General Terms and Conditions Theobald Software GmbH

1. Scope of Application

1.1 These General Terms and Conditions shall apply to all deliveries, services and offers of Theobald Software GmbH, Kernerstr. 50, 70182 Stuttgart, Germany (hereinafter referred to as "TS") in relation to the licensing of software, whether by way of a Subscription or a Purchase (each as defined in Section 2 below), the provision of professional services and other related services.

1.2 These General Terms and Conditions are an integral part of all contracts concluded by TS with its contractual partners (hereinafter referred to as "Customer") in relation to the licensing of software and the provision of related services, whether under a Subscription or a Purchase. They shall also apply to all future contracts of such nature, even if they are not separately agreed again.

1.3 Terms and conditions of the Customer or third parties shall not apply, even if TS does not separately object to their application in individual cases. Even if TS refers to any correspondence that contains or refers to the terms and conditions of the Customer or a third party, this shall not constitute an acceptance of those terms and conditions.

1.4 The legal relationship between TS and the Customer shall be governed solely by (i) an order form executed between the Parties specifying the Software, whether the Software is licensed by way of a Subscription or a Purchase, the applicable Fee and other details (the "Order Form"), (ii) these General Terms and Conditions (the "General Terms and Conditions"), (iii) the separate End User License Terms of TS (the "End User License Terms"), which govern the Customer's right to use the Software, including the applicable license types, usage restrictions, provisions on open-source software and usage data, maintenance, patches and updates and the terms applicable to trial licenses, and, where relevant, (iv) any other documents referred to in the Order Form (hereinafter collectively referred to as the "Agreement"). These General Terms and Conditions govern all other matters relating to the Agreement, in particular the Fees, invoicing and payment, additional services, professional services, the Customer's general obligations, data protection, confidentiality, term and termination, and export control. In general, the Agreements will be executed based on quotes provided by TS to the Customer and which become binding upon acceptance by the Customer.

1.5 All quotes of TS are subject to change and non-binding, unless they are expressly marked as binding or contain a specific acceptance period. TS may accept orders or commissions from the Customer within fourteen (14) days of receipt.

2. Subject of the Agreement

2.1 The subject of the Agreement is the provision of the software products described in the Order Form together with the corresponding user documentation (the "**Software**"), whether by way of a Subscription or a Purchase (each as defined below).

2.2 The Customer shall receive the Software in object code form only. The Customer shall not be entitled to the source code of the Software.

2.3 The Subscription Agreement shall apply, if applicable, in addition to all other software licensing, software maintenance and other service contracts between TS and the Customer.

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2.4 Unless otherwise specified in the Order Form, the Software is provided to the Customer by way of a temporary, subscription-based license for the term of the Agreement (the "Subscription"). By way of exception, and only if expressly specified in the Order Form, the Software may instead be licensed to the Customer on a perpetual basis in return for a one-off purchase price (the "Purchase"). The applicable license types (Server License, Cluster License, Desktop License or Product License) and the respective usage rights and restrictions for a Subscription and a Purchase are set out in the End User License Terms.

3. Delivery of the Software

3.1 TS shall provide the Customer with a copy of the Software.

3.2 The Customer may receive the copy, at the Customer's request, via TS' customer portal.

3.3 The Software must be carefully examined by the Customer immediately after receipt by the Customer.

4. License Terms

The Customer's right to use the Software, including any trial, evaluation or demonstration use, is governed by the separate End User License Terms of TS, as further specified in Section 1.4 above.

5. Fees, Invoicing and Payment

5.1 For the provision of the Software under a Subscription, the Customer shall pay to TS the remuneration agreed in the Order Form which shall also cover the provision of the maintenance services as set out in the End User License Terms (the "Subscription Fee").

5.2 The Subscription Fee must be paid annually in advance. The first invoice will be issued upon execution of the Agreement.

5.3 All agreed prices are net price plus the statutory value added tax.

5.4 For the provision of the Software under a Purchase, the Customer shall pay to TS the one-off purchase price agreed in the Order Form (the "Purchase Price"). The Purchase Price does not include maintenance services; maintenance for a Purchase is subject to a separate Maintenance Fee as set out in Section 6 below.

