

## General Terms and Conditions of Purchase

### 1. Scope

- 1.1 All and any business transactions with the contractor/supplier shall be governed by these Terms and Conditions of Purchase - in particular all contracts concluded for the purchase and maintenance of hardware, the creation, provision and maintenance of standard and/or individual software, the creation and provision of work and services - even if no express reference is made to these terms and conditions. We do not accept any conflicting or deviating terms and conditions used by the contractor/supplier unless we have expressly agreed to their validity in writing. Acceptance of deliveries or services or payment shall not imply consent.
- 1.2 Our Terms and Conditions of Purchase shall apply exclusively to entrepreneurs. They shall also be agreed for all future contracts concluded with the contractor/supplier.
- 1.3 Sections 631 et seq. BGB [*German Civil Code*] shall apply to the services provided by the contractor/supplier under the contract, in particular with regard to the maintenance of hardware as well as the creation and maintenance of software.

### 2. Subject Matter of the Contract

- 2.1 The subject matter of this contract shall comprise the following services in particular:
  - the purchase of hardware including the related materials, such as documentation, concepts, drafts as well as the provision of other services associated with the purchase by the contractor/supplier, whereby the intended use of the hardware is specified in the description of product and services (also refer to Annex A.);
  - the provision of hardware maintenance services as well as other services associated with the maintenance of hardware by the contractor/supplier in accordance with the order (also refer to Annex A.);
  - the creation and provision of individual and/or standard software including the related materials such as documentation, concepts, drafts as well as the provision of other services associated with the provision by the contractor/supplier (implementation, training, etc.), whereby the intended use of the software is specified in the description of product and services (also refer to Annex B.);
  - the provision of individual and standard software maintenance services as well as other services associated with the maintenance of individual and/or standard software by the contractor/supplier in accordance with the order (also refer to Annex B.);
  - the provision of services including the related materials, such as documentation, concepts, drafts as well as the provision of other services associated with the service by the contractor/supplier in accordance with the order and the production of a functioning deliverable in accordance with the order (also refer to Annex C.).
- 2.2 Unless otherwise agreed, the preparation and submission of offers and cost estimates, the preparation of specifications, project planning documents, plans, drawings and mock-ups or other

- 2.3 related preliminary efforts or similar by the contractor/supplier shall be non-binding and free of charge for us.
- 2.4 The contractor/supplier shall provide the contractually owed services with due care and in accordance with the state of the art. The contractor/supplier must observe the rules of engineering recognized at the time the service is provided, the applicable legal provisions and official regulations as well as any of our company rules and regulations that apply. Furthermore, the contractor/supplier undertakes to provide the contractually owed services by deploying staff that is qualified to provide the agreed services.
- 2.5 The responsible contacts named in the individual contract shall be the contact persons of the contracting parties, exclusively. In addition, we shall be authorized to officially and effectively issue statements regarding the services that are to be provided by the contractor/supplier not only to the responsible contact person designated by the contractor/supplier but also to its representative.
- 2.6 The deployment of third parties for the execution of the contract (including but not limited to subcontractors of all levels of business relationship) or the replacement of such third parties shall require our prior written consent. If the contractor/supplier intends from the outset to use third parties in the execution of the contract, the contractor/supplier must inform us thereof already in its offer.

### 3. Conclusion of Contract

- 3.1 We shall only be bound by our order if it is confirmed by the contractor/supplier in writing within a time period not exceeding 7 days. The time period shall commence with receipt of the written and signed order. An acceptance declared after the expiry of this time period shall be deemed to be a new offer. This offer can only take legal effect if we respond to it by placing the respective written order.
- 3.2 The content of the order exclusively shall be authoritative for the provision of services. The details of the respective order, such as definition of assignment, duration, remuneration, are stipulated in the respective order. No verbal collateral agreements have been concluded and such will only become effective if confirmed by us in writing.
- 3.3 If the order confirmation deviates from our order, in particular with regard to prices and/or delivery dates, the contractor/supplier must expressly inform us hereof. A deviating order confirmation shall be deemed to be a new offer. This offer can only become legally effective if we respond to it by placing the respective written order.
- 3.4 If, upon conclusion of the contract, errors on our part occur through no fault of our own, e.g. on account of transmission errors, misunderstandings etc., any claims for compensation of damages asserted against us shall be excluded.
- 3.5 Up until complete execution we shall have the right to demand modifications regarding condition and quality, delivery or delivery period of the ordered item and/or the ordered service, unless such cannot be reasonably expected of the contractor/supplier or is impossible for the contractor/supplier.

### 4. Partial Performance, Partial Deliveries

- 4.1 Partial performance shall not constitute performance in accordance

- 4.2 with the contract and will therefore not be accepted by us.
- 4.3 In the event of partial performance on the part of the contractor/supplier, we shall be entitled to claim damages in lieu of full performance if we have no interest in the partial performance. In all other respects, Sections 280 et seq. BGB shall apply.

- 4.4 In the case of partial deliveries, the contractor/supplier shall bear the return costs and the storage costs incurred up until the deliveries are returned. The risk of accidental loss, damage or other deterioration shall lie with the contractor/supplier until the deliveries are returned.

## 5. Deadlines, Delay

- 5.1 All dates and deadlines stated or agreed by us shall always be binding and must be strictly adhered to. Receipt of the delivery item and/or complete execution of the service at the agreed place of performance or the place of performance stipulated by us shall be authoritative for compliance with the delivery date or deadline. As soon as it becomes apparent to the contractor/supplier that deliveries or services might be delayed, the contractor/supplier must inform us thereof in text form [*text form*] as defined under § 126b BGB] without delay and jointly agree a new date with us. The binding effect of the agreed date shall not be affected thereby. Any extra costs incurred thereby shall be borne by the contractor/supplier.
- 5.2 If deliveries or services are performed prior to the stipulated delivery date, we shall have the right to reject such deliveries or services.
- 5.3 In case of default of the contractor/supplier we shall be entitled to the claims laid down by law. Furthermore, we shall have the right to claim a contractual penalty of 0.5% for each commencing week of the delay, however not exceeding 5% of the order value. Such contractual penalty may be asserted by us until full payment has been made for the delivery/service which was delivered late. The contractual penalty shall be offset against any claims for further damage to be compensated by the contractor/supplier. Any claims for further damage shall not be excluded by the contractual penalty.
- 5.4 Any unconditional acceptance of delayed deliveries and/or services shall not constitute a waiver of any claims to which we may be entitled on account of the delayed delivery or service. Any further claims against the contractor/supplier due to delay shall remain unaffected.
- 5.5 If the contractor/supplier exceeds an agreed date, and after an additional period has been set by us - unless such can be waived in accordance with the law - we shall have the right, at our discretion and irrespective of any additional claims laid down by law, to withdraw from the contract, either in whole or in part, and/or to claim damages. If agreed deadlines are repeatedly missed or if deliveries and/or services are repeatedly inadequate we shall have the right to withdraw from the contract, either in whole or in part, also with respect to deliveries or services not yet due or not yet provided or arising out of framework orders or standing orders or from other agreements or contracts. Any additional claims shall be unaffected thereby.
- 5.6 If we are not able to accept the deliveries and/or services due to circumstances which we cannot prevent despite taking reasonable

care, the date of acceptance shall be postponed by the length of time the impediment continues. If, on account of these circumstances, acceptance is not possible for a time period exceeding 6 months, we shall be entitled to withdraw from the contract, either in whole or in part. In such case, the contractor/supplier shall not be entitled to any claims for damages.

