

**Supplemental Terms & Conditions for the Procurement of Software Development
and Customizing Services
– EVB-IT Erstellungs-AGB –**

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Definitions of the terms marked with an asterisk (*) are provided at the end of the Supplemental Terms & Conditions for the Procurement of Software Development and Customizing Services (EVB-IT Erstellungs-AGB).

Version 1.0 dated 7/8/2013

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1 Purpose of the Software Development Contract (within the EVB-IT framework)

- 1.1 Software Development Contracts within the framework of these EVB-IT Terms & Conditions regulate the procurement of software* development and customization services on the basis of a work contract ("*Werkvertrag*"), as well as software support after acceptance and/or further development and customization.

Specifics regarding the products and services deliverable by the Contractor are regulated under items 2 and 4 of the Software Development Contract. The performance elements involved may include in particular:

- The modification of provided software* on the source code level,•
- customizing* of provided software*,
- the creation and permanent licensing of custom software*,•
- training services,
- and providing documentation.

The performance elements represent a single commercial, contractual element for purposes of the transaction.

- 1.2 The cooperation obligations of the Procurer are as outlined under point 12 of the Software Development Contract and item 10 of these Terms & Conditions.
- 1.3 The Contractor bears responsibility for the successful rendering of the contractual performance elements. The Contractor is liable for the performance of any subcontractors as for his firm's own performance.

2 Nature and scope of services

Except as otherwise agreed in the Software Development Contract, the Contractor grants the Procurer contractual rights, upon delivery or licensing, to the contractual performance elements, contingent upon

- rendering of the installment, partial or final payment due for the respective delivery or lease/license, • acceptance of the performance element/s, or
- termination by the Procurer for cause pursuant to item 15.4. The provisions below apply to the respective individual performance elements:

2.1 Licensing of the software* which the Contractor is hired to modify

If the licensing of software* is agreed, the following applies:

The software* is licensed to the Procurer for its intended contractual use in accordance with the Software Development Contract in conjunction with these Terms & Conditions.

The Procurer is entitled to make a copy of the software* for backup purposes. The copying of the software* for its intended contractual use or for distribution of the software* for the purpose of proper data backup constitute intended contractual usages. If licenses applicable to a hardware and/or software environment defined in the Software Development Contract contain limitations, any usage deviating therefrom requires the Contractor's approval. If a hardware and/or software environment defined in the Software Development Contract is non-functioning, until functioning is restored, its usage in a different environment is allowed even without the Contractor's approval.

The software* delivered or created under the Software Development Contract has been scanned at an appropriate point in time prior to its provision using up-to-date scanning software so as to identify the presence of any malware*.

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The Contractor declares that such scanning yielded no indications of malware* being present. This provision shall apply to all hardware provided, even if provided on a temporary or advance basis, such as for testing purposes.

If the software* is subject to export control regulations, the Contractor shall include an advisory thereof in the Software Development Contract.

2.1.1 **Permanent licensing of standard software***

If the permanent licensing of standard software* for a one-time fee has been agreed, the Contractor shall license and provide this standard software* to the Procurer in accordance with the terms of the Software Development Contract. Unless other intended contractual usages have been agreed in the Software Development Contract, at the point in time of delivery a non-exclusive right is granted

- which is limited as per the second to last paragraph under this item 2.1.1 and is transferable, • non-expiring, irrevocable and non-terminable,
- geographically unlimited,
- and usable in any hardware or software environment

to the Procurer to use the standard software*, which includes in particular the permanent or temporary storage thereof and the loading, displaying and running of the software. This shall also apply regarding any necessary copies.

If the Procurer exercises his right to transfer the license, the Procurer must bind the third party in question to uphold the Procurer's contractual obligations regarding the content and scope of rights of use. Upon such transfer to a third party, the Procurer shall no longer have rights of use, irrespective of the rights per this last sentence under this item.

The Contractor agrees not to convert the standard software* into different code or change the code unless doing so is permitted by law. If rights of use to the standard software* expire according to contractual provisions, the Procurer is obligated to destroy/permanently delete any copies made. The Procurer is entitled however to retain a copy exclusively for verification and archiving purposes.

2.1.2 **Creation and licensing of custom software***

If the creation and licensing of custom software* is agreed, the Contractor shall create and provide the custom software* per the contractual provisions, including particularly points 2 and 4 of the Software Development Contract.

2.1.2.1 **Scope of rights to custom software***

Barring other intended contractual usages agreed in the Software Development Contract, for the respective individual custom software* created

- a non-exclusive license is granted which is
- sublicensable for non-commercial purposes, • geographically unlimited,
- usable in any hardware or software environment, • transferable,
- non-expiring, irrevocable and non-terminable

to the Procurer to use the custom software* in original or altered, translated, edited or modified form,

- to include in particular the permanent or temporary storing and loading thereof and the displaying and running thereof, along with any necessary copies
- and to alter, translate, edit or otherwise modify such
- for non-commercial purposes on any known medium, or to in any other manner save, reproduce, display, publish or distribute in physical or intangible form, including non-publicly in particular, and with the exception of the source code* to publicly playback/render, including through the use of audio, video or other information media
- in databases, data networks and online services, including the right to provide the custom software*, but not the source code*, to users of the aforesaid databases, networks and online services for research purposes and for retrieval via tools selected by the Procurer, and to provide such for download for non-commercial purposes
- to allow third-party usage and operation for the Procurer
- to use such for internal and non-internal purposes and to provide services to third parties
- to distribute such for non-commercial purposes.

The license grants rights of use to the custom software*, including particularly its object and source code* in all developmental, intermediate and final stages and to the related documentation and any other materials necessary to exercise the rights of use, such as analyses, specifications and requirements documents, plans and descriptions.

If the Procurer exercises the right to transfer the rights of use to the custom software*, wholly or in part, or allows third parties to use such under the Procurer's reproduction, sublicensing or distribution rights, the Procurer shall contractually bind said third parties to fulfill the same obligations connected with the content and scope of the license. Liability on the part of the Contractor vis-a-vis third parties in connection with sublicensing or further distribution is excluded. This also applies to defect claims as well as to any claims asserted by the Procurer against the Contractor in consequence of claims over the custom software* asserted against the Procurer by third parties.

The Procurer shall lose any usage rights transferred to a third party. The Procurer is entitled however to retain a copy exclusively for verification and archiving purposes.

2.1.2.2 Rights to pre-existing elements*, the Contractor's notification obligations

Item 2.1.2.1 categorically applies as well to pre-existing elements*, to which however exclusive rights of use are under no circumstances granted.

Payment shall be due for the distribution and sublicensing of pre-existing elements* if the Contractor provides notification of the usage thereof in the offer stating the fee amount for granting of these rights, and the Procurer accepts that offer as stated.

