

## **General Terms of Purchase for project work, delivery and installation of software, maintenance and delivery of hardware (as of 07/2024)**

### **I. General Conditions**

#### **A. Scope**

Unless otherwise agreed and subject to the terms of the respective order, these General Terms of Purchase for project work, delivery and installation of software, maintenance and delivery of hardware (the "Terms") shall apply. General terms and conditions or forms of Supplier shall by no means be accepted or become part of the contract, regardless whether we knew them or not, whether we have contradicted their validity or not and irrespective of whether they are in opposition to these Terms or not. In case of continuous business transactions, these Terms shall be applicable even without special reference to the said. If the "AEB-IT" do not provide for more specific provisions, our General Terms and Conditions of Purchase including their annexes in the respective current version shall apply ([www.engelglobal.com/aeb](http://www.engelglobal.com/aeb)).

#### **B. Contract Formation & Contract Documents**

1. The contract documents are complementary and what is required by one shall be as binding as if required by all. In the case of conflict between terms of the contract documents, the following order of precedence shall apply:
  - a. the individual agreement entered into by and between us and Customer (project contract signed by the parties or our purchase order;
  - b. Frame Agreement (if any);
  - c. these Terms.
2. Unless explicitly stated to the contrary in writing, our inquiries are not binding. Orders are exclusively placed by the ENGEL Purchasing Department. Our Purchase orders are only binding if they are placed in writing (e-mail, fax, mail).
3. Supplier shall diligently check all data contained in the inquiry or in the order, including but not limited to the technical requirements and conditions, other descriptions, specifications and data with respect to the technical feasibility and fitness for the intended purpose, and shall inform us without undue delay of any circumstances which could frustrate, aggravate or delay the execution of the purchase agreement and/or the intended use of the supplied goods and/or services. This shall also apply to any subsequent modification or amendment of the individual agreement. Any costs incurred in connection with the preparation and submittal of the offer (including cost estimates) shall always be borne by the supplier.
4. If the order confirmation of Supplier contains amendments or deviations to our purchase order, the said shall be considered not written, unless Supplier has explicitly pointed out to these amendments or modifications. In any case, the effectiveness of the individual agreement shall require our explicit and written approval of such modifications or amendments; acceptance of the delivery shall not be considered an effective approval.
5. Unless a more restrictive form is required by law, the Parties hereby agree that this Agreement, including any renewals and amendments thereto, may be effectively concluded either
  - (i) by transmission of a signed copy by telefax or in electronic form as an optical scan and/or in multiple copies, each of which shall be deemed to be an original and, taken together, shall constitute one and the same document, provided that each party has signed at least one original; or
  - (ii) by a simple electronic signature which shall also have the same effect for all purposes as a handwritten signature, with such simple electronic signature being provided, for example, by DocuSign.

#### **C. Principles for the Placement of Quotations**

Supplier's quotations shall be meet the requirements stated hereafter:

1. Supplier's offer shall provide appropriate information on how the intended purpose and the requirements related thereto will be met; this shall include content and scope of

performance, due dates, implementation schedules, responsibilities, price and payment and contact persons;

2. Supplier shall inform about all persons designated for the offered performance and upon request provide us with records on the professional experience of these persons.
3. Supplier's offer shall entail the applicable tariffs. For the sake of transparency, any rebats or reductions shall be based on these tariffs.

4. For each milestone Supplier shall indicate all related manpower requirements and costs, based upon the applicable tariffs. Unless Supplier specifies to the contrary, all prices indicated for milestones, are deemed to be fixed prices.
6. Supplier shall be bound to his offer at least 2 months upon receipt thereof.

#### **D. Place of Performance and Transfer of Title**

1. Unless otherwise agreed, the place of risk-transfer shall also constitute the place of performance. For the delivery of equipment, the risk as to price and performance as well as to the title shall pass to us in accordance with the applicable Incoterm; if no terms of delivery are agreed on in the order, DAP Incoterms 2020 registered office of our company shall apply.
2. Unless otherwise agreed, for contracts on project work or services the place of acceptance shall also constitute the place of performance.

#### **E. Assistance**

1. Except cases of mere provision of standard software, we will
  - a. provide Supplier with proper notes, documentation and information necessary for the performance of the services, in particular concerning available facilities, equipment, computer programs and parts of computer programs, which are intended to function with the services to be provided;
  - b. provide the technical and organizational infrastructure according to the specifications stated in Supplier's quotation;
  - c. make available necessary workspace and the tools and supplies for work;
2. Supplier shall, as far as possible, entail specification of all assistance and supply required for Supplier's performance.
3. Supplier shall immediately notify us in writing of any insufficiency in assistance or supply, as otherwise we shall not be deemed to be in default with our obligations under this Section. Notwithstanding the foregoing, we shall only be held responsible for insufficient or delayed assistance or supply due to reasons attributable to us.

#### **F. Data Back Up**

We are responsible for a regular and proper data backup; this obligation entails general backup according to applicable standards as well as specific back up of those data affected by Supplier's works and/or services. Supplier cannot be held liable for any data loss, if we fail to comply with our obligations under this Section.

