

**General Terms and Conditions from Scopevisio AG  
section Retail  
for the use of actocash2, apps4brand, pos4brand, Cloud-PoS, etc..**

**I. General section**

**1. Scope**

1.1 These are the terms and conditions between the customer and Scopevisio AG Konrad-Zuse-Platz 7 53227 Bonn, Germany ("Provider").

1.2 The Provider provides its services on the basis of these General Terms and Conditions for Software Products ("GTC") and the respective service certificate (e.g. contractual specifications such as quantities, support services).

The GTC and the service certificate together form the contract between the parties relevant to the specific purchase of a service.

1.3 The customer's GTC and other comparable, pre-formulated terms and conditions of the customer in other documents such as order confirmations, purchase orders, etc. shall not apply, even if the Provider has not expressly objected to them. Acceptance of the services by the customer shall be deemed to constitute acceptance of the provider's GTC and waiver of the customer's GTC. Other terms and conditions shall only be binding if the provider has accepted them in writing; in addition, the provider's GTC shall apply.

**2. Subject matter of the contract**

2.1 The provider shall provide the contractual services, in particular access to cash register and fiscal software, ERP systems, apps and business intelligence solutions ("software" or individually "software product"), either (a) in the sense of software-as-a-service within its sphere of control or within the sphere of control of a subcontractor and hosting partner, from the interface between the data centre and the Internet for use, and/or (b) for download, installation and use on the customer's own infrastructure or on infrastructure rented by the customer (individually or collectively also referred to as "system environment"). The scope of services, the nature, the intended use and the conditions of use of the contractual services are specified in the respective service certificate and any documentation.

2.2 With regard to the contractual services, the provider shall provide the support services specified in these GTC and the respective service certificate, in particular maintenance and 3rd level support with regard to the versions of the software provided for use, which are installed at the customer's premises in object code with the provider's consent.

2.3 A service certificate could also stipulate services that go beyond those described in Section 2.1. In such cases, in addition to the main module of these General Terms and Conditions ( ) in Part I, the additional provisions in Part II shall apply.

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The provider could make updated versions of the software available. The provider shall inform the customer of updated versions and corresponding usage instructions by electronic means and make them available accordingly, unless they are customised software. Customised software is a product or feature created specifically for the customer. If the software is used online in a SaaS model, updated versions will generally be installed automatically. If, on the other hand, the software is used on-premises by the customer, the provider shall make new versions available for download, which the customer is entitled to obtain in accordance with the relevant service certificate, and shall provide the customer with the necessary access and installation information as well as installation keys, and shall also make updated versions of the relevant product documentation available to the customer in a suitable manner.

### 3. Rights of use

- 3.1 The software is protected by copyright. The rights resulting from copyright are exclusively reserved to the provider. The protection covers all software provided, including all products, components and functions, as well as the associated user documentation.

The software and the contractual services may only be used by the customer and only for the purposes agreed in the service certificate. The customer thus receives a non-exclusive, non-transferable right, limited to the duration of the respective service certificate, to use the software within the company for its own purposes and within the scope of use specified in the contract.

- 3.2 Depending on the selected software product, the scope of use could vary, e.g. with regard to the limitation of the permissible number of users, prices, inclusive services, etc. This is specified in the service certificate for the respective software product.

- 3.3 When purchasing a SaaS solution, the customer may access the contractual services online via the Internet during the term of the service certificate and use the functionalities associated with the software in accordance with the contract by means of a browser or other suitable application (e.g. "app"). The customer shall not receive any further rights, in particular to the software or any infrastructure services provided in the respective data centre, unless otherwise agreed. Any further use requires the prior written consent of the provider.

- 3.4 In the case of on-premise use of the software product, deployment takes place at the customer's own system environment or in a system environment rented by the customer.

- 3.5 Both the use of software as a SaaS solution and on-premise use are billed at a fixed, periodically payable service fee in accordance with the service certificate and plus any costs in accordance with Section 4. The provider provides the customer with the software via download for installation on its own system environment or on infrastructure rented externally from third parties. The rights of use in this section apply accordingly.