Compensation for the distribution or sublicensing of such pre-existing elements* shall not be due until the Procurer exercises these rights to the pre-existing elements*.

The right to edit pre-existing elements* is excluded if the following conditions are met:

- The Contractor stated in the offer accepted that only the object code* is licensed instead of the source code* to the pre-existing elements* and exercises this right.
- The Contractor shall enable the Procurer to generate the executable custom software* through the agency of properly qualified staff from the licensed elements of the custom software* in the source code* and the licensed elements* pre-existing solely in the object code*.
- No right to editing accrues by statutory law. Item

2.1.2.3 applies regarding the usage of tools*.

The distribution and sublicensing of the pre-existing elements* is only allowed in connection with the custom software* in the form as licensed or as modified, translated, edited or redesigned.

2.1.2.3 Rights to tools*

If the Contractor does not utilize tools* available on the market to create the custom software* or has not developed such and editing and redesigning of the custom software is not possible without use of such tools* or only possible with unreasonable effort/expense, the Contractor shall give the Procurer a reproduction of the tool/s* in question upon or before provision for partial or overall acceptance, granting the Procurer thereto

- a non-exclusive right

which is* geographically
unlimited,

- usable in any hardware or software environment,
- strictly together with the custom software which it is usable to edit or redesign, and is transferable,
- non-expiring, irrevocable and non-terminable

to utilize the tool/s* in original form exclusively to edit and redesign the custom software* for purposes of error resolution and further development, and for such purposes to use the tool/s*,

- to include in particular the permanent or temporary storing and loading thereof and the displaying and running thereof, along with any necessary copies
- to allow third-party usage and operation for the Procurer
- to use such, both for internal purposes and in order to provide services to third parties.

The Procurer is furthermore entitled to produce another reproduction and distribute this together with the respective custom software, and to grant third parties the rights pursuant to this item 2.1.2.3 with the exception of the sublicensing, distribution and reproduction rights.

Instead of the tool* utilized by the Contractor, the Contractor may give the Procurer a reduced version of the tool*, granting the Procurer the rights stated under this item 2.1.2.3 if the custom software can be edited and redesigned just as well through the use of such.

The Contractor is not obligated to provide the tool* if the Contractor demonstrates that the custom software can be edited and redesigned just as well using a different tool* available on the market as with the tool* utilized by the Contractor and informs the Procurer where to source that different tool.

2.1.2.4 **Rights to inventions**

Except as otherwise provided in the Software Development Contract, the provisions below govern inventions made in the course of contract fulfillment.

- The Contractor has free disposal over the invention and rights proceeding from or connected therewith, and file for a patent or utility patent for the invention. The Contractor hereby grants the Procurer at no charge a simple, non-exclusive, transferable, sublicensable in rem right of use to patents and utility patents filed for or granted in present or in future in connection with the usage of the created/produced results which the invention concerns. For the event that the above is insufficient in a given case, the Contractor grants rights of use in the scope necessary for the Procurer or an entitled third party to exercise the rights to the created/produced results as contractually provided.
- The Contractor shall at his own expense ensure that exercising of the rights of use to the created/produced results accruing to the Procurer cannot be compromised by either the Contractor, the inventor or any legal successor. To such end, the Contractor shall in particular claim any employee inventions.

2.2 **Software customization***

2.2.1 **Custom modification of standard software* on the source code level**

If custom modifications are made to the standard software* source code, the Contractor shall provide notification by or before the time of offer submission of whether the custom modifications will be integrated as standard. If the Contractor declares that this will be the case, the Contractor is obligated to integrate the modifications into the version* of the standard software* released after provision thereof for acceptance. If such is not declared or the modifications are not integrated as standard, the Contractor is obligated to hand over the modifications on the source code level in the source code* and the unmodified elements of the standard software* in the object code* in a manner enabling the Procurer to produce the modified standard software* through the agency of properly qualified staff. The Procurer receives rights to the source code* to be handed over for custom software*.

2.2.2 **Software customizing***

If software customizing* is agreed as a service, the Contractor grants the Procurer rights to work results produced in connection therewith, to the corresponding documenting information and to materials, database works and databases connected therewith in accordance with item 2.1.2.1. The Procurer shall not have editing or sublicensing rights however to any copyrighted pre-existing materials, such as templates, plans or documentation, unless these exclusions are respectively prohibited by law.

2.3 **Installation***

Except as otherwise agreed, the Contractor shall be obligated to install* the software* in the contractual system environment*. Item 2.2.2 applies accordingly.

2.4 **Training**

If training services have been agreed, the Contractor shall conduct such under his own responsibility and in particular in accordance with the provisions per points 2 and 4 of the Software Development Contract. Except as otherwise agreed, training is to be conducted in German. Training is to be conducted at the Procurer's facilities, except as otherwise agreed. If training is not conducted at the Procurer's facilities, the Contractor is responsible for providing the facilities and related instruction/seminar infrastructure. A training day consists of eight instructional hours of 45 minutes' duration plus breaks of appropriate length. Fees for training include payment for appropriate preparations for training seminars and for granting contractual rights of use to the training documents. Training documents must be provided in German. Copies provided as agreed become the property of the Procurer. Electronic presentation files count as training documents.

Except as otherwise agreed, the Contractor grants the Procurer a non-exclusive, irrevocable, non-expiring and transferable right to utilize the training documents produced for the Procurer for the Procurer's own internal purposes as rights holder.

The Contractor grants the Procurer the right to utilize any training documents or portions thereof produced for the Procurer for training purposes, and otherwise solely for internal purposes as the rights holder per item 2.1.2.1 in connection with point 4.4.3 of the Software Development Contract, except as otherwise agreed.

3 **Defect classification**

3.1 Except as otherwise agreed under the Software Development Contract, the following three defect classifications shall be recognized:

3.1.1 A critical defect (operation-preventing defect) is in evidence when usage of a contractual performance element is not possible or only possible with major limitations.

3.1.2 A major defect (operation-impeding defect) is in evidence when usability of a contractual performance element is substantially limited.

3.1.3 A minor defect is in evidence when usage of a contractual performance element is unaffected or only slightly limited.

3.2 A major defect is furthermore in evidence when a minor defect ultimately leads to a substantial limitation of usability of a contractual performance element.

4 **Software support after acceptance**

If software support services have been agreed, the Contractor shall perform these in accordance with the Software Development Contract and with the provisions following. Except as otherwise agreed, software support services shall be contracted for the performance elements as a whole.

4.1 Fault resolution (troubleshooting)

If fault resolution/troubleshooting is agreed as a service, the Contractor shall take the necessary measures involved. Necessary measures include for example adjusting custom software* or a particular customization* and the licensing of a necessary version* of the standard software* in which the fault is eliminated.

