

# DAIMLER TRUCK

## General Purchase Conditions of Daimler Truck AG for IT Part L - Agile Development and Adaptation of Individual Software

### 1. General

#### 1.1 Scope of Application

These Special Provisions of the GPC-IT (Part L) 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 individual software development and the adaptation of software based on agile development methods .

#### 1.2 Contract Structure and Order of Precedence

Any Annexes to these GPC-IT (Part L) shall specify and supplement the provisions of these GPC-IT (Part L). Insofar as reference is made in these GPC-IT (Part L) to the "**Order**" or "**Agreement**", the Order or Agreement shall also include all the respective Annexes thereto as well as the provisions referred to therein.

An Order or Agreement shall take precedence over these GPC-IT (Part L) in the event of any conflict between the content thereof.

In the event of any conflict with the GPC-IT (Part A), the provisions of these GPC-IT (Part L) shall take precedence; in the event of any conflict with the Annexes to these GPC-IT (Part L), the provisions of the respective Annex shall take precedence.

#### 1.3 Terms, Definitions

The Customer may use certain terms in these GPC-IT (Part L) and, as applicable, in its Orders and the Annexes thereto, the meaning of which shall be as follows:

**"Project"** shall mean that project specified in more detail in the respective Order or Agreement.

**"Product vision"** describes the essential project goals that must be achieved from the Customer's point of view.

**"Epic"** or **"theme"** describes a group of related requirements from a business perspective, whereby each epic or theme shall be described in very abstract terms and concisely in a short paragraph. An epic or theme shall form the grouping of several user stories, which contain the details of the individual functional and non-functional requirements.

**"Story point"** is a unit (e.g. points or person days) to measure the complexity of realising a user story. Alternatively, it is possible to agree on comparable units of effort or complexity.

**"User story"** contains (i) a description of a concrete use case from the user's point of view, (ii) an estimate of the effort required for realisation measured in story points or other units, (iii) a description of the acceptance criteria that must be fulfilled for contractual performance, including associated test cases for checking the correct function of this use case. The user stories form the basis of the realisation (*cf.* clause 5).

**"Reference user story"** means, at the option of the Customer, either (i) a user story already fully described by the Customer at the time of conclusion of the Contract or (ii) a user story already realised in the further course of the project up to the time of the analogy estimate.

**"Sprint"** is an iteration phase with a defined runtime in which a certain number of requirements from the product backlog are prioritised in the form of user stories and then implemented.

**"Analogy estimate"** is an estimate of the complexity of a user story to be realised within a sprint based on a comparison with the complexity of reference user stories.

**"System"** means the customised and/or adapted software to be developed under this Contract (together with any base products used).

**"Subject matter"** means the system, the documentation and all other services owed under this Contract.

**"Sprint result"** means that part of the subject matter developed during a sprint.

**"Product backlog"** is a list of all epics, including the user stories contained therein and already defined.

**"Sprint backlog"** is a part of the product backlog and contains the user stories to be realised within a sprint.

**"Documentation"** means the documentation of a system from a functional and technical point of view to the extent described in clause 5.5.

**"Operating manual"** or **"operations manual"** is a part of the documentation and documents all system-specific information required for the successful operation of the system by the Customer.

**"Installation manual"** or **"installation manual"** is a part of the documentation and documents all system-specific information necessary for successful installation and commissioning of the system.

**"System architecture"** defines the basic technical principles according to which the system is to be built. This includes all the basic products and concepts used, how and for what purpose they are used, a technical operating model and comprehensible justifications for all decisions made by the Contractor or jointly in this regard.

Within the framework of the **"exchange-for-free"** procedure, certain requirements can be exchanged for requirements not included in the project scope without influencing the remuneration to be paid by offsetting the story points underlying the requirements.

**"Acceptance criteria"** are a description of the desired results of a user story (good cases), possibly supplemented by a description of undesired results (bad cases).

**"Definition of done"** contains further criteria agreed upon in the project that must be fulfilled for a user story, a release or a sprint to be considered completed.

