

Terms and Conditions for the Supply and Maintenance of Software

1 Applicability of the Terms and Conditions

In all contractual relationships (including future ones) in which itmX GmbH (hereinafter referred to as "itmX") provides standard software to other companies, legal entities under public law or special funds under public law (hereinafter referred to as "Customer") and/or maintains such software, – unless expressly agreed otherwise in writing between the parties – these General Terms and Conditions for the Provision and Maintenance of Software (hereinafter referred to as the "GTC") in their current version shall apply exclusively, supplemented by the price lists valid at the time of the respective conclusion of the contract and any further usage/service-related documents, which may be provided to the Customer at any time upon request.

Any counter-confirmations and/or general terms and conditions of the Customer are hereby expressly rejected. They shall not apply even if itmX does not expressly object to them.

Standard software (hereinafter also referred to as "Software" or "itmX Software") refers to standard software from itmX. The provisions apply mutatis mutandis to pre-contractual relationships.

For third-party software co-distributed by itmX, the following provisions shall apply mutatis mutandis, unless otherwise stipulated in the order form or in the licence and service agreement (hereinafter referred to as the "Agreement"), these General Terms and Conditions or the price list. Unless otherwise stipulated, the provisions for itmX software shall apply mutatis mutandis to this third-party software.

2 Subject Matter of the Contract and Conclusion of the Contract

2.1 The subject matter of the Contract is set out in the Contract and in the provisions contained in the service descriptions, price lists and other relevant documents.

Provision of itmX Software

itmX provides the Customer with the itmX software covered by the Contract in accordance with the software description for the defined scope on a permanent basis in return for payment and, if contractually agreed, undertakes the maintenance of this itmX software. The itmX software consists, where contractually agreed, of the programmes provided and the associated application documentation. Unless otherwise agreed, manuals – whether in written or electronic form – are not included in the scope of delivery. Unless otherwise stipulated in the contract, no maintenance is provided for third-party software.

The scope of services for the maintenance of the itmX software is derived (by analogy) from the relevant service description.

Subject to a separate agreement, itmX shall provide the following additional services, in particular, within the scope of existing technical and operational capabilities and in return for a separate fee based on the prices valid at the time the order is placed: (i) installation of the software and consultancy services; (ii) implementation support / training; (iii) remote services / support and maintenance.

The software description shall be conclusively authoritative regarding the nature of the software's functionality. itmX shall not be liable for any functionality of the software beyond that described therein. In particular, the customer may not derive any such obligation from other representations of the software in public statements or in advertising, unless itmX has expressly confirmed such additional functionality in writing. Any guarantees require the express written confirmation of itmX.

Certain requirements must be met by the hardware used by the customer in order to use the software provided. The customer is responsible for ensuring that sufficient server hardware and, where applicable, system software is available. Upon request by the customer, itmX may provide release-dependent minimum requirements. itmX reserves the right to amend these requirements.

2.2 Subject to any separate provisions, the contract shall come into effect upon its signing or upon acceptance of the offer or order, but at the latest upon the provision of the software and/or service by itmX.

3 Delivery and Provision of Software

Unless otherwise agreed, the customer shall be supplied with a copy of the software covered by the contract in the version/release current at the time of delivery.

An additional maintenance agreement may be required for this purpose, where such an agreement is offered.

Delivery generally takes place when itmX makes the software available to the customer for download or, in the case of itmX software, makes it available to the customer via access to the relevant system (electronic delivery). In individual cases, the software is sent on a data carrier to the agreed delivery address (physical delivery). For the purposes of compliance with delivery dates and the transfer of risk, in the case of physical dispatch, the decisive point in time is when itmX hands over the data carriers to the carrier; in the case of electronic delivery, it is the point in time when the software is made available for download and the customer is notified of this (download letter).

4 Rights of Use

4.1 Granting of rights of use

a) All rights to the software – in particular the full copyright and other intellectual property rights, together with all rights to all programmes, documentation, materials, programme concepts (such as concepts, methods, best practices, ideas and know-how) and other protected information – are exclusively vested in itmX in relation to the Customer. itmX retains all rights to the software and the protected information that have not been expressly granted to the Customer under these terms and conditions. All rights exceeding the rights of use described below, in particular the right to distribute (including rental), to translate, edit, adapt and to make the software publicly available, remain exclusively with itmX. Unless expressly provided otherwise in these terms and conditions, no rights to or in relation to the source code of any software are granted to the customer.