## 6. Acceptance, Functional Test

- 6.1 Before the delivery item and/or services are actually delivered to us, the contractor/supplier undertakes to first thoroughly inspect them itself and, in particular, to determine whether they meet the contractually stipulated requirements, particularly whether they provide the functions stated in the detailed description of product and services. The contractor/supplier will inform us in writing in good time if our involvement is required in this respect.
- 6.2 The services in accordance with the above item 6.1 shall be delivered to us at the contractually agreed point in time after implementation for the purpose of carrying out a functional test. A written and signed report must be produced, documenting the execution of the functional test and its result. The report must be signed by the contractor/supplier and an employee designated by us.
- 6.3 If no significant defects are found during the functional test, we shall be under the obligation to declare acceptance. The contractor/supplier shall then carry out basic training at the contractually agreed point in time. Both acceptance and basic training must be confirmed in writing in accordance with the present provision.
- 6.4 If significant functional impairments are detected during the functional test or if there are any objections, we shall be entitled to refuse acceptance. In this case, the contractor/supplier shall be under the obligation to remedy the defect immediately, but no later than within a reasonable set period of time. This is followed by a new functional test. If this test is successful, the above clause shall apply accordingly. Significant defects are errors that prevent and impede operation, i.e. if use of a well-maintained system/program/hardware is impossible or severely restricted, either in whole or in part, for example due to malfunction, incorrect deliverables or response times.

## 7. Place of Performance, Passing of Risk, Force Majeure

- 7.1 Place of performance for all and any deliveries and services of the contractor/supplier shall be the place of performance designated by us. The place of performance will be stipulated by us in the order and/or in the individual contract.
- 7.2 The risk of complete or partial loss, of damage or other deterioration of the delivery/service shall pass to us after delivery is taken at the place of performance stipulated by us. In all other respects, unless otherwise agreed, the provisions laid down by law shall apply to the passing of the performance risk.
- 7.3 Force Majeure, labor disputes, disruptions in operations for which we bear no responsibility, civil disturbances, official measures and other unavoidable events beyond our control shall release us from the obligation to accept the delivery items and services punctually for the duration of such events. Should such events continue for a period of time that is not insignificant and lead to a reduction in our requirements – also as a result of procurement from another

source which may have been necessary in the meantime – we shall, irrespective of other rights we may have - have the right to withdraw from the contract, either in whole or in part, up until the expiry of one month following the termination of the event. Any other rights we may have shall be unaffected thereby.

- 7.4 If the contractor/supplier is unable to perform and/or provide the service on time due to Force Majeure leading to the impossibility of performance, we may either extend the deadline for the contractual provision of services or withdraw from the contract.

## 8. Prices, Payment, Remuneration

- 8.1 Unless otherwise agreed, the prices shall be fixed prices. A fixed price agreed in the individual contract shall be deemed the remuneration for all contractually owed services. All agreed prices shall be exclusive of the statutory value added tax and, unless otherwise agreed, inclusive of all ancillary costs, in particular travel expenses, travel times, transport costs and customs duties. Any price increases, irrespective of the reason thereof, also in case of framework contracts or standing supply contracts, shall only be recognized by us if an express written agreement has been concluded to this effect.
- 8.2 Invoices shall be issued without delay after dispatch of the delivery items and/or complete performance of the services. Invoices shall be issued as originals, separately for each order, specifying the order number; the value added tax shall be stated separately in the invoice in accordance with the statutory provisions laid down in the German UStG [*Value Added Tax Act*]. Furthermore, if flat rate compensation has not been agreed, the invoice must contain details of the services provided (time, place, service provided etc.). Accounting documents (e.g. activity reports, statements of incidental costs, receipts, etc.) must be attached. Invoices must on principle comply with the statutory provisions of the German UStG. Any invoices that are not issued in due form shall be deemed not issued.
- 8.3 Unless otherwise stipulated, payment shall in each case be due 30 days after receipt of a verifiable invoice, but on principle only after flawless delivery in accordance with the contract and/or acceptance of the service/performance owed.
- 8.4 Unless otherwise agreed, payment shall be effected within 14 days upon receipt of the invoice with 3% discount or within 30 days with 2% discount. The discount shall be deducted from the amount of the invoice including VAT. The terms shall start with the receipt of the invoice or, if the delivery item is received after the invoice, with the receipt of the goods, however, under no circumstances prior to the agreed delivery date / date of performance.
- 8.5 In the event of incorrect, poor or partial deliveries/performance, we shall be entitled to refuse payment until proper completion.

## 9. Deployment of Staff, Authority to Issue Instructions

- 9.1 The contractor/supplier shall provide its services independently, with its own or with external staff that is qualified to provide the agreed services.
- 9.2 We shall be entitled to request that the staff deployed by the contractor/supplier be replaced if such staff breaches the contractual obligations or if there is another important reason with respect to an individual person of the staff deployed that presents

an obstacle to the collaboration between us and the contractor/supplier. Furthermore, we can request that the staff deployed by the contractor/supplier for the execution of the contract be replaced if it lacks the required skills.

- 9.3 If the contractor/supplier deploys external staff (e.g. freelancers or temporary agency workers), we can also request that such external staff be replaced by providing the reasons for this in writing if the continued deployment of such staff cannot be expected of us. The contractor/supplier shall ensure that any external specialists or subcontractors deployed by it are deployed and managed in accordance with the provisions laid down by law. At our request, the contractor/supplier shall provide proof of compliance to us by means of suitable documents and written confirmation. If the contractor/supplier breaches the statutory provisions or the present provision, we shall be entitled to terminate the contractual relationship immediately and without notice.
- 9.4 The contractor/supplier must comply with our request to replace staff without delay. Any additional effort and expense incurred as a result of the replacement, in particular familiarization and training costs and the like, shall be borne by the contractor/supplier.
- 9.5 We will appoint a contact person who shall be available to the contractor/supplier to provide any necessary information and make or bring about without delay any decisions required. The contractor/supplier shall be under the obligation to bring in our contact person if needed for the proper execution of the respective order. The contractor/supplier shall appoint a contact person with a position and qualifications that enable such person to make or bring about without delay any decisions that may be required. The responsible persons named in the individual contract shall be the contact persons of the contracting parties exclusively.
- 9.6 The staff of the contractor/supplier will not be integrated into our business operations. The contractor/supplier shall remain fully and solely responsible for its staff. There shall be no task sharing between our staff and the staff of the contractor/supplier. The planning of the task fulfillment will be determined by the contractor/supplier in consultation with us. The contractor/supplier shall be responsible for carrying out the tasks assigned to it of its own accord.
- 9.7 The contractor/supplier shall not be subject to any directions from us regarding the type or manner in which the contractual service is provided. Neither shall the contractor/supplier be subject to directions from our business partners or customers. The contractor/supplier shall not be authorized to issue any directions to us or our staff. However, we shall be entitled to specify technical and organizational requirements, insofar as these are necessary to ensure that the service/performance of the contractor/supplier can be used. The contractor/supplier shall be the only person authorized to issue directions to its own staff, even if performance is provided at our place of business.
- 9.8 Unless otherwise agreed, the contractor/supplier shall use its own work equipment for the provision of the services. We shall be under no obligation to provide the contractor/supplier with work equipment. On principle, the contractor/supplier shall be free to schedule the working time and determine the place of work. If the staff of the contractor/supplier is deployed at our place of business such shall be coordinated with us and will be defined in the individual contracts depending on the project.