**"Potentially shippable product"** means a sprint result that is usable as such.

**"Release"** means a version of the subject matter released by the Contractor which covers all the requirements defined for that version.

**"Release plan"** is a flow chart that is constantly updated by the Parties and which describes those functionalities that are to be made available in the coming releases. "Test cases" or "test cases and scenarios" describe the test procedure for checking a user story or the integrative interaction of several user stories. Contents are input variables, preconditions for execution, expected results.

**"Test strategy"** defines the conditions for the test organisation.

**"Impediment"** describes an obstacle that prevents the Contractor from efficiently completing its tasks or achieving the goal of a sprint and thereby hinders development progress. Impediments are documented in the impediment log.

**"Impediment log"** is a list of impediments that contains a description, tasks for resolution and the current status for each impediment.

## 2. Subject Matter / Scope

- 2.1 The scope of the commissioned performance is to be determined by the Order and/or the Agreement as well as the technical performance specification, insofar as such is part of the Contract or the Order or the Agreement.
- 2.2 Unless expressly stated otherwise in the Order or the Agreement or in the technical performance specification, the Contractor shall perform the following services, including the scope of services and related services specified therein, on the basis of the agile method described below.

## 3. Conceptual Services

- 3.1 Unless provided by the Customer in advance, or unless otherwise stipulated in the Order or the Agreement or the technical performance specification, the Contractor shall be responsible in particular for the following tasks (conceptual services):
  - (a) At the commencement, the Contractor shall check whether the contents and goals defined by the Customer in the product vision are sufficiently described and, if a need for adaptation or optimisation is identified, shall immediately notify the Customer of such in text form (*Textform*);
  - (b) The Contractor shall ensure the complete description of the requirements for the system in the form of epics, a release plan, the test strategy and, as applicable, the underlying system architecture based on the product vision;
  - (c) In the case of software adaptation, the Contractor shall use a fit/gap analysis to assess which requirements are already mapped by the standard functionality of the basic software and which gaps exist and need to be closed to achieve the requirements, and shall update existing epics accordingly;
- 3.2 The Contractor shall ensure that all objectives set out in the product vision are consistently described in terms of epics, in the release plan, in the test strategy and in the system architecture before commencing implementation.
- 3.3 Subject to clause 2.2, the Contractor shall supply to the Customer by the agreed completion date the product backlog, the release plan, the test strategy and the system architecture, fully described on the basis of epics, in a printed form and on a data carrier in a common or agreed format.

## 4. Specification Services

- 4.1 Subject to clause 2.2, the Contractor shall be responsible for the complete detailing of the requirements contained in the epics by way of the creation of user stories. As part of the creation of the user stories, the Contractor shall in particular ensure that a sufficient number of meaningful test cases and acceptance criteria are defined for each completed user story and that the complexity of a user story is assessed on the basis of story points and documented accordingly (specification services).
- 4.2 The Contractor shall ensure that a sufficient number of requirements have been detailed in the form of user stories in good time before the scheduled start of a sprint.
- 4.3 Subject to clause 2.2, the Contractor shall deliver to the Customer:
  - (a) a sufficient number of user stories for realisation within a sprint in good time before the start of a sprint;

(b) by the agreed completion date, the fully detailed product backlog in printed form and on a data carrier in a common or agreed format.

## 5. Realisation by Means of Sprints

### 5.1 General

5.1.1 The project is realised by means of so-called sprints. The process described in clauses 5.2 – 5.6 is to be repeated in this regard until all the user stories described in the product backlog have been successfully processed or the story point quota has been used up.

5.1.2 Subject to clause 2.2, the duration of a sprint shall be mutually agreed by the Parties prior to the commencement of a sprint.

### 5.2 Sprint Planning

5.2.1 At the beginning of each sprint, the Contractor shall advise the Customer in a joint sprint planning meeting on the selection and prioritisation of user stories from the product backlog for the current sprint.

5.2.2 The Contractor shall notify the Customer in text form (*Textform*) in particular if the selection of specific user stories in a specific sequence results in potential cost and time savings, or if the implementation of specific user stories within a sprint is required due to technical or functional dependencies. The Customer has the right to decide on the selection and prioritisation of user stories for a sprint.

