

DAIMLER TRUCK

General Purchase Conditions of Daimler Truck AG for IT Part H - Individual Software Development, Maintenance and Adaptation of Software

1 Subject Matter/Scope

1.1 General

These Special Provisions of the GPC-IT (Part H) as applicable at the time of contract formation shall apply, together with the General Provisions of the GPC-IT (Part A), as an integral part of any contract for conceptual services, individual software development, maintenance and adaptation of software.

1.2 Concept, Software, Installation and Maintenance

The Contractor shall provide the Customer with contractual performance for the conception and development of individual software as well as for the adaptation and parameterisation of software, in particular:

- a) Specification and concept performance consisting of
 - aa) IT strategy or IT process conception,
 - bb) The creation of a specification sheet (consisting of a catalogue of requirements, functional and non-functional requirements for an IT system - also called general concept) and/or
 - cc) The creation of functional specification (consisting of a technical concept, IT concept, test concept, and requirements for operation - also called target concept, detailed concept, requirements specification or performance description) and/or
- b) Design and Realisation
 - aa) Creation of a software and application design (consisting of low-level specification, DP concept, design - documentation, architecture and application design), and/or
 - bb) Development, test and introduction including installation, (all together called "realisation")
- c) Development and implementation including installation (all together called "realisation"),
- d) Adaptation and parameterisation (collectively "customising"),
- e) Maintenance services of software as well as any performance related thereto.

1.3 Documentation

If the subject matter of the contractual performance is the realisation or customising of a software solution, this shall be delivered with the associated documentation for German-speaking places of use in German, otherwise such shall be in English in printed or printable form. Such documentation, in particular for installation, use, operation as well as maintenance, including the complete development documentation, shall constitute an element of the main performance obligations. The documentation must be sufficient for an average user to be able to use the contractual performance without support from the Contractor. Supplied operating manuals and the development documentation must enable an IT specialist to install, operate, maintain and further develop the software.

1.4 Deployment/Installation

The results of realisation and customising shall be installed, integrated and configured by the Contractor and handed over and transferred to the Customer ready for operation.

1.5 Briefing

During test and trial operations, the Contractor shall instruct the Customer to the necessary extent.

1.6 Remuneration

Any performance set out in sections 1.2 to section 1.5 are included in the contractually agreed remuneration.

Payment for performance shall be made only after such performance has been rendered in full, unless otherwise agreed. If the Parties agree on partial payments, a partial payment shall be made only after complete performance of the respective part of the performances. Any due dates that are agreed shall remain unaffected hereby.

The Contractor shall be bound by any agreed remuneration ceiling or fixed price as well as by its estimate of expenditure made prior to the formation of the contract, unless such are expressly designated in the order as being non-binding.

1.6.1 Fixed Price

If a fixed price has been agreed for any performance, the Contractor shall provide such performance in full at the agreed price. Any additional expenses for the complete provision of the agreed performance shall be borne by the Contractor. Any subsequent claims in this regard are excluded.

1.6.2 Remuneration According to Expenditure

If remuneration is agreed on a time and materials basis, with or without a remuneration cap, the Contractor shall invoice its performance in each case after the respective performance has been rendered in accordance with the agreed invoicing periods.

The Contractor shall not be entitled to exhaust any agreed remuneration ceiling. There shall be no entitlement to remuneration for services in excess of the remuneration ceiling.

The Contractor shall be responsible for ensuring that the calculation of costs and expenses carried out by the Contractor before the placing of the order is not exceeded. The Contractor shall inform the Customer without undue delay as soon as it becomes apparent to the Contractor that the estimated expenditure in terms of daily rates is likely to be exceeded. The Customer shall notify the Contractor in writing if it agrees to such extra expenditure. If the Customer does not agree, the Contractor shall perform on the basis of the originally calculated and agreed expenditure. The Contractor may require agreement if it is not responsible for the excess expenditure. If the Contractor repeatedly makes adjustments to the estimate of costs and expenses, the Customer shall have the right to an extraordinary termination.

1.7 Additional Performance

At the Customer's request, the Contractor shall provide additional or more extensive performance in accordance with a separate order. These special provisions shall also apply to such.