5.5 Invoices issued by TS are due for payment within thirty (30) days of receipt of the invoice without deduction.

5.6 Without prejudice to further rights, TS is entitled to withhold services in the event of default of payment by the Customer until the amounts due have been paid by the Customer.

5.7 A set-off of claims of the Customer against claims of TS is – with the exception of undisputed or legally awarded claims – not permitted.

5.8 Where the Subscription Fee is calculated in whole or in part on the basis of the Customer's actual usage of the Software as specified in the Order Form, the following provisions shall apply to the adjustment of the Subscription Fee.

5.9 Where the Subscription Fee is calculated in whole or in part on the basis of the Customer's actual usage of the Software or any other variable factors agreed upon in the Order Form, the Customer shall be obliged to collect, maintain and provide to TS complete and accurate statistics on such usage and other variable factors in the form and at the intervals specified in the Order Form. In the absence of a specific agreement in the Order Form, the Customer shall provide such statistics to TS in writing no less frequently than once per calendar quarter. The Customer shall retain all records underlying such statistics for a period of at least twenty-four (24) months and shall, upon reasonable request by TS, make such records available for inspection and verification.

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5.10 Where the Subscription Agreement has a term of twelve (12) months or less, the Customer's actual usage during the preceding term shall serve as the basis for determining the Subscription Fee applicable to any subsequent Subscription Agreement. TS may, at its sole discretion, waive any claims for additional fees in respect of usage exceeding the agreed usage tier during the preceding term.

5.11 Where the Subscription Agreement has a term exceeding twelve (12) months, TS shall be entitled to adjust the Subscription Fee on an annual basis to the usage tier corresponding to the Customer's actual product usage during the preceding twelve (12) month period. Such adjustment shall take effect as of the commencement of each successive twelve (12) month period. TS may, at its sole discretion, waive any claims for additional fees in respect of usage exceeding the agreed usage tier during the preceding period.

5.12 In the event that the Customer fails to comply with its reporting obligations pursuant to this Section or provides incomplete or manifestly inaccurate usage statistics, TS shall be entitled to estimate the Customer's actual usage based on the information reasonably available to TS. Such estimates shall form the basis for any fee adjustments pursuant to the preceding paragraphs. The Customer shall have the right to rebut such estimates by providing complete and verifiable usage statistics within thirty (30) days of receipt of the estimate from TS.

5.13 For the avoidance of doubt, any waiver by TS of claims for additional fees pursuant to this Section shall be at the sole discretion of TS and shall not constitute a precedent or give rise to any expectation of the Customer that TS will grant such waiver in subsequent periods. TS reserves the right to claim additional fees for any usage exceeding the agreed usage tier to the extent that TS has not expressly waived such claims in writing.

6. Maintenance

6.1 The scope and content of the maintenance services (in particular defect handling and support) are set out in the End User License Terms, irrespective of whether the Software is licensed by way of a Subscription or a Purchase.

6.2 In the case of a Subscription, the maintenance services are remunerated as part of the Subscription Fee pursuant to Section 5.1 above.

6.3 In the case of a Purchase, maintenance services are not included in the Purchase Price and shall only be provided if separately agreed in the Order Form, against payment of the separate maintenance fee specified therein (the “Maintenance Fee”). Sections 5.3 to 5.6 above shall apply mutatis mutandis to the invoicing and payment of the Maintenance Fee.

6.4 Unless otherwise agreed in the Order Form, maintenance services for a Purchase shall have an initial term of one (1) year from the Effective Date of the respective Order Form and shall thereafter be automatically renewed for successive renewal periods of one (1) year each, unless terminated by either Party with three (3) months' notice to the end of the initial term or the respective renewal period. Section 14 (Term and Termination) shall apply mutatis mutandis to the maintenance services for a Purchase, save that the licenses granted under a Purchase shall remain unaffected by any termination or expiry of the maintenance services.

7. Patches, Updates, Upgrades and New Releases

The provisions relating to patches, updates, upgrades and new releases are set out in the End User License Terms.

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8. Additional Services

8.1 Not subject of the Agreement and not covered by the agreed Fee are all services which are not explicitly mentioned in the Agreement.