#### **G. Insurance**

1. Supplier shall at its own expense obtain and maintain during the whole term of any contractual relationship from a qualified and licensed insurance carrier professional indemnity insurance and general and product liability insurance with worldwide coverage. Upon our request Supplier shall provide us with insurance details. Unless otherwise agreed, coverage amounts shall be at least:
  - a. EUR 5 million per occurrence for personal injury and property damages; and
  - b. EUR 250.000 per occurrence for financial losses.
2. The foregoing insurance requirements shall not be construed as to limit Supplier's liability in connection with the performance or non-performance of an individual agreement concluded hereunder.

#### **H. Compliance and Business Ethics**

1. Prerequisite for any business cooperation shall be the unreserved compliance with our Code of Compliance as amended from time to time (available at our [Website](#)) as well as compliance with all relevant laws, regulations, directives, and similar rules with regard to the aforementioned Code of Compliance.

2. The supplier undertakes to comply with the NIS-2 Directive (Directive [EU] 2022/2555) and/or the respective national transposition act if it falls within its scope and will take all necessary measures to ensure the security of its network and information systems relevant to the provision of its services and products. In particular, the supplier will implement appropriate technical and organizational measures to ensure a level of security appropriate to the risk and will promptly report significant security incidents. The supplier is liable for any damages resulting from a breach of provisions of the NIS-2 Directive and will hold us harmless and indemnify us in this regard.
3. Any breach of the obligations set forth in this Section shall be regarded as a material breach of contract, which shall entitle us to terminate all agreements not yet fulfilled with immediate effect and claim for all damages and losses incurred by such breach.

#### **I. Reference Ban**

The supplier is prohibited from using labels, brands and any other business- or product specific designation from ENGEL for competitive purpose or any other public use. Without any written consent, the supplier is furthermore prohibited from advertising the business relations to ENGEL.

#### **J. Applicable Law**

This Terms and any contract formed thereunder shall be governed by and construed in accordance with the laws of the state where our company has its registered office to the exclusion of the provisions of the United Nations Convention on Contracts for the International Sale of Goods.

#### **K. Dispute Resolution**

1. Subject to the paragraph below, all disputes, disagreements or any claim arising out of or in connection with a contract formed hereunder including any issue regarding its existence or validity shall be referred to the competent court where our company has its registered office; independent thereof, we may also take proceedings against Supplier in the courts of any country in which Supplier has assets or in any other court of competent jurisdiction.
2. If, however, Supplier's principal place of business is outside the European Union (EU) or the European Free Trade Association (EFTA), all disputes arising out of or in connection with a contract formed hereunder or related to its violation, termination or nullity shall be – to the exclusion of recourse to ordinary courts of law – finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Centre of the Austrian Federal Economic Chamber in Vienna (Vienna Rules) by three arbitrators appointed in accordance with the said rules. The place of the arbitration shall be Vienna.

#### **L. Confidentiality**

1. Supplier shall hold in strict confidence all technical, commercial or other internal information and knowledge – in particular trade secrets – obtained in connection with the individual agreement and shall not use or exploit such information or knowledge for any other than the contractual purpose or make it available to third parties without prior written consent.
2. For the purpose of this Section ##, Confidential Information shall not include any information which Supplier can establish: (i) is or becomes publicly known through no action on the Supplier's part; (ii) was known by the Supplier prior to receipt from the us; (iii) has been rightfully received by Supplier from a third party without restriction on disclosure and without breach of an obligation of confidentiality; or (iv) was independently developed or discovered by Supplier without reference to, or reliance on, any information which would otherwise be Confidential Information hereunder. In addition, disclosure of Confidential Information shall be admissible if and to extent that such information: (a) has been approved for public release by the Disclosing Party's prior written authorization; or (b) is required to be disclosed by law, or to a competent court, government or regulatory body having the right to same.
3. Supplier may not disclose or disseminate or permit any disclosure or dissemination of the Confidential Information only to any third party (affiliated companies are no considered

as a third party, unless they are our competitors) without our prior written consent. Supplier shall make the Confidential Information available solely to those persons (a) who are directly involved in performing a certain project covered by an individual agreement and who have a specific need to know such information; (b) on whom Supplier imposed the same or similar obligations by agreement as set forth in this Section; and (c) provided that Supplier will be responsible for any violation of the terms of this Sections by the persons whom he discloses Confidential information.

4. Supplier shall take those measures, which are reasonably necessary to protect the Confidential Information from unauthorized use or disclosure. Without limiting the foregoing, except as expressly permitted hereunder, neither party shall (i) modify, (ii) reverse engineer disclosed confidential information, or (iii) attempt to discover any trade secrets underlying any of the other party's confidential information.
5. In case the parties have signed a separate Non-Disclosure-Agreement ("NDA"), the provisions of such NDA shall take precedence over the provisions of this Section. The obligations set forth in this Section ## shall survive any termination of an individual agreement or business relationship and shall remain in effect until the Confidential Information in question becomes publicly known and made generally available through no action or inaction of Supplier.

