



## GENERAL TERMS AND CONDITIONS

FOR

### ATOSS SERVICES AND WORKS PERFORMANCE

#### ("GTC SERVICES AND WORKS PERFORMANCE")

#### I. Part: General Terms and Conditions

##### § 1 Applicability of these GTC SERVICES AND WORKS PERFORMANCE

1. Scope of applicability: These GTC SERVICES AND WORKS PERFORMANCE shall govern the rights and obligations concerning the provision of professional services under the CONTRACT between the CUSTOMER and the COMPANY. The following provisions shall apply accordingly to pre-contractual relationship between the PARTIES.

Deviating, conflicting or supplementary General Terms and Conditions of the CUSTOMER shall not apply, even, for example, if the COMPANY does not expressly object to their applicability or if the COMPANY provides the professional services without reservation in the knowledge of the general terms and conditions of the CUSTOMER.

These GTC SERVICES AND WORKS PERFORMANCE shall only apply vis-à-vis entrepreneurs, governmental entities under public law or special governmental estates.

2. Definitions: The definitions and clarifications set out in IV. Part shall apply to these GTC SERVICES AND WORKS PERFORMANCE.

##### § 2 Subject matter of the service provision

1. General: The COMPANY shall provide the CUSTOMER with the professional services specified in the CONTRACT in accordance with the CURRENT STATE OF THE ART. The CONTRACT shall specify the respective scope of performance as well as the details for the service provision.

The terms and conditions of these GTC SERVICES AND WORKS PERFORMANCE apply to all CONTRACTS concerning professional services.

The following applies:

- All CONTRACTS concerning, in particular, consulting services, the provision of training or the set-up of basic technical services as well as professional and technical support with regard to the installation, implementation, configuration, parameterisation, maintenance of master data or other measures for the customising of ATOSS PRODUCTS shall be deemed to be service contracts pursuant to the law applicable on service contracts and shall be subject to the scope of applicability of Part I. as well as, in addition, to the scope of applicability of Part II. of these SERVICE AND WORKS PERFORMANCE GTC. The conditions of Part III. shall not apply to services.
  - All CONTRACTS which (i) involve the production of non-standardised, i.e. customised and to be newly developed, special programming and comparable WORK RESULTS which are expressly created based on an individual CUSTOMER request and (ii) are expressly designated in the CONTRACT as a contract for work or, with regard to individual services, as work performances, shall be deemed to be contracts for works under the law applicable on contracts for works and shall be subject to the scope of applicability of Part I. of this document, as well as, in addition, to the scope of applicability of Part III. of these SERVICE AND WORKS PERFORMANCE GTC. The conditions of the Part II. shall not apply to work performances.
2. Staff deployment: The COMPANY shall provide the professional services through its own personnel, through personnel from its AFFILIATED COMPANIES or through appointed THIRD PARTIES who shall be engaged as subcontractors to fulfil the service obligations. The COMPANY shall ensure that sufficiently qualified personnel is deployed in each case. The COMPANY shall notify the CUSTOMER in due time of any change in the personnel deployed and

shall take into account the CUSTOMER's requirements with regard to the qualification of the personnel within the scope of its personnel options when appointing new personnel.

The COMPANY shall decide, in accordance with the provisions of the CONTRACT, on the performance of the services and shall be solely responsible for the supervision and control of the personnel deployed and for the exercise of the right to give instructions to the personnel deployed. The CUSTOMER is not authorised to issue instructions to the personnel deployed by the COMPANY.

### § 3 Cooperation

1. Appointments: The COMPANY shall notify the CUSTOMER in due time of the period during which the professional services will be provided. The COMPANY shall also inform the CUSTOMER of any foreseeable delays as soon as they become apparent to the COMPANY. The COMPANY may demand a reasonable postponement of the date as well as a reasonable restart period if there is a circumstance for which the COMPANY is not responsible and as a result of which the performance of professional services is significantly hindered, the proper performance of the CONTRACT is temporarily hindered or impossible.
2. Contact person: Clear and unambiguous communication and coordination structures are essential for the implementation of professional services by the COMPANY. Therefore, the CUSTOMER shall ensure the availability of a professional and technical contact person as well as a substitute with sufficient know-how, rights and decision-making authority during the performance period. The CUSTOMER shall notify the COMPANY without undue delay of any change of contact person or substitute or their contact details, naming a new contact person or new contact details.
3. Cooperation obligations: The implementation of professional services by the COMPANY also requires that the CUSTOMER creates the necessary personnel and technical requirements in its sphere of operation. The CUSTOMER shall, in particular:
  - a) take appropriate measures to ensure communication between them and the COMPANY (e.g. ensuring that e-mails from the known contacts of the COMPANY are not intercepted by the spam filter);
  - b) provide or communicate in a timely and complete manner all necessary information, copies of documents as well as processes and circumstances which may be of importance for the performance of professional services;
  - c) keep all information and data provided to the COMPANY in their original or as a copy so that reconstruction is possible at any time in the event of damage or loss of data;
  - d) confirm in writing, at the COMPANY's request, the completeness of the information and declarations provided in a statement prepared by the COMPANY;
  - e) to the extent necessary for the provision of the services, provide or notify the COMPANY in due time of work spaces and work equipment (e.g. telecommunications equipment, internet and network access) for the CONSULTANTS of the COMPANY;
  - f) enable the CONSULTANT to remotely access the ATOSS PRODUCTS, especially for performing the professional services; in doing so, the CUSTOMER shall ensure that only such personal data relating to the specific individual case can be remotely viewed by the CONSULTANT on the CUSTOMER's system. If the CUSTOMER does not provide the COMPANY with remote access upon the COMPANY's request and no other equally suitable means is available, the COMPANY may refuse the service in question and shall not be responsible for the consequences thereof;
  - g) provide the necessary IT infrastructures, hardware and software, including appropriate licensing, e. g. VPN access, access card to the CUSTOMER's office building, equipment for workshops (e. g. flipchart).