b) The software may be used via an interface supplied with the software or as part of the software, via an interface belonging to the customer, a third-party provider or via another intermediary system; however, the interface selected for accessing the software's functions and data is irrelevant for the purposes of pricing. The decisive factor here is the Customer's use of the Software. Furthermore, the Customer may only use the Software covered by the contract to the extent specified therein. The right of use is limited to the contractual software (functions) to the extent specified therein, even if the customer is technically able to access other software components or functions. It is not possible to return or exchange usage rights if actual usage is lower than expected or changes.

c) Under the contract, itmX grants the customer the non-exclusive, perpetual right (which may be terminated or revoked in accordance with Clause 17 of these Terms and Conditions) to use the software (regardless of whether the software is supplied in source or object code), including the documentation, as well as other protected information from itmX and third-party databases (provided they have been licensed by itmX), which itmX makes available to the Customer, for both production and non-production use at the specified location(s) within the contract territory. The specific software usage rights set out in the concluded contract shall also apply to the Customer's use of the software; "Contract Area" in this context means the area in which the Software is installed, provided that installation may only ever take place in one country. "Productive Use" means the use of the Software exclusively for the processing of the Customer's internal business transactions. "Non-productive use" refers to the use of the Software exclusively for the Customer's internal training purposes, to enable the Customer's permanent employees to use the Software for the processing of the Customer's internal business transactions, or for internal testing or development work in support of the Customer's production environment. In particular, the preparation for production operation constitutes productive use.

d) The Customer accepts this grant of rights of use and declares that, prior to the conclusion of the contract, they have taken note of and understood the terms of use described in this clause. Unless otherwise agreed in the contract, the Customer is in particular not permitted (i) to use the Software or itmX-protected information and the third-party database in data centre operations, or (ii) to grant a sub-licence for the Software or the third-party database, or to rent them out, or (iii) to offer training to third parties, except to the extent expressly provided for in these terms and conditions, or (iv) to use the Software to control power stations or mass transport systems. The Customer may only use any Software Development Kit implementation versions provided to implement the Software for its own purposes. Use for any other purpose is expressly prohibited.

e) The Customer shall install the Software and, where applicable, the third-party database only on (a) designated unit(s), (an) intranet or internet server(s) which the Customer has specified in a schedule to the Contract and for which written approval has been obtained from itmX. For all persons who access the software directly or indirectly on behalf of the Customer, its affiliated companies or commercial third parties, usage rights must be acquired, e.g. as defined users or as a specified data volume. The maximum number of defined users in use or the upper limit of the licence-relevant metric (e.g. data volume, licensed organisational units, etc.) must correspond to the details in the contract submitted by the customer. Any use of the contractual software that exceeds the contractual agreements (e.g. exceeding the maximum number of defined users or the upper limit of the metric) must be notified to itmX in writing in advance or, at the latest, upon exceeding the limit. Such use shall be deemed a purchase and shall be invoiced immediately in accordance with a separate licence call-off. Purchases shall be treated as separate business transactions and shall be based on the terms and conditions (price list) applicable at the time of purchase.

f) The Customer may transfer the Software and the third-party database from one designated unit to another without additional remuneration. The Customer must notify itmX in writing of such an installation within five working days. The Software and the third-party database must be deleted immediately and in full from the designated unit that is no longer in use and from all backup copies for that designated unit.

g) The Customer may only transfer the Software sold to them (including any software acquired through subsequent purchases or as part of maintenance) to third parties on a comprehensive basis and subject to the complete and final cessation of their own use, and only if they have immediately notified itmX in writing of the transfer to the new user, stating the latter's name and address. The complete transfer of the software requires that the customer makes the terms of use and transfer for the transferred software available to the new user and that the customer immediately deletes all copies of the software in full and from all backup copies and retains no copies of the software or information protected by itmX. Temporary or partial transfer to third parties or transfer to multiple third parties is prohibited. The restrictions set out in the preceding

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sentences also apply to corporate restructuring and legal succession, e.g. under the German Transformation Act. The Customer may not transfer the Software, which it has acquired by means other than under a purchase agreement, to third parties. Third-party software may be subject to provisions deviating from this.

h) A separate licence from SAP is required for the use of SAP software to operate the itmX solutions, and this is expressly not part of the itmX licence.

4.2 Authorisation of the end customer to use the software for the benefit of defined affiliated companies.

The Customer is authorised to use the Software and the third-party database for production purposes on behalf of its affiliated companies specified in the Contract, provided that (i) the affiliated company has previously signed and submitted to itmX an agreement to comply with these terms and conditions in the form specified in the Contract and has confirmed this to itmX, (ii) usage rights have been acquired for all persons who access the software directly or indirectly on behalf of the affiliated company, (iii) the software and third-party database are not installed at the affiliated company's premises. The Customer must provide itmX with a written list of its affiliated companies prior to the conclusion of the contract. The list forms an integral part of the contract and is decisive for the Customer's right of use. "Affiliated company" means a company affiliated with the Customer in accordance with Sections 15 et seq. of the German Stock Corporation Act (AktG). The relevant company shall only be deemed an affiliated company for as long as the requirements of Sections 15 et seq. of the German Stock Corporation Act (AktG) are met.

