpose.

**2.5** Upon request, the customer will reasonably support the provider in examining and asserting claims against other parties involved in connection with service provision. This applies in particular to the provider's recourse claims against upstream suppliers.

**2.6** The contracting parties are obliged to maintain confidentiality about trade secrets as well as other information designated as confidential (e.g., in documents, records, data sets) that become known in connection with contract performance and, without the other party's written consent, neither use such information beyond the contract purpose nor disclose it. The receiving party shall take appropriate confidentiality measures for trade secrets and confidential information. The parties are not entitled to obtain the other party's trade secrets by observing, examining, dismantling, or testing the contractual subject matter. The same applies to other information or items obtained during performance of the contract. Disclosure of trade secrets and other confidential information to persons not involved in the conclusion, performance, or settlement of the contract may only take place with the other party's written consent. Unless otherwise agreed, the obligation to maintain confidentiality for other information designated as confidential ends five years after the respective information becomes known; for continuing obligations, not before their termination. Trade secrets shall be kept confidential for an unlimited period. The parties will impose these obligations on their employees and any third parties engaged.

**2.7** The parties are aware that electronic and unencrypted communication (e.g., by e-mail) involves security risks. In such communication they will therefore not assert claims based on the lack of encryption, unless encryption was agreed in advance.

### **3 Disruptions in Service Performance**

**3.1** If a cause not attributable to the provider—including strike or lockout—impairs adherence to deadlines ("disruption"), deadlines shall be postponed by the duration of the disruption, including, where necessary, a reasonable restart phase. A contracting party shall inform the other without undue delay about the cause of a disruption that has occurred in its sphere and the duration of the postponement.

**3.2** If the effort increases due to a disruption, the provider may claim remuneration for the additional effort, unless the customer is not responsible for the disruption and its cause lies outside the customer's responsibility.

**3.3** If, due to improper performance by the provider, the customer is entitled (or claims to be entitled) to withdraw from the contract and/or to claim damages in lieu of performance, the customer shall, at the provider's request, declare in writing within a reasonable period whether it will exercise these rights or still desires performance. In the event of withdrawal, the customer shall reimburse the provider for the value of previously existing possibilities of use; the same applies to deterioration due to proper use. If the provider is in default of performance, the customer's damages and reimbursement of expenses due to default are limited, for each completed week of default, to 0.5% of the price for the part of the contractual performance that cannot be used due to the default. Liability for default is limited to a maximum of 5% of the remuneration for all contractual performances affected by the default; for continuing obligations, this is based on the remuneration for the affected performances for the full calendar year. In addition and with priority, a percentage agreed at the time of contract conclusion applies. This does not apply where the default is due to the provider's gross negligence or intent.

**3.4** In the event of delay in performance, the customer has a right of withdrawal under statutory provisions only if the delay is attributable to the provider. If the customer rightfully claims damages or reimbursement of expenses in lieu of performance due to the delay, it is entitled, for each completed week of delay, to 1% of the price for the part of the contractual performance that cannot be used due to the delay, but in total no more than 10% of this price; for continuing obligations, based on the remuneration for the affected performances for the full calendar year. In addition and with priority, a percentage agreed at the time of contract conclusion applies.

## **4 Material Defects and Reimbursement of Expenses**

**4.1** The provider warrants the contractually owed quality of the performances. No claims for material defects exist in the case of only insignificant deviations of the provider's performances from the contractual quality. Claims for defects also do not exist in the case of excessive or improper use, natural wear and tear, failure of components of the system environment, software errors that are not reproducible or otherwise provable by the customer, or damage arising due to special external influences not assumed under the contract. This also applies in the case of subsequent changes or repairs by the customer or third parties, unless this does not hinder the analysis and elimination of a material defect. Section 6 applies additionally to claims for damages and reimbursement of expenses.

**4.2** The limitation period for claims based on material defects is one year from the statutory commencement of the limitation period. Statutory periods for recourse under Section 478 BGB remain unaffected. The same applies where the law prescribes longer periods pursuant to Section 438 para. 1 no. 2 or Section 634a para. 1 no. 2 BGB, in the event of intentional or grossly negligent breach of duty by the provider, in cases of fraudulent concealment of a defect, and in cases of injury to life, body or health and for claims under the Product Liability Act. The provider's processing of a defect notice by the customer only suspends the limitation period to the extent the statutory requirements for suspension are met. This does not restart the limitation period. Subsequent

performance (new delivery or repair) may affect only the limitation period of the defect that triggered the subsequent performance.

**4.3** The provider may claim remuneration for its effort where

- a)** it acts on a notice without a defect being present, unless the customer could not recognize, with reasonable effort, that no defect existed; or
- b)** a reported disruption is not reproducible or otherwise provable by the customer as a defect; or
- c)** additional effort is incurred due to improper fulfillment of the customer's duties (see also Sections 2.2, 2.3, 2.4 and 5.2).

## **5 Defects of Title**

**5.1** The provider is liable for infringements of third-party rights by its performance only to the extent that the performance is used in accordance with the contract and, in particular, in the contractually agreed, or otherwise intended, operating environment without modification. The provider is liable for infringements of third-party rights only within the European Union and the European Economic Area and at the place of contractual use of the performance. Section 4.1 sentence 1 applies accordingly.

**5.2** If a third party asserts against the customer that a performance of the provider infringes its rights, the customer shall notify the provider without undue delay. The provider and, where applicable, its upstream suppliers are entitled, but not obligated, to defend the asserted claims at their own expense to the extent permitted. The customer is not entitled to acknowledge third-party claims before giving the provider a reasonable opportunity to defend the third-party rights in another way.

**5.3** If a provider's performance infringes third-party rights, the provider will, at its option and at its expense,

- a)** procure for the customer the right to use the performance, or
- b)** render the performance non-infringing, or
- c)** take back the performance against reimbursement of the remuneration paid for it (less reasonable compensation for use) if the provider cannot achieve another remedy with reasonable effort. The customer's interests will be reasonably taken into account.

**5.4** The customer's claims due to defects of title are subject to Section 4.2. Section 6 applies additionally to claims for damages and reimbursement of expenses; Section 4.3 applies accordingly to additional effort of the provider.

## **6 General Liability of the Provider**

**6.1** The provider is always liable to the customer

a) for damages caused intentionally or by gross negligence by the provider, its legal representatives or vicarious agents,

b) under the Product Liability Act, and

c) for damages from injury to life, body or health for which the provider, its legal representatives or vicarious agents are responsible.

