Supplemental Terms & Conditions for the Procurement of Turnkey IT Systems
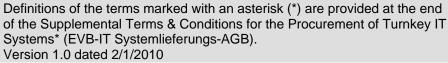## – EVB-IT Systemlieferungs-AGB –

Contents

Definitions of the terms marked with an asterisk (*) are provided at the end
of the Supplemental Terms & Conditions for the Procurement of Turnkey IT
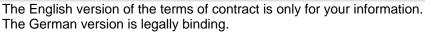Systems* (EVB-IT Systemlieferungs-AGB).
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1 Purpose of Turnkey IT Systems Procurement Contracts

1.1 Turnkey IT Systems Procurement Contracts are concluded within the framework of these Terms & Conditions for the purpose of regulating the supplying/delivery* of a Turnkey IT system, potentially including training and system servicing. Specifics regarding the system to be supplied are outlined under the performance elements required of the Contractor as per items 2.1 and 4 of the Supplemental Terms & Conditions for the Procurement of Turnkey IT Systems. The performance elements required of the Contractor in supplying* the system may include the following in particular:

- Sales of hardware
- Permanent licensing of standard software* for a one-time fee (sale)
- Rendering the system operationally ready*
- Providing documentation

These performance elements represent a single commercial, contractual element for purposes of the transaction. Resources to be provided by the Procurer* do not constitute part of the system, irrespective of the obligation to install/incorporate them into the system.

1.2 The cooperation obligations of the Procurer are as outlined under point 13 of the Turnkey IT System Procurement Contract and item 10.

1.3 It is of essential contractual importance to the Procurer that the Contractor ensures that contractual overall functionality is given as per the Turnkey IT System Procurement Contract.

2 Nature and scope of services

Except as otherwise agreed, the following shall apply regarding the respective individual performance elements:

2.1 Sales of hardware

If sales of hardware are agreed, the Contractor sells the hardware to the Procurer on the terms outlined in the contract, transferring ownership thereof to the Procurer upon delivery* of the respective hardware products. Except as otherwise agreed under points 12.4 and 12.5 of the Turnkey IT System Procurement Contract, the Contractor shall be responsible for the disposal of packaging and for disposal of the delivered hardware when no longer used.

2.2 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 Turnkey IT System Procurement Contract. Barring other intended usages agreed in the Turnkey IT System Procurement Contract, the Contractor grants the Procurer at the time of the respective delivery*

- a non-exclusive license that is
- transferable, applying the limitations per item 2.2.1
- non-expiring, irrevocable and non-terminable
- geographically unlimited
- and usable in any hardware or software environment

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. The right to use the standard software* in any hardware or software environment whatsoever does not affect the limitation of defect claims per item 13.5.

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2.2.1   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. The Procurer is entitled however to retain a copy exclusively for verification purposes.

2.2.2   The Procurer is entitled to make a copy of the standard software* for backup purposes. The copying of the software* for its intended contractual use or for distribution of the standard software* for the purpose of proper data backup constitute intended contractual usages.

2.2.3   If licenses applicable to a hardware and/or software environment defined in the Turnkey IT System Procurement Contract contain limitations, any usage deviating therefrom requires the Contractor's approval. If a hardware and/or software environment defined in the Turnkey IT System Procurement Contract is non-functioning, until functioning is restored, its usage in a different environment is allowed even without the Contractor's approval.

2.2.4   The Contractor agrees not to convert the standard software* into different code or change the code unless doing so is permitted by law.

2.2.5   The standard software* delivered under the Turnkey IT System Procurement 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*. 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.

2.3   **Rendering the system operationally ready***
The Contractor is obligated to render the system operationally ready* in accordance with the contractual terms, which includes in particular providing, installing, customizing and integrating* both the individual system components* contractually deliverable and the resources provided by the Procurer*. These are to be performed in accordance with the respective performance description, and as otherwise necessary to ensure operational readiness* of the system and to integrate resources provided by the Procurer*. When this work has been successfully concluded, the Contractor shall conduct a demonstration indicating that the system is operationally ready* in accordance with item 11.