4.3 Authorisation of commercial third parties/business partners to access the itmX software

"Commercial third party/business partner" means any third party who requires access to the itmX software in connection with the processing of the Customer's internal business transactions, in particular auditors and the Customer's sales partners and suppliers. The Customer is authorised to grant commercial third parties access to the itmX software in order to assist the Customer in the processing of its internal business transactions, provided that (i) usage rights are acquired as defined users for all persons who access the itmX software directly or indirectly on behalf of the commercial third party, (ii) access by commercial third parties to the itmX software is expressly restricted to read-only access (screen access), (iii) commercial third parties shall under no circumstances be granted access to the source code of the itmX software, (iv) commercial third parties shall under no circumstances use the itmX software to process their internal business transactions or to operate or manage their own business.

4.4 Archive copy, copying restrictions, reproduction of original notices
The Customer may make one copy of the Software for archiving purposes and the number of backup copies of the Software that corresponds to the Customer's usual, regular backup procedure. The Customer must document the number and storage location of all originals and copies of the Software. The Customer may copy or reproduce parts of the documentation for internal purposes in machine-readable or printed form, but only to the extent necessary to exercise their rights under these terms and conditions. The Customer must affix notices regarding copyrights, trademarks, service marks or other intellectual property rights of itmX to all complete or partial copies of the Software, the documentation, third-party databases or itmX-protected information in the same form and in the same place as these notices appear on the originals. Under no circumstances may the Customer remove such notices.

4.5 Modifications and Extensions

a) "Modification" means any intervention in the Software (e.g. by altering the source code or metadata). "Extension" means the creation of new code that supports an existing business scenario, which is deployed on the same installation or designated unit and is connected to the Software via an interface approved by itmX. Extensions do not include other modifications to the software itself. The software must not be modified – except to the extent necessary for bug fixes or intended use – adapted, reverse-engineered, further developed or translated; in particular, no derivative works or modifications of the software may be created.

b) itmX points out that even minor changes, edits, modifications to the software or other interventions may lead to potentially unforeseeable and significant disruptions in the operation of the software and other programmes, or in the communication between the software and other programmes. Disruptions may also arise because changes, edits or modifications are not compatible with later versions of the software. itmX is not obliged to rectify any malfunctions arising in connection with changes, adaptations, modifications or other interventions, nor is it in any way responsible for such malfunctions. In particular, itmX is entitled at any time to modify the software, including the APIs, without ensuring that modifications used by the customer are compatible with subsequent versions of the software.

c) As a precaution, itmX draws attention to the following: The Customer is aware that the Software is continuously developed and modified by itmX in accordance with its release and development strategy. The Customer undertakes not to assert any claims arising from intellectual property rights in such modifications/further developments against itmX or its affiliated companies. In particular, itmX is entitled at any time to develop, use and distribute modifications/further developments whose functions are wholly or partly identical to modifications/further developments developed by or for the Customer; provided that itmX is not entitled to copy the Customer's source codes.

4.6 Decompilation

The Customer may not disassemble, decompile, reverse-translate or use any other methods to obtain the source code of the Software. However, the Customer has the right to decompile the Software to the extent necessary to achieve interoperability with another programme, provided that they observe the limits set out in Section 69e of the Copyright Act.

4.7 Under no circumstances may the Customer infringe itmX's rights in the Software. Such infringements include, among other things: (i) modifying the source code of the Software except to the extent specified in clause 4.5 of these Terms and Conditions; or (ii) using or accessing the Software to develop application or interface functionalities with access to the Software's functionality or a database used with the Software by means other than the Software development tools; or (iii) using the extension to exceed the maximum number of users with direct or indirect access to the Software and/or a database used with the Software via third-party software, beyond the total number of users and/or the upper limit for whom a licence has been granted to use the Software.

4.8 Without prejudice to the provisions of Clause 6, the following applies: Should itmX become aware of a breach of these Terms of Use, this shall give rise to claims for damages. Any further rights of itmX remain unaffected.