8.2 This includes in particular the following services:

a) Changes to the Software that are not subject matter of the Agreement, in particular adaptation to new products and services as well as to changed operating procedures of the Customer;

b) Adaptation of the Software to a changed hardware and/or software environment of the Customer, including to new program versions (e.g. new releases, updates/upgrades) of third-party software;

c) Support for products supplied by third parties if they are not explicitly included in the Agreement.

d) Elimination of malfunctions that have occurred due to improper operation of the Software by the Customer, force majeure, interventions by third parties or other influences not caused by TS;

e) Other adaptations, additions and extensions of the Software according to Customer requirements;

f) Consulting and/or training of the Customer,

g) Telephone support,

h) Hardware and hardware parts, hardware extensions, fault diagnosis and elimination of hardware defects.

8.3 Should the Customer order any such additional services, such services will be charged and invoiced separately to the Customer according to the then current price list of TS.

9. Professional Services

9.1 TS may provide professional services to the Customer, such as implementation support, configuration, integration, customization, consulting and training services (the "Professional Services"), if and to the extent the Parties agree thereon. The scope of the Professional Services shall be described in the applicable Order Form.

9.2 Unless expressly agreed otherwise in writing, all Professional Services are rendered as services (Dienstleistung) within the meaning of Sec. 611 et seqq. German Civil Code (BGB) and not as contract work (Werkleistung) within the meaning of Sec. 631 et seqq. BGB. Accordingly, TS does not owe a specific work result (Erfolg), but the performance of the Professional Services with the diligence of a prudent businessperson.

9.3 The remuneration for the Professional Services shall be as set out in the applicable Order Form. Unless otherwise agreed in the Order Form, the Professional Services shall be remunerated on a time and materials basis (Time & Material) at TS's then-current hourly or daily rates.

9.4 Unless otherwise agreed in the Order Form, TS shall invoice the Customer monthly in arrears for the Professional Services actually rendered in the preceding calendar month, together with a description of the services performed in sufficient detail to allow the Customer to verify the invoiced time. Sections 5.3 to 5.6 of these General Terms and Conditions shall apply mutatis mutandis to invoices for Professional Services.

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9.5 Unless expressly agreed otherwise in the Order Form, any dates or timelines for the performance of Professional Services are non-binding, good faith estimates only and shall not constitute binding delivery dates (Fixgeschäft) or deadlines (Fristen) within the meaning of the BGB.

9.6 The Customer shall reasonably cooperate with TS in the performance of the Professional Services, in particular by (i) providing TS in a timely manner with complete and accurate information, data, documentation, access, work environments and materials reasonably required for the performance of the Professional Services, (ii) making available suitably qualified personnel and a designated point of contact with sufficient decision-making authority, and (iii) taking decisions and providing approvals required for the further performance of the Professional Services without undue delay. Should the Customer fail to comply with these cooperation obligations, any agreed timelines shall be adjusted accordingly, and TS shall be entitled to invoice any resulting additional expenses (including idle time) on a time and materials basis at its then-current rates.

9.7 Unless otherwise agreed in the Order Form, reasonable travel time and travel, accommodation and subsistence expenses incurred by TS in connection with the performance of the Professional Services shall be invoiced separately to the Customer against evidence.

9.8 Where the performance of Professional Services has been scheduled for specific dates, the Customer may reschedule or cancel such dates only with TS's prior consent. In the event of a rescheduling or cancellation by the Customer, or if the Customer's personnel are not available as scheduled through no fault of TS, TS shall be entitled to invoice the Customer for the Professional Services scheduled but not performed for this reason on a time and materials basis at its then-current rates.

9.9 All intellectual property rights in and to any work products, materials, documentation, software, know-how, methods, tools and other results created by TS in the course of rendering the Professional Services (the "Results"), including any pre-existing intellectual property of TS incorporated therein, shall remain vested in TS or its licensors. Nothing in this Section shall be construed as a transfer or assignment of any such intellectual property rights to the Customer.

9.10 Subject to full payment by the Customer of the remuneration attributable to the respective Professional Services, TS hereby grants to the Customer a non-exclusive, non-transferable, non-sublicensable right, limited in time to the term of the Agreement, to use the Results created individually for the Customer solely for the Customer's own internal business purposes and solely in connection with its use of the Software in accordance with the Agreement (the "Purpose"). Any use of the Results beyond the Purpose requires TS's prior written consent.