In addition, the CUSTOMER shall perform obligations of cooperation which are reasonable for the CUSTOMER in connection with the performance of the professional services. The CUSTOMER's obligations to cooperate are essential contractual obligations and shall be fulfilled by the CUSTOMER at its own expense. Should the CUSTOMER fail to perform one of its obligations to cooperate as agreed, the COMPANY shall not be liable for the consequences arising therefrom, such as additional performance expenses and / or delays. The COMPANY may request the CUSTOMER to remedy non-accomplished cooperation services by setting a deadline

and may terminate the CONTRACT if the deadline for remedy of the cooperation services expires without remedial action being taken. The COMPANY reserves the right to charge separately for additional expenses caused by the CUSTOMER's failure to comply with its obligations to cooperate in accordance with the applicable rates for remuneration.

#### § 4 Intellectual property

1. Intellectual property of the COMPANY: The intellectual property, industrial property rights and all other rights of the COMPANY to the MATERIALS provided as well as any processing, modifications and further developments of the MATERIALS shall remain with the COMPANY. This shall also apply if these MATERIALS are processed, translated or combined, either unchanged or processed, with THIRD-PARTY products by the CUSTOMER or a THIRD PARTY. However, the COMPANY grants the CUSTOMER for the period of use of the licensed ATOSS PRODUCTS or the CLOUD SERVICE a non-exclusive, non-transferable, non-sublicensable right to use the MATERIALS provided for the CUSTOMER's own internal business purposes and / or to have them used by the CUSTOMER's AFFILIATED COMPANIES. The CUSTOMER shall be strictly prohibited from removing the copyright notice in the MATERIALS.
2. Intellectual property of the CUSTOMER: The intellectual property, industrial property rights and all other rights of the CUSTOMER to the CUSTOMER DATA and other information as well as any processing, modifications and further developments of those shall remain with the CUSTOMER. However, the CUSTOMER grants the COMPANY, for the duration of the CONTRACT, a simple (i.e. non-exclusive), non-transferable, non-sublicensable right to use the CUSTOMER DATA provided and / or to have it used by personnel of the COMPANY's AFFILIATED COMPANIES and / or subcontractors to the extent necessary for the provision of the services.
3. ANALYSES: The COMPANY and / or its AFFILIATED COMPANIES may conduct analyses, investigations, evaluations and measurements (collectively "ANALYSES"), provided that they contain exclusively anonymous or anonymized usage data (e.g. duration and frequency of use of functions, mouse clicks, etc.) and / or other anonymous or anonymized data and information, such as license information, technical information or such information resulting from the technical, functional framework conditions of the deployment and use of the CLOUD SERVICE by the CUSTOMER. The data used for the ANALYSES are either already anonymous by nature, i.e. without personal reference in the meaning of the GDPR, or are anonymized for the purpose of the ANALYSES.

For example, COMPANY may conduct ANALYSES for the following purposes: (i) to improve the product and service portfolio, technical resources and support, (ii) to research, develop and enhance CLOUD SERVICES and professional services, (iii) to verify and ensure data integrity, (iv) to prepare forecasts and demand scenarios, (v) to identify and evaluate correlations and trends in industry segments, (vi) to establish and expand AI (artificial intelligence) applications, and (vii) for anonymous benchmarking. ANALYSES and the anonymous or anonymized data may be automatically forwarded by the COMPANY to itself and / or to its AFFILIATED COMPANIES.

Non-anonymized, and thus personal, data will – unless otherwise agreed – only be used to provide the contractually agreed services in accordance with the provisions of the DPA.

The COMPANY shall become the sole legal owner of the data obtained from the ANALYSIS at the time of its creation. The intellectual property, industrial property rights and all other rights to the CUSTOMER DATA shall remain with the CUSTOMER or the other holders of rights.

4. WORK RESULTS: The COMPANY grants the CUSTOMER a simple (i.e. non-exclusive), but otherwise comprehensive, transferable and sub-licensable right of use, which is not restricted in terms of region and time, to the WORK RESULTS resulting from work performances (Part III. of these GTC SERVICE AND WORKS PERFORMANCE), for the CUSTOMER's own internal business purposes and / or to have them used by the CUSTOMER's AFFILIATED COMPANIES.