If the standard software* is affected by a fault and standard software* fault resolution has been agreed as a service, the following shall apply:

- The Contractor is obligated for the term of the contract to provide an available version of the software in which the fault has been eliminated*.
- If a version* of the software in which the fault has been eliminated is not available, the Contractor shall provide a workaround solution.
- If this cannot be reasonably done, the Contractor must pressure the maker of the standard software* to release a software version* as soon as possible in which the fault has been resolved. The Contractor shall provide information regarding such efforts upon request.

The Procurer may not, in general, demand changes to the object* or source code* of standard software* as part of the obligation to provide a workaround solution*.

4.1.1 Except as otherwise agreed, the Procurer must accept a new software version* which serves to resolve a fault. The Procurer is not obligated to accept a new software version* if doing so is unreasonable because the new software version* is significantly non-conforming with contractual specifications.

If the Procurer does not accept a new software version* for this reason, the Contractor shall upon request by the Procurer propose a different solution which is reasonable to implement, if possible.

When the Procurer accepts a new software version*, the following shall apply:

- If the new software version* has greater functionality than the software version* stated in the Software Development Contract (upgrade), the Procurer is only obligated to pay additional compensation if the Procurer wishes to make use of the upgrade. This still applies if the Procurer makes use of the upgrade even though the Procurer could use the new software version* in contractually conforming fashion without utilizing the upgrade, but does not apply if the Procurer is only able to make use of previous functionalities in connection with the upgrade.
Additional compensation shall not be payable if provision of the new software version* is already required for performance pursuant to item 4.2.
- If usage of the new software version* results in increased cost, the cost difference shall be borne by the Contractor. This does not apply to increased cost resulting from the Procurer's intended usage of the upgrade/s. Sentence 2 of the first point listed under this item 4.1.1 shall apply accordingly.

4.1.2 If there are no agreed service hours, the service hours shall be Monday to Friday from 8:00 a.m. to 5:00 p.m. (excluding official holidays at the place of fulfillment). If response times* have not been agreed, troubleshooting work shall commence without delay upon receipt of a fault notification within service hours. If restoration times* have not been agreed, troubleshooting work shall be concluded within an appropriate period of time, within service hours. If the Contractor fails to adhere to the contractual response or restoration times*, the Contractor shall be deemed in delay upon missing the deadline in question without issuance of any warning unless not at fault for missing the deadline.

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The Procurer may claim damages to compensate for losses incurred due to delays. The Procurer may furthermore terminate the software support agreement per point 5 of the Software Development Contract, as well as the further development and customization clause per point 6.1 of the Software Development Contract if and as agreed, and/or claim damages in lieu of performance if the Contractor fails to meet an appropriate grace period for performance set by the Procurer. If a previous fault reoccurs stemming from the same cause after operational readiness* has been declared restored, the fault is deemed unresolved. If a flat fee has been agreed for software support services, the Contractor may demand an appropriate fee from the Procurer to resolve any fault caused by the Procurer either intentionally or through gross negligence.

4.2 **Licensing of new software versions***

If the Contractor is obligated to license new software versions* released, the Contractor must install* and customize* these unless otherwise agreed. If the standard software* has been modified for the Procurer as per item 2.2.1, the foregoing shall include implementation of said modifications in the new software version* for the Procurer. If new software versions* contain significant new functionalities, customizing* for these functionalities is only included as a service if and as necessary for function operability. If requested by the Procurer however, the Contractor is obligated to additionally provide customizing* for those functionalities. In such case, item 16 applies. Furthermore, customizing* may not impair the usability of new functionalities. The obligation to license released software updates* includes an obligation to grant rights of use of the same type and scope as for the standard software* to receive software support.

4.3 **Acceptance of software support services**

The Contractor shall notify the Procurer when performed software support services have been completed. The provision of such notice constitutes acceptance in regard to minor software support. Software support services performed by the Contractor which involve substantial changes to the work results are subject to acceptance. When software support services are subject to acceptance, the Procurer has the right to have the work results functionally tested within an appropriate period of time following receipt of the notification per sentence 1. When a fault is successfully resolved, the point in time of the notification applies for determining adherence with the contractual restoration time*.

4.4 **Warranty for software support services**

Item 12 shall apply mutatis mutandis in case of deficient software support services. The right of withdrawal pursuant to item 12.11 is replaced by the right to terminate the software support agreement per point 5 of the Software Development Contract with respect to the services in question unless continuing the software support agreement is no longer reasonable for the Procurer on the whole. In such case the Procurer shall be entitled to terminate the software support agreement as a whole.

4.5 **Documentation of software support services**

The Contractor shall appropriately document the software support services performed, except as otherwise agreed.

The Contractor shall implement any revisions and changes to the documentation which are necessary pursuant to software support work performed per items 4 and 5 of the Software Development Contract, except as otherwise agreed. If the Contractor is not legally empowered to implement such, the Contractor shall provide a corresponding supplement to the documentation.

5 Documentation

- 5.1 The Contractor is obligated to provide documentation for the work results.
- 5.2 The documentation for the work results shall include in particular application documentation (user advisories, instructions, FAQs, etc.), software* user manuals and procedural outlines.
The documentation must enable the Procurer's user and administrative staff to properly use the work results after conducting the contractual training, contingent upon the staff in question having adequate prior knowledge and training.
- 5.3 Except as otherwise agreed, the documentation, in German, must be handed over simultaneous with or before provision for acceptance, either in duplicate at a minimum or in a form allowing printout. Usage of commonly used industry terminology in English is allowed.
- 5.4 The Contractor shall document measures performed in connection with defect liability as per item 12, except as otherwise agreed.
- 5.5 The Contractor shall implement any revisions and changes to the documentation which become necessary in connection with warranty for defects as per item 12, except as otherwise agreed. If the Contractor is not legally empowered to implement such, the Contractor shall provide a corresponding supplement to the documentation.
- 5.6 The Contractor grants the Procurer rights to the documentation produced in accordance with item 2.1.2.1 in conjunction with point 4.4.3 of the Software Development Contract, except as otherwise agreed. The Contractor grants the Procurer the rights to all other documentation as per item 2.1.1, except as otherwise agreed.

6 The Contractor's notification obligations

- 6.1 The Contractor shall notify the Procurer promptly of any cooperation required which is not already scheduled into the parties' coordinated planning so as to avoid compromising performance of contract. The Contractor shall notify the Procurer if the Contractor should find that the Procurer has not promptly or properly cooperated on a matter of significant importance for project success.
- 6.2 The Contractor shall notify the Procurer within an appropriate period of time when requested by the latter, and in no case later than the point of issuance of the declaration of acceptance, of any necessary tools* used or developed for editing and redesigning of the custom software*.
- 6.3 The Contractor shall notify the Procurer of any copying or usage restrictions* that could compromise proper contractual usage of the software*. This does not apply regarding software* provided by the Procurer.