9.9 The contractor/supplier must report to us in full and at regular intervals about the work performed for us. In addition, the contractor/supplier shall also be under the obligation to correct any information that although originally correct later became incorrect, as soon as the contractor/supplier becomes aware of it. The type of work performed and the hours used for it must be communicated to us in writing and must be approved by us before invoicing.

9.10 If the contractor/supplier provides services to one of our end customers within the scope of this agreement, both the contractor/supplier and we will remain solely responsible for the respective staff, i.e. neither our staff nor the staff of the contractor/supplier will be integrated into the business operations of the end customer.

## 10. Compliance with Statutory Provisions, Minimum Wage

10.1 The contractor/supplier must ensure that all statutory provisions, ordinances and other regulations relating to each and every delivery or service are complied with – including but not limited to all and any safety-related and environmental provisions. In particular, the provisions laid down in the EU directives must be complied with in all deliveries.

10.2 Imported delivery items must be delivered duty paid. The contractor/supplier undertakes to allow inspections by customs authorities, to submit all required declarations and information and to obtain all necessary official approvals at its expense. In case of deliveries and services effected out of an EU country other than Germany the EU VAT identification number must be stated.

10.3 The contractor/supplier guarantees that it will pay the staff it deploys in Germany at least the statutory minimum wage. At our request, within 14 days, the contractor/supplier will provide proof to us that this obligation is met, by submitting complete, truthful and suitable documents (esp. documents in accordance with Section 17 [1] MiLoG [*German Minimum Wage Act*], pay slips, time sheets, contracts with subcontractors, etc.) free of charge during the entire term of the contract up until 6 months following termination of the present contractual relationship.

10.4 The contractor/supplier undertakes to bind subcontractors, if any, to the same extent as the contractor/supplier itself is bound under this section to pay the statutory minimum wage and to provide proof thereof. If the subcontractor also employs subcontractors, the contractor/supplier must ensure that all and any subsequent subcontractors are also bound accordingly.

10.5 The contractor/supplier shall indemnify us and hold us harmless from and against all and any claims asserted by any third party (including but not limited to employees of the contractor/supplier, our customers, the Federal Employment Agency) in connection with the breach of the obligation to pay the statutory minimum wage upon first request. The contractor/supplier shall indemnify us and hold us harmless from and against any liability if employees of subcontractors deployed assert claims against us for payment of the minimum wage. In addition, the contractor/supplier shall indemnify us and hold us harmless in particular from and against any pro rata claims asserted by all subcontractors of a subcontractor chain, if any, on the basis of joint and several liability.

10.6 If the contractor/supplier breaches the obligations under the Minimum Wage Act and/or the obligations under this section, we

shall be entitled to terminate the contractual relationship without notice unless the contractor/supplier remedies the breach within 14 days. We expressly reserve the right to assert claims for damages. Furthermore, we shall be entitled to exert a right of retention on payments due to the contractor/supplier.

## 11. Compliance, AEO

11.1 The contractor/supplier undertakes to comply with the ethical business guidelines set out in our Code of Conduct, the current version of which can be retrieved using the following link: [www.blanc-fischer.com/SupplierCoCDE](http://www.blanc-fischer.com/SupplierCoCDE)

11.2 In order to meet the requirements for supply chain security standards we hold the AEO status (AEO = Authorized Economic Operator). If and to the extent that the contractor/supplier is involved in customs operation, the contractor/supplier will use its best efforts to support our efforts to ensure supply chain security by either (a) applying for the AEO-F or AEO-S standard or a respective national equivalent for itself or (b) by making a security statement.

## 12. Reduced Incoming Goods Inspection and Requirement to Give Notice of Defects

12.1 The contractor/supplier shall only supply delivery items which have been continuously inspected and have been approved and shall therefore forego a detailed incoming goods inspection at our site. In derogation from Section 377 HGB [*German Commercial Code*] we shall only be under the obligation to inspect the deliveries and give notice of defects with the following proviso: Upon receipt we will only check the identity and check for any external damage of the delivery items in transport. Subsequently, we will only inspect the delivery items within the framework of the ordinary course of business during their use. Any defects identified in the process as well as any obvious defects must be reported by us within a time period of 10 working days. The term shall be deemed to be complied with if the complaint is sent by us to the contractor/supplier in text form on the last day of the term. In this respect, the contractor/supplier shall waive the defense of delayed notification of defects.

12.2 Full or partial payment of the remuneration shall not constitute approval of the delivery or service.

## 13. Material Defects and Defects of Title, Warranty

13.1 The agreed specifications stated in the description of product and services shall apply as a guarantee of condition and quality for the duration of the warranty period of 36 months.

13.2 We shall be entitled to the statutory rights in the event of material defects and defects of title in full without restriction. The contractor/supplier must remedy any defects during the warranty period without delay. If the defect is remedied, the warranty period shall commence anew.

13.3 We shall be entitled to select the type of supplementary performance (remedy of defects or replacement delivery). The contractor/supplier shall bear all and any expenses required for the purpose of remedy of defects or replacement. If the contractor/supplier fails to comply with the request for remedy of defects or replacement within a reasonable time or if the contractor/supplier fulfills the request only inadequately or if

immediate remedy of defect is required for urgent reason, we may have the defects remedied at the expense of the contractor/supplier or remedy them ourselves or make contingency purchases at the expense of the contractor/supplier.

- 13.4 If we demand supplementary performance from the contractor/supplier, the contractor/supplier shall bear the installation and removal costs as well as the costs incurred as a result. If the contractor/supplier is not in a position to do so at reasonable expense or if this is not possible for other reasons, we shall do this for the contractor/supplier at the expense of the contractor/supplier. Alternatively, we may also demand that the price of a defective delivery item be adequately reduced or we may hold the delivery item ready for pick-up for the contractor/supplier and either retain the purchase price or demand repayment of the purchase price or dispose of the defective delivery at the expense of the contractor/supplier.
- 13.5 Unless otherwise agreed, claims for material defects or defects of title shall become statute-barred 36 months from the passing of risk. The limitation period shall be extended by the period required by the contractor/supplier for repair or replacement measures, from receipt of our notification of defects up until the point in time at which the contractor/supplier declares the end of such measures or refuses further remedy of defects or replacement delivery.
- 13.6 If costs are incurred by us on account of defects pertaining to the delivery and/or service, including but not limited to transport, travelling, labor or material costs, the contractor/supplier shall refund these costs to us. The costs to be reimbursed by the contractor/supplier shall include but not be limited to costs of assembly and disassembly, recall costs and costs of production downtime (inclusive of line stoppage). The obligation to reimburse costs shall apply irrespective of whether such costs are incurred at our site or at our customers' site.

#### 14. Quality, Audit

- 14.1 The contractor/supplier shall implement and maintain an effective quality assurance system and, upon request, provide us with proof thereof. To this effect, the contractor/supplier shall use a quality assurance system with the elements of ISO 9000 et seq. or equivalent. We shall, upon notification, be entitled to inspect the quality assurance system of the contractor/supplier either ourselves or through third parties commissioned by us.
- 14.2 At any time during ordinary business hours and upon reasonable advance notice, the contractor/supplier shall provide us and our authorized agents access to its business premises as well as to the respective documentation in order to perform audits (system, process and product audits) and shall, during such visits, always provide a technically qualified employee to answer questions and provide information.
- 14.3 We will ensure that information of the contractor/supplier disclosed in the context of audits remains confidential and will observe appropriate safety regulations.