5.2.3 The Contractor shall evaluate or update and document in text form (*Textform*) the complexity of the user stories selected for the current sprint by way of an analogy estimate based on the reference user stories. This complexity assessment is subject to approval by the Customer.

5.2.4 Taking into account the complexity requirements and the agreed completion date, the Contractor shall check how many of the user stories can be realised in the defined priority within the current sprint and shall move the user stories to be implemented from the product backlog to the sprint backlog.

5.2.5 After the sprint backlog has been approved by the Customer, the Contractor shall implement the user stories contained in the sprint backlog. No changes or additions to user stories are to be made after the time of approval.

### 5.3 Implementation of a Sprint

5.3.1 Subject to clause 2.2, the performance to be provided by the Contractor shall include in particular:

(a) the creation or modification of source code of software in the form of a so-called potentially shippable product or release; and/or

(b) the adaptation and parameterisation (without interfering with the source code) of software (collectively referred to as "configuration"); and

(c) the installation and deployment on a system to be agreed between the Parties; and

(d) updating the documentation; and

(e) quality assurance services

(f) the detailing of user stories according to clause 4

5.3.2 The performance shall be undertaken by the Contractor in accordance with the requirements of the user stories in the specified priority of the respective sprint backlog released by the Customer and the specification of the agreed system architecture, if any. In this regard, all requirements of the user stories must be observed and implemented with suitable technical and functional solutions in such a way that the sprint result meets the requirements of the Customer and is suitable for its purposes.

5.3.3 Subject to clause 2.2, in the event of a planned subsequent implementation of the system in the Customer's programme and system landscape, the Contractor must ensure the interoperability of the system with programmes and systems to be used together with the Customer.

5.3.4 Prior to completion and presentation of the sprint result, the Contractor shall ensure the due functionality and performance by means of suitable test procedures.

### 5.4 Regular Sprint Meetings

5.4.1 Subject to clause 2.2, the Contractor shall hold daily sprint meetings during a sprint. The purpose of these sprint meetings is to provide both Parties with an insight into the current activities and any impediments faced by the Contractor.

5.4.2 The Contractor shall report in particular on the following topics:

(a) the tasks completed since the last sprint meeting; and

(b) the planned tasks until the next sprint meeting and alignment with the sprint target; and

(c) any current impediments and proposed solutions; and

(d) the current status of the maintained sprint backlog.

5.4.3 In addition, the Contractor shall document any impediments in an impediment log and report any impediments that jeopardise the achievement of the sprint target to the Customer in text form (*Textform*) without prejudice to clause 9.5(b).

Any impediments that are not remedied within a reasonable period of time (in the absence of an agreement to the contrary, within 48 hours) shall be escalated by the Contractor to the Customer's representative.

## 5.5 Documentation

- 5.5.1 The Contractor's realisation service shall also include the preparation of the documentation. Such documentation shall constitute part of the main performance obligations.
- 5.5.2 The documentation shall contain a complete description of the system, both from a functional and a technical point of view, and shall include in particular a full description and commentary of the source code of the system, configurations, associated design documents, an operating and an installation manual, all test protocols, as well as the current product backlog.
- 5.5.3 The Contractor shall at all times keep the documentation in a condition that enables the Customer to operate, maintain, commission and further develop the system without the Contractor, if necessary with IT specialists. Configurations shall be described by the Contractor and documented in the installation manual in such a way that an average IT specialist is able to carry out such and so that any loss of data or a hindrance of the Customer's business operations is not possible. The operating manual must be written in such a way that an average user is able to use the contractual performance without any support from the Contractor and without any significant restrictions.
- 5.5.4 Unless expressly stated otherwise in the Order or the Agreement or in the technical performance specification, the documentation shall be delivered in the German language for German-speaking locations, and otherwise in English in printed form or in a form that can be printed by way of commonly-used programmes.