**6.2** The provider is not liable for slight negligence, except where it has breached a material contractual obligation whose fulfillment is a prerequisite for proper performance of the contract or whose breach jeopardizes attainment of the contract's purpose and on whose compliance the customer may regularly rely. In such cases, liability for property and financial losses is limited to the contract-typical and foreseeable damage. This also applies to lost profits and unrealized savings. Liability for other remote consequential damages is excluded. For any single damaging event, liability is limited to the contract value; where remuneration is ongoing, to the amount of remuneration per contract year, but not to less than €50,000. Section 4.2 applies correspondingly to limitation. The contracting parties may agree in writing on broader liability, usually against separate remuneration; an individually agreed liability amount takes precedence. Liability pursuant to Section 6.1 remains unaffected. In addition and with priority, for slight negligence the provider's liability under the respective contract and its performance for damages and reimbursement of expenses, regardless of legal ground, is in total limited to the percentage of the remuneration agreed in this contract. Liability under Section 6.1(b) remains unaffected.

**6.3** The provider is liable for damages arising from a statement of guarantee only if this is expressly assumed in the guarantee. In cases of slight negligence, such liability is subject to the limitations of Section 6.2.

**6.4** In the event data or components (e.g., hardware, software) must be restored, the provider is liable only for the effort required for restoration with proper data backup and contingency planning by the customer. In cases of slight negligence by the provider, such liability arises only if, prior to the incident, the customer had performed data backup and contingency planning appropriate to the type of data and components. This does not apply insofar as such backup is agreed as a provider service.

**6.5** Sections 6.1 to 6.4 apply accordingly to claims for reimbursement of expenses and other liability claims by the customer against the provider. Sections 3.3 and 3.4 remain unaffected.

## **7 Data Protection**

The customer will conclude with the provider any data protection agreements necessary for the handling of personal data.

## **8 Miscellaneous**

**8.1** The customer shall independently observe import and export regulations applicable to the deliveries or services, in particular those of the USA. In the case of cross-border delivery or service, the customer shall bear any customs duties, fees and other charges. The customer shall independently handle statutory or administrative procedures in connection with cross-border deliveries or services, unless expressly agreed otherwise.

**8.2** German law applies. The application of the UN Convention on Contracts for the International Sale of Goods is excluded.

**8.3** The provider renders its services on the basis of its General Terms and Conditions (TC). The customer's GTC do not apply, even if the provider has not expressly objected to them. The customer's acceptance of the services constitutes acknowledgment of the provider's TC and waiver of the customer's GTC. Other conditions are binding only if recognized in writing by the provider; the provider's TC then apply additionally.

**8.4** Amendments and supplements to this contract should be agreed in writing only. Where written form is agreed (e.g., for terminations, withdrawals), text form is not sufficient.

**8.5** The place of jurisdiction vis-à-vis a merchant, a legal entity under public law, or a special fund under public law is the provider's registered office. The provider may also sue the customer at the customer's registered office.



# **Terms and Conditions for the Provision of Services**

## **1 Subject Matter of the Contract**

**1.1** The provider renders the service in accordance with the conditions agreed in the contract and below, in return for the contractually agreed remuneration. Project and success responsibility lies with the customer. The provider renders the service in accordance with the principles of proper professional practice.

**1.2** The subject matter may consist of a one-off performance, also to be rendered in parts, or be of a continuing nature.

## **2 Performance of the Service**

**2.1** Unless otherwise agreed, the place of performance is the provider's registered office.

**2.2** The provider renders the service through suitable employees. The customer has no claim to performance by specific employees of the provider.

**2.3** Unless otherwise agreed, the provider determines the manner of performance.

**2.4** The customer has no authority to issue instructions to the provider's employees engaged in service performance.

**2.5** Where the provider is to present the results of the service in writing, only the written presentation is authoritative.

## **3 Duties to Cooperate**

**3.1** The customer shall ensure that the contact person it designates provides the provider with the documents, information, and data necessary for rendering the service in full, correctly, in a timely manner, and free of charge, unless owed by the provider. The customer shall also ensure their updating. The provider may assume the completeness and correctness of these documents, information, and data, unless it recognizes or must recognize that they are incomplete or incorrect.

**3.2** The customer shall monitor the service performance by the provider for this purpose.

## **4 Rights of Use**

**4.1** In the results of the service that the provider has rendered within the contract and delivered to the customer, it grants the customer the non-exclusive and non-transferable right to use these at its premises for its own internal purposes for the contractually intended purpose on a permanent basis, unless otherwise agreed.

**4.2** All other rights remain with the provider.

**4.3** The provider may revoke rights of use granted to the customer if the customer materially breaches usage restrictions or other provisions protecting against



unauthorized use. The provider shall first grant the customer a grace period to remedy the breach. In the event of recurrence and in special circumstances that justify immediate revocation after weighing the parties' interests, the provider may revoke the rights without setting a grace period. After a revocation of rights of use, the customer shall confirm in writing to the provider that use has ceased. The provider will reinstate the rights of use after the customer has set out and warranted in writing that no infringements of the provider's rights will arise from its use and that prior infringements and their consequences have been remedied.

## **5 Term**

**5.1** If the contract is concluded for an indefinite term, it may be terminated by giving three months' notice to the end of a calendar year. The earliest possible termination is at the end of the calendar year following the conclusion of the contract. Any agreed minimum term remains unaffected. The foregoing does not apply where otherwise agreed.

**5.2** The right to extraordinary termination for cause remains unaffected.

**5.3** Notices of termination are effective only in writing.

**5.4** Withdrawal from the contract is excluded.

## **6 Remuneration**

**6.1** Unless otherwise agreed, the provider may increase the remuneration no earlier than 12 months after contract conclusion, provided the increased remuneration corresponds to the provider's current list price. Further increases may occur no earlier than 12 months after the previous increase becomes effective. An increase takes effect three months after announcement. The customer has a right of termination if the remuneration rates increase by more than five percent. The customer may terminate within one month of receipt of the announcement, effective upon the increase taking effect.

**6.2** Agreed time sheets are deemed approved unless the customer objects in detail in writing within 21 days after receipt and the provider has indicated the fiction of approval in the time sheet.

**6.3** Travel costs and expenses as well as other disbursements shall be reimbursed in accordance with the provider's price list unless otherwise agreed. Travel time counts as working time.