7 Subcontractors

The Contractor may only utilize subcontractors for work performance elements which are materially significant for the work results from a qualitative or quantitative standpoint, or replace such deployed subcontractors, with the Procurer's express consent. The Procurer shall grant consent without delay as long as the procurement contract awarding decision would not have been different with the new subcontractor than with the prior one. The Contractor shall bear costs for training a replacement subcontractor. Permission shall be deemed granted for the subcontractors stated in the Contractor's offer.

8 Payment, fees

- 8.1 The fixed flat fee* is a non-adjustable amount that represents the total compensation payable for contractual performance as per item 1.1, except for any separate compensation which may be contractually agreed for specific performance elements, including potentially a separate flat fee. Materials costs, travel time compensation, travel costs and incidental expenses* are included in the fixed flat fee. No other/further amounts shall be billable by the Contractor unless the contracting parties agree to a change in the services renderable.
- 8.2 Except as otherwise agreed, time-based billing agreed in the Software Development Contract is based on time required to render these services. Material costs, travel time compensation, travel costs and incidental expenses* shall be payable/reimbursable as contractually agreed. Waiting periods affecting the Contractor for which the Procurer is responsible shall be compensated as work time. However, any cost savings realized by the Contractor by virtue of non-performance of work/services shall be deductible therefrom as well as any earnings from resulting redeployment of resources, and/or potential earnings missed through intentional non-redeployment. If a cap is agreed as maximum compensation billable on a time basis, the Contractor remains obligated to render performance in full regardless of whether the maximum has been reached. This shall not apply if the Contractor is not at fault for exceeding of the cap limit. The Contractor is obligated however in such case to render contractual performance in full for additional compensation billable on a time basis applying the contractual rates if the Procurer requests such.
- 8.3 Compensation for the work results shall be due for payment after overall acceptance of all elements unless partial acceptance procedures have been agreed in the payment schedule per point 8 of the Software Development Contract. The Contractor shall only be entitled to down payments and/or installment payments* as agreed within the Software Development Contract. The right to demand installment payments* if the conditions per § 632a of the German Civil Code (BGB) are met remains unaffected.
- 8.4 Compensation owed shall be due for payment 30 days after receipt of a verifiable invoice, except as otherwise agreed. For time-based billing, work timesheets signed by the Contractor and documentation of other claimed costs, optionally using Form 2 – Work Documentation for Software Development Contracts – are to be attached to the invoice. If time-based billing is agreed for software support per item 4, acceptance of the respective performance element in question may be additionally agreed as a condition for billed work being due for payment.
- 8.5 The per-day rate applies as the compensation maximum per person per calendar day, unless otherwise agreed. A contractual full-day rate may only be billed if a minimum of eight billable hours were worked. If less than 8 billable hours were worked, the hours worked are to be billed accordingly as a fraction of the full-day rate. If an hourly rate is agreed, compensation shall be payable pro rate for every hour commenced. Break times must be reported and are unpaid.

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A half-hour break will be presumed taken for any time period exceeding six hours in duration worked by the Contractor's staff. This shall not apply if the Contractor provides documentation indicating that breaks were not taken.

- 8.6 If price/rate adjustments have been agreed for software support services, the following shall apply unless other provisions have been agreed. An initial price/rate increase may only be implemented 12 months after acceptance of the contractual services as a whole, and subsequent increases may be implemented no earlier than 12 months after the effective date of the last price/rate increase. Any increase becomes effective three months after the date of announcement thereof. The increase must be appropriate and aligned with market rates, capped at 3 % of compensation payable at the time of announcement of the increase.
- 8.7 All stated prices do not include sales tax, which is charged extra at the applicable statutory rate.

9 Performance delays

- 9.1 The contract fulfillment deadline*, any partial acceptance deadlines agreed and individual milestones shall be documented in the timeline and performance schedule under point 8 of the Software Development Contract. Dates and deadlines stated therein shall be binding unless otherwise agreed. In case of delays for which the Contractor is not responsible, the affected work deadlines in the timeline and performance schedule are to be moved back appropriately. Claims accruing to the parties under statutory law are thereby unaffected.
- 9.2 The Contractor shall be in default of performance if the contract fulfillment deadline* or a partial acceptance deadline are not met. This shall not apply if the Contractor is not at fault for the delay. The Procurer may assert delay damages in case of delay. The Procurer may furthermore withdraw from the Custom Software Development Contract and claim damages in lieu of performance if the Contractor fails to meet an appropriate grace period then set by the Procurer. As an alternative to asserting damages, the Procurer may claim reimbursement of fruitless expenditures in accordance with § 284 of the German Civil Code (BGB). In the cases cited in the statutes § 281 para. 2 and § 323 para. 2 BGB, a grace period does not have to be given.
- 9.3 Furthermore, if the agreed contract fulfillment deadline is missed by more than seven calendar days, the Procurer is entitled to charge a contractual penalty at a rate of 0.2% of the contract value* for every calendar day of overrun of the contract fulfillment date*. Sentence 1 applies regarding missed partial performance deadlines as well. In such case the contractual penalty amount is calculated by applying the percentage to the portion of the contract value*. The total contractual penalty due pursuant to this clause is capped at 5% of contract value*.
- 9.4 Section 341 para. 3 of the German Civil Code (BGB) applies with the superseding provision that the penalty may be claimed up until the final payment is made. This shall not apply if the Procurer has not reserved the right at acceptance to claim contractual penalties despite being prompted by the Contractor to do so. Contractual penalty amounts are deductible from the amount of any damages claimed.