Upon request and against separate remuneration, the Contractor shall carry out the training of the Customer's employees for the use of the software. A corresponding agreement shall be concluded with a separate order.

2 Provision of Performance

2.1 Specification and Concept

2.1.1 Special legal requirements are customarily not mentioned in the specification sheet, as the Contractor is expected to have a comprehensive understanding of the legal and official requirements to be observed for the contractual performance. If the Contractor is responsible for drawing up the specification sheet and/or the functional specification, it must include legal and official requirements.

2.1.2 The functional specification is the binding description for contractual performance. In terms of content, the functional specification specifies the specification sheet completely and comprehensively with detailed functional and technical specifications, including the operating and maintenance environment as well as the test requirements.

In the technical specification (IT concept), the system-specific requirements for the realisation of the functional specification are to be presented and, if necessary, any individual solutions. The applicable standards and specifications of Daimler Truck AG must be represented and taken into account in the functional specification.

The functional specification shall be formulated in full by the Contractor with the precisely agreed cooperation of the Customer and shall be approved by the Customer. Upon approval (see section 9.6), it shall form the basis for development and implementation performance.

The functional specification must define and quantify all the features on the basis of which the software solution to be implemented can be tested and accepted by the Customer.

2.1.3 The preparation of the specification sheet and/or the functional specification shall not be part of the scope of services if this is so agreed expressly in the contract.

2.2 Design and Realisation

The contractual performance shall be realised by the Contractor in accordance with the respective current functional specification and the respective current design specifications. In this regard all requirements of the functional specification shall be taken into account and implemented with suitable technical and functional solutions in such a way that the contractual performance meets the requirements of the Customer and is suitable for its purposes. The implementation shall be carried out in the Customer's programme and system landscape and shall ensure the interoperability of the contractual performance together with the programmes and systems to be used.

2.3 Adaptations/Parameterisations (Customising)

The provisions of this contract shall apply accordingly to the customising of software already used by the Customer or acquired elsewhere. The Contractor shall receive the documentation for the software available to the Customer to the necessary extent. The subject of the customising is to be described in the order. The Contractor must request any missing information.

2.4 Provision/Installation/Instruction

2.4.1 Software is to be delivered complete with the agreed scope of functions, documentation and all other documents required for use in a ready-to-use condition. This also includes the source code as well as development tools and documentation including quality assurance documentation in accordance with the Daimler Truck AG specifications of the houston.IT quality matrix. The Contractor shall deliver the contractual performance in full on an agreed data carrier.

If any performance in connection with the creation of a specification or conception of a software solution is the subject matter of the contract, the respective result shall be delivered to the Customer in printed or printable form on data carriers. Such shall be presented and explained to the Customer in a presentation of the results.

2.4.2 The Contractor's performance shall also include the installation of the software for test and trial operations in accordance with section 9.2. After acceptance of the contractual performance in accordance with section 9, the system shall be installed as a productive system.

The criticality of the system as well as possible disruptions to the Customer's business operations must be taken into account.

Any configurations and parameterisations required for the installation shall be carried out by the Contractor in advance or shall be designed in such a way that a loss of data or an obstruction of business operations during or after the installation is excluded for the Customer. Installations critical to business operations shall (if possible) be carried out outside the Customer's normal hours of business. For this purpose, time slots shall be agreed in writing in advance.

The transfer of data files into or through the contractual performance shall be carried out in compliance with all safety regulations in such a way that a loss of data is excluded or that all data stocks can be restored at any time with the current status.

- 2.4.3 The Customer shall be instructed in relation to the contractual performance. Such instruction shall enable the Customer to use the subject matter of the contract in accordance with the contract. This also includes the necessary instructions for administrators, multipliers or users. The instruction shall enable an average user to use the contractual performance without any further support by the Contractor and enable an IT specialist or an administrator of the Customer to install, operate and maintain the contractual performance.

2.5 Quality Assurance

The contractual performance shall be provided in accordance with the respective recognised state of the art, taking into account technical standards and specifications and guidelines provided by the Customer.