#### 15. Rights of Ownership, Intellectual Property Rights

- 15.1 We shall retain title to all and any work equipment, tools, molds, samples, mock-ups, profiles, drawings, standard specification sheets, artwork masters, gages and other records provided by us; these shall not be passed on to any third party nor used otherwise

for the contractor's/supplier's own purposes without our express consent. They shall be protected by the contractor/supplier against unauthorized access or use and, unless otherwise agreed, must be returned in an orderly state together with the delivery and/or service at the latest – in case of long-term framework and supply contracts at the end of the business relationship. The contractor/supplier shall not be entitled to retain any copies thereof. There shall be no right of retention. Work equipment and tools owned by us must be marked as our property. Upon request, the contractor/supplier must provide us with evidence of sufficient insurance coverage.

- 15.2 If tools, drawings or other manufacturing equipment are produced or prepared by the contractor/supplier upon our order and at our expense, there is agreement that title to such items shall pass to us immediately after their production. If we only pay a share of the costs, we shall acquire co-ownership in proportion to our share in the costs. The contractor/supplier shall have the revocable right to keep these items in safe custody for us free of charge. We shall be granted all and any copyrights to these items for our sole usage. The contractor/supplier shall not be entitled to use these items beyond the scope of the order without our consent. The contractor/supplier shall be entitled and under the obligation to keep the items in safe custody, which right and obligation shall be revocable. The contractor/supplier shall mark the items in such a manner that our title to them shall also be documented vis-a-vis third parties. The contractor/supplier shall have no right of retention relating to these items.
- 15.3 We shall have the sole right to file applications for intellectual property rights for work results and inventions created within the framework of this contract.
- 15.4 The contractor/supplier shall only be entitled to withhold payments, services and/or work results or to offset against counterclaims if the claims asserted by the contractor/supplier from the same legal relationship have either been acknowledged by us at least in writing or if a non-appealable decision has been issued in court proceedings.
- 15.5 We shall be entitled to offset the claims of the contractor/supplier against all and any of our claims as well as against claims of our affiliated companies (affiliated companies within the meaning of Section 15 et seq. of the German AktG [*German Stock Corporation Act*]).

#### 16. Rights of Use, Third-Party Rights

- 16.1 We shall be granted a non-exclusive, irrevocable, world-wide, royalty-free, transferrable as well as sub-licensable and indefinite right of use to all technical information, records and data, documentation, hardware, software, object and source codes, work results, other works as well as industrial property rights generated within the scope of the execution of the order or necessary for the usage of the deliveries and/or services under the contract. Such license shall include but not be limited to the right to use, process (e.g. by modification, reconfiguration or supplementation), duplicate, disseminate and sell the contractual items for our internal use and for use in connection with one of our products or for third-party use as well as to incorporate them in changed or unchanged form into one of our own products.
- 16.2 Irrespective of who is at fault, the contractor/supplier shall be responsible for ensuring that the contractor/supplier is authorized to

grant us the rights of use to the technical information, records and data, documentation, hardware, software, object and source codes, work results, other works as well as industrial property rights. The contractor/supplier guarantees that their use by us under the contract does not infringe the rights of any third party.

16.3 By means of appropriate contracts concluded with its employees and/or vicarious agents the contractor/supplier shall ensure that the granting of rights as described above neither conflicts with their respective property rights nor is hindered or prevented by such rights. At our request, the contractor/supplier shall be under the obligation to provide proof of the conclusion of such contracts with the employees and/or vicarious agents involved in the project.

16.4 Immediately upon conclusion of the agreed services or - depending on the circumstances - upon termination of the contract, the contractor/supplier shall provide us with all and any tangible and intangible information, stored electronically or on other storage media, necessary for the full use of the rights granted under item 16.1 above. We shall be granted the exclusive rights of use to the work results.

16.5 The contractor/supplier guarantees that no third-party rights are infringed by the delivery, the provision of the service, use thereof and/or of the manufactured deliverable. At its own expense, the contractor/supplier shall defend all and any third-party claims asserted against us in connection with infringements. In this respect, the contractor/supplier shall indemnify us and hold us harmless from and against any such compensation payments or liabilities imposed and related expenses.

16.6 If intellectual property rights are infringed by the delivery and/or service, the contractor/supplier shall be under the obligation, at its own discretion and at its own expense, either to modify the item delivered or the service provided in such a way that the property rights are not infringed by our usage but that the delivery and/or service nevertheless complies with the contractual agreements, or to obtain the right of use for us. If the contractor/supplier fails to do so, the contractor/supplier shall be under the obligation, at our discretion, to either take back the delivery and/or service against reimbursement of costs and/or to compensate us for all and any damage incurred.

16.7 If our specifications in the service description, in the related drawings, technical specifications or other records defining the service may result in the infringement of any third-party rights, the contractor/supplier shall be under the obligation to inform us thereof in writing without delay and, in all other respects, to indemnify us and hold us harmless from and against all and any third-party claims asserted against us as a result of the infringement of these rights. In addition, both contracting parties undertake to inform each other without delay of any claims asserted by any third party based on ownership or other infringements on account of the use of work results obtained within the scope of this contract.

16.8 At our request, the contractor/supplier shall inform us of all property rights that the contractor/supplier or its licensor holds in connection with the delivery and/or service. If the contractor/supplier finds that property rights are infringed, the contractor/supplier shall inform us thereof in writing without delay and without requiring any request to do so.

## 17. Confidentiality, Advertising

17.1 The contractor/supplier undertakes to keep secret and treat as confidential all and any information on us, our affiliated companies and the order that the contractor/supplier may gain knowledge of within the scope of this contractual relationship, irrespective of whether disclosed verbally, in writing, in electronic or other form or manner (e.g. business and trade secrets, data, technical and commercial information of any kind whatsoever), also beyond the duration of the contractual relationship. Such information must be stored in such a way as to exclude any misuse. It may only be used for the execution of our orders and may only be made accessible to such employees, consultants or other vicarious agents whose involvement is necessary for the execution of the order.

17.2 The contractor/supplier shall be under the obligation to surrender to us the information and documentation compiled and received within the scope of the order (including any copies thereof, if applicable) at our written request, but no later than upon completion of the respective service. The contractor/supplier shall have no right of retention with respect to such information and documentation.

17.3 In addition, the contractor/supplier shall be responsible for ensuring that its employees, consultants and other vicarious agents who are entrusted with the execution of the order and receive information within the meaning of item 17.1 above are bound in writing to maintain secrecy.

17.4 Without our prior written consent, the contractor/supplier shall not be entitled to report on or advertise the collaboration with us, in particular to include us in its list of references or use one of our logos. An evaluation or disclosure of the existing business relationship with us by the contractor/supplier shall only be permitted with our express prior written consent.

17.5 The validity of the obligations stipulated in this clause shall be of indefinite duration.

## 18. Duration, Termination of Contract, Notice of Termination

18.1 Unless otherwise agreed, we shall be entitled to terminate an order at any time, either in whole or in part, subject to the legal or contractual notice periods. Any notice of termination must be given in writing.

18.2 If an order ends prematurely, the contractor/supplier shall only receive the agreed payment for the individual services provided in accordance with the contract and accepted by us up to the receipt of the notice of termination / declaration of withdrawal. If we terminate the contract for good cause for which the contractor/supplier is responsible, the contractor/supplier shall only be paid for the individual services utilized by us and provided up to the receipt of the notice of termination. Any further claims of the contractor/supplier shall be excluded. Our rights arising from the fact that the premature ending of the order is the responsibility of the contractor/supplier, in particular claims for damages and additional expenses, shall remain unaffected. We shall acquire all rights to the partial services that have been paid for.