- 3.6 In particular, the customer may not use the software beyond the agreed scope of use, allow third parties to use it or make it accessible to third parties. In particular, the customer is not

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permitted to reproduce, sell or transfer the software or parts thereof for a limited period of time, or to rent or lend it. However, when using the software on-premises, the customer is entitled to entrust the hosting and/or operation of the software to a third party and to outsource it.

3.7 The provider is entitled to take appropriate technical measures to protect against non-contractual use. This must not significantly impair the contractual use of the services.

3.8 In the event of a user exceeding the scope of use in breach of contract when using the software in a SaaS model or in the event of unauthorised transfer of use, the customer must, upon request, immediately provide the provider with all information available to them for asserting claims due to the use in breach of contract, in particular the notification of the user's name and address.

3.9 When using the software in the SaaS model, the provider could revoke the customer's access authorisation and/or terminate the contract if the customer significantly exceeds the permitted use or violates regulations for protection against unauthorised use. In connection with this, the provider could interrupt or block access to the contractual services as a whole or for individual users of the customer. The provider must always give the customer a reasonable grace period to remedy the situation beforehand, unless, for example, there is imminent danger and/or potential damage to be expected due to security considerations. The sole revocation of access authorisation does not constitute termination of the contract. The provider could only maintain the revocation of access authorisation without termination for a reasonable period of time, up to a maximum of 3 months. Individual users, on the other hand, could also be permanently excluded from further use. The provider's claim to remuneration for use exceeding the agreed use remains unaffected. The customer is entitled to have their access authorisation and access rights reinstated after they have proven that they have ceased the use in breach of contract and prevented any future use in breach of contract.

3.10 The provider could grant the customer a temporary and free right to use the software for testing and evaluation purposes for proof of concept requests and similar undertakings. Such a right of use for testing purposes grants the customer a non-exclusive and non-transferable right to use the software for testing purposes during the evaluation period. The customer may not transfer this right of use or exercise it for the benefit of third parties. In connection with the granting of free rights of use to software for testing purposes, the provider disclaims any warranty and liability to the extent permitted by law.

## 4. Remuneration and invoicing

4.1 The customer shall pay a service fee in accordance with the prices specified in the service certificate for the software provided for use within the scope of the specific contract and the specified maintenance and support services.

4.2 The service fee refers to the initial scope of use specified in the service certificate. A subsequent increase in the intensity of use by the customer entitles the provider to adjust the service

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fee at the time such an adjustment takes effect. In such cases, the service certificate shall be adjusted accordingly.

4.3 The service fee for the use of the software is payable in advance, unless otherwise agreed.

### 5. Payment terms

5.1 Both the recurring service fee for the use of the software and the prices and rates for additional services (work services, services) are generally net prices plus applicable statutory value added tax.

5.2 The provider is entitled to adjust recurring fees such as the service fee and agreed hourly or daily rates, which are not fixed for a specific period in accordance with the relevant service voucher, in the event of changed market conditions, significant changes in procurement and wage costs, changes in value added tax or procurement prices, with three months' written notice. In the event of an increase of more than ten per cent (10%), the customer is entitled to terminate the specific service voucher with two months' notice of the increase coming into effect if the contracting parties cannot reach an amicable agreement. The provider will explain the relevant changes to the customer as transparently as possible; however, it is not obliged to disclose its calculations.

5.3 All invoices are generally payable without deduction no later than 14 calendar days after receipt by the paying agent. The customer shall be in default at the latest if they do not pay within the aforementioned period.

5.4 If invoices that have not been disputed by the customer in good faith have not been paid within the above-mentioned payment period and if, within ten (10) days after the customer has received a written warning from the provider, the provider could charge default interest from the date of default at the maximum default interest rate provided for in German law for commercial transactions ( ). If an outstanding amount is sixty calendar days or more overdue and has not been paid within ten calendar days of receipt of a further written reminder from the customer, the provider is entitled to suspend its services in whole or in part in accordance with the relevant service certificate until the amounts not disputed in good faith have been paid in full. The provider shall notify the customer at least seven calendar days in advance that it intends to suspend its services in this manner. Notwithstanding this, the provider reserves the right to terminate the relevant service certificate for good cause in an extraordinary manner.