## 5.6 Sprint Review and Retrospective

- 5.6.1 At the end of a sprint, the Contractor shall organise and moderate a sprint review meeting and a sprint retrospective meeting, unless otherwise agreed. The aims of the sprint review meeting shall be:
- (a) to present the sprint result to the Customer by carrying out a test and trial run in accordance with clause 17.1 and to make such available to the Customer for acceptance, and
  - (b) the acceptance of the sprint result (clauses 17.2 - 17.5) by the Customer,
  - (c) to identify new or changed user stories,
  - (d) to provide the Customer with an accurate report on story points already used, project progress against any agreed milestones and delivery dates, and provide a forecast for the project duration.

The aim of the sprint retrospective meeting is to compile the experiences from the previous sprint and to incorporate the results into future sprints in the form of improvement measures. In this context, the Contractor will take appropriate measures at an early stage if the speed of realisation of the current sprint gives reason to believe that the agreed completion date or agreed milestones cannot be achieved.

- 5.6.2 The sprint review meeting and the sprint retrospective meeting shall form the conclusion of a sprint.

## 6. Finalisation

- 6.1 After completion of the realisation phase and in good time before expiry of the agreed completion date, the Contractor shall present the system to the Customer by way of a test and trial run (clause 17.1) and shall make the system, including the agreed documentation and all other documents required or owed for acceptance and use, available to the Customer in an operational condition for acceptance (clauses 17.2- 17.5).
- 6.2 The Contractor shall deliver the contractual performance in full on a common or agreed data carrier.

## 7. Installation, Integration and Deployment of the System

For any performance in connection with the installation, integration and provision of the system, the special provisions for "**Individual Software Development, Maintenance and Adaptation of Software**" (GPC-IT (Part H)) shall apply.

## 8. Software Maintenance

- 8.1 Insofar as maintenance services are also agreed, the Contractor shall provide the contractual performance in accordance with the current recognised state of the art and free of any disruptions and the Contractor shall rectify any defects that may occur. The maintenance of the configuration performance shall be carried out together with the maintenance of the system. The special provisions on "Maintenance of Software" (GPC-IT (Part F)) shall apply to such performance.
- 8.2 In the event of any withdrawal or termination, software maintenance shall also end automatically.

## 9. Project Organisation

### 9.1 Obligations of Contractor

For the Customer, the Contractor is the sole and exclusive responsible contact person for the contractual performance, even if it uses vicarious agents and employees.

### 9.2 Contact Persons

- 9.2.1 Prior to the commencement of the provision of services, the Contractor shall name in text form (*Textform*) a representative and the Contractor's project staff involved for the planning, control and coordination of the tasks.

The Customer shall also name a representative.

9.2.2 Communication shall take place exclusively via such representatives. The representatives are authorised to receive all declarations in connection with the Contract. They shall take or cause to be taken any necessary decisions of their organisation in an expeditious manner.

### 9.3 Dates

Dates and meetings to be organised by the Contractor within the scope of the project implementation shall be announced to the Customer in text form (*Textform*) in good time, unless otherwise agreed in the Order or the Agreement or technical performance specification, with at least one week's notice.

### 9.4 Meetings and Workshops

Unless otherwise agreed, the Contractor shall provide suitable premises as well as appropriate video/audio conference facilities for remote participation for all meetings or workshops taking place in the project. Unless expressly agreed otherwise, the Customer's participation in meetings shall not be binding.

### 9.5 Reports

Subject to clause 2.2, the Contractor shall, without prejudice to the other documents and reports owed under these GPC-IT (Part L), regularly provide the Customer with the following reports in particular in text form (*Textform*) during the project:

(a) after each sprint and during a sprint, no later than half a working day after a specific request by the Customer: a precise report on the expenses already incurred, the progress of the project in comparison with any agreed milestones and delivery dates, and a forecast of the total costs and the project duration; and

(b) daily or, without undue delay if a solution is to be brought about by the Customer: an up-to-date impediment log.

### 9.6 Project Decisions

If the Parties are unable to agree on significant points in the context of the decisions to be made in the project, the Contractor's representative and the Customer's contact person shall work towards reaching an agreement. If this does not take place without undue delay, the parties shall escalate the matter in dispute to competent employees or bodies of the respective company capable of making a decision or bringing such about without undue delay.