18.3 Upon termination of the order, the contractor/supplier must return all documentation, information, data carriers, etc. provided to the contractor/supplier by us without being requested to do so and without delay, however no later than within two weeks after the end of the contract, at its own expense and at its own risk, or, if so

agreed in writing with us, duly destroy them and provide us with proof thereof upon request.

- 18.4 The right to give notice of termination for good cause shall remain unaffected. We shall be entitled to terminate or withdraw from the contract immediately for good cause, in particular, but not exclusively, if (a) the contractor/supplier culpably breaches essential contractual obligations; (b) the services of the contractor/supplier are not of the required quality despite a written warning; (c) there is a significant deterioration in the financial situation of the contractor/supplier, which seriously jeopardizes the execution of the performance owed; (d) the contractor/supplier suspends its payments or services not only temporarily. Essential contractual obligations shall be deemed obligations the execution of which characterizes the contract and on which we may rely.

## 19. Liability, Product Liability, Insurance

- 19.1 The liability of the contractor/supplier shall be governed by the provisions laid down by law. In particular, the contractor/supplier undertakes to indemnify us and hold us harmless from and against all and any claims of any third party asserted against us on account of the services of the contractor/supplier or its failure to provide services, including the associated costs and expenses. We will inform the contractor/supplier in good time if such claims are asserted by any third party and will not effect any payment or acknowledge any claims without consultation.
- 19.2 We shall be liable for intent and gross negligence. We shall only be liable for slight negligence if it concerns the breach of essential contractual obligations arising from the nature of the contract or the breach of which jeopardizes the achievement of the contractual purpose. Also in this case, damages shall be limited to the foreseeable damage. In all other respects, in the case of slight negligence claims for damages by the contractor/supplier shall be excluded, irrespective of the legal grounds such claims are based on. The above limitation of liability shall not apply in the event of injury to life, limb or health.
- 19.3 If claims under product liability are asserted against us, the contractor/supplier must compensate us for the resulting damage (including the costs of a recall action, if such is required) insofar as the contractor/supplier is liable for the defect causing the liability. In this respect, the contractor/supplier shall waive any plea that the claim is statute-barred, unless we can invoke the statute of limitations against the claimant ourselves.
- 19.4 The contractor/supplier undertakes to maintain business liability insurance for the entire duration of the contract, the scope and amount of which shall be appropriate to its liability risks under the respective order. However, unless otherwise agreed, the minimum sum insured shall be EUR 1.5 million per claim. Proof of the conclusion and existence of the insurance as well as payment of the corresponding premiums must be provided to us at the beginning of the execution of the order at the latest and at any time at our request.

## 20. Data Protection, Information Security

- 20.1 The contractor/supplier shall be responsible for ensuring that all persons entrusted with the execution of the order comply with the statutory provisions on data protection and are bound to maintain data secrecy in accordance with the rules on data protection which can be proven by documentary evidence.

- 20.2 In the event of personal data processing (Agreement on Contract Processing of Personal Data – "DPA"), a separate agreement shall be concluded between the contracting parties. The DPA shall be an integral part of the contract.

- 20.3 We expressly do not give our consent to the use of our contact data for advertising purposes. Any disclosure, transmission or other use of our contact data shall be strictly prohibited.

- 20.4 During the execution of the order, the contractor/supplier undertakes to take all necessary measures to ensure information security and operational safety and for quality assurance, in compliance with relevant, internationally established information security standards such as ISO 27.001 or comparable standards. Our relevant guidelines and information leaflets shall apply which will be provided to the contractor/supplier at its request.

- 20.5 The contractor/supplier shall ensure that the contractor/supplier and the persons entrusted by it with the execution of the order and with the provision of services will only use IT systems for this purpose that are safe and secured according to the respective state of the art with regard to confidentiality, integrity and availability of the information processed on them. These security measures shall include but not be limited to using hard disks or comparable storage media (SSD, etc.), which are continuously encrypted by a state-of-the-art application, as well as using strong authentication mechanisms (multi-factor authentication) for cloud-based storage locations, if such has been agreed.

- 20.6 The contractor/supplier shall ensure that the solution it provides does not use any IT components (hardware and/or software) for which manufacturer support with security patches/updates is no longer guaranteed at the time of conclusion of the contract ("obsolescence"). The contractor/supplier shall also be under the obligation to point out in the documentation if, at the time of conclusion of the contract, components are included for which said manufacturer support has already been discontinued. Breaches of this regulation shall be considered poor performance not meeting the contractually agreed quality [*German "Schlechtleistung"*].

- 20.7 Within the scope of product development, the contractor/supplier shall ensure that appropriate upgrades are available in good time before an impending obsolescence of installed IT components, provided that the warranty period of the overall service has not already been exceeded.

- 20.8 If the contractor/supplier becomes aware of circumstances in which it cannot be ruled out that they may jeopardize or have jeopardized the confidentiality, integrity or availability of our processed information/data, the contractor/supplier shall be under the obligation to inform us thereof in full and in good time and, if necessary, to participate in the elucidation of the facts.

## 21. Performing Work in our Factories

Persons who in the execution of a delivery or service perform work in one of our factories must comply with the relevant statutory provisions as well as our respective factory regulations. In the event of breaches, we will not assume any liability for accidents occurring in our realm of control, unless we have caused the accident intentionally or through gross negligence. The regulations applicable for entering and leaving our factories must be complied with.

## 22. Transfer of Rights and Obligations

- 22.1 Assignments of claims of the contractor/supplier against us outside the scope of application of Section 354 a HGB shall be excluded. Exceptions to this shall require our written consent in order to be effective.
- 22.2 Any rights and obligations arising from contracts for deliveries and/or services must not be transferred to any third party. However, we shall be entitled to transfer rights and obligations arising from contracts for deliveries and/or services to be provided to us to companies affiliated with us. An affiliated company within this meaning shall be a company that directly or indirectly controls us, is directly or indirectly controlled by us or that is under direct or indirect joint control with us. Accordingly, such affiliated companies shall not be deemed third parties within the meaning of these provisions.

## 23. Final Provisions, Place of Jurisdiction, Applicable Law

- 23.1 A signature transmitted by a simple - not necessarily advanced or qualified - electronic signature procedure (e.g. DocuSign) shall have the same effect as an original signature on a paper document. Changes and additions to this agreement, as well as to this clause, must also be made in writing or in the form described above in order to be effective.
- 23.2 Place of jurisdiction for all and any legal disputes arising out of the contractual relationship as well as its creation and effectiveness shall be the court having jurisdiction at the registered office of our company. We may, at our discretion, also bring an action at the registered office of the contractor/supplier.
- 23.3 The contract, its interpretation as well as all rights and claims arising therefrom shall be governed by the law of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG) and the conflict of laws provisions.

## Annex A: Purchase and Maintenance of Hardware

When entering into contracts for the purchase and maintenance of hardware, the following special conditions shall apply in addition to the Terms and Conditions of Purchase:

### 1. Scope

- 1.1 The contractor/supplier shall supply us with the hardware specified in the order and/or the individual contract including the related program and user documentation as well as other manuals (hereinafter referred to as "hardware"). Furthermore, the contractor/supplier shall supply us with the operating system software and application software specified in the order and/or in the individual contract including the related program and user documentation as well as other manuals (hereinafter referred to as "software"). The delivery shall require our acceptance.
- 1.2 The hardware and software must be delivered free from defects and at no costs for us (inclusive of freight and customs) in customary packaging and in a suitable manner (e.g. data carrier, download, etc.) to the place of performance specified by us in the order and/or

individual contract. The hardware and software must be delivered within the agreed delivery time and on the agreed delivery date. Deliveries shall be made without retention of title. If the hardware and software are provided as a download, the contractor/supplier shall ensure that they are provided in a secured, state-of-the-art manner and, in particular, that the integrity of the hardware and software provided can be independently verified.