**6.4** The provider may claim remuneration for additional effort where additional effort arises due to improper fulfillment of the customer's duties (see Section 3).

## **7 Performance Disruptions**

**7.1** If the service is not rendered in accordance with the contract and the provider is responsible for this (performance disruption), it is obliged to render the service, in whole

or in part, in conformity with the contract within a reasonable period without additional costs for the customer, unless this is possible only with disproportionate effort. This obligation exists only if the customer notifies the performance disruption in writing and without undue delay, but no later than two weeks after becoming aware, unless otherwise agreed.

**7.2** Any further claims for reimbursement of expenses and damages are governed by Section 6 of the TC.

## **8 Applicability of the TC**

The General Terms and Conditions (TC) apply in addition.

# **Terms and Conditions for the Use of Software over the Internet (Software as a Service)**

## **1 Services**

**1.1** The provider makes the contractual services, in particular access to the software, available within its sphere of control (starting at the interface of the data center to the Internet). The scope, quality, purpose of use, and operating conditions of the contractual services follow from the respective service description and, additionally, from the software user manual.

**1.2** Services beyond this, such as developing customer-specific solutions or necessary adaptations, require a separate contract.

**1.3** The provider may provide updated versions of the software. The provider will inform the customer electronically about updated versions and corresponding instructions for use and make these available accordingly.

## **2 Scope of Use**

**2.1** The contractual services may be used only by the customer and only for the purposes agreed in the contract. During the term of the contract, the customer may access the contractual services by means of telecommunications (via the Internet) and, using a browser or another suitable application (e.g., an app), use the functionalities associated with the software in accordance with the contract. The customer does not receive any further rights, in particular to the software or any infrastructure services provided in the respective data center. Any further use requires the provider's prior written consent.

**2.2** In particular, the customer may not use the software beyond the agreed scope of use, allow use by third parties, or make it accessible to third parties. In particular, the customer is not permitted to reproduce software or parts thereof, to sell it, or to provide it temporarily, rent it, or lend it.

**2.3** The provider is entitled to take appropriate technical measures to protect against non-contractual use. Contractual use of the services may not be impaired more than insignificantly as a result.

**2.4** In the event of a user's non-contractual exceeding of the scope of use or in the event of unauthorized granting of use, the customer shall, upon request, promptly provide the provider with all available information to assert claims due to non-contractual use, in particular provide the name and address of the user.

**2.5** The provider may revoke the customer's access authorization and/or terminate the contract if the customer materially exceeds permitted use or breaches provisions protecting against unauthorized use. In connection therewith, the provider may interrupt or block access to the contractual services. As a rule, the provider shall first set an

appropriate grace period for remedy. The mere revocation of access authorization does not at the same time constitute termination of the contract. Without termination, the provider may maintain the revocation of access authorization only for a reasonable period, a maximum of three months.

**2.6** The provider's claim to remuneration for use exceeding the agreed scope remains unaffected.

**2.7** The customer has a claim to reinstatement of access authorization and the ability to access once it has demonstrated that it has ceased non-contractual use and prevented future non-contractual use.

### **3 Availability, Defects in Performance**

**3.1** Availability of the services provided follows from the service description.

**3.2** In the case of only insignificant reduction in the suitability of the services for contractual use, the customer has no claims based on defects. The provider's strict liability for defects already existing at the time of contract conclusion is excluded.

### **4 Data Protection**

**4.1** Where the provider can access personal data of the customer or from the customer's sphere, it will act exclusively as a processor and will process and use this data only to perform the contract. The provider will observe the customer's instructions regarding handling such data. The customer bears any adverse consequences of such instructions for contract performance. The customer will agree with the provider the details for handling the customer's data by the provider in accordance with data protection requirements.

**4.2** The customer remains the controller both generally within the contractual relationship and in the data protection sense. If the customer processes personal data (including collection and use) in connection with the contract, the customer warrants it is entitled to do so under applicable provisions, in particular data protection law, and shall indemnify the provider against third-party claims in the event of a breach.

**4.3** As between provider and customer, the customer bears responsibility toward the data subject for processing (including collection and use) personal data, unless the provider is responsible for any claims by the data subject due to a breach of duty attributable to it. The customer will examine, handle, and respond to any inquiries, requests, and claims by the data subject. This also applies where the provider is approached by the data subject. The provider will support the customer within the scope of its duties.

**4.4** The provider ensures that the customer's data are stored exclusively in the Federal Republic of Germany, in a Member State of the European Union, or in another state party to the Agreement on the European Economic Area, unless otherwise agreed.

## **5 Customer Duties**

**5.1** The customer shall protect the access authorizations and identification and authentication information assigned to it or to users against access by third parties and shall not disclose them to unauthorized persons.

**5.2** The customer shall indemnify the provider against all third-party claims based on legal infringements resulting from unlawful use of the subject matter of performance by the customer or with its approval. If the customer recognizes or must recognize that such an infringement is imminent, the customer is obliged to inform the provider without undue delay.

**5.3** The customer shall use the options provided by the provider to back up its data within the customer's original sphere of responsibility.

## **6 Non-Contractual Use, Damages**

For each case in which a contractual service is used without authorization within the customer's sphere of responsibility, the customer shall pay damages equal to the remuneration that would have accrued for contractual use over the minimum contract term applicable to that service. The customer may provide evidence that it is not responsible for the unauthorized use or that no damage or substantially less damage occurred. The provider remains entitled to claim further damages.

## **7 Incident Management**

**7.1** The provider will accept the customer's incident reports, assign them to the agreed incident categories (Section 7.3), and, based on this assignment, carry out the agreed measures to analyze and remedy incidents.

**7.2** During its usual business hours the provider will accept proper incident reports from the customer and assign an identifier to each. Upon the customer's request, the provider shall confirm receipt of an incident report and communicate the assigned identifier.

**7.3** Unless otherwise agreed, after an initial review the provider shall assign incident reports to one of the following categories:

**a)** Severe incident: The incident is due to an error in the contractual services, in particular the software, which makes use of the contractual services impossible or allows it only with severe restrictions. The customer cannot reasonably work around this problem and therefore cannot complete urgent tasks.

**b)** Other incident: The incident is due to an error in the contractual services, in particular the software, which restricts the customer's use of the contractual services more than insignificantly, without being a severe incident.

**c)** Other report: Incident reports not falling into (a) or (b) are assigned to other reports. Other reports are handled by the provider only as agreed for them.