#### **M. Miscellaneous**

1. Any sub-contracting by Supplier requires our written consent; the respective sub-contract shall in no way contradict with these Terms and the individual agreement formed thereunder. In case of sub-contraction Supplier shall be responsible for any acts and omissions of a subcontractor.
2. For the purposes of these Terms the following priority levels shall apply:
  - a. Priority Level 1: failures entailing serious disadvantages on essential functions and/or the safety of the software, thus having a material adverse impact on the performance of the software.
  - b. Priority Level 2: failures resulting in significant limitations of essential functionalities of the software, that couldn't be bypassed in a reasonable time.
  - c. Priority Level 3: failures causing limitations of important software functionalities, that could be bypassed with workarounds in reasonable time.
  - d. Priority Level 4: all failures other failures.
3. Unless otherwise agreed to the contrary, all our claims and remedies under these Terms or under law are cumulative and may be exercised together or separately without the specific exercise being construed as an exclusion or waiver of other claims or remedies.
4. Messages sent to us shall be binding only, if they are written in German or English language. Messages may be transmitted by facsimile or by electronic means. They shall become effective at the point in time when they have reached the recipient or would have reached the said under normal circumstances with the type of transmission chosen. Messages which reach us on Saturdays, Sundays or one of our legal public holidays shall become effective only on the next working day.
5. An individual agreement concluded subject to these Terms shall remain effective, even if any term or other provision thereof is determined by a court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other terms, provisions and conditions of the contract shall nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, it is also the intention of the parties that in lieu of each clause or provision that is illegal, invalid or unenforceable, there be added as a part of the respective contract a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

## **II. Specific conditions for Project work, Delivery and Installation of Software**

### **A. Scope**

In addition to the General Conditions above (Section I.), the provisions of this Section II. shall exclusively apply to the project work, delivery and installation of software. Irrespective of whether standard software is used or not, any contract providing/entailing/stipulating implementation and/or installation of software based upon our requirements and specifications or even software specifically programmed for us, shall be subject to the provisions of this Section II. For the purposes of this Section II "Software" shall entail any outcome in connection with the performance under the respective contract.

#### **B. Parties**

1. Supplier recognizes that a purchase of Software and related licenses exceeding a value of EUR 750.000 may require conclusion of a separate contract with Ludwig Engel GmbH & Co KG, Ludwig-Engel-Straße 1, 4311 Schwertberg, Austria as investment company. In such case this investment company will not use the Software but lease it to ENGEL AUSTRIA GmbH for the agreed use. Supplier shall not unreasonably refuse conclusion of such separate contract with the investment company.
2. If project work should require cooperation of several suppliers, the respective contract will define a main supplier assuming responsibility for performance of the project work (including responsibility for any delayed or non-performance of all other designated suppliers). In case that we have commissioned the other suppliers, and, therefore the main supplier cannot be qualified as general contractor, we will enable the main supplier (e.g. by corresponding assignment) to assert any recourse claims against the other suppliers.

#### **C. Scope of Performance und Scheduling**

1. Scope, detailed content and organizational parameters of the project will be exclusively subject to the respective individual agreement including any Annexes thereto. Changes to and alterations of the scope and content of the project work are subject to a Change Request (as hereafter defined).
2. Parties shall mutually define a project- and milestone-plan for the project works. Changes to and alterations of such milestone-plan shall be subject to the provisions set forth in Section II.D (Change Request).
3. Unless otherwise agreed, Parties shall collaborate on detailing and specifying the project work and the respective framework conditions before executing the contract (Planning Phase), which shall result in a statement of work (SOW).
4. The SOW shall be prepared in accordance with the state of the art considering our expressed (but not implied) particular expectations, requirements and needs, if any, and shall include
  - a. targets;
  - b. technical specifications;
  - c. functional specifications;
  - d. interface linking; and an
  - e. implementation plan (including test-strategy and acceptance formalities).
5. Supplier shall use all reasonable efforts to collect sufficient information on our existing system environment. If Supplier finds has any reason to believe that the software to be installed cannot be properly used due to the system environment, Supplier shall so advise us. We will provide reasonable support and all information necessary to assess the system environment. Parties shall mutually set up the outcome of such system environment assessment, which will be part of the functional specification document (FSD). Adaptions of the system environment, if any, will be carried out by us; Supplier shall not provide any further support with this regard, unless so expressly assigned by us.
6. Parties shall mutually finalize the SOW, which shall become part of the respective individual agreement. If Supplier is in delay with the completion of the SOW, we are entitled to terminate the individual agreement after a reasonable grace period; whereas setting of the grace period and withdrawal must be in writing. In case of a delay in acceptance of the SOW exceeding 14 days, Supplier is entitled to withdraw from the contract after another 14 days grace period; Supplier is entitled to charge for services performed during the planning phase based upon the agreed standard rates respectively in absence of a such agreement in accordance with standard market rates.

7. Within the planning phase the schedule and, as the case may be, commercial parameters for the respective contract shall be determined. Hence, the SOW shall state a binding fixed price for all services to be performed under the respective individual agreement. Unless acceptance of this fixed price, we shall not be bound to implement the project, but entitled to withdraw from (further) performance of the contract; unless a specific compensation has been agreed on, Supplier shall in this case receive a lump-sum payment based upon the applicable standard rates for all services performed within the planning. Notwithstanding the foregoing right, title and interest in the results provided by Supplier in the course of the planning phase, such as the SOW, remain with us. We reserve the right to implement the project at any time with another supplier.
8. In case of any inconsistencies between SOW and the contractual provisions (such as the FSD), the latter shall prevail.