10 Cooperation by the Procurer

- 10.1 As part of the Procurer's performance obligations the Procurer must cooperate as outlined under point 12 of the Software Development Contract and provide resources as agreed under point 3 of the Software Development Contract. The Procurer shall provide necessary information and documents in the Procurer's possession to the Contractor. The Procurer shall promptly give the Contractor's staff access to the former's facilities and IT infrastructure maintained there as necessary for rendering of the performance elements, subject to the fulfillment of personnel-related contractual requirements (such as security clearance procedures per the Security Clearance Act - SÜG). If the Procurer fails to promptly and fully perform cooperative services despite being instructed by the Contractor to do so, the Contractor may prepare an offer to perform the cooperative services for and instead of the Procurer. Other claims accruing to the Contractor remain unaffected.
- 10.2 If the Contractor requests cooperation by the Procurer beyond the scope of the Procurer's obligations, the Procurer may accept such as a further cooperative obligation instead of requiring the Contractor to perform such and reduce the fees payable for the performance elements correspondingly. The Contractor is obligated however to check the Procurer's work and make corrections as necessary for integration into the former's performance elements*. Contractual and statutory claims accruing to the Procurer remain unaffected.
- 10.3 The Procurer must report any faults or defects, providing any known information of relevance for detection/identification of the issue in question. Unless other fault reporting procedures are agreed, the Procurer shall use Form 1 as standard procedure for fault reporting. Upon request by the Contractor, the Procurer shall implement reasonable, specific measures within the latter's control to enable the identification and analysis of the fault/defect, such as providing specific required technical information pertinent to the Procurers sphere which is obtainable with reasonable effort.
- 10.4 The Procurer is responsible for notifying the Contractor of any changes to the resources provided by the former which affect the contractual performance of the Contractor. If software support is agreed, it is the Procurer's responsibility to promptly notify the Contractor of any changes to the work results not implemented or initiated by the Contractor which affect contractual performance by the Contractor. This obligation shall apply irrespective of whether the Procurer is entitled to make such changes.
The Contractor shall notify the Procurer without delay of any known detrimental effects of such changes. Either contracting party may demand that the contract be amended accordingly to reflect the changes made.
- 10.5 If teleservice* has been contractually agreed, the Procurer shall provide the necessary technical facilities/equipment which the Procurer is to provide under the teleservice agreement and allow access.
- 10.6 Ensuring proper data backup is the responsibility of the Procurer except to the extent data backup is part of the services to be provided by the Contractor.

11 Acceptance

- 11.1 The Contractor is obligated to provide the work results for acceptance at the agreed appointment date and time. If a date for such is not stated in the Software Development Contract, acceptance shall be conducted promptly ahead of the contractual fulfillment date* to at a minimum afford the Procurer time for the contractual functional testing ahead of the contract fulfillment date*.
- 11.2 Except as otherwise agreed, the Procurer has the right to conduct functional testing on the work results within 30 days of provision for acceptance (functional testing period). Except as otherwise agreed, the functional testing period for partial performance results subject to acceptance shall be 14 days.
- 11.3 Functional testing shall be conducted within the contractual system environment*. Functional testing involves the testing of the work results or partial performance elements subject to acceptance in order to verify that these are free of any defects. The Contractor shall appropriately assist the Procurer with preparations for and conducting of functional testing.
- 11.4 The Procurer may stop functional testing if defects are identified which are classifiable as critical or major. If identified defects are classifiable no higher than major, the Procurer may only stop functional testing if continuing testing no longer appears practical in view of the defect/s in question. Upon conclusion of functional testing or stopping functional testing, the Procurer shall notify the Contractor of the defects thereby identified, stating the relevant defect classification per the contract terms.
- 11.5 If the Procurer stops functional testing as per item 11.4 sentence 1, the Procurer shall set an appropriate grace period for the Contractor to remedy the defects. When such have been remedied, the Contractor must provide the work results again for partial or overall acceptance. The Procurer has the right to require another round of functional testing. Except as otherwise agreed, the period of time for such shall be 14 days.
- 11.6 Item 11.5 shall also apply if functional testing is completed despite the identification of critical or major defects.
- 11.7 Upon conclusion of the functional testing period the Procurer shall declare acceptance of the work results if only minor system defects are identified which do not together constitute an major defect per item 3.2. The Contractor shall document these as defects in the declaration of acceptance and shall remedy these without delay under warranty for product and title defects as per items 12 and 13, unless a specific period for remedying such is agreed.
- 11.8 Partial acceptance shall only be conducted as expressly agreed. Except as otherwise agreed, partial acceptance procedures solely concern the partial performance element/s in question. Accordingly, such procedures do not concern system-wide functionalities or the interoperability of partial performance elements with other elements of the work results. System-wide functionalities and interoperability of partial performance results are however concerned in partial acceptance to the extent the usage of the partial performance results prior to overall acceptance has been agreed and such usage requires interoperability, in accordance with the contract. Overall acceptance occurs after the declaration of acceptance of the last partial performance element. In particular, overall acceptance involves the checking/verification of system-wide functionalities and of the interoperability of all elements of the work results. A declaration of overall acceptance is still required. Whether the Software Development Contract is fulfilled is determined exclusively on the basis of whether the work results as a whole is in acceptable condition as contractually agreed, in accordance with item 11.7.

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The Contractor remains responsible for providing relevant documentation. The provisions regulating acceptance of the work results apply accordingly.

- 11.9 If the Contractor is unable to hand over the contractual performance results in acceptable condition by the contract fulfillment date*, the Contractor is in performance delay of fulfillment of the Software Development Contract. Item 9 applies. The preceding sentences shall not apply if the Contractor is not at fault for the delay.
- 11.10 A formal acceptance procedure must be conducted. Acceptance shall be deemed given however if the Procurer fails to meet the obligation of accepting the work results within a specific period set by the Contractor.

12 Procurer's rights in case of defects to the work results (warranty)

- 12.1 The Contractor agrees to deliver the work results free of either product or title defects.
- 12.2 The right to assert defect claims shall be deemed reserved for unremedied defects known to both parties at the time of acceptance.
- 12.3 Except as otherwise agreed the expiration of claims period for product and title defects shall be 24 months, but for title defects to custom software* this period shall be 36 months – in either case starting on the date of acceptance. Upon the elapse of the first 12 months of the expiration of claims period, the Contractor may no longer withdraw from the contract within the Software Development Contract with respect to standard software* on any grounds. The right to withdrawal with respect to any other performance elements remains unaffected, even if the reason for withdrawal is a standard software* defect. Superseding sentences 1 and 2, the regular expiration of claims period shall apply in case of malicious concealment on the part of the Contractor. The claims expiration period shall not in such case elapse prior to the end of the periods per sentences 1 and 2.
- 12.4 The expiration of claims period for any performance elements subject to partial acceptance shall run for a period of two years starting on the respective partial acceptance date, and shall in no case elapse earlier than nine months after the date of overall acceptance. If overall acceptance is delayed for reasons for which the Procurer is responsible, the nine month period shall commence as of the date on which overall acceptance would have occurred without the delay. The expiration of claims period for any defects affecting accepted partial performance elements which affect the work results as a whole shall commence as of the partial acceptance date and elapse simultaneously with the claims expiration period for defects affecting the work results as a whole.
- 12.5 Warranty claims do not accrue for software* provided by the Procurer and software* which have been modified by the Procurer or a third party without the Contractor's approval. This shall not apply if the Procurer demonstrates that the modification did not cause the reported defect or that the defect resulted from previous unapproved intervention as per item 12.11. Warranty claims furthermore do not accrue for software* which the Procurer does not use within the contractual system environment* unless the Procurer demonstrates that such use did not cause the reported defect.
- 12.6 Liability for defects of title does not extend to claims for patent or utility model violations under German law asserted against the Procurer by third parties for the Procurer's usage of software* outside the EU and EFTA member states.