**7.4** For reports of severe and other incidents, the provider will, without undue delay, initiate appropriate measures, based on the circumstances communicated by the customer, to first localize the incident cause. If the incident reported does not, after initial analysis, turn out to be an error in the contractual services, in particular the provided software, the provider shall inform the customer without undue delay. Otherwise, the provider shall initiate appropriate measures for further analysis and remedy of the incident, or—where third-party software is involved—forward the incident report together with its analysis results to the distributor or manufacturer of the third-party software requesting remedy. The provider will promptly provide the customer with any measures available to it for circumventing or remedying an error in the contractual services, in particular the provided software, such as instructions for action or corrections to the provided software. The customer will promptly adopt such measures and promptly report to the provider any incidents remaining when using them.

## **8 Point of Contact (Hotline)**

### **8.1 Contractual services**

The provider sets up a point of contact for the customer (hotline). This point of contact handles the customer's inquiries concerning the technical operating prerequisites and conditions of the provided software as well as individual functional aspects.

### **8.2 Acceptance and handling of inquiries**

A prerequisite for acceptance and handling of inquiries is that the customer designates to the provider personnel with suitable professional and technical qualifications who internally handle inquiries from users of the provided software. The customer is obliged to direct inquiries to the hotline only via such personnel designated to the provider and to use forms provided by the provider. The hotline accepts such inquiries by e-mail, fax, and telephone during the provider's usual business hours. The hotline will handle proper inquiries in the ordinary course of business and answer them where possible. To answer, the hotline may refer to documentation and other training materials for the provided software available to the customer. To the extent an answer by the hotline is not possible or not possible in a timely manner, the provider will—where expressly agreed—forward the inquiry for processing, in particular inquiries concerning software not developed by the provider. Further hotline services, such as different contact times and deadlines as well as on-call service or on-site deployments at the customer's premises, must be expressly agreed in advance.

## **9 Contract Term and Termination**

**9.1** The contractual services are provided from the date specified in the contract initially for the term agreed in the contract. During this minimum term, early ordinary termination is excluded for both parties.

**9.2** The contract may be terminated by giving three months' notice, at the earliest upon expiry of the minimum term. If this does not occur, the contract is extended by one

additional year at a time unless it is ordinarily terminated by giving three months' notice to the end of the respective extension period.

**9.3** The right of each party to extraordinary termination for cause remains unaffected.

**9.4** Any notice of termination must be in writing to be effective. Section 8.4 TC applies.

**9.5** The customer shall, in good time before the end of the contract, back up its data sets under its own responsibility (e.g., by download). Upon request, the provider will support the customer in this; Section 4.3 TC applies. As a rule, the customer will no longer have access to these data sets after the end of the contract for data protection reasons.

## **10 Applicability of the TC**

The General Terms and Conditions (TC) apply in addition.



# Terms and Conditions for the Sale of Hardware

## 1 Subject Matter of the Contract

**1.1** The quality and scope of performance of the hardware and the approved operating environment follow from the respective product description and, additionally, from the user manual, unless otherwise agreed.

**1.2** The hardware is delivered including an installation guide. A user manual (user documentation or online help) is delivered only where necessary for intended use. The provider may, at its discretion, provide the user manual and installation guide electronically, unless this is unreasonable for the customer.

**1.3** If delivery of the hardware includes software indispensable for its functionality, the customer only receives a right to use such software with this hardware. Other software is subject to separate provisions.

**1.4** Unless otherwise agreed, the hardware shall be installed and commissioned by the customer. Any additional services provided by the provider at the customer's request (in particular preparation for deployment, installation and demonstration of successful installation, briefing, training and consulting) shall be remunerated on a time-and-materials basis.

## 2 Price, Transfer of Risk

**2.1** Prices are valid for three months from contract conclusion. Thereafter, the provider may, up to one week before delivery at the latest, pass on to the customer any increase in list price by its upstream supplier. Until delivery, but no later than within one month after notification of the price increase, the customer may withdraw from the contract if the price increase exceeds 5%.

**2.2** Risk passes to the customer directly from the shipping warehouse. The customer transports the hardware entirely at its own expense and holds the provider harmless from any transport and clearance costs.

## 3 Customer Duties

**3.1** The customer shall provide the operating and environmental conditions (e.g., room, power, climate) required for the hardware. The required conditions follow from the contract or, if not regulated there, from the product description or the user manual.

**3.2** As part of any required support, the customer will in particular grant the provider free access to the hardware location, make the necessary working tools available there to a reasonable extent, and provide useful information (e.g., about operating conditions or changes to the hardware).

## **4 Customer's Defect Claims**

**4.1** The provider warrants that the hardware, when used in accordance with the contract, conforms with the agreements pursuant to Section 1.1. For defects of title, Section 5 TC applies in addition. For material defects, Section 4 TC applies in addition subject to the following provisions (Sections 4.2 to 4.4).

**4.2** The customer has defect claims only if reported defects are reproducible or otherwise provable by the customer. Section 2.4 TC applies in particular to defect notifications.

**4.3** Where the customer has defect claims, it initially has only the right to subsequent performance within a reasonable period. Subsequent performance comprises, at the provider's option, repair or replacement delivery. The customer's interests will be appropriately considered in the choice. Title to parts replaced due to subsequent performance passes to the provider. The customer shall permit the provider to remove and install within the scope of subsequent performance, unless this is unreasonable for the customer. Before taking its own measures to remedy defects, the customer will consult with the provider. If the customer has a claim for reimbursement of expenses, such claim exists only to a reasonable extent taking into account the value of the affected performance in a defect-free condition and the significance of the defect.

**4.4** If subsequent performance fails or cannot be carried out for other reasons, the customer may, under the statutory requirements, reduce the remuneration, withdraw from the contract, and/or—under the conditions of Section 6 TC—claim damages or reimbursement of expenses. The customer shall exercise any choice it has between these defect claims within a reasonable period, generally within 14 calendar days after becoming able to take cognizance of the choice.

**4.5** If the customer withdraws from the contract, the provider will take back the hardware and refund the remuneration paid by the customer less the use possibilities granted to the customer, at most up to the customary sales value of this hardware at the time of return. As a rule, such use possibilities are calculated on the basis of declining-balance depreciation over a useful life of three years. Both contracting parties may prove that a longer or shorter useful life should be applied.