To the extent the work results are adaptations of the COMPANY's standard software or documentation or training materials, the COMPANY grants the CUSTOMER a simple right to use in accordance with the provisions of the licence agreement for previously licensed software of the COMPANY. In all other respects, all rights shall remain with the COMPANY.

## § 5 Remuneration and payment modalities

1. Remuneration: Details of the remuneration are in principle specified in the respective CONTRACT. The amount of the remuneration to be paid will be based on time and effort and on the service rates according to the COMPANY's current price list. The PARTIES may agree on other arrangements in the CONTRACT. The actual time and efforts that have been incurred shall be recorded by the CONSULTANTS of the COMPANY in itemized statements. If the CUSTOMER has not already been provided with the itemized statements together with the invoice, the CUSTOMER shall be given access to them upon request. All remuneration rates of the COMPANY are net exclusive of applicable taxes.  
The COMPANY shall issue the CUSTOMER with a paper or electronic invoice for the services provided no later than at the end of each month.
2. Payments are due within ten (10) days of the invoice date without deduction.
3. The CUSTOMER may set off only those claims which are undisputed or have been finally determined by a court of law.
4. Insofar as the CONTRACT provides a binding price (if applicable, for a specific period) for ATOSS PRODUCTS (e.g. for additional MODULES and/or license extensions) and/or for the provision of professional services by the COMPANY (e.g. daily rates for CONSULTANTS, training courses, flat rates e.g. for setting up terminals, test systems or VPN tunnels as well as for any travel costs and expenses), which the CUSTOMER may order from the COMPANY after conclusion of the CONTRACT, COMPANY shall no longer be bound to these prices if the official consumer price index for the Federal Republic of Germany or the index replacing it increases in one month by more than thirty (30) percentage points compared to the same month of the previous year.
5. Costs and travel expenses: Travel expenses, daily allowances and accommodation allowances are charged according to expenditure. Travel time is considered working time and therefore a billable expense.
6. Appointment cancellations: An appointment cancelled by the CUSTOMER eight to four working days in advance will be charged to the CUSTOMER at the rate of 30% of the cost estimate provided for the appointment. Appointments cancelled by the CUSTOMER less than four working days in advance will be charged to the CUSTOMER in full.

## § 6 Liability

1. Unlimited liability: The COMPANY shall assume unlimited liability in accordance with the statutory provisions in the event of wilful intent and gross negligence, as well as in the event of culpable injury to life, limb or health, in the event of infringements of the Product Liability Act and to the extent of a guarantee accepted by the COMPANY.
2. Liability in case of minor negligence: Subject to § 6 clause 1, the COMPANY shall be liable in the event of a minor negligent breach of an obligation, the fulfilment of which is a requirement for the proper performance of the CONTRACT or on the observance of which the CUSTOMER regularly relies and may rely ("CARDINAL OBLIGATION"), limited to the amount of foreseeable damage typical for the CONTRACT.
3. Clarification: In the cases of § 6 clause 2, the COMPANY's liability is limited to € 25,000, regardless of the legal grounds.
4. Liability disclaimer: In all other respects, the COMPANY's liability shall be excluded. Except in the cases set out in § 6 clause 1, the COMPANY shall in particular not be liable for profits lost, savings forfeit, losses resulting from THIRD PARTY claims and other indirect and consequential damages. Excluded are court-imposed costs and damage reimbursement payments which the COMPANY assumes in accordance with § 16 clause 1 of these GTC SERVICES AND WORKS PERFORMANCE in connection with property rights claims by THIRD PARTIES. The COMPANY shall not be liable for any consequences based on the CUSTOMER's failure to use the

services in accordance with the purpose of the CONTRACT or these GTC SERVICES AND WORKS PERFORMANCE.

5. Force majeure: The COMPANY shall not be liable for EVENTS OF FORCE MAJEURE which make it substantially more difficult for the COMPANY to perform the services or which temporarily impede or render impossible the proper performance of the CONTRACT.

#### § 7 Statute of Limitations

With the exception of claims due to wilful intent or gross negligence or due to culpable injury to life, body or health, the following shall apply to liability claims and, in the case of works performances, to warranty claims (Part III. § 16 of these GTC SERVICES AND WORKS PERFORMANCE) against the COMPANY a limitation period of one (1) year shall apply. The limitation period shall commence from the statutory commencement of the limitation period.

#### § 8 Confidentiality

The PARTIES shall be obliged to treat all CONFIDENTIAL INFORMATION obtained within the context of the contractual relationship as confidential for an unlimited period of time, in particular they may not disclose it to THIRD PARTIES or use it other than for contractual purposes. Insofar as disclosure to THIRD PARTIES is necessary for the exercise of rights or for the performance of CONTRACTS, these THIRD PARTIES shall be obliged to comply with non-disclosure obligations that are largely comparable with § 8 of this document. The receiving PARTY may disclose CONFIDENTIAL INFORMATION by way of exception to the extent that it is required to disclose the CONFIDENTIAL INFORMATION pursuant to a binding legal, judicial or regulatory decision. Prior to disclosure, the PARTY which received the CONFIDENTIAL INFORMATION undertakes to promptly notify the other PARTY in writing of the order to disclose the CONFIDENTIAL INFORMATION so that the other PARTY may take timely remedies to prevent or limit the disclosure. If it lodges an appeal, the other PARTY continues to be bound by the obligation of secrecy as long as the appeal has suspensive effect. The disclosing PARTY will inform the receiving PARTY of the filing of an appeal.