The Contractor shall provide the contractual performance uniformly in accordance with its quality management system, which shall be aligned with the specifications and guidelines provided by the Customer. It shall design the contractual performance in such a way that the quality objectives are implemented in practice and a high quality of the contractual performance is ensured.

The Customer is entitled to inspect the quality management system in connection with the contractual performance at the Contractor's premises during the normal hours of business, either itself or by appointed third parties. The Customer shall give notice of any such inspection, stating the place and the content of the inspection, at least five working days before the intended start of the inspection. During this inspection, the Customer or third parties may also inspect the Contractor's entire project documentation.

During the period of cooperation, the Contractor shall inform the Customer on an on-going basis as to its quality management system and shall identify the responsible quality managers as well as the quality procedures. A component of the quality management system is the provision of written evidence of non-disclosure agreements concluded in favour of the Customer, including such with any vicarious agents.

In addition to the provision of the contractual performance, the Contractor shall also provide to the Customer a complete written documentation of quality management systems and quality assurance procedures applied in the performance of the contract, including quality inspections carried out and the results of such inspections.

3 Customer Participation

If the performance involves standard software not originating from or not provided by the Contractor, such software shall be procured by the Customer and made available to the Contractor, provided that this is expressly stipulated in the order or in the call-off and such is not impossible for the Customer.

4 Contractor's Obligations

4.1 Performance Environment/Preliminary Check

Prior to performance, the Contractor shall check the technical conditions to the extent required so that performance is possible without hindrance and, if necessary, the Contractor shall inform the Customer of any work to be carried out to create the system requirements for the use of the contractual performance. Any necessary changes to systems and software (in particular system and operating software) at the Customer's premises shall be agreed with the Customer. The result of this preliminary check shall be included in the functional specification as a concept.

4.2 Milestones/Dates

The dates and deadlines agreed in project plans and schedules as well as other agreed dates are binding. The timelines of any provision of goods or services shall be determined by the actual provision of the subject matter for acceptance after successful test and trial operations (see section 9.2). If the Contractor realises that an agreed date or deadline cannot be met, it shall inform the Customer in writing without undue delay, stating the reasons for such delay. Changes to agreed dates and deadlines must be made in writing.

The Contractor shall regularly inform the Customer about the state of progress in the performance.

4.3 Notification of Failure to Cooperate by Customer

The Contractor shall give notice of any insufficient cooperation by the Customer in writing or in text form (*Textform*) without undue delay. Failure to provide such notice shall mean that the Customer is not in default and the Contractor may not invoke any claim for failure to provide adequate cooperation. If the Customer culpably fails to provide the notified cooperation even after notification and a reasonable grace period, the Contractor may demand a postponement for the duration of the delay of any dates or deadlines related to the defective cooperation.

4.4 Request for Additional Cooperation

The Contractor shall inform the Customer in good time if additional cooperation from the Customer is necessary for

performance over and above the agreed level of cooperation. Such contributions must be requested in good time so that the Customer is able to provide them within the framework of its current business operations without any hindrance to such. Additional contributions must not jeopardise the existing schedule. Agreed dates and deadlines shall remain binding. The Customer reserves the right to claim from the Contractor any expenses incurred for contributions not agreed in the contract.

5 Change in Performance

5.1 Change Request by Customer

Until acceptance, the Customer may at any time request in writing changes to the agreed performance in terms of time and content.

5.2 Examination of Change Request

If the Customer requests a change, the Contractor shall notify the Customer in writing within 10 work days whether the change is possible and what effects it has on the contractual performance, in particular on deadlines, expenditure, remuneration and cooperation.

During the examination of a change request, performance shall be continued according to the existing contract. They shall be interrupted in whole or in part only upon the written instruction of the Customer. In that case, deadlines shall be extended by the duration of the interruption and - insofar as the Contractor has set this out in advance - by a reasonable start-up period.

Insofar as the examination of the change request requires a not inconsiderable amount of costs and expenses, the Contractor may charge for the examination separately, insofar as it has informed the Customer of such and the extent of the examination work required in writing without undue delay after receipt of the change request and the Customer, in view of this information, still wishes the examination and confirms such to the Contractor in writing.