5. Indirect access to software (indirect use)

The use of the itmX software is essentially based on defined users or any metrics in accordance with the price list. Users of upstream or intermediate technical systems are also considered defined users or are included within the upper limit/packages, provided they engage in a dialogue-based or real-time exchange of information with the software, regardless of whether access is direct or indirect. However, if redundant functionality that is also available in the software is used in upstream or intermediate systems that access the software, the users shall also count as defined users or be included within the upper limit/packages, even if the data is transmitted to the software in the background, i.e. not in a dialogue-oriented manner.

'In real time' or 'dialogue-oriented' means that a user accesses the software via an upstream and/or intermediate system whilst carrying out an activity or a work step. 'Indirect' means, in particular, that the user communicates with a system upstream of the software which transmits the communication processes to the software installation or otherwise accesses the software or uses its functions. The following in particular are considered indirect use: (i) users who enter or provide data in an upstream system that is transferred to the software or exchanged with the software, e.g. order entry using mobile systems/devices, or users of a portal insofar as they use functions of the software; (ii) users who, through the use of non-itmX software (third-party software), access data that is read, modified or stored by the software and use itmX programmes for this purpose, such as BAPI, RFC or transaction calls.

6 System measurement/purchase (licence audit)

a) itmX or a third party authorised by itmX is entitled, in principle once a year, to carry out system audits to determine the number of users and/or agreed metrics (e.g. users, data volume, number of licensed organisational units, number of CPUs, etc.) on each of the Customer's software installations. This includes a review of usage in accordance with the order and contract and the calculation of the contract value in accordance with the terms and conditions applicable at the relevant time. The Customer is obliged to assist itmX in this regard, in particular by performing the actions described below. Only the tools (measurement tools) provided by itmX and in their original condition may be used for measurement.

b) For the purposes of measurement, the software shall be configured in such a way that each system generates the information required for the remuneration of the installation and transmits it to itmX. Measurements shall take place regularly in the form of self-reports. In particular, the customer undertakes to prepare the measurement report no later than two weeks after being requested to do so by itmX. The results of the measurement must be transmitted to itmX in unaltered form, both in writing and in electronic format (e.g. txt, pdf).

c) itmX may also carry out remote surveys if the customer has refused to provide the self-report, or if the self-report did not yield meaningful results and there are objective indications of a breach of contract by the customer.

d) The Customer shall cooperate with itmX in an appropriate manner during the performance of such measurements, in particular by granting itmX access to its systems to the extent necessary for remote measurements. Due regard shall be given to the Customer's confidentiality interests and to the protection of its business operations from disruption.

e) If it transpires during the audit or otherwise that the customer's use of the contractual software exceeds the contractual agreements, itmX shall be entitled to charge for the amount incurred as a result of the unauthorised use. Clause 4.1(e), sentences 4 to 6, shall apply mutatis mutandis. Any special agreements between the parties shall not apply in the course of the measurement. The right to claim damages and default interest remains reserved. itmX expressly points out that system access by multiple persons via a Defined User created in the system is not permitted. This also applies to users who access the software indirectly.

7 Country versions/language versions and restrictions on availability and use in multinational environments

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7.1 Software or parts thereof may be subject to restrictions regarding their availability. Information on these restrictions, including availability in specific countries, supported languages, supported operating systems and databases, is listed in the Product Availability Matrix (PAM), which should be requested from itmX Software.

7.2 itmX software applications may be used in other countries at no additional cost (subject, however, to the availability restrictions specified in the aforementioned PAM). Local products may only be used in the country in which they were purchased, unless otherwise agreed in the contract.

7.3 Unless expressly agreed otherwise in the contract, the customer shall acquire from itmX Software only those rights of use for the country/language version specified in the contract.

7.4 Furthermore, the Customer is responsible for complying with all applicable legal regulations of the country in which the Customer's head office is located, and of other countries, in relation to the use of the software by the Customer and its affiliated companies.

8 Obligations and duties of the Customer

The Customer shall have the following obligations in particular:

- a) The Customer must ensure that they are sufficiently informed about the suitability of the software's functionalities for their business and their needs prior to concluding the contract.
- b) The Customer shall designate in writing a central point of contact for itmX, providing the relevant contact details. The point of contact must be able to make the necessary decisions on behalf of itmX or ensure that such decisions are taken without delay. The Customer must inform itmX of any change in the point of contact.
- c) Certain software products require an internet connection to function properly. The customer is responsible for establishing the internet connection. itmX accepts no liability for loss of functionality resulting from internet connection failures.
- d) For remote diagnosis (remote access), the customer must provide the necessary telecommunications connections and lines, as well as the required equipment, and ensure they remain operational.
- e) The Customer must not, either themselves or through unauthorised third parties, interfere with or allow interference in programmes or data to an extent exceeding that specified in clause 4.
- f) The customer shall thoroughly test the software for defects and usability before commencing operational use of the software. This also applies to software received as part of subsequent performance and maintenance.
- g) The Customer shall take appropriate precautions in the event that the software fails to function properly, either in whole or in part (e.g. through data backup, fault diagnosis, regular verification of results). In the absence of an express written notice in individual cases, itmX's employees may always assume that all data with which they may come into contact is backed up.
- h) itmX and its vicarious agents shall be indemnified against all claims by third parties arising from the unlawful use of the software by the customer or occurring with the customer's approval, or arising in particular from data protection, copyright or other disputes associated with the use of the software. If the customer becomes aware, or ought to have become aware, that such a breach is imminent, they are obliged to inform itmX immediately.
- i) The Customer shall assume a duty to inspect and give notice of defects in accordance with Section 377 of the German Commercial Code (HGB) in respect of all deliveries and services provided by itmX. Clause 13.4 shall apply to notices of defects.
- j) The Customer shall bear any disadvantages and additional costs arising from a breach of its obligations.

9 Terms of Payment

9.1 Unless otherwise agreed in the contract, the price list valid at the time of conclusion of the contract shall apply to the remuneration for the provision and maintenance of the software.

9.2 The Customer shall only be entitled to a right of set-off insofar as their counterclaim has been legally established or is undisputed. The Customer shall only be entitled to assert a right of retention on the basis of counterclaims arising from this contractual relationship.

9.3 The purchase price and other one-off charges shall be invoiced after the service has been provided or the goods delivered.

9.4 For software maintenance, the annual fee is calculated as a percentage of the respective contract price (maintenance basis). The maintenance basis does not depend on the actual use of the software. Subject to any deviating provisions in the contract, the obligation to pay for software maintenance commences upon conclusion of the contract and is due from the month following the delivery of the software. Software fees are payable annually in advance, commencing on the date specified above; for any remaining part of a current year, payment is payable pro rata from the month following the conclusion of the contract.

9.5 The percentage used to calculate the maintenance base is determined by the software release version in use.

- a) If the software in use is covered by standard maintenance, the percentage defined in the purchase contract shall apply.
- b) *If the software in use is covered by the first extended maintenance, the percentage defined in the purchase agreement plus an additional 2 percentage points shall apply.*
- c) *If the software in use is covered by the second extended maintenance package, the percentage defined in the purchase agreement plus an additional 6 percentage points shall apply.*
- d) *If the software in use is covered by customised maintenance, the percentage defined in the purchase agreement plus an additional 10 percentage points shall apply.*

The current release schedule can be viewed on our website.

9.6 Other consultancy services and/or services outside the scope of standard maintenance services, for which itmX has no contractual obligation to perform and/or where the customer's obligations under the contract have been breached by the customer, shall be invoiced on a time and materials basis. itmX notes that, in particular, all consultancy enquiries are subject to a charge.

9.7 All prices are exclusive of statutory VAT.

9.8 The invoice amount must be paid into the account specified on the invoice and is due for payment within ten days of receipt of the invoice.

9.9 itmX may adjust the fee for software maintenance at the end of each calendar year, subject to two (2) months by means of a written declaration to the customer, at its discretion, up to an amount corresponding to the change in the average gross monthly earnings of full-time employees in Germany in the information technology services sector (as reported by the Federal Statistical Office) compared with the corresponding average gross monthly earnings at the time the percentage was last set. Should this index no longer be published, the index published by the Federal Statistical Office that most closely reflects the development of average gross monthly earnings in the aforementioned sector shall be decisive for determining the scope of the adjustment. itmX is entitled to replace the aforementioned price index with a comparable price index.

However, itmX is generally entitled, subject to the above notice period, to adjust its software service fees vis-à-vis the customer.

In this case, the Customer shall have a special right of termination at the end of the calendar year. If, in this case, the Customer does not terminate the maintenance agreement within two weeks of receiving the notice by the end of the calendar year, the new remuneration shall be deemed agreed. In its notice, itmX shall draw attention to the special right of termination and the consequences of not exercising this right.

10 Special Conditions for Software Maintenance Services

10.1 itmX software maintenance always relates to the entire maintenance-relevant itmX software inventory of the customer's respective itmX software. The customer must always keep all installations of the itmX software for which maintenance is offered (including any additional purchases or itmX software acquired as part of the maintenance) fully under maintenance with itmX in order to make use of maintenance services. The customer may terminate the maintenance agreement for itmX software in its entirety or for individual, distinct itmX software products (e.g. itmX sales). If the customer terminates the maintenance agreement for a single itmX software product, this affects the maintenance service for the entire licensed itmX software product; the remaining maintenance agreements for any other itmX software products remain unaffected in this case.