2.3.1   **Scope of rights accruing in rendering the system operationally ready***
Barring other proper usages defined in the Turnkey IT System Procurement Contract, in performing the work above for the Procurer the Contractor grants the Procurer rights to the corresponding work results upon the respective delivery* thereof which are

- non-exclusive
- geographically unlimited
- usable in any hardware or software environment
- transferable
- non-expiring, irrevocable and non perminable

permitting usage of the work results

- in their original form or in modified, translated, edited or redesigned form
- 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 such in physical or intangible form
- to allow third parties to use such for non-commercial purposes

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- to operate such for the Procurer
- to use such, both for internal purposes and in order to provide services to third parties.

If work is performed on standard software*, the Contractor grants the Procurer a license to use the work results not exceeding the scope of the Procurer license to use the standard software*

2.4 **Training**

2.4.1 If training services have been agreed, the Contractor shall conduct such under his own responsibility and in particular in accordance with the provisions per item 5 of the Turnkey IT System Procurement 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.

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

2.4.3 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 2.3.1, except as otherwise agreed.

3 **Defect classification**

3.1 Except as otherwise agreed under the Turnkey IT System Procurement Contract, the following three defect classifications shall be recognized:

3.1.1 A critical defect (operation-preventing defect) is in evidence when usage of the system is not possible or only possible with major limitations.

3.1.2 A major defect (operation-impeding defect) is in evidence when usability of the system is substantially limited.

3.1.3 A minor defect is in evidence when usage of the system 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 the system.

4 **System servicing**

If system servicing has been agreed, the Contractor shall perform such work in accordance with the Turnkey IT System Procurement Contract and with the provisions following.

4.1 **Restoration of operational readiness *(troubleshooting, fault resolution)**

Except as otherwise agreed, restoration of operational readiness* includes all measures required for the Contractor to resolve faults. This includes, for example, hardware servicing and providing software support to fix bugs in the standard software*. The latter includes for example the licensing of a necessary version* of the standard software* in which the fault is eliminated. If fault resolution is an agreed service for the standard software*, the Contractor is obligated for the term of the contract to

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provide an available version of the software in which an identified 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. Such a workaround solution does not have to involve programming. If such a workaround solution cannot be reasonably implemented, the Contractor must pressure the maker of the standard software* to release a software update/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*.

The obligation to license released software updates* includes an obligation to grant rights of use of the same type and scope as exist for the standard software* for which software support is to be performed.

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

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

When the Procurer accepts a new system component*, the following shall apply:

- If the new system component* has greater functionality than the system component listed in the Turnkey IT System Procurement 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 system component* 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 system component* is already required for performance pursuant to item 4.3.

- If usage of the new system component* 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, work to restore operational readiness* shall commence without delay upon receipt of a fault notification within service hours.

If restoration times* have not been agreed, work to restore operational readiness* 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.

The Procurer may claim damages to compensate for losses incurred due to delays. The Procurer may furthermore terminate the system servicing agreement per item 7 of the Turnkey IT System Procurement Contract and/or claim damages in lieu of performance if the Contractor fails to meet an

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appropriate grace period for performance set by the Procurer. If a previous fault reoccurs stemming from the same cause not long after operational readiness* has been declared restored, the fault is deemed unresolved. If the Contractor demonstrates that the Procurer culpably caused a fault, the Contractor may demand an appropriate fee from the Procurer to resolve that fault.

4.2 **Maintaining operational readiness* (preventive measures)**
Except as otherwise agreed, maintaining operational readiness* shall mean all measures implemented by the Contractor in/on the system or system components* for the purpose of avoiding future faults. This includes for example regularly replacing wearing parts and components promptly in advance of the end of their useful life. This also includes the providing of bugfixes/patch update versions of the standard software* to the extent these are available to the Contractor without payment of license fees being required for usage by the Procurer and are required to maintain operational readiness*.