5.3 Change Proposal by Contractor

In the event of a change proposal by the Contractor, the Customer shall notify within 10 work days whether it agrees to such change. This requires that the change proposal is specified in such detail that it is possible for the Customer to examine the cause and content of the change proposal as well as the costs and effects of implementation and the effects of non-implementation without any additional information.

5.4 Agreement on Change Request

The Customer shall notify the Contractor in writing within a further period of 10 work days after receipt of the results of the examination (see section 5.2) whether the proposed change is to take place; if so, the Contract shall be amended accordingly.

5.5 Escalation

If no agreement is reached on a change proposal and if there is still disagreement as to the necessity of a change in the contractual performance, both Parties shall inform the respective project manager or contact person concerning the cause, content and consequences of the change agreement as well as the reasons for the failure to reach an agreement. The respective project manager or contact person shall take a decision without undue delay or bring about a decision by personnel of the respective Party authorised to make such a decision.

5.6 Additional Applicable Provisions

In addition hereto, clause 5 of the GPC-IT (Part A) shall apply accordingly.

6 Project Organisation

6.1 Obligation of Contractor to Perform

For the Customer, the Contractor shall be solely and without limitation the responsible contact person for the contractual performance, even if vicarious agents or contractors or agents are employed.

6.2 Representatives

Prior to the commencement of the performance, the Contractor and the Customer shall each appoint a representative for any coordination that may become necessary in the course of the performance. If one of these representatives is prevented from attending for a longer period of time, a replacement shall be appointed in good time.

The representatives are authorised to receive all declarations in connection with the contract. They shall make, or cause to have made, in a prompt manner any necessary decisions by their companies.

6.3 Project Management/Meetings/Minutes of Meeting

During the performance of the contract, the representatives shall meet regularly insofar as such is necessary at the Customer's or at the Contractor's premises, as agreed, to discuss the status of performance. The Contractor shall draw up a status report on the basis of the results of these meetings containing all the points discussed and in particular any matters still open. This report shall be submitted to the Customer's representative for approval within five work days after the meeting without any need for such to be requested.

6.4 Project Decisions

If the Parties cannot agree on any significant points at the regular meetings, the project manager and the Customer's contact person shall work towards reaching an agreement. If this is not done without undue delay, the Parties shall escalate the matter in dispute to competent personnel or bodies of the respective company authorised to make a decision or bring about a decision being made without undue delay.

6.5 Personnel Qualification

The Contractor and its deployed personnel are to be qualified to undertake the contractual performance and have sufficient experience with comparable services. The Customer may evidence of such and, in the absence thereof, demand a replacement of the project manager or any deployed personnel.

7 Rights of Use

7.1 Ownership and Exclusive Rights of Use of the Customer

Title to all results and interim results of the Contractor's contractual performance, e.g. service descriptions, specifications, studies, concepts, documentation including installation, usage and operating manuals as well as documentation for maintenance and further development, reports, papers, consulting documents, charts, diagrams, pictures as well as individual software, programmes, software adaptations and parameterisations including annotated source and object code as well as all interim results arising in this connection and tools and/or other performance results created for this purpose (together:

"work results") shall, insofar as embodied objects are concerned, pass to the Customer upon the handing over of such objects.

Furthermore, the Contractor hereby grants the Customer the indefinite, worldwide, exclusive, compensated, permanent, irrevocable and sub-licensable as well as transferable rights to use and exploit these work results, unlimited as to content and from the time of their creation or, at the latest upon such being handed over. These rights of use shall include all types of use including, storage, loading, execution, processing of data, processing including by third parties and also with any fixed connection with services of the Contractor, rights of reproduction and distribution, rights of performance and presentation including in public, rights of further marketing as well as rights to make changes, redesign, translations, additions and further developments. The source code of all performance results and intermediate results shall be handed over to the Customer in full together with the development documentation.

The Customer is entitled to grant sub-licences and further rights of use to these rights of use against payment and free of charge as well as to transfer rights of use to third parties and to use the originals as well as copies and modified versions without any copyright designation.