- 1.3 The risk shall pass when the hardware and software are delivered defect-free at the place of performance. The contractor/supplier undertakes to take out insurance required for transport to the contractually agreed place of performance at its own expense.
- 1.4 Unless otherwise agreed, the contractor/supplier shall install the hardware and ensure that the hardware is ready for operation. These services shall require our acceptance. In the absence of any other agreement and if necessary for the installation of the hardware, the contractor/supplier shall dismantle any old hardware.
- 1.5 The software shall be set up, installed, integrated and/or configured by the contractor/supplier and handed over to us ready for operation and title transferred to us. These services shall require our acceptance. If the contractor/supplier needs specific operational requirements to be met for proper installation and configuration (e.g. premises, network and network connections), the contractor/supplier must inform us thereof in good time and in writing before the agreed delivery date. The contractor/supplier shall provide an adequate number of qualified and competent employees to ensure fast and effective installation and configuration without interfering with our business operations.
- 1.6 When using the software for the first time, we shall be entitled to test it for a time period of 30 days from execution of the services stipulated in items 1.4 and 1.5 above. Within this time period, we shall be entitled to withdraw from the purchase contract at any time if the contractually agreed functions of the hardware and software are not fully met, unless we have already tested the hardware and software free of charge before ordering.
- 1.7 The contractor/supplier shall support and train our staff to the extent necessary and at its own expense so that we are able to use the hardware and software proficiently ("induction"). We shall be entitled to request further training from the contractor/supplier at a charge customary in the market.
- 1.8 The contractor/supplier shall owe the provision of printable, detailed program and user documentation as well as other manuals ("documentation") in German and/or English – unless otherwise agreed. The documentation provided must be suitable to enable us to operate the hardware and software properly. We shall be entitled to use, reproduce, translate, modify, distribute or otherwise dispose of the documentation provided by the contractor/supplier, including the operating manual provided by the contractor/supplier.
- 1.9 The contractor/supplier shall ensure that the hardware and software do not contain any functions that make it possible to weaken, circumvent or disable safety functions. The contractor/supplier shall also ensure that the hardware and software do not allow any unauthorized third parties to access our systems or data without our consent. The contractor/supplier must check beforehand that the hardware and software are free from viruses, Trojans and other malware. The contractor/supplier warrants that the inspection has not revealed any indication of such malware.



## 2. Spare Parts, Guarantee

- 2.1 The contractor/supplier undertakes to keep spare parts for the hardware available for a time period of at least 5 years from the passing of risk and, if required, to deliver them to us for a remuneration customary in the market.
- 2.2 The contractor/supplier undertakes to pass on to us any guarantee provided by the manufacturer. Information on the scope of the guarantee as well as on how to assert claims under it shall be provided by the contractor/supplier together with the hardware and software. We shall be entitled to either assert guarantee claims against the manufacturer directly or via the contractor/supplier. The contractor/supplier shall allow the terms and provisions of the manufacturer's guarantee terms to apply against it, ensuring that the limitation period for liability for material defects and defects of title does not begin before the guarantee terms are known and is suspended for the time period required for inspection and remedy by the manufacturer until these efforts are finally completed.
- 2.3 If the contractor/supplier is the manufacturer, the contractor/supplier shall offer us a manufacturer's guarantee that is customary in the trade free of charge. The last sentence of the previous provision shall apply mutatis mutandis.

## 3. Maintenance, Modification and Improvement of Hardware

- 3.1 The contractor/supplier shall ensure that the hardware and software are maintained and restored to operational readiness. To this effect, the contractor/supplier shall provide the necessary maintenance and repair work. Any work by the contractor/supplier that affects our availability will be coordinated with us and carried out at the times specified by us.
- 3.2 Maintenance shall support the functionality of the hardware and software and shall include the replacement of defective wear parts and components that no longer correspond to the currently recognized state of the art or no longer function safely. The contractor/supplier shall carry out any necessary integration, configuration or installation work in coordination with us as well as regular inspections in accordance with the respective hardware and software documentation or applicable manufacturer information. Failures in the hardware and software detected by the contractor/supplier or communicated by the manufacturer shall be remedied by the contractor/supplier.
- 3.3 The contractor/supplier shall ensure that the solution it provides can be monitored and continuously checked by common IT security technology in accordance with the state of the art (anti-virus software, vulnerability scanners, etc.) without causing functional impairments. The configuration specifications required for this shall be an integral part of the documentation.
- 3.4 We will notify the contractor/supplier of any malfunctions, complete or partial downtimes and other problems ("disruptions") that occur within the agreed service times. The contractor/supplier will locate, analyze and remedy the disruption. To this effect, the contracting parties will enter into a **Service Level Agreement**, which shall become an integral part of the contract. If, after its analysis, the remedy of the disruption turns out to be very extensive, the contractor/supplier, in consultation with us, shall provide at least a temporary replacement or workaround solution so that significant impairments for our business operations will be avoided. The obligation to permanently eliminate the disruption within a

reasonable period of time shall remain unaffected.

- 3.5 For the improvement of hardware and software, the contractor/supplier undertakes to provide us with existing new firmware and operating system versions that are generally offered and released, free of charge at regular intervals, but at least once a calendar year. If required, the contractor/supplier will train our staff on the new hardware and software version free of charge and in a timely manner.
- 3.6 The contractor/supplier undertakes to provide us with security patches and updates in a timely manner and free of charge to solve any newly discovered flaws or security problems in the hardware and software, if any. Furthermore, the contractor/supplier undertakes to transparently inform us at all times in what time frame such security patches and updates will be made available for the software versions provided by the contractor/supplier.
- 3.7 The contractor/supplier undertakes to adapt the hardware and software to any changed legal provisions free of charge, if the hardware and software cannot be used or can only be used to a limited extent under such changed legal provisions.
- 3.8 In the event of modification and/or improvement of the hardware and software on the basis of this contract, the contractor/supplier shall update the documentation correspondingly, explaining the resulting changes. The documentation shall be updated in terms of type and scope in accordance with our requirements.
- 3.9 In the event of defects, application problems, malfunctions or other problems in connection with hardware and software processes the contractor/supplier shall provide telephone advice and support during the agreed service times. The contractor/supplier shall be available to us during the agreed service times for the diagnosis and processing of any defects, application problems, malfunctions or other problems that occur in connection with the functioning of the hardware and software via remote access (VPN connection or remote desktop sharing). To this effect, the contracting parties shall enter into a **Service Level Agreement**, which shall become an integral part of the contract.

## 4. Duration, Termination of Contract, Termination

- 4.1 The duration of the services is stipulated between the contracting parties in the individual contract. For hardware maintenance services the term shall commence with the productive use of the hardware and software.
- 4.2 The contractor/supplier must inform us in writing of the end of the contract term three months before the end of the contract.

## 5. Rights of use

- 5.1 In the absence of any deviating agreement, the contractor/supplier shall grant us and our affiliated companies within the meaning of Sections 15 et seq. of the German AktG [*German Stock Corporation Act*] a non-exclusive, irrevocable, transferable and sub-licensable right of use to the hardware and software that is unrestricted in terms of time, place and content, even for types of use unknown at the time the contract is concluded. This shall also apply to all patches, updates, upgrades and new versions of the hardware and software provided by the contractor/supplier - as well as to the related documentation.