#### § 9 Data protection

By signing the CONTRACT, the COMPANY and the CUSTOMER have concluded a DPA in accordance with the GDPR. All processing of non-anonymised, personal CUSTOMER DATA shall be carried out by the COMPANY on behalf of the CUSTOMER on the basis of the DPA.

When the COMPANY provides the professional services, the CUSTOMER shall ensure that only personal data relating to the specific individual case (e.g. for professional and technical support with regard to configurations) can be viewed remotely by the CONSULTANT.

The transmission of non-anonymized, personal CUSTOMER DATA (e.g. test data, employee master data etc.) to the COMPANY by means of transmission and communication channels that have not been mutually agreed upon in advance shall not be permitted.

#### § 10 Miscellaneous

1. Written form: Amendments and supplements to the CONTRACT shall only be effective if made in writing. This shall also apply to the waiver of the written form requirement or the waiver of this written form clause itself.
2. Form of termination of and withdrawal from the CONTRACT: The declaration of termination of or - exclusively in the case of work performances - of withdrawal from the CONTRACT must be made in writing; text form, e.g. by e-mail or fax, is not sufficient.
3. Amendments to the CONTRACT: The COMPANY shall be entitled to amend or supplement the provisions of the CONTRACT insofar as this does not negatively affect the equivalence relationship agreed upon at the time the CONTRACT was concluded with regard to essential elements of the CONTRACT and the amendments are reasonable for the CUSTOMER. The right to amend the CONTRACT in particular shall include changes with regard to (i) technical developments, (ii) changes in the legal framework, (iii) adaptations of the regulations on the handling of personal data, (iv) the elimination of an equivalence disruption that has arisen subsequently or (v) the elimination of regulatory gaps (e.g. in the event of unforeseeable, changed circumstances). The COMPANY will inform the CUSTOMER of the planned amendments in advance. The amendments shall be deemed to have been accepted by the CUSTOMER if it does not object to the COMPANY in writing or text form within six (6) weeks after notification. In the notice

of amendment, the COMPANY shall also draw the CUSTOMER's attention to the intended significance of its conduct.

4. Transfer: The PARTIES may not assign or transfer the CONTRACT or individual rights and obligations under the CONTRACT without the prior written consent of the other PARTY. However, the transfer to an AFFILIATED COMPANY of the COMPANY does not require the prior written consent of the CUSTOMER.
5. Non-solicitation: The CUSTOMER shall not solicit, hire or otherwise employ CONSULTANTS of the COMPANY or its AFFILIATES for its own or any THIRD PARTY's purposes during the preliminary discussions and the term of the CONTRACT and for a period of two (2) years after the termination of the discussions or the CONTRACT. The prohibition also applies to the attempt of the aforementioned acts.
6. Updating of contact details of the main contacts: The CUSTOMER shall be responsible for keeping the contact details of its main contacts (in particular contractual and technical main contact) provided to the COMPANY in the CONTRACT up to date and for notifying the COMPANY of any changes.
7. Choice of law, place of jurisdiction: The laws at the registered office of the COMPANY shall apply exclusively to all claims arising from or in connection with the CONTRACT; the application of the "Uniform UN Sales Law" (United Nations Convention on Contracts for the International Sale of Goods) is expressly excluded. The exclusive place of jurisdiction for all disputes arising from or in connection with the CONTRACT shall be the registered office of the COMPANY.

## **II. Part: Supplementary provisions for services**

### **§ 11 Claims for non-performance and poor performance of services**

If the professional services in the form of services are not provided in accordance with the CONTRACT and this is attributable to the COMPANY, the latter shall provide the professional services in question in accordance with the CONTRACT upon express complaint by the CUSTOMER. The CUSTOMER's complaint must be made in writing to the COMPANY and at the latest within two (2) weeks of becoming aware of it or of the time at which the CUSTOMER should have become aware of it without gross negligence. If the performance in accordance with the CONTRACT is still not successful, the CUSTOMER shall be entitled to terminate the CONTRACT without notice, provided that (i) the performance fails for reasons not attributable to the CUSTOMER and (ii) the CUSTOMER has given the COMPANY a reasonable grace period in writing and this period has elapsed without the COMPANY properly performing the services.

In this case, the COMPANY shall be entitled to the remuneration for the services already rendered up to the effective date of the termination. The remuneration shall only be waived for those services for which the CUSTOMER proves, at the latest within two (2) weeks after its notice of termination, that they are not usable and of no interest to it. Further claims of the CUSTOMER are excluded. The aforementioned exclusion shall not apply in the case of claims for intent or gross negligence or for culpable injury to life, body or health. The right to extraordinary termination without notice remains unaffected.