7.2 Non-exclusive Rights of Use of Customer

The Contractor hereby grants the Customer the non-exclusive, irrevocable, permanent, worldwide, transferable, compensated rights of use to works, other copyright or other unprotected knowledge (know-how) of the Contractor already developed or used by the Contractor prior to the commencement of the contract, as well as to the know-how, standard software and development tools ("Contractor's intellectual property") acquired by the Contractor, its vicarious agents and employees during performance, to the extent necessary to use the work results produced by the Contractor for the Customer. This also includes the reproduction, processing and modification of the Contractor's intellectual property by the Customer or third parties, insofar as this is necessary for the use of the work results.

7.3 Standard Software

Notwithstanding section 7.2, rights of use to standard software may be transferred to group companies or to third parties only for use solely for the purposes of the Customer or its group companies.

7.4 Rights of Use for Customising Services

Insofar as the Contractor carries out customising of its own software or of third party software for the Customer, it shall grant the Customer rights of use in accordance with section 7.1. Any provision deviating from this shall be agreed in writing in the order, whereby the Customer shall be granted at least the rights of use in accordance with section 7.2 for customising services.

7.5 Duty of Disclosure

The Contractor shall notify the Customer in writing prior to the conclusion of the contract of all standard software, development tools and other works (such as documentation required for the further development and processing of the Contractor's performance results) to be used in connection with the development of the work results. These shall be listed in the contract. The Contractor shall in particular indicate which version was used and whether it is proprietary or software available in the market. "Proprietary" shall mean software developed by the Contractor itself or to which it has exclusive rights of use or which can be obtained exclusively from the manufacturer itself and not, as is the case with software in the market, via trade sources or intermediaries.

Unless otherwise agreed in the contract, the Contractor shall in any case grant the Customer the rights of use to standard software, development tools and other works in accordance with sections 7.2 and 7.3.

7.6 Co-authorship

If employees or vicarious agents of the Contractor are co-authors, the Contractor warrants that it has acquired from them a grant of rights of use and exploitation corresponding to the aforementioned sections 7.1 and 7.2 in each case.

7.7 Rights to Inventions

The Customer shall be put in a position by the Contractor so that it can permanently use any invention created during performance free of charge. For this purpose, the Contractor hereby grants the Customer a non-exclusive, compensated, irrevocable, permanent, worldwide right of use to any such invention or the Contractor's share in any such joint invention to the extent necessary for the use of the performance created by the Contractor for the Customer. This includes in particular any right of reproduction. The production of copies of the invention as well as the processing or modification is permissible insofar as this is necessary for the use of the performance. These rights of use may be exercised by group companies of Daimler Truck AG (§ 15 *et seq.* of the German Stock Corporation Act (*Aktiengesetz*)) or by third parties solely for the purposes of the Customer and the group companies. This also applies to the Customer's right to transfer the rights of use to group companies and third parties.

7.8 Granting of Rights for Updates and in the Event of Subsequent Performance

Corrections, patches, updates, upgrades, additions, new versions or similar provided by the Contractor to the Customer in connection with the contractual performance as well as any respective updated documentation therefor (collectively "updates") shall also be subject to the provisions of this clause 7.

7.9 Survival

Any sub-licences or rights of use granted shall remain unaffected by a withdrawal from or termination of the contract.

8 Delivery Location/Delivery Dates

The contractual performance shall be delivered at the agreed place of performance (place of use) on the agreed date. Before this time, price and performance risk shall not pass to the Customer.

9 Acceptance

9.1 Inspection before Handover

Before handing over the contractual performance to the Customer, the Contractor itself shall check whether it is complete and meets the contractual requirements and contains all functions in accordance with the performance description and specification. For this purpose, it shall first install the software for integration tests, trial operations and acceptance tests in a test environment of the Contractor which is to be set up to be similar to production.

The Contractor shall notify the Customer of a successful carrying out of the function tests.

9.2 Test and Trial Operations and Demonstration by Contractor

The acceptance test of the contractual performance by the Customer shall only commence after its completeness and functional capability has been demonstrated on the basis of the functional and non-functional requirements through successful test and trial operations.