- 12.7 If the Procurer reports a defect prior to elapse of the claims expiration deadline and the parties enter into negotiations as per § 203 BGB, elapse of the claim expiration period is suspended until the Contractor or Procurer should refuse to continue such negotiations. Claims shall expire no earlier than three months after the date of ending of suspension.
- 12.8 The Procurer must accept a new software version* which serves to avoid or eliminate defects if the Contractor compensates the Procurer for any detriment resulting from the acceptance thereof, subject to the provisions per item 12.9. The Procurer is not obligated to accept a new software version* if doing so is unreasonable, because, for example, the new software version is significantly non-conforming with contractual specifications or in terms of its operation. The Contractor grants the Procurer license to new software versions* of an identical type and scope as for the delivered software*.
- 12.9 When the Procurer accepts a new software version*, the following shall apply:
- If the new software version* has greater functionality than the software version* stated in the Software Development Contract (upgrade), the Procurer is only obligated to pay additional compensation if the Procurer wishes to make use of the upgrade. This still applies if the Procurer makes use of the upgrade even though the Procurer could use the new software version* in contractually conforming fashion without utilizing the upgrade, but does not apply if the Procurer is only able to make use of previous functionalities in connection with the upgrade.
 - If usage of the new software version* results in increased cost, the cost difference shall be borne by the Contractor. This does not apply to increased cost resulting from the Procurer's intended usage of the upgrade/s. Sentence 2 of the first listed point under this item 12.9 applies accordingly.
- 12.10 The Contractor shall remedy a defect without delay upon notification thereof either by way of repair/follow-up performance or by delivery of a new item at his discretion, observing an appropriate period to do so set by the Procurer. If the defect concerned affects standard software*, the Contractor may provide a workaround solution* until licensing of a software version* in which the defect is eliminated as long as this solution is reasonable for the Procurer. The Contractor's obligation to remedy defects without delay remains unaffected. Item 13 supersedes in case of infringement of third-party rights. The Contractor bears costs necessary for follow-up performance, including particularly transport, transport-related, labor and materials costs. If subsequent performance is rendered by way of replacement delivery or development/delivery of new performance elements/results, the Contractor's claim to compensation for usufruct from the original item is disappplied.
- 12.11 If the Contractor does not successfully conclude efforts to remedy a defect within an appropriate deadline set, the Procurer may either
- set another appropriate grace period for the Contractor, announcing that the former will remedy the defect independently if the deadline is not met, If that deadline is not met, the Procurer is entitled to eliminate the defect independently and claim reimbursement of the expenditures necessary for such.
 - or set another appropriate grace period and if that deadline is not met either reduce payment accordingly or withdraw from the Software Development Contract, wholly or in part. Withdrawal from the contract on the basis of a non-significant defect is excluded, however.

- 12.12 The Procurer may additionally claim damages or reimbursement of expenditures if the conditions per § 634 no. 4 of the German Civil Code (BGB) are met, within the scope as per item 14.

13 Third-party intellectual property rights

If a third party asserts a claim for infringement of intellectual property rights against the Procurer due to infringement of intellectual property rights through usage of the work results, thereby compromising or prohibiting the usability thereof, the Contractor shall have liability as set forth below, irrespective of the rights accruing to the Procurer as per item 12:

- 13.1 The Contractor may choose as per item 12.10, at his own expense, to either alter or replace the performance elements so that intellectual property rights are no longer infringed but still essentially correspond to the contractual functionalities and performance characteristics in a manner reasonable for the Procurer's purposes, or to indemnify the Procurer for and from infringement claims by intellectual property rights holders.
- 13.2 If the Contractor is unable to render follow-up performance or can only do so on unreasonable terms, the Contractor shall be entitled to take repossession of the performance elements, refunding payment rendered for such. The Contractor must notify the Procurer appropriately in advance of any product discontinuation unless doing so is unreasonable from a legal standpoint or on other grounds. Other rights accruing to the Procurer, such as to contract withdrawal or to reduce payment or claim damages, remain unaffected.
- 13.3 The parties shall notify each other respectively without delay of any third-party claims asserted. The Procurer will not recognize any rights asserted for an alleged infringement, and will either leave all litigation and out-of-court settlement negotiations exclusively up to the Contractor or conduct such in coordination with the Contractor. The Contractor shall reimburse the Procurer for expenditures necessary to defend against claims and for other losses incurred if the Procurer conducts or has to conduct defense measures and/or settlement negotiations for legal reasons. In such case the Procurer is entitled to receive an advance in the amount of the estimated defense costs.
- 13.4 If the Procurer is at fault for the rights infringement, claims against the Contractor are excluded.

14 Limitation of liability

Unless liable under other contractual clauses, the following shall apply for all statutory and contractual claims for damages, indemnification and/or expense reimbursement accruing to the Procurer:

- 14.1 For slight negligence in breach of obligations, contractual liability shall be limited in all cases to the total contract value*. Superseding the above, the following shall apply:
- If the contract value* is less than €25,000.00, the liability limit is €50,000.00.
 - If the contract value* is more than €25,000.00 but less than €100,000.00, the liability limit shall be €100,000.00.
- 14.2 For slight negligence in breach of obligations in providing software support, liability is limited to the total amount of fees payable for software support. Liability is further capped at four times the amount of the fees payable for the first year of the software support agreement.
- Any agreed reduction for warranty claims shall not be factored into the above calculation of fee amounts.

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- 14.3 The Contractor has liability for data losses only in the amount of expense that would have been necessary to restore the data if the Procurer had regularly and properly backed up the data. This limitation shall not apply if and to the extent data backup is part of the services to be provided by the Contractor.
- 14.4 The liability limitations do not apply to claims in cases of malice, intent, gross negligence, loss of life or bodily injury/harm, to cases falling within the scope of the Product Liability Act or warranty cases unless provided otherwise under a warranty agreement.
- 14.5 Claims for lost profits are excluded, except as otherwise agreed under point 15 of the Software Development Contract.

15 Contractual term and termination

- 15.1 The software support agreement term commences upon acceptance of the work results, except as otherwise agreed.
- 15.2 If the Software Development Contract has no contractual expiration date, the software support agreement may be terminated with three months' notice effective at the later of calendar month-end or the end of any minimum contract term agreed per the Software Development Contract. A different termination notice period may be agreed in the Software Development Contract. Termination per items 15.3 or 15.4 shall apply likewise to the software support agreement.
- 15.3 The Procurer has the right to terminate the Software Development Contract in line with § 649 BGB. Except as otherwise agreed, the Contractor's rights shall be as per statutory law in case of termination per the above, but the Contractor is obligated to present transparent accounting outlining the fee amount the Contractor claims factoring in expenditures saved by virtue of termination. The Contractor is furthermore obligated to state which performance elements the Contractor deems completed and started respectively and which the Contractor has already purchased from third parties.