5.2 We shall be entitled to reproduce the software at least to the extent necessary for its intended use and in order to use and let the software be used by and for our affiliated companies. We shall also be entitled to make copies of the software for backup purposes.

## 6. Remuneration

6.1 Any agreed remuneration shall be valid for the duration of the contract. An automatic increase in remuneration or a unilateral increase in remuneration by the contractor/supplier shall not be permitted.

6.2 All and any services stipulated under items 1 to 3 of Annex A shall be included in the agreed remuneration and shall not be remunerated separately. Payment shall be broken down according to the services in the product and service description. The remuneration shall also include the costs for data carriers and shipment.

6.3 If the contractor/supplier is under warranty obligation to us, the contractually owed services, in particular the hardware maintenance services, shall be provided free of charge for the duration of the warranty period.

## Annex B: Creation, Provision and Maintenance of Individual and/or Standard Software

When entering into contracts for the creation, provision and maintenance of individual and/or standard software the following special conditions shall apply in addition to the Terms and Conditions of Purchase:

### 1. Scope

1.1 The contractor/supplier shall supply us with the individual and/or standard software specified in the order and/or in the individual contract including the related program and user documentation as well as other manuals (hereinafter referred to as "software"). The delivery shall require our acceptance.

1.2 The software must be delivered free from defects and at no costs for us (inclusive of freight and customs) in customary packaging and in a suitable manner (e.g. data carrier, download, etc.) to the place of performance specified by us in the order and/or individual contract. The software must be delivered within the agreed delivery time and on the agreed delivery date. Deliveries shall be made without retention of title. If the software is made available as a download, the contractor/supplier shall ensure that it is provided in a secured state-of-the-art manner and, in particular, that the integrity of the software provided can be independently verified.

1.3 The risk shall pass when the software is delivered defect-free at the place of performance or when the software is stored defect-free on one of our data carriers. The contractor/supplier undertakes to take out insurance required for transport to the contractually agreed place of performance at its own expense.

1.4 We shall be entitled to make copies of the software in machine-readable form for the purpose of due data backup for protection in the event of loss, accidental deletion or damage to the software or similar occurrences.

1.5 Unless otherwise agreed and in addition to the creation and

provision of the software, the contractor/supplier shall also be under the obligation to install and configure the software and to establish technical operational readiness ("implementation"), always in consultation with us. In this respect, we may set up requirements, in particular with regard to safety, which must be strictly observed by the contractor/supplier. If the contractor/supplier needs operational requirements to be met for proper implementation (e.g. premises, network and network connections), the contractor/supplier must inform us thereof in good time and in writing before the agreed delivery date. The contractor/supplier shall provide an adequate number of employees to ensure fast and effective implementation without interfering with our business operations.

1.6 When using the software for the first time, we shall be entitled to test it for a time period of 14 days calculated from the end of implementation. Within this time period, we shall be entitled to withdraw from the purchase contract at any time if the contractually agreed functions of the software are not fully met, unless we have already tested the software free of charge before ordering.

1.7 The contractor/supplier shall support and train our staff to the extent necessary and at its own expense so that we are able to use the software proficiently ("induction"). We shall be entitled to request further training from the contractor/supplier at a charge customary in the market.

1.8 The contractor/supplier shall owe the provision of printable, detailed program and user documentation as well as other manuals ("documentation") in German and/or English – unless otherwise agreed. The documentation provided must be suitable to enable us to operate the software properly. We shall be entitled to use, reproduce, translate, modify, distribute or otherwise dispose of the documentation provided by the contractor/supplier, including the operating manual provided by the contractor/supplier.

1.9 The contractor/supplier shall ensure that the software does not contain any functions that make it possible to weaken, circumvent or disable safety functions. The contractor/supplier shall also ensure that the software does not allow any unauthorized third parties to access our systems or data without our consent. The contractor/supplier must check beforehand that the software is free from viruses, Trojans and other malware. The contractor/supplier warrants that the inspection has not revealed any indication of such malware. Correspondingly, the contractor/supplier shall ensure that, at least within the context of putting the software into commercial use, the software has been subjected to a safety inspection with regard to common and known vulnerabilities; upon request, the contractor/supplier shall provide us with proof of the inspection performed.

1.10 Our rights and claims in the event of material defects and defects of title in the performance and in the event of other breaches of duty by the contractor/supplier shall be governed by the provisions laid down by law, without restriction, and, in addition, by the provisions of the General Terms and Conditions of Purchase. As a short-term measure, a replacement or workaround solution may be provided to temporarily remedy or circumvent the effects of a defect. However, this shall not constitute the final remedy of the defect. During the warranty period and if software is provided for a limited duration during the term of the contract the contractor/supplier must remedy defects without delay.

## 2. Modification, Improvement and Further Development of Software

- 2.1 If the contractor/supplier modifies the software that has been used by us, the contractor/supplier must notify us of such modification in writing and without delay. In the event of software modifications, the contractor/supplier shall, if necessary, instruct our personnel in the new software version free of charge and in a timely manner. However, we shall not be under the obligation to accept the installation of updates, upgrades or new versions of the software by the contractor/supplier if this is unreasonable for us, in particular due to the expense or technical conversion risks incurred thereby by us. We may refuse the installation of updates, upgrades or new versions of the software if, by and large, they do not have the same functionality and compatibility as the part of the software to be replaced.
- 2.2 For the improvement of the software, the contractor/supplier undertakes to provide us with existing updates, upgrades and new software versions that are generally offered and released, free of charge at regular intervals, but at least once a calendar year.
- 2.3 The contractor/supplier undertakes to provide us with security patches and updates in a timely manner and free of charge to solve any newly discovered flaws or security problems in the software, if any. Furthermore, the contractor/supplier undertakes to transparently inform us at all times in what time frame such security patches and updates will be made available for the software versions provided by the contractor/supplier.
- 2.4 The contractor/supplier shall ensure the ongoing development of the software and shall provide us with updates, upgrades and new versions of the software free of charge.
- 2.5 The contractor/supplier undertakes to adapt the software to any changed legal provisions free of charge, if the software cannot be used or can only be used to a limited extent under such changed legal provisions.
- 2.6 In the event of modification and/or improvement of the software on the basis of this contract, the contractor/supplier shall update the documentation correspondingly, explaining the resulting changes. The documentation shall be updated in terms of type and scope in accordance with our requirements.
- 2.7 In the event of defects, application problems, malfunctions or other problems in connection with software processes the contractor/supplier shall provide telephone advice and support during the agreed service times. The contractor/supplier shall be available to us during the agreed service times for the diagnosis and processing of any defects, application problems, malfunctions or other problems that occur in connection with the functioning of the software via remote access (VPN connection or remote desktop sharing). To this effect, the contracting parties shall enter into a **Service Level Agreement**, which shall become an integral part of the contract.

## 3. Source Code

- 3.1 Unless expressly otherwise agreed, the contractor/supplier must provide us with the source code and the object code together with printable documentation of the source code and the maintenance documentation as well as with the compiler.

- 3.2 If the contractor/supplier writes, modifies or similarly uses a source code and/or compiles it into an object code, the contractor/supplier shall, unless expressly otherwise stipulated, deliver or provide us with a copy of the source code without delay. The source code must be delivered together with the documentation and any other records required for generation or compilation.