### 6. Availability, fault management, support and service deficiencies

6.1 The provider shall provide support exclusively to the POS software manufacturer and directly to the customer, but not to end users (e.g. retailers, POS terminals, web interfaces). Service hours are Monday to Friday, 8 a.m. to 6 p.m. (except on public holidays in North Rhine-West-

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phalia, national public holidays, Christmas and New Year's Eve). Within these hours, the following maximum response times apply depending on the priority of the request: critical 2 hours, high 4 hours, medium 8 hours, low 12 hours. All times are in CET/CEST.

- 6.2 Upon receipt of a fault report, the provider first assesses the extent to which the use of the respective function is restricted ("degree of restriction") and categorises the affected function ("function category"). A degree of restriction is "total" if the function cannot be used at all, causes significant data loss or corruption, or violates legal requirements. In the case of a "significant" degree of restriction, the function could only be used with significant limitations, whereby workarounds may be necessary. A restriction is considered "minor" if only minor impairments occur (e.g. incorrect outputs, labels or layouts).

Functions are classified as "basic functions" (essential for using the product), "important functions" (essential but not mandatory) and "other functions" ("nice-to-have"). The degree of restriction and the function category determine the priority of a fault: "critical" (priority 0), "high" (priority 1), "medium" (priority 2) or "low" (priority 3). The exact classification is based on the provider's current priority matrix.

- 6.3 The customer's entitlement to fault rectification is subject to the condition that a fault or malfunction is traceable and reproducible or could be demonstrated by machine-generated output. The problem description provided by the customer when reporting to the provider should therefore contain the information necessary to narrow down the fault or malfunction and, if available, supporting documents (such as screen shots) and must, if possible, include at least the following information: Date and time of problem detection; prioritisation according to the customer's assessment; company number; Branch number; Device or POS number; Receipt or transaction number; Problem description; Information regarding attempts by the customer to analyse and solve the problem. The customer reports faults and malfunctions relating to the software by entering the fault report or, if necessary, further enquiries in the customer's TopDesk Ticketing & Issue Tracking System and forwarding them to the provider.

- 6.4 In the event of only an insignificant reduction in the suitability of the services for contractual use, the customer shall have no claims for defects. The provider's strict liability for defects that already existed at the time of conclusion of the contract is excluded.

- 6.5 When using software in a SaaS model, Section 578b of the German Civil Code (BGB) remains unaffected.

- 6.6 The provider shall maintain and service the software during the term of the service certificate in accordance with the agreed software maintenance and support model.

- 6.7 **Basic maintenance services:** Basic maintenance services include those maintenance and support services that are regularly provided by the provider as part of the agreed service fee. For SaaS products, the customer is entitled to the latest versions and automatic updates of

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the standard software during the term of the contract at no additional cost. For software provided as an on-premise solution, the customer is entitled to obtain available updates and minor versions of the software as part of the basic maintenance services; the provider makes these updates available for download, if applicable, and provides the customer with the necessary access information and installation instructions. However, changes that are tailored exclusively to specific customer requirements or that require the adaptation of customer-specific components are not included in the basic maintenance services. Basic maintenance services are generally provided for both production systems and test and laboratory systems. However, no specific service levels apply to test and laboratory systems.