#### **D. Project Management and Change Requests**

1. Parties shall each designate a project manager and, as far as reasonable, a deputy, and install a project committee as well as a steering committee. Names and contact data of all designated persons and committee members shall be stated in the respective individual agreement.
2. The Project Committee consists of the project managers and their deputies, if any. The Project Committee shall monitor the contractual performance and compliance with the project- and mile-stone-plan; further tasks are the coordination of either party's contribution to the project work, share of information, identification of possible issues and preparation of change requests. The Project Committee will evaluate the project work, prepares reports and organizes meetings and decisions of the Steering Committee.
3. In consideration of the scope and importance of the project, the Steering Committee shall consist either of one managing director or an area manager of each party, the project managers and their deputies, if any. The parties may mutually appoint further representatives of the relevant (technical) departments to the Steering Committee. Except where assigned to the Project Committee, the Steering Committee decides on the strategic aspects; important organizational decisions; budget decisions; changes to the scope of supply and services and change requests.
4. Any decision must be made unanimously by the Project and the Steering Committee. Any discussions and votes made in a meeting shall be recorded accordingly by our representatives. The respective minutes will be sent to the project managers within 5 business days. In case that such minutes remain undisputed for 5 business days from receipt thereof, they shall be considered accepted and approved. Either party may upon prior written notice to the other party replace one of its delegates of a committee.
5. The Project Committee may at any time propose changes of or additions to the content or scope of the project work to be delivered by us and address such proposals to the Steering Committee. Such Proposal must contain the following:
  - a. a detailed description of the requested changes;
  - b. statement on technical reasons for such changes;
  - c. expected impact on project- and milestone-plan;
  - d. appraisal of costs incurring in connection with the Change Request.
6. The Steering Committee shall review the proposal and make comments, if any. Supplier may refuse such proposal only, if the proposed changes or additions would be technically or economically not feasible or unreasonable with regards to Supplier's capacities.
7. Any consequences resulting from such changes with regards to the project- and milestone-plan and the consideration, must be mutually agreed by the parties upon Supplier's request. Non-substantial alterations and changes shall not be subject to a change request. For the avoidance of doubt, Supplier may request an adequate compensation for all additional costs incurred in connection with any change request, which will be on a time and labor basis according to Supplier's then current rates, unless otherwise agreed by the parties; such request must be made before the execution of any alterations and changes.

#### **E. Specific Assistance**

1. At all stages of a project we will cooperate closely and efficiently with Supplier. In particular, if required, we will

- a. provide test schedules and test data
  - b. set up and provide the test environment;
  - c. reproducibly document and promptly notify Supplier of any defects detected within test or live operation; and
  - d. at our expense make available facilities and personnel professionally qualified for cooperation as far as required for the provision of services.
2. Any further requirements for assistance or any interfaces needed shall be specified in detail in the individual contract or its appendices.
  3. As far as required for the performance of service, we will enable Supplier to use third party systems and provide the necessary licenses, as the case may be.

**F. Time Is Of Essence**

1. Any milestones and due dates shall be specified in detail in the individual agreement or its appendices. Unless otherwise agreed to the contrary, all milestones and due dates are binding and subject to liquidated damages as provided in the respective individual agreement. Liquidated damages shall accrue irrespective of the occurrence and actual amount of any damage and may only be reduced if delay is attributable to us in whole or in part.
2. If Supplier has reasons to believe that compliance with agreed due dates or milestones is at risk, Supplier shall give us immediate notification thereof.
3. Any change of due dates and/or milestones requires agreement between us and Supplier's respective project manager. Unless otherwise agreed to the contrary, irrespective of such mutual change the originally agreed due dates/milestones shall remain effective for accrual of liquidated damages. In event of a delay not attributable to Supplier, due dates and/or milestones shall be changed appropriately. A delay shall not be deemed attributable to Supplier, if Supplier couldn't reasonably anticipate it or in case of anticipation couldn't avert it with economically reasonable means, always provided that the delay is not caused by Supplier's fault. Supplier shall be responsible for any acts and omissions of its subcontractors.
4. In any case of delay or where a delay may reasonably be anticipated, we shall have the right, without prejudice to any other right or remedy, after having granted Supplier an additional time of reasonable length for the performance of its obligations, to either terminate the respective contract in whole or in part, or to correct such failure ourselves or having such failure corrected by a third party at Supplier's expense (the "Substitute Performance") and to deduct from any amounts payable to Supplier any costs incurred thereby. Such Substitute Performance shall not relieve Supplier from its responsibility under the respective individual agreement; Purchaser shall cooperate with us and shall provide support, codes, documentation and whatever needed and shall grant us a royalty free, non-exclusive, worldwide license to carry out the Substitute Performance or to authorize third parties to do so on our behalf.