Test and trial operations of the contractual performance shall then be carried out at the Customer's premises in order to check the contractual performance for completeness and its functions in accordance with the contract and the documentation supplied. If a project quality plan or test cases are available, the procedures and criteria set out therein shall also apply. If the Customer's cooperation is required and agreed for the test and trial operations, the Contractor shall inform the Customer of this in writing in good time.

At the end of the test and trial operations the test and trial operations, including any deficiencies that may have occurred, shall be recorded in writing. This protocol shall be signed by both parties. The Customer shall confirm a successful demonstration in writing without undue delay. If requirements are not met, the Customer may refuse to confirm. The Contractor shall remedy any defects that have occurred without undue delay and demonstrate the contractual performance again within agreed dates and deadlines in further test and trial operations.

Upon confirmation by the Customer that the trial operations were carried out without any defects preventing acceptance testing, the contractual performance shall be deemed to have been made available by the Contractor for acceptance and the acceptance test shall commence at the Customer's premises and the Contractor shall provide support for such to the extent required. If the Customer waives trial operations, the Contractor shall declare to the Customer in writing that it is ready to carry out the acceptance procedures.

9.3 Acceptance Procedures and Classes of Defect

The Customer shall be obliged to carry out acceptance tests only if contractual performance is complete.

The place, duration and scope of acceptance tests shall be determined by the Customer after consultation with the Contractor. The location of the acceptance tests shall be the place of use of the contractual performance at the Customer's premises, unless otherwise agreed in the contract. Within the framework of the acceptance tests, the Contractor shall prove that the software fulfils the contractual requirements under conditions similar to those in productive operation. In the acceptance tests, the Customer shall also check the functions of the software against the functional specification and other agreed specifications. The acceptance test does not constitute a productive use of the contractual performance.

Defects in the contractual performance identified during the acceptance test shall be assigned to the following classes by the Customer:

9.3.1 Class 1: Software or System Standstill

The contractual performance does not work at all or one or more defects occur which make complete acceptance testing impossible or hinder it in such a way that complete acceptance testing is impossible or not reasonable.

9.3.2 Class 2: Software or System Function(s) Failures

Most of the main and peripheral functions of the contractual performance are fully functional. One or more main functions work only with significant limitations or workarounds. Individual peripheral functions do not work at all or only with significant limitations or workarounds. The essential part of the contractual performance functions and can be tested in a meaningful way.

9.3.3 Class 3: Software or System Function(s) Significantly Impaired

All main functions of the contractual performance do work. Individual main or peripheral functions work with not only insignificant limitations or workarounds. However, the contractual performance as a whole can be tested in a fully reasonable manner.

9.3.4 Class 4: Software or System Function(s) Affected Only Insignificantly

All main and peripheral functions of the contractual performance do work. Individual functions can be tested with insignificant restrictions or workarounds.

9.3.5 Supplementary Regulations for Class Allocation

The Contractor may object to any allocation to a particular defect class if it demonstrates that the contractual performance fulfils the contractual requirements in this respect or that the defect should be allocated to a different class.

9.4 Refusal of Acceptance

The Customer shall be obliged to declare acceptance (see clause 9.5) only if the contractual performance is complete, in accordance with the contract and has only insignificant defects.

The Customer may refuse acceptance and abort the acceptance tests if a defect of Class 1 and/or Class 2 or several defects of Class 3 are found, i.e. there is no contractual performance or only contractual performance that is essentially unsuitable for use.

In the case of Class 3 defects, the Customer may refuse acceptance if, when considered as a whole, the contractual performance is not only insignificantly defective, e.g. smooth and defect-free work is not only insignificantly impeded as a result.

If the contractual performance is defective, the Contractor shall remedy the defect within a reasonable period of time, taking into account the interests of the Customer and, in particular in compliance with the agreed dates and deadlines.

The contractual performance shall again be made available for acceptance. If the Contractor exceeds agreed dates and deadlines within the scope of such rectification of defects, the Contractor shall be in default with its performance. In the event of refusal of acceptance, the Contractor shall not be entitled to a postponement or extension of the deadline.