- 6.8 **Extended software maintenance services:** Extended software maintenance services include customer-specific additional services, individual adaptations and other support services that go beyond the basic maintenance services. The provider shall render such extended services upon express agreement with the customer and subject to availability ("best effort"). These extended services shall be invoiced separately in accordance with the agreed terms and conditions, with the specific rates being specified in the respective service sheet. The customer shall be obliged to pay separate remuneration for this in accordance with the agreement. If the customer requests services that are not expressly part of the agreed basic maintenance services, the provider shall also provide these as extended software maintenance services in accordance with the agreed remuneration rates, unless otherwise agreed in writing.
- 6.9 **Supported versions:** The provider's maintenance and support services relate to the current minor version of the software and the two immediately preceding minor versions. Each minor version is supported by the provider for a period of at least twelve months after the release of the next minor version, unless a different discontinuation policy has been expressly communicated. The provider shall inform the customer regularly and in a timely manner about the discontinuation policy, the planned release cycle and any "end of support" for certain software versions.
- 6.10 **Excluded services:** The provider does not provide 1st and 2nd level support under this agreement. The maintenance and support services explicitly do not include troubleshooting and services that are attributable to causes beyond the provider's responsibility. These include, in particular, errors or damage caused by insufficient or incorrect data deliveries from third-party systems, defects in the customer's infrastructure (hardware, networks, operating systems), incorrect operation by the customer or interference by third parties, environmental events (e.g. fire, water, power surges, vandalism), errors in third-party software and external systems (such as Salesforce or SAP), and the restoration of customer data. The provider is entitled to investigate justified doubts about the allocation of services and could invoice the costs of such error analyses separately if it subsequently transpires that the cause of the error was not covered by the basic maintenance services. If services had to be provided immediately to prevent damage and it is subsequently determined that these are not covered by basic maintenance services, the provider could also invoice these services separately. Any ambiguities shall be clarified between the respective responsible contact persons of both parties.

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- 6.11 **Service levels:** The agreed response times apply exclusively to the customer's production systems, but not to test or laboratory systems. The provider shall provide the troubleshooting services on a "best effort" basis and shall not make any commitments regarding compliance with specific repair times. The agreed response times shall only apply if the customer has fully complied with its agreed obligations to cooperate. The deadlines shall commence upon notification of the fault by the customer and shall be suspended outside the service hours defined for the respective support level.
- 6.12 The software is free of material defects if it essentially has the characteristics owed after the service call. However, this does not mean that every single component of the software is state of the art. Rather, it is sufficient if the combination of the software has proven to be reliable in use and alone offers the guarantee of largely trouble-free operation of all important functionalities, or if the customer has accepted the software.
- 6.13 In the event of defects in the software, the provider guarantees contractual use by providing an update to the software in accordance with the provisions of the service specification. The provision of a reasonable workaround for the software by the provider to the customer shall also be deemed to constitute contractual use, provided that an insignificant error remains after taking the workaround into account.
- 6.14 The provider does not guarantee (a) the smooth operation of the software if the customer or third parties operate the software with untrained or insufficiently trained personnel – in this case, the provider is not liable in particular for operating errors, unless the lack of or insufficient training is due to circumstances for which the provider is responsible; (b) that the software is compatible with other software selected by the customer; (c) in connection with test licences that have been granted to the customer free of charge – these are provided 'as is'.

## 7. Subcontracting

The provider may engage subcontractors, but remains responsible to the customer for the fulfilment of the contract. Subcontractors are obliged to comply with the contractual obligations, in particular with regard to data protection and confidentiality. The customer will be informed of the use of new subcontractors and could object in writing within 14 calendar days.

## 8. Obligations of the customer

- 8.1 The customer is obliged to create the organisational and technical conditions, to a reasonable extent and in a timely manner, to enable the provider to fulfil its contractual obligations completely and on time. The provider generally provides services via remote access. The customer's obligation to cooperate includes, in particular, the provision of the necessary IT and organisational information that the provider reasonably needs in order to be able to properly fulfil its contractual obligations. The service certificate may provide for further or more specific obligations on the part of the customer to cooperate.

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- 8.2 The customer is responsible for ensuring that the use of the contractual services by users authorised by them does not violate the provisions of the contract, the rights of third parties (e.g. copyrights, other intellectual property rights, claims of all kinds, property rights and other rights in rem, as well as personal rights), legal provisions and/or public decency. The provider is free to further specify this "Acceptable Use Policy" and publish it in a binding manner for all users in the customer portal of the contractual services.

The customer is responsible for the content of the information (data in any form) that they or their users collect, store, transmit, process and/or provide in the course of using the contractual services. It is and remains the responsibility of the customer to ensure that the assets managed with the contractual services are operated in compliance with the law.

- 8.3 The provision of the software and its use could be subject to certain conditions, such as terms of use and operating requirements, for use in a SaaS model as well as for on-premises use at the customer's premises, which the customer must comply with and fulfil. The customer shall inform themselves about the essential functional features of the software and its technical requirements (e.g. with regard to browsers, client hardware and network connection) and observe these.