## **5 Applicability of the TC**

The General Terms and Conditions (TC) apply in addition.

# Terms and Conditions for the Rental of Hardware and Standard Software

## 1 Subject Matter, Services, Rights of Use

**1.1** The provider rents to the customer the hardware and/or software agreed in the contract for the term of this contract. Hardware and software (“rented items”) are rented separately in each case. If rented items are rented as a single system, they are referred to as a “rental system.” Where a provision applies to rented items as well as rental systems, the term “rental object” is used. The hardware is delivered including an installation guide. The user manual (user documentation or online help) and the installation guide may, at the provider’s discretion, be provided electronically unless this is unreasonable for the customer. The software is delivered in executable form (object code) including a user manual (user documentation or online help) and the installation guide. The user manual and installation guide may also be provided electronically unless this is unreasonable for the customer. The rental object is rented and provided only for the use agreed in the contract. Quality, scope, operating conditions, and system environment of the rental object follow, unless otherwise agreed, from the product description and the user manual, in that order.

**1.2** Unless otherwise agreed in the contract, the customer has independently selected the rental object based on its professional and functional requirements.

**1.3** The provider delivers the rented item, for a separate remuneration, to the installation site indicated in the contract. The provider may also, for a separate charge, undertake setup and/or installation and establishing the operational readiness of the rented item. For rental systems, the provider always establishes operational readiness, including installation. For such rental systems, the contract also contains the test cases/procedures to be agreed pursuant to Section 4 to determine operational readiness. If conducting test cases/procedures is agreed for a rental system, the lessor also owes this at the times and criteria set in the contract. The provider’s obligation to maintain usability of the rental object relates only to its contractually owed condition at the contractually agreed rental commencement. Additional services such as adaptations, changes to the software, creation of interfaces to third-party programs, analysis, planning, and related consulting services must be agreed separately and remunerated. This also applies to changes in operating conditions or system environment after contract conclusion not caused by the provider.

**1.4** The provider may make new versions of the rented software available to the customer with at least the same content and scope of performance for use. The existing agreements between the parties apply to these new versions. The customer undertakes, after a reasonable period—generally not exceeding three months—to use only this new version, unless unreasonable.

**1.5** The rental object may be used only by the customer and only for the purposes agreed in the contract. Any further use, including any subletting, requires the provider's prior written consent. Unless otherwise agreed, the provider grants the customer a non-exclusive right to use software at the customer's premises during the rental period for its own internal purposes within the contractually intended purpose.

**1.6** The provider is entitled to take appropriate technical measures to protect against non-contractual use. Contractual use of the services may not be impaired thereby.

**1.7** The provider may revoke the customer's right of use and/or terminate the contract if the customer materially exceeds its usage rights or breaches provisions protecting against unauthorized use. As a rule, the provider shall first set an appropriate grace period for remedy. Revocation of the right of use alone does not at the same time constitute termination of the contract. After revocation, the customer shall confirm in writing to the provider that use has ceased. The provider's claim to remuneration for use exceeding the agreed scope remains unaffected. The customer has a claim to reinstatement of the right of use after demonstrating it has ceased non-contractual use and prevented future non-contractual use. (Sentence repeated in source.)

## **2 Rent**

**2.1** The rent covers the remuneration for provision of the rental object and maintaining it in a contractually compliant condition. Further services, such as supply of consumables, are remunerated separately.

**2.2** Unless otherwise agreed in the individual case, the rent is payable monthly in advance, without deduction, no later than the fifth business day of each calendar month. For rental systems, the obligation to pay rent begins upon confirmation of operational readiness pursuant to Section 4 or upon productive use of the rental system by the customer, whichever occurs earlier. If rent begins during a month, each day is charged at 1/30 of the monthly rent.

**2.3** The provider reserves the right to increase the rent for the first time after 12 months and at most once per year, with three months' notice to month-end, where its energy or personnel costs incurred for maintaining the rental object have increased. As soon as the annual remuneration increases by more than 5%, the customer is entitled, within six weeks after receipt of the rent increase request, to extraordinarily terminate the contract with effect at the time the increase takes effect. In the event of a reduction of the corresponding costs, the customer may likewise request a reduction of the rent for the first time after 12 months.

**2.4** The provider may claim additional remuneration for its effort where:

**a)** a reported incident is connected with use of a rental object in a non-approved environment or with changes to the rental object made by the customer or a third party;

**b)** additional effort arises due to improper fulfillment of the customer's duties (see in particular Section 3).

Where the provider is entitled to claim remuneration for effort beyond the rent, such remuneration—unless otherwise agreed in writing between the contracting parties—shall be charged at the provider's then-valid billing units and list prices for hourly, daily and expense rates at the time of performance.

### **3 Customer Duties**

**3.1** The customer shall inform the provider in writing of intended changes to the operating conditions or system environment agreed in each case. Section 8.4 TC applies. If the provider's effort increases due to a disruption arising from the customer's responsibility (e.g., network operator), the provider may claim remuneration for the additional proven effort resulting therefrom. Section 2.4 paragraph 2 applies.

**3.2** The customer is obliged to treat the rental object with care and protect it from damage. It will ensure proper use and correct operation by sufficiently qualified personnel. The customer will follow the provider's maintenance, care, and operating instructions within what is reasonable, in particular the notes contained in the user manual (user documentation or online help) and installation guide. Markings, in particular signs, serial numbers, inscriptions, copyright notices, trademarks or similar must not be removed, altered, or rendered unrecognizable.

**3.3** The customer grants the provider's employees and agents, after prior notice and during the provider's usual business hours, free access to the rental object for maintenance and repair work, unless legitimate security interests of the customer oppose this.

### **4 Determination of Operational Readiness of a Rental System**

After handover of a rental system, the provider and the customer will jointly determine its contractual operational readiness. For this purpose—and if agreed—based on the test cases/procedures set out in the contract (see Section 1.3), provider and customer will verify that this rental system complies with the contract. Where operational readiness is present, the customer shall confirm this on a corresponding form of the provider.

### **5 Changes to the Rental Object / Change of Location**

**5.1** The provider is entitled to make changes to the rental object to maintain it. Measures for improvement may be taken only if they are reasonable for the customer and the contractual use of the rental object is not impaired thereby. The provider will inform the customer in good time in advance about such measures. Any expenses incurred by the customer to restore contractual use possibilities due to these measures shall be reimbursed by the provider.