9.5 Acceptance Declaration

The Customer shall declare acceptance in writing if it is established that complete performance in accordance with the contract does not show any significant defects. With this declaration of acceptance, the price and performance risk shall pass to the Customer. The contractual performance shall be deemed to have been accepted only if the Customer has signed the acceptance report on the overall performance together with the acceptance declaration.

If acceptance is refused, the Contractor shall be obliged to carry out a new acceptance only if the Contractor proves the elimination of any defects that prevent acceptance.

The Contractor is obliged to remedy insignificant defects within a reasonable period of time. The Contractor may also provide these within a reasonable period of time as part of a regular delivery of corrections, patches, updates, upgrades, new versions or the like together with the respective updated documentation therefor (collectively "updates").

If the Customer accepts the contractual performance despite recognising defects that are not merely insignificant, these shall be recorded in the acceptance report and remedied by the Contractor without undue delay.

9.6 Releases of Partial Performance

Partial acceptances are excluded. Confirmation of parts of the performance, concepts, specifications or milestones shall not be deemed to be an acceptance or partial acceptance, but shall merely include a release of the relevant section of the performance, after which the Contractor shall continue to provide the performance to the agreed extent. The provisions of this clause 9 shall apply accordingly to releases.

9.7 Start of Limitation Period

Limitation periods for claims for defects shall commence with the overall acceptance of the contractual performance. The date of signature of the acceptance protocol by the Customer, which may not be unreasonably withheld, shall be deemed to be the acceptance date. Insofar as defects or missing functions or malfunctions are recorded in the acceptance protocol, the acceptance date shall be the first day on which the last significant defect has been eliminated or the last missing function has been integrated without defects and accepted.

10 Defects and Deficiencies in Performance

A deviation of the contractual performance from the functional specification or other agreed specifications shall always constitute a defect.

A defect in the documentation exists if a reasonable user with the knowledge normally to be expected for the use of the software is unable, with the help of the documentation and with reasonable effort, either to understand how to use individual functions or to solve problems that arise.

The Contractor warrants that the contractual performance can also be used to operate common programmes, or at least those programmes intended for the purpose of the contract, without any disruptions on the basis of industry standards.

It further warrants that the contractual performance complies with the applicable provisions of law at the time of acceptance. If any provision of law changes unexpectedly shortly before or during the planned acceptance procedures so that the Contractor cannot reasonably be expected to take the change into account, it may demand a reasonable extension of agreed dates and deadlines for that part of the contractual performance affected thereby.

The limitation period for defects is 2 years from acceptance. The limitation period for defects of title shall be 2 years and shall commence at the end of the calendar year in which the claim arose, and the Customer became aware of the defect of title (in particular an infringement of any industrial property rights) and the entitled party became, or should have become aware thereof without gross negligence. The limitation period shall be suspended by any notice of defect by the Customer.

The Customer shall notify the Contractor without undue delay of any defects occurring up to the expiry of the limitation period and shall cooperate to the necessary extent in the analysis and rectification of defects.

In cases of disruptions that were not caused by the contractual performance or were not caused solely by the contractual performance, the costs incurred for the search for, analysis of and elimination of the disruption shall be divided appropriately according to the respective contributions to causation or reimbursed to the party that did not cause the disruption.

10.1 Subsequent Performance

The Contractor shall remedy defects within the warranty period, taking into account the Customer's interests, without undue delay and within a reasonable period of time by either delivering an improved version of the contractual performance or by producing the contractual performance anew. The Customer's interest is sufficiently taken into account if the Contractor chooses the option that least impedes the Customer's business operations.

A short-term measure may be the provision of a substitute or workaround solution to temporarily remedy or circumvent the effects of a defect. Only when the defect has been completely remedied within a reasonable period of time shall it be deemed to have been remedied.

If a defect of Class 1 or several defects of Class 2 are detected within the warranty period, the Contractor shall provide subsequent performance by rectifying the defect.

10.2 Price Reduction, Withdrawal

In the event of failure to remedy the defect or if a grace period granted to the Contractor expires unsuccessfully, the Customer may, at its discretion, reduce the remuneration or withdraw from the contract in whole or in part. If the Customer withdraws from the contract, it shall pay the Contractor an appropriate usage fee for the period until the time of withdrawal, taking into account the defects, on the basis of a linear four-year depreciation.