**G. Delivery and Installation**

1. Subject to the agreed specifications and in accordance with the state of the art, Supplier shall provide us with Software applicable for the intended use.
2. In accordance with the agreed schedule Supplier shall provide us with at least one draft for the software documentation for further review.
3. Thereafter, Supplier shall program the Software, which shall include coding, unit tests and integration of the respective parts of the software. Supplier shall periodically provide us with reports on the progress of work. If Supplier has reason to believe that the work cannot be finalized within the agreed time frame, it shall notify us thereof without undue delay. In any case Supplier shall deliver the finalized and tested Software without undue delay.
4. If performance of the respective individual contract requires the use or implementation of third-party software, Supplier shall give us notification thereof. Supplier shall notify us of respective license fees in advance.
5. The Project Work Product shall not include Open Source Software ("OSS"); this also applies to OSS-licenses explicitly granting the right of free use of the OSS for software development in its original, modified, derived or other form. Notwithstanding the foregoing OSS may be used, if
  - a. Supplier requests the use of OSS from us;

- b. Supplier provides us with all respective license terms;
- c. Supplier discloses the advantages of the use of OSS; and
- d. we explicitly consent to the use of OSS.

Unauthorized use of OSS shall be deemed a material breach of contract.

6. In case of authorized use of OSS, Supplier warrants compliance with all relevant license terms as amended from time to time. Supplier will defend, indemnify and hold us harmless against any and all losses, damages, costs and expenses arising from a third party claim to the extent due to a breach by Supplier of any of its obligations or representations under this Section II.G.

**H. Acceptance**

1. Finalized project work is subject to our acceptance. Such acceptance shall be declared after delivery and installation of the Software on the real system. Acceptance is subject to the provision of the complete software documentation according to Section II.I. and performance of all agreed supplementary services (e.g. training). Running tests after completion of a milestone shall not be deemed as an acceptance, neither shall a partial acceptance be deemed as final acceptance. The parties shall protocol each acceptance test and shall sign such acceptance protocol.
2. Partial acceptance, if any, shall not be deemed as binding acceptance. All non-conformities identified during partial acceptance tests shall be rectified by Supplier within reasonable time, but at latest by the agreed date of final acceptance. Binding partial acceptance shall only be admissible upon a respective decision of the steering committee except for defects of Level 1 or 2.
3. Any acceptance test shall demonstrate the functionalities of the Software to meet the relevant specifications agreed between the parties in the respective SOW. Supplier shall carry out the acceptance tests in the presence of the project managers. Content and scope of such acceptance tests shall be specified in the SOW, or by the project committee.
4. In case that an acceptance test shows non-conformities, Supplier shall remedy such non-conformities in accordance with the respective priority level (Section ##). If a non-conformity affects the Software in whole, a new acceptance test shall be carried out after rectification. All additional costs incurred by such additional acceptance test shall be borne by Supplier; the respective amount shall be specified by the steering committee.
5. In case of successful completion of the acceptance tests, we will declare final acceptance of the Software in writing. The Software shall be deemed accepted upon successful completion of the acceptance test, if we fail to declare final acceptance within four weeks after completion of the said acceptance test.

**I. Documentation and Source Code**

1. Supplier shall provide the Software in source code, if the Software is specifically developed for us; in all other cases the Software shall be delivered and installed in object code.
2. Delivery of specific software shall entail documentation of the software-development, whereas non-specific/standard software shall include user documentation. Any documentation shall be provided in German and English.

**J. License Grant**

1. Unless otherwise agreed in the respective individual agreement, the following shall apply: With respect to Software specifically developed for us and any copy thereof, including the respective documentation, Supplier shall grant to us an exclusive, perpetual, transferable, sublicensable and worldwide right to use the Software for any purpose. Concerning standard software and any copy thereof, including the respective documentation, Supplier shall grant to us a non-exclusive, perpetual, transferable, sublicensable and worldwide right to use such software. Any contractual limitation of transfer or the grant of sublicenses shall not apply to a transfer and/or sublicensing to our affiliates.
2. Unless required to achieve interoperability and/or for software maintenance purposes, we are not entitled to modify, decompile, translate, or isolate parts of the Software. Provision of the source code may be subject to a specific Escrow-

Agreement; Supplier will not unreasonably refuse conclusion of such Escrow-Agreement. Upon full payment of the agreed fees the license granted under this Section II.J. is irrevocable.

#### **K. Fees and Payment Conditions**

Project fees and payment conditions are subject to the respective individual agreement. Unless otherwise agreed to the contrary, all quoted prices shall be deemed fixed prices; daily and hourly rates are for information purposes only. Advance payments are subject to concurrent provision of an abstract bank guarantee with a term of up to acceptance of the project work. Payment terms, including cash discount terms, shall not commence prior to receipt of an undisputed invoice. Payment shall in no event indicate the acknowledgement of the conformity of deliveries or services, and thus shall not be deemed a waiver of any of our rights and remedies, we may have hereunder or at law. We shall have the right to offset and deduct any amounts resulting from counterclaims towards the Supplier or any of its affiliated companies from the payment of any due amounts. The assignment of payment claims shall be permitted only with our previous written consent.

#### **L. Termination**

We reserve the right to terminate an individual agreement concluded hereunder upon reaching an agreed milestone without stating reasons; in such case, Supplier is entitled to compensation of all costs, commitments to others incurred until receipt of notice of termination up to the fees explicitly agreed on for these performances. Upon payment of the fees due we are entitled to use any outcome/result according to the respective license. Unless otherwise agreed, Supplier shall provide us with the Software in object and in source code and with the corresponding program- and the development documentation upon termination of the individual agreement.