### 9.7 Special Requirements for Project Organisation

The documents of any Order and in particular those which may contain special provisions on the project organisation shall prevail in the event of conflict to these GPC-IT (Part L). This concerns in particular, formal requirements for result documents for individual project phases/activities, as well as the specification of corresponding templates and further tools.

### 9.8 Staff Qualification

The Contractor shall only deploy personnel who are qualified for the contractual performance and have sufficient experience with comparable work. The Customer may demand proof of such and, in the absence of such proof, may demand a replacement of the project manager or any employees deployed.

## 10. General Contractor Obligations

### 10.1 Tools of Contractor

Subject to clause 2.2, the Contractor shall provide all tools required for the contractual performance - including required development environments, project management and planning systems, as well as any required test environments.

### 10.2 Compliance with Quality Assurance Standards

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

10.2.2 The Contractor shall perform uniformly in accordance with its quality management system, which shall be compared in advance with the specification and guidelines provided by the Customer. Unless otherwise agreed, these specifications include the project quality matrix and quality gates guideline in the provisions relevant to the order. The Contractor shall design the contractual performance in such a way that the quality goals are implemented in practice and a high quality of contractual performance is ensured.

10.2.3 The Customer is entitled to inspect the Contractor's quality management system in connection with the contractual performance at the Contractor's premises during normal business hours, either itself or through third parties. The Customer must notify the inspection at least five working days before it is to begin, stating the location and the content of the inspection. During this inspection, the Customer and/or third parties commissioned by the Customer may also inspect the Contractor's entire project documentation, which shall be made available to the Customer for inspection.

10.2.4 The Contractor shall name the responsible quality manager as well as the quality procedures before the start of the performance of the owed service and shall continuously inform the Customer about its quality management system during the period of collaboration.

10.2.5 Together with the contractual performance, the Contractor shall hand over to the Customer a complete written documentation of the quality management systems and quality assurance procedures applied in the performance of the services, including quality inspections carried out and their inspection results.

### 10.3 Legal and Regulatory Requirements

In the Order or the Agreement and/or the technical performance specification together with any attachments thereto and in concepts prepared by the Customer, special legal or general official requirements are generally not mentioned, because the Contractor, as a specialist company for such work, is expected to have a comprehensive understanding of the statutory and official requirements to be observed. These requirements must therefore nevertheless be fulfilled by the Contractor.

### 10.4 Review of Contract Documents

The Contractor shall, on the basis of its expertise, check the documents provided to it by the Customer for correctness and completeness before submitting its offer and shall notify the Customer in writing of any incompleteness, contradictions and errors before submitting its binding offer. The Contractor may not use as a defence or excuse any defects in the contract documents not detected or reported for reasons for which the Contractor is responsible. This shall apply accordingly to documents provided by the Customer after the start of the project.

### 10.5 Performance Environment/Preliminary Checks

Prior to the provision of any performance, the Contractor shall check the technical conditions at the place of installation or use of its contractual performance to the extent necessary so that such performance is possible without hindrance and, if necessary, the Contractor shall notify the Customer of the work to be carried out to create the system requirements for the use of the contractual performance. The Contractor shall notify the Customer in text form (*Textform*) of any necessary changes to systems and software (in particular system and operating software). Such changes shall be agreed with the Customer. The result of this preliminary review shall be documented in the form of user stories (including an analogy estimate of the effort on the basis of reference user stories), if such are to be prepared by the Contractor.

### 10.6 Request for Additional Support

The Contractor shall notify the Customer in writing in good time if additional cooperation or support from the Customer is necessary for the performance over and above the agreed level of cooperation/provision of support. Such contributions and support must be requested in good time so that the Customer is able to provide such within the framework of its ongoing business operations without any hindrance. Any such additional contributions and provision of support required shall not jeopardise the existing schedule; agreed dates and deadlines shall remain binding. The Customer shall be entitled to claim from the Contractor any expenses for cooperation and provision of support not agreed to.