## **III. Part: Supplementary provisions for work performances**

### **§ 12 Carrying out professional services in the form of work performances**

1. Explicit labelling: The COMPANY shall provide work performances (i) only in connection with the production of non-standardised, i.e. CUSTOMER-specific and / or newly to be developed special programming and comparable WORK SERVICES, which are expressly created on the basis of an individual CUSTOMER request and (ii) are expressly designated in the CONTRACT as a work contract or in relation to individual services as work performances. The COMPANY and the CUSTOMER shall therefore expressly and unambiguously identify the services concerned in the CONTRACT with reference to their contractual nature. In the absence of an express designation, the PARTIES have agreed that the performances under the CONTRACT are, in case of doubt, services and the terms and conditions of this Part III. shall not apply.

Unless expressly identified as such in the CONTRACT, any stipulations regarding the quality of the WORK RESULTS shall not constitute warranties.

2. Scope of delivery: If the subject matter of the work performance is special programming, the delivery of documentation of the work performance performed as well as the surrender of the source code shall only be owed if this is expressly agreed between the PARTIES in the CONTRACT. In the event of such a contractual arrangement, the release of the source code shall be carried out exclusively by deposit with an independent depository under the conclusion of a separate deposit agreement. The filing shall be made in a generally understandable format customary in the market. If the disclosure of a WORK RESULT is only possible upon disclosure of the source code of ATOSS PRODUCTS, the disclosure of source code of the COMPANY shall likewise be made exclusively by deposit with an independent depository under conclusion of a separate deposit agreement. The costs and fees for the deposit, including any initial or further audits of the WORK RESULTS, shall be borne by the CUSTOMER.
3. Deadlines and dates: Deadlines and dates relating to the completion and provision of WORK RESULTS shall be explicitly referred to in the CONTRACT as "Binding Completion Dates". Otherwise, dates and deadlines are non-binding for the COMPANY.

If the CUSTOMER does not comply with its obligations to provide and cooperate (cf. § 3 and § 13 hereunder) or any other required support service as agreed or on time and if, as a result, deadlines and dates are not met according to the previous planning, the corresponding deadlines and dates shall lose their validity. In this case, the PARTIES will agree on new deadlines and dates, taking into account the COMPANY's resource planning. This shall apply, in particular, if, for example, the preparation of a specification is planned by the COMPANY and the CUSTOMER does not approve of it until after the scheduled date or if the CUSTOMER has not provided the COMPANY with the necessary information in due time. The same applies if a subsequent change to the specifications or changes to the CUSTOMER's system environment make it impossible or substantially more difficult to provide the service on time.

#### § 13 Further obligations of the CUSTOMER to cooperate

In addition to the provisions in § 3 of these GTC SERVICES AND WORKS PERFORMANCE, the CUSTOMER shall have further obligations to cooperate when performing professional services in the form of works performance. This includes, in particular

- a) the submission of a complete specification (including catalogue of requirements and performance specifications); in this context, the CUSTOMER shall ensure that the data processing environment for the integration of the WORK RESULTS is described to the required extent in the performance specification and corresponds to the CURRENT STATE OF THE ART;
- b) the provision of test data for the performance of acceptance tests;
- c) the provision of personnel who are sufficiently qualified and resources from IT and the relevant business areas during the performance period so that issues can be resolved without delay and / or internal requirements in the CUSTOMER's business operations can be implemented without delay;
- d) the steering of THIRD PARTIES and coordination of contacts with THIRD PARTIES, especially when it comes to providing information on THIRD PARTY systems.

The specific scope of the information referred to in letters a) and b) shall be defined in the CONTRACT. This information must be available to the COMPANY in a final and binding version in due time before the start of the performance.

#### § 14 Requirements for the specifications and the acceptance test documentation

1. Specifications: The performance specification conclusively describes the requirements defined by the CUSTOMER regarding the WORK RESULT (including performance description, development and documentation guidelines, etc.). In order to be binding on the COMPANY, the specifications must be agreed in the CONTRACT as an integral part of the CONTRACT.
2. Acceptance test documentation: The acceptance test documentation is to be prepared by the CUSTOMER on the basis of the specifications and acknowledged by both parties by signature. The acceptance test documentation finally describes all acceptance tests, their execution as well as the definition of error categories and a description of the acceptance criteria, if they are

met, the work performances are ready for acceptance. Depending on the schedule and necessity, the acceptance test documentation shall be confirmed by signature of both parties no later than four (4) weeks before the start of the acceptance tests.

3. Commissioning: If the COMPANY is commissioned to prepare the specifications and / or the acceptance test documentation, this shall be done in accordance with the applicable rates for remuneration. The prepared documents become binding with the approval by the CUSTOMER. The CUSTOMER shall approve the documents immediately after submission by the COMPANY or shall refuse to approve, stating reasons. If the CUSTOMER does not give approval within ten (10) working days after submission of the specifications or the acceptance test documentation, the respective document submitted shall be deemed released and shall become a binding part of the CONTRACT. Changes to the performance specification and / or the acceptance test documentation can only be agreed after release in accordance with the Change Request Procedure (§ 17 of these GTC SERVICES AND WORKS PERFORMANCE).