**5.2** Changes and additions to the rental object by the customer require the provider's prior written consent. This applies in particular to attachments or installations and connecting the rental object with other devices, IT systems or networks. Exempted are those connections serving the intended use of the rental object. Actions by the customer that do not require consent for computer programs pursuant to Section 69d UrhG remain unaffected. Upon return of the rental object, the customer shall restore the original condition at the provider's request.

**5.3** Placing the rental object at a location other than the installation site specified in the rental contract requires the provider's prior written consent. The provider will not unreasonably withhold consent. The provider may require that transport and reinstallation be carried out by it or by qualified professionals named by it at reasonable prices. The expenses and consequential costs associated with a change of location as well as any additional costs for maintenance and servicing arising therefrom shall be borne by the customer.

## **6 Material Defects**

**6.1** The provider undertakes to maintain the rental object during the rental period in a condition suitable for contractual use.

**6.2** In the case of only insignificant reduction in suitability for contractual use, no claims for defects of the rental object exist. Likewise, claims for defects are excluded where the deviation from the contractual quality is due to improper use or use of the rental object under non-agreed operating conditions or in a non-agreed system environment. The same applies to deviations due to special external influences not assumed under the contract.

**6.3** The provider's strict liability under Section 536a para. 1 BGB for defects already existing at the time of contract conclusion is excluded.

**6.4** Section 2.4 TC applies in particular to defect notifications. Unless otherwise agreed, the customer shall use the provider's corresponding forms and procedures. Section 8.4 TC applies accordingly. The customer shall otherwise support the provider appropriately in remedying defects to the extent required.

**6.5** Defect remediation takes place during the provider's business hours. The provider shall be allowed a reasonable period. With the customer's consent, the provider may replace the rental object or individual components thereof for the purpose of remedying defects. The customer will not unreasonably refuse its consent.

**6.6** Termination by the customer pursuant to Section 543 para. 2 sentence 1 no. 1 BGB for failure to grant contractual use is permissible only after the provider has been given sufficient opportunity to remedy defects and such remedy has failed. Failure may be assumed only where remedy is impossible, refused by the provider, unreasonably delayed, there are justified doubts as to prospects of success, or for other reasons is unreasonable for the customer.

**6.7** The customer's rights arising from defect warranty are excluded where the customer, without prior consent of the provider, makes or has made changes to the rental object, unless the customer proves that the changes have no unreasonable effects on analysis and remedy of the defect for the provider. The customer's rights due to defects remain unaffected where the customer is entitled to make changes, in particular under the right of self-help pursuant to Section 536a para. 2 BGB, and these were carried out properly and documented in a traceable manner.

**6.8** The limitation period for material defects is one year from the statutory commencement of the limitation period. Where the law prescribes longer periods in the event of intentional or grossly negligent breach of duty by the provider, fraudulent concealment of a defect, and in cases of injury to life, body or health, these remain unaffected. The statutory period in Section 548 BGB for the provider's claims for compensation due to alteration or deterioration of the rented item or rental system remains unaffected.

**6.9** Section 6 TC applies in addition to claims for damages and reimbursement of expenses.

## **7 Contract Term and End of Tenancy**

**7.1** The contractual services are provided from the date specified in the contract initially for the term agreed in the contract. During this minimum term, early ordinary termination is excluded for both parties.

**7.2** The contract may be terminated by giving three months' notice, at the earliest upon expiry of the minimum term. If this does not occur, the contract is extended by one additional year at a time unless it is ordinarily terminated by giving three months' notice to the end of the respective extension period. Section 545 BGB does not apply

**7.3** The customer's right of termination pursuant to Sections 2.3 and 6.6 and the right of each party to extraordinary termination for cause remain unaffected.

**7.4** Any notice of termination must be in writing to be effective. Section 8.4 TC applies.

## **8 Return of the Rental Object**

**8.1** Upon termination of the contract, the customer shall return the rental object to the provider in a condition corresponding to contractual use, in full, including supplied original data carriers, user manual (user documentation or online help), and installation guide. Copies made and downloads shall be completely and permanently deleted or destroyed.

**8.2** The customer is obliged to delete all data not belonging to the rental object prior to its return in a manner that it cannot be reconstructed.

**8.3** Upon the provider's request, full return and deletion or destruction pursuant to Sections 8.1 and 8.2 shall be confirmed to the provider in writing.



**8.4** Upon return of the rental object, the contracting parties shall, where requested by the provider, prepare a report recording any damage and defects of the rental object.

**8.5** The customer bears the costs for dismantling, packaging, and return shipment of the rental object. This does not apply where the provider owes establishing operational readiness under the contract.

## **9 Applicability of the TC**

The General Terms and Conditions (TC) apply in addition.

# Terms and Conditions for the Maintenance of Standard Software

## A. Contract Items

### A 1 Maintenance Item

The provider renders the agreed maintenance services only for the current version of the standard software agreed as the maintenance item (“maintenance software”) in return for the agreed remuneration. If the contract expressly designates third-party software as maintenance software, the restrictions described there apply.

The provider renders—where agreed—the following maintenance services:

### A 2 Incident Management

**2.1 Acceptance of incident reports.** During its usual business hours, the provider will accept the customer’s incident reports, assign an identifier to each, assign them to the agreed incident categories, and, based on this assignment, carry out the agreed measures to analyze and remedy incidents. Section 2.4 TC applies accordingly to incident reports. Upon the customer’s request, the provider shall confirm receipt of an incident report and communicate the assigned identifier. Incident management does not include services related to the use of maintenance software in non-approved environments or to changes to the maintenance software by the customer or third parties.

**2.2 Assignment to incident categories.** Unless otherwise agreed, after initial review the provider shall assign incident reports to one of the following categories:

**a) Severe incident:** The incident is due to an error in the maintenance software that makes use of the maintenance software impossible or allows it only with severe restrictions. The customer cannot reasonably work around this problem and therefore cannot complete urgent tasks.

**b) Other incident:** The incident is due to an error in the maintenance software that restricts the customer’s use of the maintenance software more than insignificantly, without being a severe incident.

**c) Other report:** Incident reports not falling into (a) or (b) are assigned to other reports. Other reports are handled by the provider only as agreed for them.

**2.3 Conducting measures to remedy incidents.** For reports of severe and other incidents, the provider will, without undue delay, initiate appropriate measures, based on the circumstances communicated by the customer, to first localize the incident cause. If the incident reported does not, after initial analysis, turn out to be an error in the maintenance software, the provider shall inform the customer without undue delay.