- 3.3 If it has been agreed that the source code of the software is not made available, the contractor/supplier agrees to deposit the source code of the software upon our request with an independent escrow agent while granting us a right of surrender and a right of use, processing and exploitation of the source code limited to the purpose of the contract should the contractor/supplier become insolvent. In this case, the contracting parties will enter into an **Escrow Agreement** which shall become an integral part of the contract.

## 4. Rights of Use

- 4.1 In the absence of any deviating agreement, the contractor/supplier shall grant us and our affiliated companies within the meaning of Sections 15 et seq. of the German AktG [*German Stock Corporation Act*] a non-exclusive, irrevocable, transferable right of use to the software and the results of the software maintenance services, unrestricted in terms of time, place and content, from the time of its creation. This shall also apply to all patches, updates, upgrades and new versions of the software provided by the contractor/supplier as well as to the related documentation.
- 4.2 We shall be entitled to reproduce the software at least to the extent necessary for its intended use and in order to use and let the software be used by and for our affiliated companies. We shall also be entitled to make copies of the software for backup purposes.
- 4.3 If software is only provided for a limited period of time, the aforesaid rights shall apply for the duration of the contract.
- 4.4 The contractor/supplier must inform us in writing without delay if so-called "free software" or "open-source software" ("OSS") is also to be used in the provision of the service, specifying the relevant licenses and providing the license terms. Without our prior written consent, the contractor/supplier shall not be entitled to include OSS for the execution of the contract. If OSS is used without our prior written consent this shall be deemed to be a material breach of contractual obligations and shall constitute a defect in performance.
- 4.5 Upon termination of the right of use, we shall still be entitled to keep and use a copy of the software and the related documentation for verification and archiving purposes.

## 5. Duration, Termination of Contract, Termination

- 5.1 The duration of the services is stipulated between the contracting parties in the individual contract. For software maintenance services, the term shall commence with the productive use of the software.
- 5.2 The contractor/supplier must inform us in writing of the end of the contract term three months before the end of the contract.

## 6. Remuneration

- 6.1 Any agreed remuneration shall be valid for the duration of the contract. An automatic increase in remuneration or a unilateral

increase in remuneration by the contractor/supplier shall not be permitted.

- 6.2 All and any services stipulated under items 1 to 4 of Annex B shall be included in the agreed remuneration and shall not be remunerated separately. Payment shall be broken down according to the services in the product and service description. The remuneration shall also include the costs for data carriers and shipment.
- 6.3 If the contractor/supplier is under warranty obligation to us, the contractually owed services, in particular the software maintenance services, shall be provided free of charge for the duration of the warranty period.

## Annex C: Procurement of Work and Services

When entering into contracts for work and services, the following special conditions shall apply in addition to the Terms and Conditions of Purchase:

### 1. Modification and Extension of Service

- 1.1 We shall have the right to request modifications and/or extensions to the agreed services, even after conclusion of the contract and up until the provision of services has been properly completed, for as long as such services are not unreasonable or impossible for the contractor/supplier.
- 1.2 The contractor/supplier shall check and inform us in writing within 14 days whether the modification is possible and how it will affect the order, in particular taking into account any additional or reduced effort, new prices and any changes in dates or deadlines, if applicable. If the modification can be expected of the contractor/supplier and can be implemented, the contractor/supplier shall submit a written offer to us also within the 14-day deadline stipulated above, which may then be accepted or rejected by us within an additional period of 14 days. If modifications to services are agreed, these must be bindingly documented in writing by adjusting the contract accordingly.
- 1.3 Unless otherwise agreed, the services will continue in line with the existing order until the modifications are agreed and finalized. If there is no agreement on modifications, the services will be continued on the basis of the existing order.
- 1.4 Should any deviations from the services included in the order be required by the contractor/supplier, in particular technical modifications, the contractor/supplier must immediately submit to us a written offer specifying the reasons for the modifications in detail. They shall only be permitted if we have given our consent to the deviation in writing. This shall also apply if the intended deviation does not result in a price change.

### 2. Performance Obligations, Obligations to Cooperate

- 2.1 The contractor/supplier owes the preparation and provision of the deliverables as well as the handing over of a printable, detailed service description or documentation on the provision of services ("documentation") in German and/or English, unless otherwise agreed.

- 2.2 The contractor/supplier must make the deliverables available in sufficient quantity on suitable data carriers or by download/upload in a suitable data format, in each case together with the documentation. The risk shall pass when the data carrier is handed over or when the deliverables are stored defect-free on one of our data carriers.

- 2.3 The contractor/supplier shall ensure that the deliverables do not contain any functions that make it possible to weaken, circumvent or disable safety functions. The contractor/supplier shall also ensure that the deliverables do not allow any unauthorized third parties to access our systems or data without our consent.

- 2.4 We shall only be under the obligation to cooperate and provide records, information, data, access, work equipment (in particular IT equipment) and premises if such has been agreed in an individual contract and only to the extent specified therein.

### 3. Acceptance

- 3.1 If work is performed, we will declare acceptance to the contractor/supplier if the respective performance is provided in full and free from defects and if acceptance is not excluded on the basis of the nature of the performance. Partial acceptance shall be possible, depending on the nature of the performance. However, we shall reserve the right to only accept the performance in total. Acceptance must not be refused due to insignificant defects.

- 3.2 If services are provided, the service shall be deemed to have been provided when we have signed the corresponding activity reports that are submitted by the contractor/supplier. The report will be signed if the service has been provided in accordance with the contract and the signature must not be unreasonably refused or delayed.

### 4. Default

- 4.1 If the service is not provided at all, is not provided in accordance with the contract or is defective and if the contractor/supplier is responsible for this, the contractor/supplier shall be under the obligation to provide the service in accordance with the contract within a reasonable period of time at no additional cost to us. This shall require a complaint by us, which must be made within 10 working days of the default being detected. If the contractor/supplier fails to provide the service in accordance with the contract in substantial parts within the reasonable grace period to be set by us for reasons for which the contractor/supplier is responsible, we shall have the right to remedy the defect ourselves or have it remedied by third parties at the expense of the contractor/supplier, or to terminate the contract without notice. In this case, the contractor/supplier shall be entitled to remuneration for the services provided on the basis of the contract until termination takes effect.
- 4.2 The right to extraordinary termination for good cause shall remain unaffected thereby.

### 5. Duration, Termination of Contract, Termination

Without prejudice to the right to terminate the contract without notice for good cause, and unless otherwise agreed in the respective individual contract, contracts for the provision of services may be terminated by us with a notice period of 14 days to the end of the month.

**6. Remuneration**

- 6.1 The services provided by the contractor/supplier shall on principle be remunerated by us based either on the time spent or at a fixed price.
- 6.2 If remuneration based on the time spent is agreed in the individual contract the actual time spent on the contractually owed services shall be remunerated. Remuneration based on time spent shall not be payable until a verifiable invoice together with the activity report signed by the contractor/supplier and countersigned by us has been received. Unless otherwise agreed, the contractor/supplier must always submit the invoice and the respective activity report to us in writing immediately, but no later than 4 weeks after the service has been provided. Invoices that have not been issued properly shall not be due for payment.
- 6.3 If fixed-price remuneration is agreed in the individual contract the remuneration shall be due for payment once the service has been provided in full.
- 6.4 Travel times for business trips from the place of deployment will be charged at 50% of the respective hourly rate. Unless otherwise agreed, there shall be no further claims for remuneration for travel times. Other ancillary costs, e.g. for transport, accommodation, meals, etc., shall only be paid by us if such has been separately agreed in writing beforehand.