10.2 Additional licence purchases or add-ons increase the contract price and thus the total software service fees. The software service fees for additional licence purchases and add-ons are based on the prices for software services valid at the time of the additional purchase or add-on.

10.3 Subject to any contrary provisions in the contract, if the customer does not order software maintenance immediately upon delivery of the software to them, they must, in order to bring the software up to the current version upon a later commencement of maintenance, pay the maintenance fee that they would have been required to pay had maintenance been agreed upon delivery. The additional payment is due immediately and without deduction. This applies mutatis mutandis in the event of termination and the Customer's subsequent wish to reinstate the software maintenance. Clause 9.5 applies mutatis mutandis.

11 Amendments to the General Terms and Conditions, Service Descriptions and Prices

itmX is entitled to adapt the General Terms and Conditions, prices and service descriptions, including the scope of services relating to software maintenance and further development, to technical, economic and legal progress. Subject to more specific provisions under these terms, itmX shall notify the customer in writing of any intended amendments to the General Terms and Conditions, the service descriptions and/or the prices at least one (1) month before they take effect. In such cases, the customer shall have a special right of termination

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upon the amendments taking effect. If the Customer does not provide written notice of termination within 2 weeks of receiving the notification of changes, the changes shall become part of the contract upon taking effect and the contract shall continue under the amended terms. In its notification, itmX shall draw attention to the special right of termination and the consequences of failing to exercise this right.

12 Default

If the customer

a) fails to pay the fees for software maintenance, or a significant portion of the fees, for two consecutive months, or

b) over a period extending beyond two months, with payment of fees amounting to the base fee for one quarter, itmX may terminate the contractual relationship extraordinarily without notice.

If the customer fails to accept the software by the agreed date despite the setting and expiry of a reasonable grace period, itmX may – without prejudice to its statutory rights arising from default – withdraw from the purchase contract and claim lump-sum damages payable immediately in a single sum in lieu of performance, amounting to 25% of the total remuneration accrued up to the date on which the Customer could have first terminated the contract in accordance with the ordinary procedure, as well as compensation for services already rendered. The amount shall be set higher or lower if itmX proves greater damage or the customer proves lesser damage. itmX reserves the right to assert further claims for late payment.

13 Material and Legal Defects; Other Breaches of Contract

13.1 itmX warrants, in accordance with the rules of sales law, that the software is of the agreed quality and that no third-party rights stand in the way of the transfer of the agreed rights of use to the customer (see Clause 4).

13.2. In the event of proven material defects, itmX shall provide a warranty by means of subsequent performance, whereby itmX shall, at its discretion, either provide the customer with a new, defect-free version of the software or remedy the defect. Remedying the defect may also consist of itmX showing the customer reasonable ways to avoid the effects of the defect. Rectification of the defect may also take the form of instructions to the Customer provided by telephone, in writing or electronically. In the event of proven legal defects, itmX shall provide warranty by way of subsequent performance by, at its discretion, providing the Customer with a legally sound means of using the delivered software or replaced or modified equivalent software. The customer must accept a new software version if the contractual scope of functions is retained and acceptance is not unreasonable.

13.3. If three attempts at subsequent performance fail, the customer is entitled to set a reasonable grace period for the rectification of the defect. In doing so, the customer must expressly state in writing that they reserve the right, in the event of a further failure, to withdraw from the contract and/or to reduce the remuneration and/or to claim damages. If the rectification fails even after this grace period, the customer is entitled to take the above actions. itmX shall pay compensation for a defect within the limits set out in Clause 14.

13.4 The Customer shall report defects in writing immediately upon discovery of the defect, providing as precise a description of the problem as possible, including all necessary information such as screenshots, error images, error messages, defect logs and data material.

13.5 In the event of material defects or defects of title arising in the course of software maintenance, the right of withdrawal shall be replaced by extraordinary termination of the software maintenance contract. The subject matter of any right to a reduction in payment shall be the maintenance fee owed under the software maintenance contract.

13.6 The limitation period for claims under clauses 13.1 to 13.3 is one year and commences upon delivery of the software. This also applies to claims arising from withdrawal and reduction pursuant to clause 13.3. The shortening of the limitation period shall not apply in cases of intent, gross negligence on the part of itmX, fraudulent concealment of the defect, personal injury or defects of title within the meaning of Section 438(1)(1a) of the German Civil Code (BGB).

13.7 For defects in rectification work, workarounds or new deliveries by way of subsequent performance or within the scope of maintenance, the limitation period shall also expire at the time specified in clause 13.6. However, if itmX, in agreement with the customer, examines the existence of a defect or carries out subsequent performance, the limitation period shall be suspended until itmX informs the customer of the result of its examination, declares the subsequent performance to be complete, or refuses to carry out subsequent performance.