### 10.7 Notification of Lack of Cooperation and Support by the Customer

Without undue delay the Contractor shall notify the Customer in writing of any inadequate or omitted cooperation on the part of the Customer. Any failure to do so shall mean that the Customer is not in default in relation to such and the Contractor may not claim improper cooperation. If the Customer culpably fails to provide the notified cooperation after notification has been given and a reasonable grace period has been granted, the Contractor may demand a postponement of the respective dates or deadlines for the period of the delay.

### 10.8 Confidentiality

The Contractor shall conclude a written non-disclosure agreement in favour of the Customer with any vicarious agents engaged and shall provide evidence thereof to the Customer upon request.

## 11. Cooperation and Provision of Support by the Customer

11.1 Insofar as the Customer's cooperation and support go beyond the requirements under these GPC-IT (Part L), such shall be described in the Order or the Agreement and/or the technical performance specification. The procedure for issuing notification for omitted cooperation and for agreeing on additional cooperation by the Customer is set out in clauses 10.6 and 10.7.

11.2 If standard software is to be included in the contractual performance according to the Order or the Agreement or the technical performance specification and such does not originate from the Contractor or is to be provided by the Contractor, the Customer shall procure the standard software and make it available to the Contractor if this is expressly regulated in the Order or the Agreement and is not impossible for the Customer.

## 12. Performance Locations, Delivery Dates and Milestones

### 12.1 Performance Locations

The Contractor's performance shall be provided at the locations specified in the Order or the Agreement and/or in the technical performance specification. If no specification exist, the Contractor shall provide the performance, with the exception of installation and integration, at the Contractor's place of business, unless otherwise stipulated in these GPC-IT (Part L).

### 12.2 Milestones/Delivery Dates

12.2.1 Agreed delivery dates, milestones and deadlines are binding. The delivery dates and deadlines are determined in particular from the Order or the Agreement and/or the technical performance description. The timely provision of goods and services shall be determined by the delivery (insofar as, exceptionally, no acceptance of the performance is to be carried out) or the acceptance after a successfully completed test and trial run (see clause 17). If the Contractor realises that an agreed date or deadline cannot be met, it shall notify the Customer in writing without delay, stating the reasons for the delay. Any changes to agreed delivery dates and deadlines must be made in writing.

12.2.2 If an agreed deadline is not achieved, the Contractor shall undertake everything possible to keep the delay to a minimum and to make up for such delay. Any contractual penalties agreed for any delay in relation to delivery dates and in particular milestones shall be determined in particular by the Order or the Agreement. Any right to claim a contractual penalty may be asserted until the time of payment of the final invoice of the Contractor. Any further rights of the Customer due to delay by the Contractor in relation to milestones remain unaffected thereby.

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

### 12.3 Transfer of Risk

Performance shall be provided at the agreed respective place of performance (clause 12.1) by the respective agreed date (clause 12.2). The price and performance risk shall not pass to the Customer before such date. In relation to any performance ready for acceptance, clause 17 shall apply to the transfer of the risk of price and performance.

## 13. Remuneration

### 13.1 General

13.1.1 All agreed performance of the Contractor, in particular that which is included in the GPC-IT, are included in the contractually agreed remuneration, unless expressly agreed otherwise in writing.

13.1.2 Remuneration for performance according to a fixed price (clause 13.2) or a maximum price (clause 13.3) or on the basis of story point quotas (clause 13.4) shall be made only after complete performance. If the Parties agree on partial payments, partial payments shall be made only after complete performance of the respective partial performance.

13.1.3 Unless otherwise expressly agreed in writing generally or for individual performance elements, the prices stated in the Order or Agreement are maximum prices (clause 13.3).

13.1.4 The Contractor shall be bound by agreed remuneration ceilings, price frames and fixed prices. The Contractor's estimate of expenditure shall be binding; unless such is expressly designated as being non-binding in the Order or the Agreement.