For appropriate compensation the Contractor shall appropriately assist the Procurer when requested to allow the Procurer or a third party to complete the work performance elements agreed under the Software Development Contract, to the extent doing so is reasonable for the Contractor. Providing such assistance shall be deemed a service under a termination-compensating contract ("Füllauftrag") within the meaning of § 649 BGB, to the extent such is reasonable for the Contractor.

- 15.4 The contracting parties may only terminate the Software Development Contract for cause, without observing a notice period, within an appropriate period of time after becoming aware of grounds for termination being in evidence. Cause shall be in evidence when circumstances are in place due to which continuation of the agreement is no longer reasonable for the terminating party in view of the overall situation in the given case at hand and of the interests of the contracting parties. If cause is in evidence due to breach of a contractual obligation, termination shall only be permissible if compliance has not been restored by the elapse of a statutory grace period or period set by warning letter, unless a grace period is not required pursuant to § 323 paragraph 2 of the German Civil Code (BGB).
- 15.4.1 If the Contractor was at fault for the termination, accounts shall be settled for the performance elements actually completed and/or started to the extent the Procurer has use for such. The Contractor shall deliver/render these performance elements if outstanding, transferring to the Procurer the contractual licenses thereto. The agreed prices/rates shall apply for billing on a pro rata basis. Unusable performance elements shall be returned to the Contractor at the Contractor's expense.

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Any other statutory rights and claims remain unaffected.

- 15.4.2 In the case per item 15.4.1, the Contractor shall appropriately assist the Procurer when requested to allow the Procurer or a third party to complete the work performance elements agreed under the Software Development Contract, to the extent doing so is reasonable for the Contractor.

16 Changes to performance elements after contract conclusion

- 16.1 At any time after contract conclusion the Procurer may request that the Contractor implement changes to the work performance elements if and as reasonable for the Contractor and within the Contractor's capability. Except as otherwise agreed, the change procedure is to be documented using a form as per Model Document 3 - Change Procedure for Software Development Contract.
- 16.2 The Contractor shall review changes proposed by the Procurer and notify the Procurer within a period of time which is appropriate, particularly in view of the nature and scope of requested changes, of whether such are reasonable and of the reasons why if not reasonable.
- 16.3 If a reasonable change request will not impact contractual fees/compensation due or contractual deadlines, the Contractor shall commence implementing the requested changes without delay, notifying the Procurer thereof accordingly.
- 16.4 If a reasonable change request will impact contractual fees/compensation due or contractual deadlines, the Contractor shall prepare a change implementation offer specifying dates and the impact on contractual fees/compensation. The Procurer must either accept or reject the Contractor's change implementation offer within an appropriate period of time.
- 16.5 If substantial technical planning is required to prepare a change implementation offer, the Contractor may require an appropriate fee for doing so. In such case the Contractor shall prepare a corresponding offer for planning services, stating the fee. The Procurer must either accept or reject the Contractor's planning services offer within an appropriate period of time.
- 16.6 If agreement is reached regarding a change to performance elements, the Software Development Contract is to be amended accordingly, including particularly the performance description. If agreement is not reached, work shall continue on the basis of the governing Software Development Contract in place. If a change request is reasonable for the Contractor but agreement is not reached because the parties are unable to agree on the adjustment of fees/compensation, the Procurer may demand that the change be implemented regardless. The fees/compensation payable shall be adjusted appropriately in such case. If agreement is not reached because the contracting parties are unable to agree on the adjusting of the timeline and performance schedule due to the additional work, the Procurer may demand that the change be implemented regardless. In such case the affected completion dates per the timeline and performance schedule shall be moved back appropriately.

17 Source code handover and escrowing

- 17.1 Except as otherwise agreed, the Contractor must hand over to the Procurer the latest updated version of the source code* of the respective custom software* and any modifications to standard software* on the source code level as per item 2.2.1 upon acceptance of the work results, and after acceptance upon delivery of every new software version* of custom software* or of the standard software* in question.

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This shall not apply if the Contractor declares per item 2.2.1 that the modifications will be integrated as standard and implements this in accordance with contract. The source code* includes appropriate code comments and a description of the required system parameters and other necessary information enabling the Procurer's specialist staff to edit the source code* as independent further development of the custom software* and to customize standard software* on the source code level. Source code is to be handed over in electronic form on a data carrier in a documented process. The Procurer shall receive a license to all versions of the source code* and to the documentation at the time of their respective production as per item 2.1.2.1. The Procurer shall handle the source code* as confidential internal information and only permit accessing by third parties within the limits of proper usage, binding such third parties accordingly to uphold confidentiality.

- 17.2 If escrowing of the source code* to specific software* is agreed, this shall be done with the escrow agent agreed in accordance with the escrowing clauses of the Software Development Contract. The escrowing requirement applies to the last changed version of the source code* for a software version licensed by the Contractor under the Software Development Contract, including patches/bugfixes. The Procurer's rights to all versions of the source code* to custom software* are as per item 2.1.2.1. The Procurer has the right regarding all versions of the source code* of standard software to be escrowed, contingent upon handover, to utilize these for purposes of bug fixing/troubleshooting and maintaining usability, to edit such and to produce new executable software versions* out of such, to which the Procurer is in turn entitled to the same rights as to the originally licensed version of the standard software*. Rights per the above to the source code* of custom software* are granted upon the creation of the respective software program; rights to the source code* of standard software* are granted upon licensing of an executable software version*.
- 17.3 If the provision of new software versions* is agreed for the escrowed standard software* under point 5.1.2 of the contract within the Software Development Contract, the escrowing obligation pertains to the source code* of the respective software versions licensed*.
- 17.4 The Procurer shall bear escrowing costs.

18 Liability insurance

- 18.1 If and as agreed, upon conclusion of the Software Development Contract the Contractor shall provide documentation to the Procurer of holding industrial liability insurance that is market-typical in terms of limits and scope, or a comparable insurance policy issued in an EU member state.
- 18.2 The Contractor shall maintain such insurance coverage until the latter of ending of the Software Development Contract or expiration of warranty claims. If the Contractor fails to meet this obligation, the Procurer shall be entitled, given continuing non-compliance after elapse of an appropriate grace period, to withdraw from the Software Development Contract if continuing the Contract is no longer reasonable. Further claims accruing to the Procurer, including damage claims in particular, shall remain thereby unaffected. Upon overall acceptance, right of withdrawal is replaced by the right to terminate the software support agreement.