It should be noted that the technical usage requirements and specifications could change from time to time, particularly in connection with software updates. The provider shall inform the customer in a timely manner before any changes to the requirements and specifications. The customer shall implement the current requirements and specifications without delay.

- 8.4 The customer shall protect the access authorisations and identification and authentication information assigned to them or their users from access by third parties and shall not disclose them to unauthorised persons, and shall instruct and train their users accordingly.
- 8.5 The customer is obliged to indemnify the provider against all third-party claims arising from legal violations based on unlawful use of the service object by the customer or with the customer's approval. If the customer recognises or should recognise that such a violation is imminent, they are obliged to inform the provider immediately.
- 8.6 The customer must use the options provided by the provider to back up their data in their original area of responsibility. The customer is responsible for ensuring that their own infrastructure has security measures in place to protect stored data from destruction, loss or misuse. The provider is not liable for the loss of data or information in the event of errors or other malfunctions of the software products or infrastructure used by the customer in connection with the contractual software.
- 8.7 Before putting a new software version into production, the customer is obliged to comprehensively test the contractual software in their own system environment. This includes, in particular, integration, interface and functional tests with regard to data processing, user interface,

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documents and reports. The customer shall ensure that potential malfunctions, incompatibilities or data errors could be detected and documented before use in live operation.

- 8.8 The customer is responsible for checking whether the new version could be operated without errors under the specific technical and organisational conditions of their system environment. The provider does not guarantee that the software will run without restrictions or adjustments in every individual system configuration of the customer.

### 9. Use contrary to the contract, compensation

- 9.1 In each case in which a contractual service is used without authorisation within the customer's area of responsibility, the customer shall pay damages in the amount of the remuneration that would have been incurred for contractual use within the minimum contract period applicable to this service.

- 9.2 The customer reserves the right to prove that they are not responsible for the unauthorised use or that there is no damage or significantly less damage. The provider remains entitled to claim further damages.

### 10. Contract term and termination

- 10.1 The contractually agreed services shall be provided from the date specified in the service voucher, initially for the duration agreed in the service voucher. During this minimum term, early termination by either party is excluded.
- 10.2 Unless otherwise agreed, a service voucher could be terminated with three months' notice, at the earliest upon expiry of the minimum term. If this does not occur, the service voucher shall be extended for a further year after the initial term and after each extension period, unless it has been terminated with three months' notice to the end of the respective extension period.
- 10.3 The right of each contracting party to terminate a service voucher for good cause remains unaffected.
- 10.4 Any notice of termination must be in writing to be effective.
- 10.5 The customer shall back up their data in a timely manner before the termination of a service voucher. Upon request, the provider shall support the customer in this process for a fee. For data protection reasons, the customer will generally no longer have access to this data after the termination of the specific contract.
- 10.6 The termination of a specific service voucher concluded under these General Terms and Conditions shall in principle have no effect on the validity of other service vouchers under these General Terms and Conditions.

### 11. Legal defects; indemnification

The provider guarantees that the use of the contractual services, in particular the use of the software in a SaaS or on-prem model, does not infringe any third-party rights. The provider shall indemnify the customer against all third-party claims for infringements of property rights for which it is responsible in connection with the contractual use of the software upon first request and shall reimburse the costs of reasonable legal action. The customer shall immediately inform the provider of any claims asserted against it by third parties due to the contractual use of the software and shall grant it all necessary powers of attorney and authorisations to defend the claims. If the customer could not use the contractual services in accordance with the contract due to a conflicting right of a third party, the provider could, at its own discretion, either (a) make all necessary adjustments to the components in question at its own expense and risk, which are suitable for permanently excluding or eliminating any infringement of third-party rights, or (b) obtain the necessary authorisation for the customer to use the contractual services or obtain a replacement.

### 12. Liability

12.1 The provider shall always be liable to the customer

12.1.1 for damages caused by it, its legal representatives or vicarious agents through intent or gross negligence,

12.1.2 under the Product Liability Act, and

12.1.3 for damages resulting from injury to life, limb or health for which the provider, its legal representatives or vicarious agents are responsible.