9.11 The Professional Services are ancillary to the Agreement. Neither the Customer nor TS shall have a right to terminate an Order Form for Professional Services or the provision of Professional Services independently of, and without also terminating, the underlying Agreement, save for termination for good cause (wichtiger Grund).

9.12 Section 10 (Limitation of Liability) of these General Terms and Conditions shall apply mutatis mutandis to the Professional Services.

10. Limitation of Liability

10.1 In case of willful misconduct and gross negligence, TS shall be liable according to the statutory provisions of applicable law.

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10.2 In case of simple negligence, TS shall only be liable for breach of material contractual obligations (material contractual obligations are obligations the breach of which endangers the purpose of the agreement and the fulfilment of which the Customer may reasonably rely on); in this case TS's liability shall be limited to the typical damages that were reasonably foreseeable. Therefore, indirect and consequential damages resulting from defects of the delivered goods and/or work are only eligible for compensation if such damages are typical and reasonably foreseeable when the goods and/or work are used in conformity with their intended purpose.

10.3 The limitations of liability under this Section do not apply to

a) damages resulting from injury to life, body or health;

b) liability pursuant to the German Product Liability Act (Produkthaftungsgesetz);

c) to the extent TS has fraudulently concealed a defect; and/or

d) to the extent TS has assumed a guarantee for the condition of delivered goods and/or work (Beschaffenheitsgarantie).

10.4 The limitations of liability under this Section shall – subject to the provisions of the preceding paragraph – apply to (i) any liability claims for whatever legal reason but in particular due to impossibility, default, defective or incorrect delivery, breach of contract, breach of obligations in contractual negotiations and tort, as far as such claims are subject to fault, and (ii) any breach of duty by vicarious agents or any other person for whose conduct TS can be held liable according to the statutory provisions of applicable law.

10.5 In case the standard of liability is limited according to statutory provisions of applicable law (such as any limitation to the duty of care observed in own affairs), the above provisions shall not be deemed to create a higher standard of liability.

10.6 The strict liability for initial defects according to Sec. 536 a para. 1 German Civil Code (BGB) is excluded.

10.7 The Customer is obliged to back up data at intervals appropriate to the application. In the event of a loss of data for which TS is responsible, TS is only liable for the expenditure normally required for recovery.

11. Obligations of the Customer

11.1 The Customer shall support TS by making data available free of charge and by ensuring the free use of office space, hardware, software and telecommunications when providing services at the Customer's premises.

11.2 The Customer is solely responsible for regular and complete data backups according to the state of the art.

11.3 Within the scope of the detection and elimination of defects, the Customer shall

a) inform TS immediately of any defects occurring in the Software,

b) document the defects in such a way that they are reproducible for TS,

c) allow TS sufficient time for maintenance work, if necessary, and

d) participate in the care service itself, if necessary (demonstrating the defects, granting access to the facility, providing personnel, etc.).

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11.4 The Software made available by TS to the Customer under the Agreement facilitates the integration of SAP systems with non-SAP systems of the Customer. The Customer acknowledges and agrees that solely the Customer shall be responsible for procuring the relevant licenses from SAP and any other third-party provider at its own cost and for complying with the applicable license terms of such third-party providers. The Customer undertakes to use the Software only in compliance with the license terms of such third-party providers. The Customer shall indemnify and defend TS and each of its past, present and future directors, officers, employees and agents, in each case, in their respective capacities as such, from and against any and all third party suit, claim, action or demand to the extent relating to, arising out of or resulting from, directly or indirectly, any violation of its obligations and/or undertakings under this provision.

12. Data Protection

12.1 The Parties shall observe the relevant data protection regulations, in particular the GDPR and the Federal Data Protection Act.

12.2 The Parties oblige their employees to observe data secrecy in accordance with the GDPR and the German Federal Data Protection Act.

12.3 Insofar as TS processes personal data on behalf of the Customer, this shall be done based on a data processing agreement to be concluded separately.