19 Data protection, confidentiality, security

- 19.1 The Procurer shall inform the Contractor of all relevant matters, beyond the scope of the statutory provisions, which the Contractor needs to know for data protection or confidentiality reasons.
- 19.2 Except as otherwise provided, prior to handing over any data carrier to the Contractor the Procurer shall ensure that sensitive content thereupon is deleted.
- 19.3 The Contractor shall ensure that all individuals the Contractor deploys for processing or fulfillment of the Software Development Contract act in compliance with applicable data protection laws. The signed agreements to uphold data privacy required under data protection law must be obtained no later than the point of initial commencement of work, and written confirmation thereof must be provided to the Procurer upon request.
- 19.4 The Procurer may terminate the Software Development Contract wholly or in part if the Contractor culpably fails to fulfill the obligations per item 19.3 with reference to the matters per item 19.1 within an appropriate grace period to be set, or violates data protection regulations with intent or gross negligence. If non-fulfillment of obligations per the above exclusively concerns software support, right of withdrawal is replaced by the right to terminate the software support agreement.
- 19.5 The Procurer and Contractor are obligated to uphold confidentiality regarding all confidential information and business and operational secrets which they receive in connection with the contractual relationship, and shall not in particular disclose such to third parties or utilize such for any purposes other than the contractual purposes. This shall also apply to the sharing of information on past experiences between and among public-sector organizations.
- 19.6 Confidential information is information which a reasonable third party would deem worthy of protecting or is designated as confidential. This may include information which became known during a verbal presentation or discussion. Confidential information is exclusively to be used to fulfill obligations under the Software Development Contract. Confidentiality obligations do not apply to information previously and legally known to the parties or which becomes known outside the Software Development Contract without breach of a confidentiality obligation.

20 Rights of retention

The Contractor shall have no rights of retention nor rights to refuse performance unless the underlying counterclaims are undisputed by the Procurer or have been upheld by legal judgment.

21 Arbitration

The contracting parties may agree that any unresolvable disputes arising in the course of or in connection with contract fulfillment shall be brought before an arbitration tribunal with the aim of achieving a full or partial and temporary or permanent resolution in accordance with the panel's rules of arbitration. The parties to the Software Development Contract can only validly agree to arbitration if the arbitration tribunal in question is specifically named and is actually active in arbitrating such disputes. To allow arbitration the contracting parties mutually waive the right to invoke expiration of claims regarding any claims connected with the matter in dispute during a period running from the date of arbitration filing until one month after ending of the arbitration proceedings.

The expiration of claims period shall be suspended during this period of waiver.

22 Text form

Except as otherwise provided, communications and declarations relating to the contract must be made in text form, at a minimum. For complaints, entry in a ticket system suffices.

23 Choice of law

The law of the Federal Republic of Germany shall govern; the UN Convention on Contracts for the International Sale of Goods (CISG*) is disapplied.

Terms and definitions

Installment payment	Partial payment toward the total fee/compensation prior to the due date thereof. Entitlement to render payment in installments may be agreed in the Software Development Contract.
Offer price	Price referenced to determine the most economical offer for individual contract performance elements such as work results, software support and further development.
Contract value	The completion price* plus all contractually agreed fee/compensation increases or decreases which are implemented at any point until acceptance, pursuant to change requests in particular.
CISG	United Nations Convention on Contracts for the International Sale of Goods
Customizing	The modification of standard software* to meet specific requirements of the Procurer without altering the source code.
Completion price	The offer price* for completion of the work results.
Total offer price	Price referenced to determine the most economical offer representing the sum of all offer prices* which are agreed or are payable on a call-off order basis.
Custom software	Software programs, program modules, tools etc. plus related documentation created by the Contractor to meet the requirements of the Procurer in fulfillment of contract. This includes modifications to standard or custom software* on the source code level. This does not however include customizing* or modifications to standard software* adopted as standard in accordance with item 2.2.1.
Installation	All activities required to install the software* in the agreed system environment* and render the software* executable as agreed, including all necessary testing and checks.
Copying and usage restrictions	Measures limiting the ability to copy and/or use software*.
Incidental expenses	Expenditures by the Contractor which are necessary for performance

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and are neither travel nor materials costs.

Object code	The intermediate output of a source code* compiler or translation procedure executed by a software program.
Patch	Temporary measure to fix a defect or fault in the standard software* that does not involve altering the source code*.
Fixed flat fee	Fee comprised of the completion price*, the offer price* for software support, the offer price* for the further development and customization of the contractual performance elements and the offer price* for other products/services agreed as included in the fixed price.
Software version	Term used herein to refer to separate releases/versions* of software as well as related patches*, updates* and upgrades*.
Source code	Coding of a software program in the respective programming language.
Response time	Period within which the Contractor must commence work to remedy a defect. This period starts upon receipt of a fault or defect notification during the contractual service hours and runs during the contractual service hours.
Release/version	A new developmental stage of a software* program which exhibits significant differences vis-a-vis the previous release or version in terms of functionalities or data data spectrum (e.g. from 4.5.7 to → 5.0.0).
Malware	Software* which has undesired functionalities not agreed with the Procurer and is designed at a minimum to jeopardize or compromise the availability of data, resources, services or the confidentiality or integrity of data, such as viruses, worms and Trojan horses.
Software	Computer programs in general, which may be standard software* or custom software*.
Standard software	Software programs, program modules, tools etc. (including the associated documentation) which are developed to meet the needs of many different customers in the marketplace rather than being specifically developed for the Procurer by the Contractor.
System environment	A system and the technical surroundings and organizational and space it is embedded in within which the executable work results are provided.
Teleservice	Service provided via technical telecommunications equipment from a location

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outside the place of utilization of the contractual performance elements.

Workaround solution	A temporary solution for working around a software* defect or fault.
Update	Multiple bug fixes of defects and/or faults bundled within a single release, potentially including minor functional optimizations and/or software* modifications (e.g. from 4.1.3 → to 4.1.4).
Upgrade	Multiple bug fixes of defects and/or faults bundled within a single release, potentially including non-minor functional optimizations and/or software* modifications (e.g. from 4.1.3 → to 4.2.0).
Version/Release	See Release/Version.
Contract fulfillment date	Date by which the Contractor must have completed all steps enabling the Procurer to declare acceptance. This includes in particular the Contractor providing the work results in a contractually conforming state free of significant defects already upon provision for acceptance to allow the Procurer to conduct functional testing during the period up until the contract fulfillment date.
Pre-existing elements	<p>All elements</p> <ul style="list-style-type: none"> • of the custom software* and • modifications to standard software* made on the source code level which are not however adopted as standard as per item 2.2.1 <p>which the Contractor or a third party has developed independent of this contract.</p>
Tool	An aid useful for software* development, editing and support.
Restoration time	Period of time within which the Contractor must successfully conclude work to resolve a fault or remedy a defect. This period starts upon receipt of a fault or defect notification and runs exclusively during the contractual service hours.

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