12.2 The provider shall not be liable for slight negligence, provided that it has not breached any essential contractual obligation, the fulfilment of which is essential for the proper execution of the service voucher in question or the breach of which jeopardises the achievement of the purpose of the contract and on the fulfilment of which the customer may regularly rely. This liability is limited to the foreseeable damage typical for this type of contract in the case of property damage and financial loss. This also applies to lost profits and lost savings. Liability for other remote consequential damages is excluded. For a single root cause claim, liability is limited to the monthly reoccurring revenue, in the case of ongoing remuneration to the amount of remuneration per quarterly reoccurring revenue. The contracting parties could agree in writing on different liability upon conclusion of the contract, usually in return for separate remuneration. An individually agreed liability amount shall take precedence. Liability in accordance with clause 12.1 remains unaffected by this paragraph.

12.3 The provider shall only be liable for damages arising from a warranty statement if this has been expressly agreed in the warranty. In cases of slight negligence, this liability is subject to the limitations set out in Section 12.2 .

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12.4 If data or components (such as hardware or software) need to be restored, the provider shall only be liable for the costs necessary for restoration in the event of proper data backup and failure prevention by the customer. In the event of slight negligence on the part of the provider, this liability shall only apply if the customer has carried out data backup and failure prevention appropriate to the type of data and components prior to the malfunction. This shall not apply if this has been agreed as a service to be provided by the provider.

12.5 Clauses 12.1 to 12.4 apply accordingly to claims for reimbursement of expenses and other liability claims of the customer against the provider.

### 13. Data protection

13.1 Insofar as the provider could access personal data of the customer or from the customer's area, it shall act exclusively as a processor and shall only process and use this data for the purpose of executing the contract. The provider shall observe the customer's instructions for handling this data. The customer shall bear any adverse consequences of such instructions for the execution of the contract. The customer shall agree with the provider on the details of how the provider shall handle the customer's data in accordance with data protection requirements.

13.2 The customer remains the controller both in general in the contractual relationship and in terms of data protection law. If the customer processes personal data (including collection and use) in connection with the contract, they shall ensure that they are entitled to do so in accordance with the applicable provisions, in particular data protection provisions, and shall indemnify the provider against any claims by third parties in the event of a breach.

13.3 The following applies to the relationship between the provider and the customer: The customer is responsible to the data subject for the processing (including collection and use) of personal data, except insofar as the provider is responsible for any claims of the data subject due to a breach of duty attributable to the provider. The customer shall be responsible for reviewing, processing and responding to any enquiries, requests and claims from the data subject. This also applies if the data subject makes a claim against the provider. The provider shall support the customer in fulfilling its obligations.

### 14. Confidentiality

14.1 "Confidential Information" within the meaning of this clause shall mean all information of a party which that party has marked as confidential prior to disclosure or which is reasonably understood to be confidential due to its nature and/or the circumstances of its disclosure. Information shall not be considered "Confidential Information" if the receiving party could prove that it was either (a) released for disclosure in writing by the disclosing party; (b) was already in the possession of the party without any obligation of confidentiality; (c) was lawfully acquired from a third party who was not under any obligation of confidentiality; (d) is or was generally available; or (e) was independently developed by another party without the use of confidential information.