13.1.5 The Parties agree that the ordering and implementation of the project is based on mutual trust. The Contractor shall disclose to the Customer in its offer the calculation basis underlying its offer and the relevant price parameters in each case in order to ensure the transparency of the prices and the comprehensibility by the Customer of the expenses incurred in the project.

### 13.2 Fixed Price

13.2.1 If a fixed price has been agreed for performance, the Contractor shall provide such performance in full at the agreed price.

13.2.2 Unless expressly agreed otherwise in the Order or the Agreement, additional expenses for the complete performance shall be borne by the Contractor unless (a) the Contractor is not responsible for such and (b) the Contractor has notified the Customer in writing in good time beforehand of the overrun and (c) the Customer has agreed to such additional expenses by means of a separate order. In particular, additional requirements of the Customer (clause 15 Additional Services) which exceed the respective current product backlog and cannot be compensated according to the exchange-for-free principle are excluded. Payment for additional requirements shall only be made by way of a separate ordering of such.

13.2.3 If the Parties agree on partial payments and nothing to the contrary is expressly agreed in the Order or the Agreement, the remuneration owed for the respective partial performance shall correspond to 75% of the sum of the number of story points attributable to the partial performance multiplied by the agreed price per story point. The remaining 25 % of the remuneration shall be linked to the successful final acceptance of the system and shall only be invoiced after successful final acceptance. In the event of premature termination of the project, clause 20.2.1 shall apply.

### 13.3 Maximum Price

13.3.1 If a maximum price has been agreed for performance, such shall constitute a binding upper price limit for the performance.

13.3.2 Unless expressly agreed otherwise in the Order or the Agreement, additional expenses for the complete performance shall be borne by the Contractor unless (a) the Contractor is not responsible for such and (b) the Contractor has notified the Customer in writing in good time beforehand of the overrun and (c) the Customer has agreed to such additional expenses by means of a separate Order. In particular, additional requirements of the Customer (clause 15 Additional Services) which exceed the respective current product backlog and cannot be compensated according to the exchange-for-free principle are excluded. Payment for additional requirements shall only be made by way of a separate ordering of such

13.3.3 If the maximum price is not exhausted, the Contractor shall not be entitled to charge the unexhausted part of the maximum price.

13.3.4 The calculation of the remuneration according to the maximum price is carried out by multiplying the total effort for the realisation of the product backlog measured in story points by the agreed price per story point. The total expense for the realisation of the product backlog in the form of story points as well as the price per story point shall be bindingly determined upon conclusion of the Contract.

13.3.5 If the Parties agree on partial payments and nothing to the contrary is expressly agreed in the Order or the Agreement, the remuneration owed for the respective partial performance shall correspond to 75% of the sum of the number of story points attributable to the partial performance multiplied by the agreed price per story point. The remaining 25 % of the remuneration shall be linked to the successful final acceptance of the system and shall only be invoiced after successful final acceptance. In the event of premature termination of the project, clause 20.2.1 shall apply.