12.4 The Customer acknowledges and agrees that TS may share the Customer's contract data (including, without limitation, company name, contact details, contract data and license information) within the Theobald group of companies, including Theobald Software Inc. and bluetelligence GmbH and their respective affiliates (the "Theobald Group"), for the purposes of contract administration, product management, customer support, license management and internal reporting. TS shall ensure that any entity within the Theobald Group receiving such data is bound by data protection obligations in accordance with applicable data protection laws. The legal basis for such data sharing shall be the legitimate interests of TS and the Theobald Group pursuant to Art. 6(1)(f) GDPR.

12.5 The Parties acknowledge that the handling of security incidents, including notification obligations, shall be governed by the data processing agreement to be concluded separately between the Parties in accordance with Art. 28 GDPR. In the event of any conflict between the provisions of such data processing agreement and the Agreement with respect to security incidents, the provisions of the data processing agreement shall prevail.

13. Confidentiality

13.1 “Confidential Information” means any information, documents, items, materials, substances or electronic files disclosed by one Party to the other Party in written, electronic, oral or any other form, which is marked confidential by the disclosing Party or is by its nature to be treated as confidential.

13.2 The Parties undertake to treat the Confidential Information of the other Party as confidential and to use them exclusively for the purposes of the performance of the Agreement.

13.3 The disclosure of the Confidential Information of the disclosing Party by the respective recipient to third parties is only permitted to the extent that this is necessary for the performance of the Agreement provided that the third party has committed itself to confidentiality vis-à-vis the Party making the Confidential Information available to the third party or is bound to confidentiality for professional reasons. Legal disclosure obligations remain unaffected. The respective Party making the Confidential Information available to the third party shall be responsible for ensuring that the obligations of the Agreement are also observed by such third parties. The Party making the Confidential Information available to the third party shall be liable for breaches of confidentiality by such third parties as if such breaches were its own.

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13.4 Each Party undertakes to protect the Confidential Information of the respective other Party by taking appropriate security measures.

13.5 The foregoing obligations shall not apply to information of which the receiving Party can prove that it (i) was or is available to the public in a lawful manner and in a manner not in breach of the provisions of the Agreement, (ii) was previously known to the receiving Party and was available to it without restriction, (iii) was disclosed to the receiving Party by a third party authorized to do so, or (iv) was developed by the receiving Party independently and without use of the Confidential Information disclosed by the disclosing Party.

13.6 The respective receiving Party undertakes to completely and permanently destroy all documents and records containing Confidential Information of the respective other Party or, in the case of electronic data, to permanently delete such data immediately after termination of the Agreement. This shall not affect any statutory storage and archiving obligations.

13.7 After termination of the Agreement, all rights and obligations of each Party with respect to the Confidential Information of the respective other Party shall continue to apply for a period of ten (10) years.

13.8 To the extent the Customer provides TS with any feedback, suggestions, ideas, enhancement requests or recommendations regarding the Software or any other products or services of TS ("Feedback"), the Customer hereby acknowledges and agrees that (i) such Feedback shall not be considered Confidential Information of the Customer, (ii) TS shall be free to use, disclose, reproduce, license or otherwise exploit such Feedback without restriction and without any obligation to compensate the Customer, and (iii) the Customer shall not acquire any intellectual property rights or other rights in any products, services, enhancements or modifications developed by TS based on or incorporating such Feedback.

14. Term and Termination

14.1 The Agreement comes into force upon execution of the Order Form by both Parties (i.e. at the date of the last signature provided) (the “Effective Date”).

14.2 This Section 14 governs the term and termination of a Subscription. A Purchase is not subject to a term and, once the Purchase Price has been paid in full, the license granted for the Software licensed thereunder is perpetual and does not expire; the term and termination of the related maintenance services (if agreed) are governed by Section 6.4 above. Unless specifically agreed otherwise, a Subscription shall have an initial term of one (1) year from the Effective Date (the "Initial Term"). Thereafter, the Subscription shall be automatically renewed for successive renewal periods of one (1) year each unless terminated by either Party with three (3) months’ notice to the end of the Initial Term or the respective renewal period.