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- 14.2 The parties mutually undertake to treat the other party's Confidential Information as strictly confidential and to protect it adequately from access by third parties, using at least the same care to protect such information as they use to protect their own information of the same or similar nature.
- 14.3 Unless otherwise specified, the parties may not disclose Confidential Information to third parties or make it accessible in any way without the prior written consent of the other party. However, the parties are entitled to disclose Confidential Information on a 'need-to-know' basis to (a) employees, subcontractors or other third parties and their employees who reasonably require access to such Confidential Information in order to assert/provide services under this call-off contract or otherwise to process such a contract; (b) third parties and their employees who provide legal, accounting and/or auditing services to a party. Both parties shall ensure that all of the aforementioned persons (including their employees) are subject to contractual or statutory confidentiality obligations that are at least equivalent in content to the confidentiality obligations provided for in this contractual relationship.
- 14.4 A party shall be entitled to disclose Confidential Information if it is required to do so by law, regulation, court order or similar requirement and (a) it notifies the other party of such requirement without delay, unless such notification is prohibited by law; and (b) provides the other party with reasonable assistance in connection with all legally available steps to prevent or limit disclosure as far as possible.
- 14.5 The parties shall inform each other (a) in the event of an actual or threatened breach of these confidentiality obligations; (b) in the event of unauthorised access to computer systems on which confidential information is stored; and/or (c) if confidential information has been disclosed which is not recognisably related to the performance of the contractual relationship.
- 14.6 The provisions regarding confidentiality pursuant to this clause 14 shall remain valid beyond the end of the contractual relationship.
- 15. In other matters**
- 15.1 The parties are entitled to mention the cooperation and the positive experiences gained from the cooperation in presentations (e.g. website, customer presentations, sales documents) and for advertising purposes. For this purpose, the parties may use the company name and logo of the other party. Each use requires the prior written or text-based consent of the other party.
- 15.2 The provider reserves the right to amend these General Terms and Conditions. The provider shall send the customer the amended terms and conditions by email at least 30 days before they come into force and shall also inform the customer of the intended validity of the amended General Terms and Conditions for a current service voucher and of the customer's right to object to the validity of the amended General Terms and Conditions. If the customer does not object to the validity of the amended GTC within this period or uses the provider's service after the amended GTC have come into force, the amended GTC shall be deemed accepted. The

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provider shall inform the customer in an appropriate form of the significance of the 30-day period, the right of objection and the legal consequences of silence.

15.3 With the exception of cases of universal succession, both parties are only entitled to transfer their rights and obligations from a service voucher individually or collectively to third parties if the other party has given its prior written consent, whereby such consent may not be refused or delayed without good cause. An important reason within the meaning of this provision shall be deemed to exist if the transfer of the contract would change the nature, scope or costs of the service provision at the expense of the party requested to consent to the transfer.

15.4 Should any provision of these General Terms and Conditions and/or a service voucher be or become invalid, this shall not affect the validity of the remaining provisions of the respective document. In this case, the parties agree to cooperate in redrafting the invalid provisions and to agree on a new, legally permissible provision that comes as close as possible to the economic content of the invalid provisions. The same applies mutatis mutandis to any contractual loopholes.

### **16. Applicable law and place of jurisdiction**

16.1 Every contract under these General Terms and Conditions is subject exclusively to German substantive law, excluding international agreements (including the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG)) and conflict of law rules.

16.2 The place of jurisdiction for merchants, legal entities under public law or special funds under public law is the registered office of the provider. The provider could also sue the customer at the customer's place of business.

## **II. Special provisions for work performance and services – supplementary to Part I**

### **17. In the case of work performance**

17.1 The provider shall perform the work in accordance with the terms and conditions agreed in the service voucher and below in return for the contractually agreed remuneration.

17.2 The provider shall only be responsible for the success of the work if

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- 17.2.1 the relevant criteria were defined specifically and conclusively in the service description in terms of scope and effect at the time the contract was concluded and became the subject of the contract (agreed performance criteria), and
- 17.2.2 the customer fulfils its obligations to cooperate in a timely manner and properly, unless these have no effect on the provision of services.
- 17.3 The service description is based on the technical and functional requirements communicated by the customer. The service description conclusively reflects the agreed performance criteria and any test criteria to be applied for this purpose.
- 17.4 Insofar as the provider is not obliged to achieve success under a contract for work and services, clause 18 of these General Terms and Conditions (Contractual Terms and Conditions for Services) shall apply in the absence of any deviating agreement.
- 17.5 Acceptance shall be deemed to have taken place if the customer uses the software after commissioning within the scope of a reasonable trial operation and does not report any significant defects in writing within fourteen (14) calendar days. Productive use of the software or the expiry of the aforementioned period without notification of defects shall be deemed to constitute implied acceptance. Non-significant defects shall not prevent acceptance, but shall remain subject to rectification in accordance with the contract.
- 17.6 Unless otherwise agreed, a reported defect shall be assigned to one of the following categories:
- 17.6.1 Category 1: The work performance is affected by a defect that makes use impossible or only possible with serious restrictions.
- 17.6.2 Category 2: The work performance is affected by a defect that restricts its use without constituting a defect of category 1.
- 17.6.3 Category 3: The work performance is affected by a defect that only insignificantly restricts its use.
- 17.7 In the case of a defect in category 1, the customer could refuse to accept the work. This also applies if several defects in category 2 together lead to effects in category 1. The provider shall remedy defects with effects in category 1 that have been reported in the proper manner (analogous to the notification in accordance with the SLA) within a reasonable period of time in such a way that there are no longer any effects in category 1. As long as the test could not be properly continued due to such a defect, its effects or its rectification, the test period for the work affected shall be extended appropriately. Claims for defects after the declaration of acceptance remain unaffected.