Otherwise, the provider shall initiate appropriate measures for further analysis and remedy of the incident, or—where third-party software is involved—forward the incident report together with its analysis results to the distributor or manufacturer of the maintenance software requesting remedy. The provider will promptly provide the customer with any measures available to it for circumventing or remedying an error in the maintenance software, such as instructions for action or corrections to the maintenance software. The customer will promptly adopt such measures and promptly report to the provider any incidents remaining when using them.

## **A 3 Provision of New Versions**

**3.1 Contractual services.** The provider supplies the customer with certain new builds of the maintenance software to keep it up to date and prevent incidents. These are updates of the maintenance software with technical modifications, improvements, minor functional enhancements, as well as patches with corrections to the maintenance software or other measures to prevent possible incidents. These new builds are collectively referred to as “new versions.” The maintenance services do not include upgrades with substantial functional enhancements or new products, or obligations to further develop the maintenance software, unless expressly agreed otherwise.

**3.2 Duties and rights with respect to new versions.** The provider makes new versions of the software available to the customer. The customer will promptly inspect new versions and promptly notify any apparent defects, for which Section 377 HGB applies accordingly. Incidents and defects are handled in accordance with Section A 2. Sections 2.4 and 4.1 TC apply in addition. Where the provider has provided the customer with a new version, it will continue maintaining the prior version for a reasonable transition period—generally not exceeding three months. Where the customer has defect claims, it initially has only the right to subsequent performance within a reasonable period. Subsequent performance comprises, at the provider’s option, repair or delivery of replacement software. The customer’s interests will be appropriately considered in the choice. The customer shall permit the provider to remove and install within the scope of subsequent performance, unless this is unreasonable for the customer. Before taking its own measures to remedy defects, the customer will consult with the provider. If the customer has a claim for reimbursement of expenses, such claim exists only to a reasonable extent taking into account the value of the affected performance in a defect-free condition and the significance of the defect. For new versions of third-party software, the warranty provisions of the transfer agreement between the customer and provider for such third-party software take precedence unless otherwise agreed.

## **A 4 Point of Contact (Hotline)**

**4.1 Contractual services.** The provider sets up a point of contact for the customer (hotline). This point of contact handles the customer’s inquiries concerning the technical operating prerequisites and conditions of the maintenance software as well as individual functional aspects. Section A 2.1 applies. The hotline does not render services

connected with use of maintenance software in non-approved environments or with changes to the maintenance software by the customer or third parties.

**4.2 Acceptance and handling of inquiries.** A prerequisite for acceptance and handling of inquiries is that the customer designates to the provider personnel with suitable professional and technical qualifications who internally handle inquiries from users of the maintenance software. The customer is obliged to direct inquiries to the hotline only via such personnel designated to the provider and to use forms provided by the provider. The hotline accepts such inquiries by e-mail, fax, and telephone during the provider's usual business hours. The hotline will handle proper inquiries in the ordinary course of business and answer them where possible. To answer, the hotline may refer to documentation and other training materials for the maintenance software available to the customer. To the extent an answer by the hotline is not possible or not possible in a timely manner, the provider will—where expressly agreed—forward the inquiry for processing, in particular inquiries concerning maintenance software not developed by the provider. Further hotline services, such as different contact times and deadlines as well as on-call service or on-site deployments at the customer's premises, must be expressly agreed in advance.

## **A 5 Additional Services**

Services beyond Sections A 2 to A 4 are not owed under this contract, require a separate agreement, and shall be remunerated separately. This may include, for example, additionally agreed on-site deployments at the customer's premises, consulting and support for modified software, clarification of interfaces to third-party systems, installation as well as configuration support.

## **B. General Provisions**

The following provisions apply equally to incident management (A 2), provision of new versions (A 3), and the hotline (A 4).

### **B 1 Term**

**1.1** Unless otherwise agreed, the maintenance contract begins with delivery pursuant to the transfer agreement for the standard software.

**1.2** After expiry of any agreed minimum term, the maintenance contract may be terminated in writing by giving three months' notice to the end of a calendar year, but for the first time at the end of the calendar year following contract conclusion. In addition, the provider and customer may terminate the contract without notice for cause.

**1.3** Notices of termination are effective only in writing.

### **B 2 Remuneration**

**2.1 Flat remuneration.** The customer remunerates the maintenance services by means of a recurring flat fee. The maintenance remuneration is owed in advance for the billing

period and will be invoiced by the provider to the customer at the start of the billing period. As a rule, the billing period is the calendar year. Where the contract begins within a billing period, remuneration is owed on a pro-rata basis and invoiced upon contract conclusion.

**2.2 Remuneration of additional services.** Additional services not covered by the flat fee are remunerated in accordance with Section 1.1 TC.

**2.3 Adjustment of remuneration.** The provider reserves the right to increase remuneration for the first time after 12 months and at most once per year, with three months' notice, in accordance with the development of the "Index of labor costs – manufacturing and service sector." The provider may pass on additional cost increases for third-party preliminary services, except where caused by the provider. As soon as the annual remuneration increases by more than 5%, the customer is entitled, within six weeks after receipt of the increase request, to extraordinarily terminate the contract with effect at the time the increase takes effect. In the event of a reduction of the corresponding costs, the customer may likewise request a reduction of remuneration for the first time after 12 months.

## **B 3 Right of Use**

The customer's rights of use to new versions and other corrections of the maintenance software correspond to the rights of use to the previous version of the maintenance software. With respect to rights of use, the rights to the new versions and other corrections replace, after a reasonable transition period—generally not exceeding one month—the rights to the previous versions and other corrections. The customer may archive one copy.

## **B 4 Customer Duties**

**4.1** The customer will inform the provider without undue delay of changes to the operating environment, including to enable the provider to render maintenance. Furthermore, the customer shall ensure that the maintenance software is used only in an approved operating environment supported by the maintenance software. The provider does not owe maintenance for software not used in such an environment.

**4.2** Unless otherwise agreed, the customer shall additionally keep all documents, information, and data handed over to the provider so that these can be reconstructed in the event data carriers are damaged or lost.

## **B 5 Delivery**

Where software is delivered under these conditions and unless otherwise agreed, delivery takes place in the same manner as for delivery of the maintenance software.