14.3 The right to terminate the Agreement for good cause remains unaffected.

14.4 A right to terminate for good cause shall be deemed to exist in particular if one Party commits a breach of a material contractual obligation under the Agreement, provided that the other Party cannot reasonably be expected to continue the Agreement for this reason. A prerequisite for termination under this provision is that the terminating Party gives the other Party a detailed written explanation of the reasons for termination, sets a reasonable period of at least thirty (30) days for the other Party to eliminate the important reason for termination and expressly threatens termination if the important reason for termination is not eliminated in due time. The warning notice is not required if the breach of contract cannot, by its nature, be remedied.

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14.5 Furthermore, a right to terminate for good cause shall be deemed to exist in particular if the other Party suffers or threatens to suffer substantial losses in its economic circumstances, in particular if the other Party itself files for the opening of insolvency proceedings against its assets or if insolvency proceedings are opened against its assets and/or the other Party suspends payments.

14.6 Declarations of termination must be in writing to be effective and must be sent to the other Party by registered mail/advice of receipt or postal delivery certificate or delivered personally.

14.7 With the termination of a Subscription, all rights of the Customer to use the Software licensed thereunder automatically end. This shall not affect any license granted under a Purchase.

14.8 Each Party shall have the right to demand the return of the documents, materials and other items provided by the other Party immediately after termination of the contractual relationship if and to the extent that they have not been used as intended or are intended to remain with the other Party even after termination of the Agreement. Statutory storage and archiving obligations shall remain unaffected.

14.9 Claims of the Parties arising before the termination date shall remain unaffected by the termination of the Agreement.

14.10 The provisions of the Agreement, which, as intended, shall continue to apply beyond the termination of the Agreement, shall remain unaffected by the termination of the Agreement. This applies in particular to the confidentiality obligations agreed under the Agreement.

15. Export Control

15.1 The Customer acknowledges that the Software may be subject to export control laws and regulations, including, without limitation, the export control laws of the Federal Republic of Germany, the European Union and the United States of America, as well as applicable trade sanctions and embargo regulations (collectively, "Export Control Laws").

15.2 The Customer undertakes to comply with all applicable Export Control Laws in connection with its use of the Software and shall not, directly or indirectly, export, re-export, transfer or otherwise make available the Software or any part thereof to any country, territory, entity or person that is subject to sanctions or embargoes under applicable Export Control Laws without obtaining the required governmental authorizations.

15.3 The Customer represents and warrants that (i) it is not located in, and will not export, re-export or transfer the Software to, any country or territory that is subject to comprehensive trade sanctions or embargoes under applicable Export Control Laws, (ii) it is not, and none of its directors, officers, employees or agents is, a person or entity designated on any applicable restricted or denied party list maintained by the Federal Republic of Germany, the European Union, the United States of America or any other relevant authority, and (iii) it will not use the Software for any purpose prohibited by applicable Export Control Laws, including, without limitation, the development, design, manufacture or production of nuclear, chemical or biological weapons or missile technology. The Customer shall be solely responsible for obtaining any export licenses or governmental approvals required in connection with its use of the Software.

16. Final Provisions

16.1 Each Party shall bear its own costs incurred in connection with the execution and performance of the Agreement, unless expressly agreed otherwise in the Agreement.

16.2 The Agreement fully reflects the agreement between the Parties regarding the subject matter; no oral or other side agreements exist. Unless expressly agreed otherwise in the Agreement, all previous agreements between the Parties regarding the subject matter shall be fully replaced by the

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Agreement with effect from the effective date of the Agreement.

16.3 Amendments or additions to the Agreement shall require written form to be effective, unless a stricter form is required under mandatory law. The same applies to the waiver of this written form requirement. Unless expressly agreed otherwise in the Agreement, e-mails do not comply with this written form requirement. The written form requirement under the Agreement shall be deemed to have been met when the copy of a declaration is being transmitted by telecommunications (e.g. as an attachment to an e-mail) and that copy contains the signature of the person making that declaration, unless a stricter form is required under mandatory law.

16.4 Neither Party is entitled to transfer the Agreement to a third Party without the prior written consent of the other Party.

16.5 The Agreement shall be governed by the laws of the Federal Republic of Germany, excluding the conflict of laws rules of private international law. The applicability of the UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.

16.6 Exclusive place of jurisdiction for all disputes arising out of or in connection with the Agreement shall be the registered seat of TS, unless otherwise required by mandatory law.

16.7 The Customer agrees to be named as a reference customer by TS.

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