#### **M. Warranty**

1. Supplier warrants that the Software is free of defects and conforms to the functionalities specified in the respective program documentation throughout the whole warranty period. Any defect or malfunction shall be assumed to have already been existent or inherent at the time of acceptance. Unless otherwise agreed, a 24 months' warranty period as of acceptance of the Software shall apply. We will notify Supplier of any non-conformity detected within reasonable time upon occurrence of the non-conformity of the Software; for this purpose, an out of court notice of defects shall suspend expiration of the warranty period.
2. Supplier warrants that the Software is free from third party intellectual property rights ("IPR") which may restrict or exclude the intended use of the Software. The Parties shall notify each other in writing of any alleged third-party claims without undue delay. Supplier shall defend, indemnify and hold us harmless from and against any claim or proceeding brought against us to the extent that such claim or proceeding alleges that our use of the Software constitutes an infringement of a third party's IPR ("IP Claim"). The indemnity does not apply to the extent that the IP Claim arises out of (i) a use of the Software in a manner not reasonably contemplated by the individual agreement or otherwise not authorized by Supplier or (ii) a modification or alteration of the Software without Supplier's authorization. Any indemnity claim based on this Section II.M. must be filed within three years from acceptance of the Software, otherwise such claim will be time-barred.

### **III. Specific conditions for IT-Services**

#### **A. Scope**

In addition to the general conditions set forth herein (Section I), the provisions of this Section III. shall exclusively apply to IT-Services, such as support and consulting services. For the purpose herein, IT-Services shall mean any services that are not intended to achieve any specific outcome or project work result. Notwithstanding the foregoing the provisions of the Section III. shall also apply, if explicitly referred thereto.

#### **B. Quotation Requirements**

1. Supplier's quotation shall indicate the approach to comply with our objectives considering the respective requirements and specifications. This shall particularly entail content and scope of services, a detailed schedule, cooperation/assistance requirements, consideration as well as designation of contact persons and a project manager.
2. Supplier shall indicate in detail all costs for each milestone on the basis of hourly respectively daily rates; for this purpose, the relevant hourly and daily rates shall be specified for the respective employees assigned by the Supplier. If milestones/work packages are defined, Supplier shall offer fixed prices or - to the extent not possible - at least cost estimates. Supplier shall inform us without undue delay of any deviations by more than 15% of the estimated costs accruing in the course of the performance of services, in default whereof Supplier shall not be entitled to claim such additional costs. In case of fixed prices Supplier shall be entitled to additional claims only, if we have issued a corresponding written supplementary order.

#### **C. Organizational Requirements**

1. Either Party shall designate a project manager responsible for the organizational implementation of the project. Our project manager will further be the contact person for any technical matters; the progress of the project shall be reported to him on a regular basis, he defines the milestones/work packages (unless already provided in the individual agreement) in coordination with the Supplier and releases (partial) invoices.
2. The key employees assigned to the service by the Supplier shall be determined in consultation with us. A change of Supplier's assigned employees is subject to our consent; this shall not apply to staff not directly employed by the Supplier or if the further assignment of an employee is not feasible. We will not unreasonably withhold such consent.
3. If the qualification or suitability of one or more employees of the Supplier is actually not at our satisfaction, we may either terminate the individual agreement with immediate effect (Section III.G.2.) or demand a replacement of the respective employees. In this case, the Supplier shall immediately provide for qualified replacement. Any costs incurred by such replacement, including any necessary (introductory) training, shall be borne by Supplier.
4. The employees assigned by Supplier are subject to Supplier's discretionary power. In no event shall this relationship considered as an employment relationship between the Supplier's employees and us.
5. Upgrades of Supplier's employees regarding the relevant rates shall have no effect during the term of an individual agreement. This shall apply to the whole term of a project, even if a project is subject to consecutive individual agreements. In the event of vacation or other absence of an employee, all necessary costs incurred for replacement shall be borne by Supplier.
6. Supplier shall immediately inform us if the Supplier or its employees are also commissioned by one of our competitors.

#### **D. Supplier's (other) Obligations**

1. Supplier shall perform the agreed services either by itself or by its own qualified employees. Supplier shall always take best industry practice steps and use at least that care, skill, and diligence that would ordinarily be used by similar professionals in similar circumstances considering the specific requirements of our business operations. As far as required for the performance of service, we will enable Supplier to use third party systems and provide the necessary licenses, as the case may be. The commissioning of staff not in a permanent employment relation with Supplier (e.g. Freelancer) is subject to our prior consent.
2. Supplier shall provide the services in accordance with the individual agreement and the respective schedule. Supplier shall regularly report on the performance of services and upon request provide us with the relevant documents. All services shall be documented in accordance with our specifications. The documentation shall be provided to us at the latest upon completion of the service.

#### **E. Consideration and Payment**

1. Unless otherwise agreed to the contrary, travel costs by car will be compensated on the basis of a flat rate of € 0.30 per

distance kilometer (shortest connection) and other travel costs according to actual costs incurred. Notwithstanding the foregoing, travel times in Austria and/or Germany shall not be considered chargeable working times. Hotel reservations are organized by us to take advantage of discount agreements with local providers.