13.8 If itmX performs services in connection with fault detection or rectification without being obliged to do so, itmX may demand reasonable remuneration in accordance with the contractual provisions. This applies in particular if a reported material defect cannot be verified or is not attributable to itmX. In particular, compensation shall also be payable for the additional expenditure incurred by itmX in rectifying defects as a result of the Customer failing to properly fulfil their obligations to cooperate, operating the software improperly, or interfering with the software themselves or through third parties within the meaning of clause 4.5(b).

13.9 If a third party asserts claims that conflict with the exercise of the contractual right of use, the customer must inform itmX immediately in writing and in full. The customer may not acknowledge such claims without the prior written

consent of itmX. If the Customer ceases use of the Software for the purpose of mitigating damage or for other important reasons, they shall be obliged to inform the third party that the cessation of use does not constitute an acknowledgement of the alleged infringement of intellectual property rights. The Customer hereby authorises itmX, to the extent permitted, to conduct the dispute with the third party in and out of court on its own; otherwise, the Customer shall conduct the dispute only in agreement with itmX. The exercise of this authorisation is at the discretion of itmX. The Customer shall provide the necessary support and all required information in connection with the dispute with the third party. itmX shall indemnify the Customer against any costs and damages arising from itmX's defence against third-party claims, provided that the Customer has fulfilled or fulfils the above-mentioned conditions and provided that the third-party claims are not based on the Customer's conduct. The provisions of Clause 14 shall apply mutatis mutandis.

13.10 If itmX fails to perform services or performs them improperly outside the scope of liability for material defects and defects of title, or if itmX commits any other breach of duty, the Customer must always notify itmX of this in writing and grant itmX a grace period within which itmX is given the opportunity to perform the service properly or to remedy the situation in some other way. The provisions of Clause 14 shall apply mutatis mutandis.

14 Liability

14.1 In all cases of contractual and non-contractual liability, itmX shall only pay compensation for damages or expenses arising from a breach of a material obligation, provided that such breach jeopardises the purpose of the contract and the customer may reasonably rely on compliance with such obligation, and only up to the liability limits set out below. Liability under the contract is generally limited to a total of €250,000. Notwithstanding this, the following applies:

- If the value of the software licence at the time of conclusion of the contract is up to €25,000, liability shall be limited to a total of €50,000

- If the value of the software licence at the time of conclusion of the contract is up to €100,000, liability is limited to a total of €200,000

- In the event of default or impossibility on the part of itmX, liability is limited to a maximum of €125,000 in total.

Any further liability on the part of itmX, in particular for loss of profit, lost savings and other consequential damages, is excluded. The defence of contributory negligence remains open.

14.2 In the event of data loss, itmX shall only be liable for the costs that would have been necessary to restore the data had the customer carried out proper and regular data backups, up to a maximum of the limits set out in clause 14.1. This limitation shall not apply if and to the extent that data backup forms part of the services to be provided by itmX.

14.3 The limitations of liability shall not apply to claims arising from intent, gross negligence, injury to life, limb or health, fraud, in so far as the Product Liability Act applies, or in the case of an expressly agreed guarantee, unless otherwise provided for in respect of the latter.

14.4 A limitation period of one year applies to all claims against itmX arising from contractual and non-contractual liability. It begins at the time the damage occurs and ends at the latest upon expiry of the period specified in clause 13.6.

15 Confidentiality and Data Protection

15.1 The parties undertake to treat the contents of the contracts concluded between them and all knowledge of confidential information and trade secrets of the other party obtained in the course of fulfilling the order as confidential and to use such information only for the purpose of fulfilling the order. "Confidential Information" means, in relation to itmX, all information that itmX protects from unrestricted disclosure to third parties, including, but not limited to: (a) the Software, copies thereof, documentation and other materials, including, without limitation, the following information relating to the Software: (i) computer software (object and source code), programming techniques and concepts, processing methods, and system designs embodied in software; (ii) benchmark results, manuals, program listings, data structures, flowcharts, logic diagrams, specifications, file formats; and (iii) discoveries, inventions, concepts, designs, methods and processes; (b) research and development or investigations; (c) product offerings, content partners, product pricing and availability, technical drawings, algorithms, processes, ideas, techniques, formulas, data, circuit diagrams, trade and business secrets, know-how, improvements, marketing plans, forecasts and strategies. With regard to the Customer, "Confidential Information" means all information which the Customer protects from unrestricted disclosure to third parties and (i) which the Customer, where in tangible form, designates as confidential or secret at the time of disclosure; and (ii) which the Customer, where it exists in intangible form (including oral or visual disclosure), designates as confidential at the time of disclosure and confirms this in writing within thirty (30) calendar days of such disclosure.