## § 15 Acceptance

1. Provision: The COMPANY shall make the WORK RESULTS specified in the CONTRACT as work performances available to the CUSTOMER for acceptance. The CUSTOMER shall then test them and declare acceptance, provided that there are no defects that prevent acceptance.
2. Acceptance test: The tests and acceptance are based on the acceptance test documentation or, if no acceptance test documentation is available, the agreed performance documentation and the functionalities and requirements defined in the reference manual, user manuals and technical documentation.

The errors found during the acceptance test are classified into three (3) error categories:

Error category 1 - serious errors, this means, for example, errors that lead to the overall inability to use the WORK RESULTS as well as errors in central functions of the WORK RESULTS that lead to the entire application being aborted.

Error category 2 - medium errors, this means e.g. errors in the WORK RESULTS which are not to be classified as errors listed in error category 1 and which are nevertheless so significant that acceptance and error correction under the warranty is not reasonable because critical functions are not free from significant errors. The deficiency cannot be solved by organisational means.

Error category 3 - minor errors, which means, for example, errors that do not have a significant impact on the functionality and usability of the WORK RESULTS. The use of the WORK RESULTS is not or only insignificantly restricted by this.

If errors of error categories 1 and 2 occur, the COMPANY shall be entitled to remedy these errors during the acceptance test or to work around them in such a way that the WORK RESULT can be used at least in the sense of error category 3.

If errors of error categories 1 and 2 continue to occur despite attempts by the COMPANY to remedy them, the CUSTOMER shall be entitled to terminate the acceptance test and request the COMPANY to remedy the errors and the COMPANY shall remedy them without delay and, after remedying the errors, to make the concerned WORK RESULT available for repeated acceptance.

Errors of error category 3 do not prevent acceptance and will be eliminated within the scope of the warranty.

3. Declaration of Acceptance: If there are no errors preventing acceptance, the CUSTOMER shall declare acceptance in writing within thirty (30) calendar days after provision by the COMPANY. Any detected errors shall be documented. If the CUSTOMER has not refused acceptance within this period, determining at least one error of error category 1, acceptance shall be deemed to have been declared upon expiry of the period.

## § 16 Warranty

Die Gewährleistung der GESELLSCHAFT richtet sich nach den Bestimmungen unter diesem The COMPANY's warranty is governed by the provisions under this § 16. The COMPANY warrants that the WORK RESULTS are free from THIRD PARTY proprietary rights and free from material defects. The WORK RESULTS shall be deemed free from material defects if they substantially meet the agreed requirements. The COMPANY shall be released from its warranty obligations if the CUSTOMER has operated the WORK RESULT in contravention of the provisions of the CONTRACT or a defect in the WORK RESULT has been caused by an act or



omission of the CUSTOMER. This is the case, for example, if a defect is due to unauthorised processing or modification of the WORK RESULT by the CUSTOMER. In all other respects, the CUSTOMER shall support the COMPANY within the scope of what is reasonable in the elimination of defects.

There shall be no warranty obligations on the part of the COMPANY with regard to any required licensing with THIRD PARTIES.

1. Claims in the case of property rights of THIRD PARTIES: The COMPANY shall defend the CUSTOMER against all claims asserted against the CUSTOMER by a THIRD PARTY for infringement of a copyright or other industrial property right in connection with the contractual use of the WORK RESULTS and shall indemnify the CUSTOMER against the costs and damages imposed by the court in accordance with § 6 (Liability). This requires, cumulatively, that the CUSTOMER (i) informs the COMPANY in writing immediately after becoming aware of the assertion of the claims by the THIRD PARTY, (ii) at no time makes an acknowledgement of the alleged infringement of property rights or a comparable admission of guilt, (iii) gives the COMPANY sole control over the defence and settlement negotiations of the claims with the THIRD PARTY and (iv) assists the COMPANY to the extent reasonable in the defence of the claims. In the event of a legal dispute or arbitration with the THIRD PARTY, the CUSTOMER shall leave the conduct of the litigation / arbitration to the COMPANY, grant power of attorney to the lawyer appointed or designated by the COMPANY and provide the latter with information to the extent required. Insofar as the CUSTOMER cannot fully transfer the in- and out-of-court legal defence to the COMPANY, the CUSTOMER shall instead grant the COMPANY sole control over it in the internal relationship; the COMPANY shall then carry out the legal defence in agreement with the CUSTOMER. If it is legally established or if there is reasonable suspicion that the WORK RESULTS or parts thereof are subject to THIRD PARTY rights, the COMPANY may, at its expense and at its option, either acquire the THIRD PARTY rights for the parts concerned or replace or modify the parts concerned in such a way that they no longer infringe the THIRD PARTY rights but continue to substantially comply with the agreed requirements.
2. Material defects: A prerequisite for the assertion of claims for defects is the possibility to reproduce or ascertain the material defects. The CUSTOMER shall report any material defects to the COMPANY without delay, stating the information known to it and useful for detection, and shall take appropriate measures to facilitate the detection of the material defect and to avert or reduce its effects. The COMPANY shall remedy material defects at its discretion. In this context, the COMPANY shall be entitled to provide the CUSTOMER with equivalent services or an equivalent workaround solution via download as a remedy for defects. If the rectification fails even after the third attempt or if the COMPANY does not succeed in providing a workaround so that the WORK RESULT is operational for the CUSTOMER in accordance with the agreed requirements, the CUSTOMER shall be entitled to reduce the remuneration for the defective WORK RESULT or to withdraw from the CONTRACT insofar as it cannot reasonably be expected to continue to adhere to the CONTRACT due to the material defect. In case of partial performance by the COMPANY, the CUSTOMER may only withdraw from the entire CONTRACT if it has no interest in the partial performance. The CUSTOMER may not withdraw from the CONTRACT if the breach is insignificant. If the COMPANY is at fault, the CUSTOMER shall be entitled to claim damages or reimbursement of futile expenses in accordance with § 6 of the GTC SERVICES AND WORKS PERFORMANCE.