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- 17.8 Partial acceptances already declared shall remain unaffected by subsequent acceptance tests for other services. The same applies to tests already carried out, except insofar as these are affected by a defect or its rectification.
- 17.9 If there are no category 1 defect effects, the service shall be deemed acceptable for acceptance.
- 17.10 The work shall be deemed to have been accepted – even without an express declaration and without a request for acceptance by the supplier –
- 17.10.1 if the customer uses the work performance for purposes other than testing, or
- 17.10.2 upon payment, unless the customer has justifiably refused acceptance, or
- 17.10.3 if the customer does not report any defects within the inspection period that prevent acceptance, or
- 17.10.4 if the customer does not report any defects that prevent acceptance within a reasonable period set by the provider and the provider has pointed out this consequence when setting the deadline, or
- 17.11 Unless otherwise agreed, separable partial services shall also be accepted individually in accordance with these provisions.
- 17.12 The customer shall only be entitled to claims for defects if the reported defects are reproducible or otherwise verifiable. This also applies to defects for which rights are reserved upon acceptance.
- 17.13 If the customer is entitled to claims for defects, they shall initially only have the right to subsequent performance within a reasonable period of time. Subsequent performance shall include, at the provider's discretion, either the rectification of defects or the manufacture of new goods.
- 17.14 If the subsequent performance fails or cannot be carried out for other reasons, the customer could, under the statutory conditions, reduce the remuneration, withdraw from the contract and/or – within the scope of Section 112 of these General Terms and Conditions – claim damages or reimbursement of expenses. The customer shall only be entitled to carry out the work themselves at their own expense if a defect has not been remedied despite the expiry of a reasonable period for subsequent performance and the cause of this lies within the sphere of responsibility of the provider.
- 17.15 The customer shall exercise their right of choice with regard to these claims for defects within a reasonable period of time, usually within 14 calendar days of becoming aware of their right of choice.

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### **18. For services**

- 18.1 The provider shall render the service in accordance with the terms and conditions agreed in the contract and below in return for the contractually agreed remuneration. The customer shall bear responsibility for the project and its success. The provider shall render the service in accordance with the principles of proper professional practice.
- 18.2 The subject matter of the contract could consist of a one-off service, which could also be provided in parts, or could be of a permanent nature.
- 18.3 If the service is not provided in accordance with the contract and the provider is responsible for this (performance disruption), the provider is obliged to provide the service in whole or in part without additional costs for the customer within a reasonable period of time in accordance with the contract, unless this is only possible with disproportionate effort.
- 18.4 This obligation on the part of the provider shall only apply if the customer reports the disruption to performance in writing and without delay, at the latest within two weeks of becoming aware of it, unless otherwise agreed.

### **19. General terms and conditions for work and services**

- 19.1 Unless otherwise agreed, the place of performance shall be the provider's registered office.
- 19.2 The provider shall determine the manner in which the service is provided, unless otherwise agreed. The customer shall not be authorised to issue instructions to the provider's employees involved in the provision of the service.
- 19.3 Agreed expense reports shall be deemed approved unless the customer objects in detail in writing within 21 days of receipt and the provider has indicated the deemed approval in the expense report.
- 19.4 Travel costs and expenses as well as other expenses shall be reimbursed in accordance with the provider's rates specified in the service voucher, unless otherwise agreed. Travel time in connection with the deployment of the provider's personnel on site at the customer's premises shall be deemed billable working time.
- 19.5 The payment terms set out in section 5 GTC (General Provisions) also apply to work and services.