## **B 6 Data Protection**

**6.1** Where the provider can access personal data of the customer or from the customer's sphere, it will act exclusively as a processor and will process and use this data only to perform the contract. The provider will observe the customer's instructions regarding handling such data. The customer bears any adverse consequences of such instructions for contract performance. The customer will agree with the provider the details for handling the customer's data by the provider in accordance with data protection requirements.

**6.2** The customer remains the controller both generally within the contractual relationship and in the data protection sense. As between provider and customer, the customer bears responsibility toward the data subject for processing (including collection and use) personal data, unless the provider is responsible for any claims by the data subject due to a breach of duty attributable to it. The customer will examine, handle, and respond to any inquiries, requests, and claims by the data subject. This also applies where the provider is approached by the data subject. The provider will support the customer within the scope of its duties.

**6.3** The provider ensures that the customer's data are processed exclusively in the Federal Republic of Germany, in a Member State of the European Union, or in another state party to the Agreement on the European Economic Area, unless otherwise agreed.

## **B 7 Applicability of the TC**

The General Terms and Conditions (TC) apply in addition.

# **Terms and Conditions for the Provision (Licensing) of Standard Software**

## **1 Subject Matter of the Contract**

**1.1** The quality and scope of performance of the software and the approved operating environment follow from the respective program description and, additionally, from the user manual, unless otherwise agreed.

**1.2** The software is delivered only in executable form including a user manual (user documentation or online help) and the installation guide. The user manual and installation guide may also be provided electronically. Where interfaces exist in the provider's software to software not to be supplied by the provider, Section 69d of the German Copyright Act applies. Before decompilation, the customer shall first request the necessary information from the provider.

**1.3** Unless otherwise agreed, the software shall be installed and commissioned by the customer. Any additional services provided by the provider at the customer's request (in particular preparation for deployment, installation and demonstration of successful installation, briefing, training and consulting) shall be remunerated on a time-and-materials basis.

## **2 Rights of Use to Software and Protection Against Unauthorized Use**

**2.1** Upon full payment of the agreed remuneration, the provider grants the customer the right to use the agreed software to the extent specified in the contract. If the extent is not agreed in the contract, this is a simple, non-exclusive right of use for use on a permanent basis. This entitles the customer only to use the software on one computer by one user at the same time. The right of use covers only internal purposes of the customer. Any extended use must always be agreed by contract prior to its commencement. Remuneration is determined by the extent of the right of use.

**2.2** A transfer of rights of use to third parties is permitted only upon complete relinquishment of the customer's rights. The customer is obliged to impose on the third party the duties and usage restrictions applying to the customer. This applies in particular to the duties under Section 3.5. Upon the provider's request, the customer shall confirm in writing that it has ceased its own use.

**2.3** The customer may copy software only to the extent necessary for contractual use. Copyright notices in the software may not be altered or deleted.

**2.4** The provider is entitled to take appropriate technical measures to protect against non-contractual use. Use of the software on a fallback or successor configuration may not be materially impaired thereby.



**2.5** Title to supplied copies remains reserved until full payment of the remuneration owed. Where rights of use are granted individually before that time, such rights are always granted only provisionally and are freely revocable by the provider.

**2.6** The provider may revoke the customer's right of use if the customer materially breaches usage restrictions or other provisions protecting against unauthorized use (see also Sections 3.4 and 3.5). The provider shall first grant the customer a grace period to remedy the breach. In the event of recurrence and in special circumstances that justify immediate revocation after weighing the parties' interests, the provider may revoke without setting a grace period. After revocation, the customer shall confirm in writing to the provider that use has ceased. The provider will reinstate the right of use after the customer has set out and warranted in writing that no infringements of the right of use exist and that prior infringements and their consequences have been remedied.

### **3 Customer Duties**

**3.1** The customer shall ensure that, no later than at delivery, qualified personnel is available to support the provider and to use the software.

**3.2** The customer will inform the provider without undue delay of changes to the operating environment. Section 1.1 remains unaffected.

**3.3** The customer will support the provider as required in remedying defects, in particular, at the provider's request, send a data carrier with the software concerned and provide work equipment.

**3.4** The customer acknowledges that the software together with the user manual and further documentation—even in future versions—is protected by copyright. In particular, source code constitutes the provider's trade secrets. The customer shall take measures of unlimited duration to ensure that source code does not become accessible to third parties without the provider's consent. Transfer of source code requires the provider's consent, which may not be refused contrary to good faith. The provider is obliged to deliver source code only based on an express agreement.

**3.5** The customer shall not engage in any activities that could facilitate unauthorized use. In particular, the customer shall not attempt to decompile the programs unless entitled to do so under Section 1.2 paragraph 2. The customer shall inform the provider without undue delay upon becoming aware that unauthorized access is threatened or has occurred within its sphere.

### **4 Customer's Defect Claims**

**4.1** The provider warrants that the software, when used in accordance with the contract, conforms with the agreements pursuant to Section 1.1. The limitation period for defect claims begins upon delivery or—where the provider installs—upon completion of installation. Any extension of the scope of use (Section 2.1 paragraph 2) has no effect on the course of limitation. For defects of title, Section 5 TC applies in addition. For material

defects, Section 4 TC applies in addition subject to the following provisions (Sections 4.2–4.4).

**4.2** The customer has defect claims only if reported defects are reproducible or otherwise provable by the customer. Section 2.4 TC applies in particular to defect notifications.

**4.3** Where the customer has defect claims, it initially has only the right to subsequent performance within a reasonable period. Subsequent performance comprises, at the provider's option, repair or delivery of replacement software. The customer's interests will be appropriately considered in the choice. The customer shall permit the provider to remove and install within the scope of subsequent performance, unless this is unreasonable for the customer. Before taking its own measures to remedy defects, the customer will consult with the provider. If the customer has a claim for reimbursement of expenses, such claim exists only to a reasonable extent taking into account the value of the affected performance in a defect-free condition and the significance of the defect.

**4.4** If subsequent performance fails or cannot be carried out for other reasons, the customer may, under the statutory requirements, reduce the remuneration, withdraw from the contract, and/or—within the framework of Section 6 TC—claim damages or reimbursement of expenses. In the event of delayed subsequent performance, Sections 3.4 TC applies to damages and reimbursement of expenses. The customer shall exercise any choice it has between these defect claims within a reasonable period, generally within 14 calendar days after becoming able to take cognizance of the choice.

## **5 Applicability of the TC**

The General Terms and Conditions (TC) apply in addition.