4.3 **Licensing of available update versions* of the standard software***
If the Contractor is obligated to license new software versions* released, the Contractor must install*, customize* and integrate* these into the system as necessary to maintain operational readiness, except as otherwise agreed. These services are to be performed in accordance with the respective service description, and as otherwise necessary to ensure operational readiness*. 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* for which support services are to be provided.

4.4 **Declaration of acceptance of system servicing support work**
Upon completing system servicing work on the system the Contractor declares that the fault resolution or other work has been successfully completed. If operational readiness* has not been ensured despite issuance of such declaration, the system servicing work shall only be deemed successfully completed if and when the Contractor demonstrates that lacking operational readiness is not due to the servicing work performed or the underlying fault, as applicable. When a fault is successfully resolved, the point in time of the declaration of fault resolution applies for determining adherence with the contractual restoration time*. On a case by case basis it may be agreed that system servicing work is subject to an acceptance procedure.

4.5 **Liability for deficient system servicing**
Item 13 shall apply mutatis mutandis in case of deficient system servicing work. The right of withdrawal is replaced by the right to terminate the system servicing agreement with respect to the servicing work in question unless continuing the system maintenance agreement is no longer reasonable for the Procurer on the whole.

In such case the Procurer shall be entitled to terminate the system servicing agreement as a whole.

4.6 **Documentation for system servicing work**
The Contractor shall appropriately document the system servicing work performed, except as otherwise agreed.
The Contractor shall implement revisions and changes to the documentation which are necessary pursuant to system servicing work performed per item 4, except as otherwise agreed. If the Contractor is not legally empowered to implement such, the Contractor shall provide a corresponding supplement to the documentation.

4.7 **Agreement term and termination**
Except as otherwise agreed, the system servicing period shall commence upon system delivery*.

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4.7.1   If no end date for the respective system servicing agreements/clauses has been agreed in the Turnkey IT System Procurement Contract, the agreements/clauses may be terminated with three months' notice effective at the later of calendar month-end or the end of any minimum agreement term per the Turnkey IT System Procurement Contract. A different termination notice period may be agreed in the Turnkey IT System Procurement Contract.

4.7.2   The contracting parties may only respectively terminate the system servicing agreements/clauses Turnkey IT System Procurement 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).

5   Documentation

5.1   The Contractor is obligated to deliver documentation along with the system as provided for under item 6 of the Turnkey IT System Procurement Contract.

5.1.1   The documentation for system components* must enable the Procurer's users and administrative staff to properly operate the respective system component* after completion of the contractual training, contingent upon the staff in question having adequate prior knowledge and training.

5.1.2   The Contractor is furthermore obligated to document work performed to ensure operational readiness* as per item 2.3 in such transparency as to enable specialized technicians to understand how system components* are integrated together and with resources provided by the Procurer.

5.2   Except as otherwise agreed, the respective German-language documentation must be handed over in printed or printable form, conferring ownership thereof, simultaneous with or before the demonstration of operational readiness* per item 11. Usage of commonly used industry terminology in English is allowed.

5.3   The Contractor shall document measures performed in connection with defect liability as per item 13, except as otherwise agreed.

5.4   The Contractor shall implement any revisions and changes to the documentation which become necessary in connection with warranty for defects as per item 13, except as otherwise agreed. If the Contractor is not legally empowered to implement such, the Contractor shall provide a corresponding supplement to the documentation.

5.5   The Contractor grants the Procurer rights to the documentation produced in accordance with item 2.3.1 of the IT System Procurement Contract, except as otherwise agreed. The Contractor grants the Procurer the rights to all other documentation as per item 2.2, except as otherwise agreed. If the documentation concerned is for standard software*, the Contractor only grants the Procurer rights to the documentation within the scope of the Procurer's license to use the standard software*

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6   **The Contractor's notification obligations**

6.1   The Contractor is obligated to notify the Procurer without delay if the Procurer's specifications are materially

- deficient, incomplete, contradictory or
- unperformable as outlined or agreed

or if resources provided by the Procurer* or the system environment* are unsuited for rendering the system operationally ready.* Regarding resources provided by the Procurer* and the system environment*, the Contract shall not have liability for non-fulfillment of this obligation in cases of slight negligence. The Contractor shall at the same time notify the Procurer of any apparent consequences of such, to the extent possible with reasonable effort, and await a decision before proceeding. The Procurer shall provide notification of such decision without delay. The Contractor is only obligated to check and review specifications, resources provided by the Procurer* or the system environment* other than as necessary to ensure operational readiness* of the system.