2. Invoices must include the order date, the order number and the tax ID, and shall be sent to the address specified in the order. Invoiced items must correspond to order items. The regular working time is eight hours per day. For attendance of > 3.5 h up to 6 h, a half day's rate can be applied, and for attendance of > 6.5 h up to 11 h a full day's rate can be applied, provided that settlement according to the daily rate has been agreed upon.
3. For organizational reasons, a fixed amount will be shown in our order even if settlement on a time and material basis has been agreed upon. In such cases, settlement is always based on actual time spent according to the proof of performance signed by our project manager. A copy of the proof of performance is to be included with the invoice. If the proof of performance is not included, the invoice will be returned. Payment terms, including cash discount terms, shall not commence prior to the authorization of the (partial) invoice through the project manager, for which a 10-day review period is agreed upon. The performance of the Supplier's employee is to be documented with a correspondingly detailed statement of work confirmed by our project manager.

#### **F. License Grant**

1. To the extent legally possible all right, title and interest in any results of the services shall remain with us. If this is not possible, Supplier shall grant us free of charge an exclusive, perpetual, transferable, sublicensable and worldwide right to use the results of services. This license grant particularly entails the right to process, modify, copy, disseminate, publish or present the original or the processed results.
2. The license grants under this Section III.F. shall in no event restrict Supplier in the use of general concepts, ideas, techniques, procedures, tools etc. deployed or developed, unless containing specific information or trade secrets relevant to us or subject to our intellectual property or similar rights.

#### **G. Alteration/Termination**

1. We reserve the right to alter the scope of the respective individual agreement at any time; Supplier may only object such alteration, if it is not able to meet the altered scope due to technical or personnel reasons. If the alteration for all intents and purposes equals the termination of the individual agreement, the provisions on termination shall apply.
2. Either party may terminate an individual agreement with immediate effect for cause, such as the respective other party's default of any of its material obligations under the individual agreement, unless the breaching party is able to satisfactorily cure such default within reasonable time. The replacement of Supplier's assigned employees without our prior consent, the resignation or any other unavailability of such employee for whatever reason, shall also be deemed a cause for termination.
3. We also reserve the right to terminate any individual agreement with a notice period of 14 days, unless a shorter notice period has been agreed upon. For services performed before the effective date of such termination, the Supplier may not demand compensation higher than corresponding to actual time spent (in the case of billing on a time and material basis), or (in the case of billing according to fixed prices for the achievement of milestones/work packages, if the respective milestone or work package has not been achieved due to the termination) to the partial fixed price based on the ratio of actual time spent to total time allocated to the achievement of the milestone/work package (however, under no circumstances more than the agreed upon fixed price).

### **IV. Specific conditions on Software Maintenance**

#### **A. General Scope**

The Parties agree that maintenance and support is imperative for any capital expenditure regarding software in view of sustainability. Therefore, Supplier shall, upon our request, provide such maintenance and support for any software delivered hereunder, whether or not the software is standard, bespoke or both. In case of individual agreement subject to Section II., Supplier shall provide

maintenance and support even for third-party software. Unless otherwise hereinafter provided to the contrary, the General Conditions of Section I. above shall apply.

#### **B. Specific Scope**

1. Supplier shall provide services in connection with software-service and support for those users working with the Software, which shall include:
  - a. fixing of failures;
  - b. supply with and implementation of software updates, patches and bugfixes;
  - c. application support, including, but not limited to, information and instruction on the operation of the software, troubleshooting and workarounds as well as replying to queries placed via helpline during the agreed helpline hours.
2. Supplier may provide service outside the scope defined above only, if such additional services are included in a separate order issued in writing. In case that Supplier provides additional services without having received a written order from us, such services will not be compensated, unless Supplier can prove that without such services our software and/or IT-systems would have been damaged and the contact person nominated by us was not available.

#### **C. Performance Principles**

Supplier shall provide the services hereunder in accordance with the following principles:

1. Supplier shall always take best industry practice steps and use at least that care, skill, and diligence that would ordinarily be used by similar professionals in similar circumstances considering the specific requirements of our business operations.
2. Any support and service must be provided in a way that our ordinary course of business will not be interfered or interrupted, unless expressly otherwise agreed in writing in case that such interruption or interference cannot be avoided. Supplier shall employ only skilled personnel that are familiar with the specific software and its implementation in our systems.
4. Each of the parties shall nominate a main contact person and a deputy that are skilled and experienced, familiar with the Software and our systems and authorized to make decisions on behalf of the respective party.