15.2 The foregoing Section 15.1 shall not apply to Confidential Information which (a) has been or is being developed by the recipient independently of any communication from the disclosing party, (b) has been lawfully acquired from a third party without any obligation of confidentiality, without the recipient having been bound by such a confidentiality obligation by that third party or without any wrongful conduct on the part of the recipient, (c) has become generally available to the public without any breach of contract by the recipient, (d) was known to the recipient at the time of disclosure, or (e) is exempt from the above provisions following the written consent of the disclosing party.

Terms and Conditions for the Supply and Maintenance of Software

15.3 The parties shall safeguard the confidential information – in particular any source code and documentation provided – with due care to prevent misuse and may only make confidential information accessible to employees and other third parties to the extent necessary to achieve the purpose of the contract. In all other respects, all confidential information must be kept secret. All persons granted access to confidential information must be informed of the other party's rights to such information and of the duty to maintain its confidentiality, and such persons must be required in writing to comply with the duty of confidentiality, insofar as this is not already ensured by contractual agreements between the persons and the party.

15.4 itmX complies with data protection legislation. Where itmX gains access to the Customer's hardware and software (e.g. in the course of remote maintenance), this is not intended to constitute commercial processing or use of personal data by itmX. itmX shall handle any personal data in accordance with the currently applicable data protection regulations and other relevant protective provisions.

The final provisions regarding the data protection obligations of the contracting parties in the context of any commissioned data processing or commissioned processing (in particular in the context of maintenance services) shall be set out in an agreement on commissioned data processing or commissioned processing to be concluded between the parties.

16 Retention of Title and Rights

itmX reserves title and rights to the purchased software until its claims arising from the contract have been settled in full. The customer must immediately notify itmX in writing if third parties access the goods subject to retention of title and must inform the third parties of itmX's rights. By signing this contract, the customer declares that it undertakes to respect the copyright of itmX. The customer is not permitted to create security interests in the software or the data carriers on which it is distributed, nor to assign such interests.

17 Term of the Agreement/Termination

17.1 Duration and Termination of Software Licence

In principle, software usage rights are perpetual rights of use which remain with the customer on a permanent basis. With a perpetual right of use, the customer is entitled to exercise the rights of use to the software for an indefinite period, provided that the licence is not terminated for good cause. Good cause shall only be deemed to exist if, in view of the circumstances of the individual case and after weighing up the interests of the parties, it is unreasonable for itmX to maintain the contract. For example, good cause shall be deemed to exist if a case of software piracy can be traced back to the Customer, in which the persons involved have committed a criminal offence.

17.2 Software maintenance

a) Commencement of the contract

The term of the contract for the provision of software maintenance is set out in the contract concluded between the parties and commences at the latest upon delivery of the software.

b) Term and termination

The contractual relationship may be terminated by either party at the earliest upon expiry of the minimum term of 3 years. If notice of termination is not given in due time, the contractual relationship shall be extended at the end of each full calendar year. The notice period is four months prior to the expiry of the contract term. The right to terminate for good cause remains unaffected. Good cause shall be deemed to exist in particular in cases where the Customer materially breaches the obligations incumbent upon them under these General Terms and Conditions or under this contract, or in the event of late payment, insolvency or imminent insolvency on the part of the Customer.

18 Export

The Customer acknowledges that the Software or parts thereof and any associated technical documentation and/or information are subject to US and/or European or other export control laws, which may prohibit their delivery to certain countries. The Customer undertakes and is responsible for ensuring that the Software or related technology is not imported or re-exported in contravention of the export control regulations of the United States of America, the European Community and the Federal Republic of Germany, and in particular for obtaining the necessary export licences from the Federal Office of Economics and Export Control (BAFA). itmX may refuse to fulfil its obligations under this contract if and for as long as such fulfilment violates German, European or US export law.

19 Miscellaneous

19.1 The Customer may only transfer the rights and obligations under this Agreement (e.g. in the case of leasing) to a third party with the prior written consent of itmX.

19.2 itmX is entitled to include the Customer in its reference lists and to use the Customer's data within the companies with which itmX or the NTT DATA Group is affiliated under company law.

19.3 The contractual relations between the parties shall be governed by German law, to the exclusion of the UN Convention on Contracts for the International Sale of Goods. The exclusive place of jurisdiction for all disputes arising from or in connection with this contract shall be Stuttgart.