6.2   The Contractor must notify the Procurer without delay in writing if the Contractor finds that data backup as conducted by the Procurer does not meet standards for proper data backup, outlining the evident consequences thereof.

6.3   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 proper contractual fulfillment.

6.4   The Contractor shall notify the Procurer without delay if it becomes apparent in the course of contract fulfillment that deadlines per the timeline and performance schedule may not be met.

6.5   The Contractor shall notify the Procurer of any copying or usage restrictions* that could compromise proper contractual usage of the system.

7   **Staff of the Contractor and subcontractors**

7.1   In rendering the system operationally ready* the Contractor shall utilize staff who are qualified in accordance with applicable contractual provisions. The language of communication with the Procurer shall be German unless otherwise agreed.

7.2   The Contractor may only utilize subcontractors for performance elements of material significance which the Contractor has agreed to perform directly with the Procurer's approval. If the utilization of subcontractors has been agreed, approval is required to change subcontractors, without exception. The Procurer shall not refuse approval without objective reasons to do so, but does not have to communicate such reasons. The Contractor shall bear costs for training a replacement subcontractor.

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 for specific performance elements which may be contractually agreed, including potentially separate flat fees. Travel time compensation, travel costs, incidental expenses* and materials costs 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.

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8.2   Except as otherwise agreed, time-based billing agreed in the Turnkey IT System Procurement 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   Such compensation shall be due upon system delivery*, except as otherwise agreed under the payment schedule per item 10 of the Turnkey IT System Procurement Contract. Payment for system servicing billable on a time basis shall be due monthly in arrears unless otherwise agreed. Sentence 2 of item 8.4 remains thereby unaffected. If time-based billing is agreed for system servicing per the last sentence under item 4.4 and an acceptance procedure is also agreed, payment being due shall also be contingent upon acceptance.

8.4   Compensation owed shall be due for payment 30 days after receipt of a verifiable invoice, except as otherwise agreed. Time-based billing requires presentation of a work timesheets and documentation of any materials costs signed by the Contractor, potentially using Form 2—Work Documentation for Turnkey IT System Procurement Contracts.

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 eight 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. 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 system servicing as per item 4, the following shall apply unless other provisions have been agreed. An initial price/rate increase may only be implemented 12 months after system delivery*, 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 for system servicing 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 dates for system delivery* as well as for any agreed partial deliveries are stated in the timeline and performance schedule per item 9 of the Turnkey IT Systems Procurement Contract. Dates and deadlines stated therein shall be binding unless otherwise agreed. In case of delays for which the

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Contractor is not responsible, the affected delivery deadlines are to be moved back accordingly. Other claims accruing to the parties are thereby unaffected.

9.2 The Contractor shall be in default of performance if a deadline for system delivery* or partial delivery* is 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 Turnkey IT System Procurement 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 system delivery* 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 delay of performance on the part of the Contractor. Sentence 1 applies regarding missed partial delivery* deadlines as well. In such case, the contractual penalty amount is calculated by applying the percentage to the portion of the total contract value constituted by the partial delivery*. The total contractual penalty due pursuant to this clause is capped at 5% of contract value*.

9.4 The respective contractual penalty amount may be asserted up until payment in full is rendered for the respective partial delivery* or for system delivery*. This shall not apply if the Procurer has not reserved the right to claim contractual penalties for the respective delivery* despite demand 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 item 13 of the Turnkey IT System Procurement Contract and provide the resources and system environment* as agreed under item 3 of the Turnkey IT System Procurement 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, 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 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.