#### **D. Troubleshooting**

1. Supplier warrants and covenants to fix all Failures which are identified and notified in accordance with Section IV.D.3. For the purpose of this Section "Failure" shall mean any malfunction of the software that would be qualified as a non-conformity under the respective warranty provisions in case of a software-purchase or software-lease. Failures shall not include malfunctions that were caused by unauthorized modifications of the Software.
2. For the purpose of troubleshooting Supplier will: (i) install and maintain during the term a remote access, which is properly secured against authorized use and cyber-attacks; (ii) provide a help-desk (service hotline) as further specified in the individual agreement with capacities defined therein throughout the term; and (iii) procure that skilled personnel will carry out trouble-shooting on a high professional level. Unless otherwise agreed, Supplier must accept error reports during normal service hours (Monday to Friday 8 a.m. to 12 a.m. (CET), and 1 p.m. to 5 p.m. (CET)).
3. In the event of a Failure, we will provide Supplier with a specific, comprehensible and accurate failure report which will contain all information enabling Supplier to identify the cause of the Failure and to define strategies for rectification. This particularly includes information on the type of Failure, the description of the system status when the Failure occurred, the components affected and the frequency with which the defect occurred. The failure report can first be reported verbally via Supplier's help-desk and must be confirmed in writing by e-mail, if necessary, at the request of the employees employed there by Supplier; if possible,

further information (screenshots, error logs, etc.) must be included.

4. The parties agree that Failures will be rectified via helpline, e-mail or remote maintenance. In case that a rectification via aforementioned means is not possible, troubleshooting shall be carried out on-premise. Such on-premise-support is included in the maintenance fee; if we request troubleshooting on-premise even though the Failure could have been resolved remotely, we will bear the costs of this service at agreed standard rates.
5. Supplier shall commence trouble-shooting ("Commencing Date") latest within the following reaction times starting (and continue to correct the Failure without undue delay):  
Priority Level 1: without delay, but latest within 6 hours from receipt of the failure report.  
Priority Level 2: within 48 hours from receipt of the failure report.  
Priority Levels 3 and 4: within 14 days from receipt of the failure report.  
Commencing Date shall mean either the actual start of Supplier's personnel to correct the reported Failure or the arrival of Supplier's personnel on premise at the computer concerned. At the beginning of the failure correction Supplier's personnel shall inform about the estimated correction time and shall get in touch with our contact person regarding the next steps. All reaction times shall be subject to normal service hours defined in Section IV.D.2.
6. Supplier shall pay liquidated damages in the amounts as further specified in the individual agreement for every Failure to meet the respective Commencing Date. Liquidated damages shall accrue irrespective of the occurrence and actual amount of any damage.

**E. Updates, Patches, Bugfixes**

1. Supplier shall provide us with all generally released updates, patches and bug fixes, including installation on our systems. Supplier must ensure that new parts of the program are completely compatible with our software and our software environment; further, Supplier must maintain interface compatibility.
2. We may decide in our sole discretion, if the updates or releases as defined in this Section will be installed or not; in case that we should refrain from installing an update, patch or bugfix, our right to have Failures fixed shall only be forfeited for those failures that have actually been fixed by such update, patch or bugfix. The Parties agree that Supplier may refrain to provide service for a preceding program version after 2 years. After such period the individual agreement may be terminated by either party. For the avoidance of doubt, our right to demand maintenance shall be limited to one version of the Software.
3. Supplier shall provide an updated version of the software documentation together with any update. Scope and content of the software documentation shall be subject to the specific provisions of the individual agreement.
4. Any software (parts) implemented by update, patch or bugfix are subject to the same license grant as the originally installed software and shall be irrevocably granted upon payment of the maintenance fee. After implementation, an acceptance test shall be mandatory.
5. The foregoing provisions of this Section shall not apply to upgrades which are defined as a new version of the Software containing an extended functionality or a changed architecture with a different enumeration of the major release number; other software versions with a different enumeration of the minor release number or patch level, will be subject to this Section.

**F. Warranty and Liability**

1. To the extent that the Software is replaced by a new release within the scope of software maintenance, the provisions on warranties for software shall apply.
2. Supplier shall fix reported failures or, in case of irremediable failures, provide a workaround. If Supplier fails to comply with his obligations hereunder, we may exercise our right of Substitute Performance as defined in Section III.F.4.
3. Unless otherwise expressly provided herein, we shall have the right to claim damages as provided at law. Supplier's liability in connection with the non-compliance with provisions

of this Section IV.F. shall be limited to three times the annual maintenance fee per occurrence. The foregoing limitation shall not apply in case of (i) intentional acts and omissions and gross negligence; (ii) breach of confidentiality obligations and (iii) coverage by Supplier's insurance as per Section I.G.

**G. Fees and Payment Conditions**

The annual maintenance fee will be defined in the respective individual agreement. Unless otherwise agreed, the annual fee shall be payable in arrears in quarterly instalments.

**H. Term and Termination**

1. Unless otherwise agreed, the maintenance agreement shall be effective as of the date of acceptance of the software or, if the Parties failed to agree on a specific acceptance procedure, the installation date, and shall continue to be effective for an indefinite period of time, unless earlier terminated by either Party upon 3 months' written notice prior to the end of the respective contract year. Supplier waives his right to terminate the maintenance agreement for the first three contract years.
2. Notwithstanding the foregoing, either Party may terminate the individual agreement with immediate effect for cause, if:
  - a. a Party ceases payment or announces cessation of payment;
  - b. bankruptcy or a similar proceeding is commenced against a Party;
  - c. an application for insolvency against a Party is dismissed due to the lack of cost-covering assets;
  - d. a Party materially breaches this Agreement and fails to cure such breach within reasonable time.