## § 17 Change Request Procedure

Changes or additions to the professional services specified or released in the CONTRACT may be agreed by way of the Change Request Procedure pursuant to the following provisions:

1. Request: Both the CUSTOMER and the COMPANY may initiate the Change Request Procedure at any time by submitting a written request describing the desired changes or additions to the services specified in the CONTRACT or already approved. The change request must be submitted in writing to the contact person of the other PARTY. The request must contain sufficient information to allow a final assessment of the scope and impact of the requested change.
2. Supplementary offer: If the CUSTOMER submits a request for a change in performance, the COMPANY shall review it with regard to feasibility, the time required, any additional costs incurred and shall submit a written supplementary offer to the CUSTOMER within a period of no more than two (2) weeks on the basis of the COMPANY's currently applicable rates of remuneration. Should the aforementioned period not be sufficient due to the complexity or scope of

the request, the COMPANY shall notify the CUSTOMER thereof before expiry of the deadline, submitting an appropriate, meaningful justification, and shall submit the supplementary OFFER as soon as possible. The supplementary OFFER shall take into account, in particular, the following information:

- the technical and functional effects in relation to the scope of performance which may result from the implementation of the change in performance, in particular (i) an adjustment of the effort estimate and (ii) additional cooperation obligations of the CUSTOMER, if any, to the extent that they are foreseeable by the COMPANY in the exercise of due diligence;
  - possible effects on deadlines and dates and, if applicable, a proposal for a suitable period for implementation of the change;
  - other circumstances reasonably required by the CUSTOMER to make an informed decision regarding the supplementary OFFER.
3. **Acceptance:** The CUSTOMER shall notify the COMPANY within two (2) weeks on whether it accepts the supplementary OFFER. Until acceptance of the supplementary OFFER, the COMPANY shall be entitled and obliged to provide the originally agreed services, unless the CUSTOMER requests a suspension of performance. If the CUSTOMER accepts the supplementary OFFER, the COMPANY shall implement the changes in performance based on the supplementary OFFER. If the CUSTOMER rejects the supplementary OFFER, the COMPANY shall carry out the performance of services to the originally agreed extent.
  4. **Costs:** If the CUSTOMER submits a request for a change, the CUSTOMER shall separately remunerate the COMPANY's expenses incurred for the investigation of the requested change and for the preparation of the supplementary OFFER as well as any downtime costs (neutral times). If the COMPANY makes a request for a change because the change is factually necessary for the performance of the service and if this circumstance was not recognisable to the COMPANY when the order was placed in compliance with its duty of care, the additional costs for the supplementary OFFER shall also be borne by the CUSTOMER. In all other cases, the investigation of the desired change in performance and the preparation of the supplementary OFFER shall be free of charge for the CUSTOMER.

#### IV. Part: Definitions and clarifications

1. To the extent the masculine form for certain persons or groups of persons is exclusively used in the GTC SERVICES AND WORKS PERFORMANCE, it is merely for the sake of simplification. The relevant wording shall refer equally to all genders.
2. Insofar as a declaration is to be made "in written form" or "in writing" in accordance with these GTC SOFTWARE MAINTENANCE, it may also be made by the COMPANY in text form, in particular by e-mail, to the relevant contact person of the CUSTOMER, with the exception of notices of termination or rescission.
3. In all other respects, the following definitions shall apply:

**"GTC SERVICES AND WORKS PERFORMANCE"** means these General Terms and Conditions;

**"CURRENT STATE OF THE ART"** includes the technical knowledge gained up to the respective point in time, which has found its way into operational practice and is generally recognised;

**"ANALYSES"** means the analyses, investigations, evaluations and measurements of anonymised CUSTOMER DATA and / or other data and information, such as licence information, technical information or such information resulting from the technical, functional framework conditions of the deployment and use of the ATOSS PRODUCTS by the CUSTOMER, as described in more detail in § 4 clause 3 of the GTC SERVICES AND WORKS PERFORMANCE;

**"OFFER"** means the letter of offer from the COMPANY defining the content of the performance by the COMPANY. Insofar as the PARTIES extend the content of the performance as a result of supplementary orders, this term shall also refer to the supplementary offer in its most recently amended version;

**"WORK RESULTS"** mean only deliverables of expressly agreed work performances of the COMPANY, such as customized special programming or customized adaptations of ATOSS PRODUCTS (in object code and / or source code);