10.3 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 to the system.

10.4   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.

10.5   If system maintenance is agreed, it is the Procurer's responsibility to promptly notify the Contractor of any changes to the system components* implemented which affect contractual performance by the Contractor. This obligation shall apply irrespective of whether the Procurer is entitled to make such changes. The Procurer is furthermore responsible for notifying the Contractor of any changes to the system environment* or provided resources* made by the Procurer* which affect contractual performance by the Contractor. 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.

10.6   If the replacement of system components* or elements thereof is involved, the Procurer shall remove data carriers from these unless otherwise agreed.

11   System delivery*

11.1   System delivery* consists of the delivery of all contractual system components*, rendering the system operationally ready, demonstrating operational readiness and any other performance elements agreed as part of system delivery*. Demonstration includes demonstrating how the system runs/operates and how any other functionalities expressly agreed in the Turnkey IT Systems Procurement Contract work. System delivery* per item 11.4 is deemed not to have occurred if the Procurer rejects the delivered system for justified reasons.

11.2   Except as otherwise agreed, the Procurer shall provide required testing data, and the demonstration of operational readiness* of the system shall take place at the Procurer's facilities during the Procurer's business hours. Scheduling of the demonstration is to be coordinated with the Procurer.

11.3   Partial deliveries* shall only be made as agreed. Items 11.1 and 11.2 shall apply accordingly. The demonstration of operational readiness* of the final partial delivery* must include a demonstration of interoperability with all previous partial deliveries where such interoperability is necessary for operational readiness* of the system.

11.4   The Procurer may reject a delivery* if a critical defect per item 3.1.1 or a major defect per 3.1.2 are identified prior to completion of the respective delivery*. Right to reject a delivery also accrues if the Contractor fails to fulfill his obligation to properly demonstrate operational readiness* of the system.

11.5   The signing of a delivery note merely confirms that system components* were physically delivered to a place within the Procurer's sphere of control, not that delivery was complete or that the partial system elements or full system delivered were free of defects.

12   Place of fulfillment, passing of risk, shipping

12.1   The place of fulfillment shall be that of the Procurer's location, except as otherwise agreed.

12.2   Risk of accidental destruction/loss/damage/deterioration passes upon system delivery*, or partially for a partial delivery*.

12.3   Except as otherwise agreed, the Contractor shall bear shipping and packaging costs.

13   Procurer's rights in case of system defects (warranty)

13.1   The Contractor agrees to deliver the system free of either product or title defects. The system evidences a product defect if the system has not been rendered operationally ready* in accordance with the contract.

13.2 Claims for product and title defects expire 24 months after system delivery*, except as otherwise agreed. Upon the elapse of the first 12 months of the expiration of claims period, the Contractor may no longer withdraw from the Turnkey IT System Procurement Contract with respect to the 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. The statutory claim expiration period shall apply to claims for any material or defects which the Contractor has maliciously concealed. The claims expiration period shall not in such case elapse prior to the end of the periods per sentences 1 and 2.

13.3 The expiration of claims period for any defects affecting partial deliveries* starts on the date of partial delivery* and only ends upon elapse of the expiration of claims period for the system, though in no case later than three years from the date of the respective partial delivery*.

13.4 Warranty claims do not accrue for system components* which the Procurer or a third party have modified/altered without the Contractor's approval. This shall not apply if the Procurer demonstrates that such modification/alteration did not cause the reported defect.

13.5 Warranty claims furthermore do not accrue for standard software* used by the Procurer outside the system environment unless the Procurer demonstrates that such usage does not cause the reported defect.

13.6 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.

13.7 The Procurer must accept a new system component* 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 13.8. The Procurer is not obligated to accept a new system component* if doing so is unreasonable, because, for example, the new system component* 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 standard software*.

13.8 When the Procurer accepts a new system component*, the following shall apply:

- If the new system component* has greater functionality than the system component listed in the Turnkey IT System Procurement 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 system component* 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 system component* 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 13.8 applies accordingly.