10.3 Retention and Set-off

Insofar as the Contractor does not fulfil its obligations, the Customer may retain the remuneration for the contractual performance until the Contractor has fulfilled its obligations in full. The Customer may deduct its claims against the Contractor from the Contractor's remuneration for breach of contract.

10.4 Reimbursement of Expenses, Damages

Any further claims, including claims for damages or reimbursement of expenses, shall remain unaffected hereby.

11 Data Protection, Information Security and Data Backup Measures

The Contractor shall observe the Principles of Proper Data Processing (*GoDV*) when providing the contractual performance. This includes, for example, protection against malware (e.g. Trojans, viruses, spyware, etc.), information security and data backup measures, compliance with data protection provisions and all precautions and measures in accordance with the currently recognised state of ICT technology.

For data protection and information security, the **Annex "Agreement on Commissioned Processing"** shall also apply. The required information is to be filled in by the Contractor and the Customer. If no personal data are processed by the Contractor within the scope of the performance, the inclusion of this Annex is not necessary. The Customer shall document such.

12 Commencement, Termination and Ending of Contract

12.1 Commencement

The contract commences at the earliest with the conclusion of the contract, insofar as no other date is agreed in the contract for this purpose, and ends with the complete provision of the contractual performance in full.

12.2 Termination without Good Cause

The Customer is entitled to terminate the contract prematurely at any time, even without good cause, subject to a notice period of 8 (eight) weeks. In this case, the Customer shall pay only for the performance rendered up to the time of termination. The degree of completion in accordance with the agreed schedule shall be decisive in this regard. It is not necessary for the performance to be ready for acceptance.

The Customer's right to terminate the contract pursuant to § 648 Civil Code (*BGB*) shall remain unaffected.

12.3 Extraordinary Termination

Either party may terminate the contract with immediate effect for good cause. Good cause includes material violations of the provisions of this contract or other obligations.

Notice of termination must be given in writing (*Schriftform*) to be effective.

12.4 Contract Termination

In the event of termination and pro rata remuneration, the Contractor shall hand over the contractual performance to the Customer in full in accordance with the ascertained degree of completion. This also includes all documents and documentation required for further use by the Customer. Any copies of the documentation and other documents of the Customer remaining with the Contractor shall be returned to the Customer in whatever form and copies thereof shall be deleted or destroyed. There shall be no rights of retention or rights to refuse performance in respect of the software, data or other documents to be surrendered.

13 Software Maintenance

Insofar as maintenance services are also agreed during the duration of the project, the Contractor shall maintain the contractual performance at the current recognised state of the art and free of faults and shall rectify any defects that occur. The maintenance of customising services shall be carried out together with the maintenance of the overall solution. The special provisions on "Software Maintenance" GPC-IT (Part F) shall apply.

In the event of withdrawal from the individual software development or customisation contract for the software, the software maintenance also ends automatically (objection enforcement (*Einwendungsdurchgriff*)). After expiry of the warranty for the contractual performance, only termination of the software maintenance is possible. This applies accordingly to any individual parts of the contractual performance.

14 Special Provisions for Performance of Contract for Services

Insofar as the Contractor is to support the Customer in the conception of a specification (e.g. specification sheet or functional specification) or design concept or is to create such a concept, this may be expressly provided for in the contract as a performance of a contract for services in individual cases. In this case, the Contractor shall always be obliged to provide the best possible expert performance.

The specifications in sections 9.1 and 9.2 shall apply accordingly to the manner in which this performance is to be handed over. The Customer shall check whether the performance handed over by the Contractor in this way is in order.

In the event of improper performance, the Contractor shall be entitled to subsequent performance. If the performance provided is not in accordance with the contract, the Contractor shall have no claim or only a reduced claim to the agreed remuneration, insofar as the Customer is entitled to claim damages for this reason. The Customer may set off claims for damages against any claims of the Contractor.

The procedures pursuant to clause 5 of the GPC-IT (Part A) shall apply to any changes to the performance.