**"ATOSS PRODUCTS"** means the entirety of the software programs which the COMPANY delivers to the CUSTOMER in accordance with the CONTRACT in object code as MODULES for the purpose of installation and use on the CUSTOMER's system. The CUSTOMER will not receive the source code;

**"DPA"** means the Data Processing Agreement, that the COMPANY as Processor and the CUSTOMER as Controller conclude pursuant to Article 28 of the GDPR by signing the CONTRACT as an integral part of the CONTRACT with respect to the collection, processing and use of the CUSTOMER's personal data. The DPA is available on the ATOSS website at <https://www.atoss.com/en-gb/dpa>;

**"CONSULTANT"** means personnel who perform services on behalf of and at the sole discretion of the COMPANY;

**"DOCUMENTATION"** means, collectively, the following documents at this time: (i) the annex called "System Approvals and Requirements", (ii) the annex called "Product Description" and (iii) the reference manual and other technical documentation provided, in each case as amended;

**"THIRD PARTY"** means any natural person or legal entity other than the PARTIES and their AFFILIATED COMPANIES, their salaried and freelance employees, temporary workers and external consultants (such as management consultants, auditors and legal advisors) engaged by the PARTIES;

**"GDPR"** means the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC;

**"EVENT OF FORCE MAJEURE"** means an event which could not have been foreseen by the PARTIES and which could not have been avoided even by exercising due care. This shall include in particular natural disasters, fire and water damage, storms, terror, war, strikes and industrial disputes, diseases (including epidemics and pandemics), insofar as a risk level of at least "moderate" is defined by the Robert Koch Institute or by an assessment of the World Health Organisation WHO;

**"COMPANY"** means the contracting ATOSS Group Company;

**"CARDINAL OBLIGATION"** means, in accordance with 6 clause 2 of the GTC SERVICES AND WORKS PERFORMANCE a material contractual obligation the fulfilment of which is a prerequisite for the proper performance of the CONTRACT or on the fulfilment of which the CUSTOMER regularly relies and may rely;

**"CUSTOMER"** means the contracting party of the COMPANY;

**"CUSTOMER DATA"** means the personal data or other data which the CUSTOMER enters into, processes and stores in the ATOSS PRODUCTS;

**"MATERIALS"** mean the implementation, configuration, parameterisation, maintenance of master data and other service components for customising the ATOSS PRODUCTS as well as the configurations of other computer programs, technologies and hardware as well as, e.g. interfaces, scripts or protocols to be set up for the CUSTOMER, as well as all information, data records and documents, including sketches, drafts, concepts, presentations, whether in print or electronic form, which have been or will be created by the COMPANY;

**"MODULES"** mean the COMPANY software programmes ordered by the CUSTOMER. The MODULES are made available to the CUSTOMER by the COMPANY for use in a non-parameterised state in their standard functions in accordance with a CONTRACT concluded";

**"PARTY"** means either the CUSTOMER or the COMPANY as the respective contracting party; collectively, both contracting parties are referred to as "PARTIES";

**"AFFILIATED COMPANY"** means any entity that is directly or indirectly controlled by or under common control with a PARTY. "Control" for the purposes of this definition means (i) direct or indirect ownership or control of more than 50% of the voting shares of the relevant company and / or (ii) the ability to direct or cause the direction of the management and policies of the relevant company;

**"CONTRACT"** means the entirety of the rights and obligations of the PARTIES arising, as the case may be, from (a) the OFFER, (b) these GTC SERVICES AND WORKS PERFORMANCE, (c) the DPA and (d) the other Annexes referenced in the OFFER; the CONTRACT shall be concluded by written order confirmation or countersignature by the COMPANY vis-à-vis the

CUSTOMER;

**"CONFIDENTIAL INFORMATION"**

means any information, including data and other materials, which the COMPANY or the CUSTOMER – whether communicated in writing, electronically or orally – (i) has designated as “confidential” or otherwise deemed confidential or (ii) which a reasonable THIRD PARTY would, by its nature or by reason of the circumstances, consider to be entitled to protection and therefore confidential. Such confidential information shall in particular include the CUSTOMER DATA, information on the business activities and / or processes of the PARTIES as well as all software, technologies and know-how of the COMPANY in any form, including the MODULES, DOCUMENTATION and their updates and adaptations, the business model as well as the co-operation partners and suppliers of the COMPANY, prices, offer documents, (marketing) ideas, brochures, advertising materials and presentations, concepts as well as all copies and records made thereof. Confidential Information shall not include information (i) expressly marked as “non-confidential” by the disclosing PARTY; (ii) lawfully developed or acquired by the receiving PARTY without any obligation of confidentiality; (iii) which is already generally known or subsequently becomes generally known through no fault of the receiving PARTY or as a result of a breach of CONTRACT; (iv) which is communicated or provided to the receiving PARTY by a THIRD PARTY entitled to make disclosure without breach of these GTC SOFTWARE MAINTENANCE; or (v) which has been released for disclosure by the disclosing PARTY with express written permission. .

**"BUSINESS DAY"** means the weekdays from Monday to Friday (excluding public holidays recognised by law at the registered office of the COMPANY).

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