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13.9   The Contractor shall remedy a defect without delay upon becoming aware thereof either by way of repair/follow-up performance or by delivery of a new item at the discretion of the Contractor, 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 14 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, the Contractor's claim to compensation for usufruct from the original item is disapplied.

13.10 If the Contractor does not successfully finish work to remedy the defect within a grace period set, the Procurer may either set a second grace period for the Contractor after the fruitless elapse of which the Procurer may reduce payment appropriately or withdraw from the Turnkey IT System Procurement Contract, wholly or in part. Withdrawal from the contract on the basis of a non-significant defect is excluded, however.

13.11 The Procurer may additionally claim damages or reimbursement of expenditures if the conditions per § 437 no. 3 of the German Civil Code (BGB) are met.

14   Third-party intellectual property rights*

14.1   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 delivered system components, 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 13:

- The Contractor may choose as per item 13.9, 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.
- 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 grant the Procurer an appropriate run-out period, unless such is unreasonable from a legal standpoint or on other grounds.

Other rights accruing to the Procurer, such as to contract withdrawal, reduce payment and claim damages, remain unaffected.

14.2   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.

14.3   If the Procurer is at fault for the rights infringement, claims against the Contractor are excluded.

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15 **Limitation of liability**

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

15.1 For slight negligence in breach of obligations, contractual liability shall be limited in all cases to the total contract value*.

- 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.

15.2 Liability for delays resulting from slight negligence shall be limited to 50% of the liability caps per item 15.1. The Contractor's liability shall not however exceed the contractual liability caps per item 15.1 for any further breaches of obligations resulting from slight negligence.

15.3 Liability in case of breach of obligations through slight negligence in connection with system servicing shall be limited in total to twice the amount of fees/compensation payable for the first system servicing contract year, excluding any agreed reductions for defect claims.

15.4 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.

15.5 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.

15.6 Claims for lost profits are excluded, except as otherwise agreed under point 16.3 of the Turnkey IT System Procurement Contract.

16 **Source code escrowing of standard software***

16.1 If escrowing of the source code* to specific standard software* is agreed, this shall be done with the escrow agent agreed in accordance with the escrowing clauses of the Turnkey IT System Procurement Contract. The escrowing requirement applies to the last changed version of the source code* for a software version licensed by the Contractor under the Turnkey IT System Procurement Contract, including patches/bugfixes, except as otherwise provided in the escrowing agreement. 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, including particularly the right to edit such within the system and 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*.

16.2 Rights per the above are granted upon provision of the executable software versions*.

16.3 If the provision of new software versions* is agreed for the escrowed standard software* under point 7.1.3 of the contract within the Turnkey IT System Procurement Contract, the escrowing obligation pertains to the source code* of the respective software versions licensed*.

16.4 The Procurer shall bear escrowing costs.

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17 **Liability insurance**

17.1 If and as agreed, upon conclusion of the Turnkey IT System Procurement 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 policy issued by an insurance company domiciled in an EU member state.

17.2 The Contractor shall maintain such insurance coverage until the latter of ending of the Turnkey IT System Procurement 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 Turnkey IT System Procurement 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 system servicing agreement.

18 **Surety bonds**

18.1 If the Procurer is obligated to make an advance payment, simultaneous with making the advance payment the Contractor shall hand over to the Procurer a non-expiring bond for the agreed amount from a German bank or comparable credit institution from an EU member state or deposit the contractual amount of funds per § 18 no. 5 VOL/B. The bond serves as a guarantee securing the Procurer's potential claims to refunding of the advance. The advance payment bond document is to be returned without delay once the Contractor has rendered performance in the value of the payment advance.

18.2 A defect liability bond may be agreed for contracts valued at € 50,000.00 or greater. If posting a defect liability bond has been agreed, at the time of system delivery*, or of partial delivery* if and as agreed, the Contractor shall deposit the contractual amount of funds per § 18 no. 5 VOL/B or hand over to the Procurer a bond for the agreed amount from a German bank or comparable credit institution from an EU member state. Unless otherwise agreed, the amount of the defect liability bond shall be 5% of the contract value*, or in case of partial deliveries* 5% of the respective portion of contract value* concerned. The bond serves to secure any accruing warranty claims. This bond is to be returned to the Contractor without delay upon the elapse of the expiration of claims periods for all warranty claims, subject to the fulfillment of any unexpired warranty claims existing at that point in time.

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 contract fulfillment 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 Turnkey IT System Procurement 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

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gross negligence. If non-fulfillment of obligations per the above exclusively concerns system maintenance, right of withdrawal is replaced by the right to terminate the system maintenance 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 Turnkey IT System Procurement Contract. Confidentiality obligations do not apply to information previously and legally known to the parties or which becomes known outside this contractual framework 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 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.

22 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.

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23   Terms and definitions

Contract value	The offer price for system delivery* plus compensation for additional deliveries*. The contract value is solely referenced in order to calculate the amount of contractual penalties, liability limits and the amount of any defect liability bond to be posted.
Resources provided by the Procurer	Resources provided by the Procurer are components which are not part of the system environment* which the Procurer provides for integration* into it.
Operational readiness	A condition, status or state which exists when the system, or a partial system delivery* respectively, is available in accordance with the contractual terms With regard to system servicing, operational readiness pertains only to the contractual system components* if the system servicing in question has not been agreed for the overall system.
CISG	United Nations Convention on Contracts for the International Sale of Goods
Customizing	The modifying of system components* to meet contractual requirements for system delivery* or maintain operational readiness* (e.g. configuring system components* in order to create operational readiness*).
Integration	The installing of system components* into the contractual system environment* and/or connecting of system components* with resources provided by the Procurer.
Copying and usage restrictions	Measures limiting the ability to copy and/or use a system component*.
Delivery	May refer to delivery of the system or to a partial system delivery
Incidental expenses	Expenditures by the Contractor which are necessary for performance and are neither travel nor materials costs.
Patch	Measure to fix a defect or fault * in the standard software* that does not involve altering the source code*.
Software version	Term used herein to refer to separate releases/versions* of software as well as

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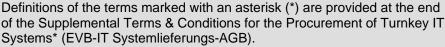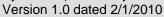|	
Source code	Coding of a software program in the respective programming language.
Response time	Period within which the Contractor must commence work to remedy a defect. This period starts upon receipt of a fault or defect notification during the contractual service hours and runs during the contractual service hours.
Release/version	A new developmental stage of a standard software* program which exhibits significant differences vis-a-vis the previous release or version in terms of functionalities or data spectrum (e.g. from 4.5.7 to 5.0.0).
Malware	Software which has undesired functionalities which have not been agreed and are 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.
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 component	A component or element of the system, such as hardware or standard software*, including new software versions* licensed under the contract.
System delivery	The performance elements to be rendered by the Contractor per item 11.1.
System environment	Technical, spatial and operational/organizational environment within which the system to be delivered is integrated.
Intellectual property rights	Includes industrial property rights, copyrights and similar or related rights/protections
Partial delivery	Delivery of elements or part of a system, as outlined under item 11.3 in conjunction with item 11.1 as well as item 11.2.
Teleservice	Service provided via technical telecommunications equipment from a location outside the place where the IT system is operated.
Workaround solution	A temporary solution for working around a defect or fault affecting the standard software*.

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Update	Multiple bug fixes of defects and/or faults bundled within a single release, potentially including minor functional optimizations and/or standard software* modifications (e.g. from version 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 standard software* modifications (e.g. from version 4.1.3 to 4.2.0).
Version/Release	See Release/Version*.
Restoration time	The period of time within which the Contractor must successfully conclude work to resolve faults and/or remedy defects. This period starts upon receipt of a fault or defect notification and runs exclusively during the contractual service hours.
Delivery supplement, additional/supplemental delivery	Additional products or services which may be ordered and deliverable after contract conclusion (call-off order for additional hardware, etc.)

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