### 13.4 Remuneration based on Story Point Quotas

- 13.4.1 If remuneration on the basis of story point quotas has been expressly agreed, the Contractor shall invoice its performance in accordance with the story points implemented in the agreed billing period.
- 13.4.2 There shall be no entitlement to remuneration for performance beyond the agreed story point quota. Remuneration for additional requirements shall only be made by way of a separate ordering of such.
- 13.4.3 If the story point quota is not used up, the Contractor shall not be entitled to charge the unused part of the story point quota.
- 13.4.4 The calculation of the remuneration on the basis of story points shall be made by multiplying the number of story points by the agreed price per story point. The number of story points as well as the price per story point shall be bindingly determined upon conclusion of the Contract.
- 13.4.5 If the Parties agree on partial payments and nothing to the contrary is expressly agreed in the Order or the Agreement, 75 % of the number of story points attributable to the partial performance shall initially be charged for the respective partial performance. The remaining 25 % shall be linked to the successful final acceptance of the system and shall only be invoiced after successful final acceptance. In the event of premature termination of the project, clause 20.2.1 shall apply accordingly.
- 13.5 Remuneration According to Expenditure (Time & Material)
- 13.5.1 In the event of an express agreement on remuneration according to time & material, with or without an upper remuneration limit, the Contractor shall invoice its performance in each case after the performance has been rendered in accordance with the agreed payment periods. Time & material is a calculation basis for wages, in which invoicing is based on working time and material expenditure, for example for conception and specification services (clauses 3 and 4).
- 13.5.2 There shall be no claim to remuneration for agreed services in excess of an agreed upper remuneration limit. Unless otherwise expressly agreed in the Order or the Agreement, an agreed maximum price shall also be deemed to be the upper remuneration limit for the remuneration of services on a time and material basis, i.e. the maximum price shall act as the absolute upper limit of the Contractor's remuneration claim for the project in the Order as a whole.
- 13.5.3 The Contractor shall be responsible for ensuring that the calculation of expenses carried out by it before placing the Order is not exceeded for reasons for which it is responsible. The Contractor shall notify the Customer without undue delay as soon as it becomes apparent to it that the estimated expenditure - for whatever reason - is likely to be exceeded and shall communicate the reasons and the additional expenditure in detail. The Customer shall notify the Contractor in writing whether it agrees to this overrun. If the Customer does not consent, the Contractor shall provide its performance at the originally calculated and agreed level expenditure. The Contractor may request consent if it is not responsible for the overrun. If the Contractor repeatedly demands adjustments to the expense estimate for reasons for which it is responsible, the Customer may exercise its right of extraordinary termination (*ausserordentliche Kündigungsrecht*) by way of notice to the Contractor.

## 14. Change in Performance

- 14.1 Change Request of the Customer
- Until the time of successful final acceptance, the Customer may request changes to the agreed scope of performance in text form (*Textform*) at any time.
- 14.2 Examination of a Change Request
- 14.2.1 If the Customer requests a change, the Contractor shall inform the Customer in writing by the agreed date - at the latest after 10 working days - whether such change is possible and what effects it will have on the contractual performance, in particular in relation to deadlines, dependence on other epics or user stories, effort, remuneration and cooperation.
- 14.2.2 The following applies to the expense assessment of new requirements:
- (a) The Parties shall detail the scope of change in the form of user stories. The procedure described in clause 4 shall apply accordingly.
  - (b) The Contractor shall prepare an expense estimate for these user stories by way of an analogy estimate based on the reference user stories.
- 14.2.3 Within the framework of the examination of the change request, the Contractor shall be obliged to avoid adjustments to the remuneration if possible and to implement the exchange-for-free principle in the case of new requirements. The following procedure shall apply for this purpose:
- (a) The Contractor shall check whether and to what extent other user stories can be simplified in order to reduce the associated implementation expense.
  - (b) The Parties shall, in accordance with clause 4, specify the user stories for epics that are not yet defined in user stories but where potential for simplification and complexity reduction is identified, and seek to reduce complexity in the process.
  - (c) The Contractor shall check whether the user stories that are not absolutely necessary from the Contractor's point of view can be eliminated from the product backlog.
- 14.2.4 If the changes cannot be (fully) compensated by means of the exchange-for-free principle, the Contractor shall submit a separate offer for the implementation of the requirements to the Customer in accordance with clause 15.



14.2.5 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.

14.2.6 The expenses associated with any examination shall be borne by the Parties themselves.

#### 14.3 Agreement on Change Requests

The Customer shall notify the Contractor in writing within the agreed period, otherwise within a reasonable period after receipt of the examination results (see clause 14.2), whether the proposed change to the examination result is supported; if this is the case, the change shall be agreed and the Contract shall be updated accordingly. The new or modified epics and/or user stories shall be prioritised accordingly in the product backlog.

#### 14.4 Proposed Change by the Contractor

In the event of a change proposal by the Contractor, the Customer shall notify the Contractor in text form (*Textform*) within the agreed period of time, otherwise within a reasonable period of time, whether it agrees to the change. This requires that the proposed change is specified in such detail that it enables the Customer to examine the cause and content of the proposed change as well as the costs and effects of implementation and the effects of non-implementation without any further information being necessary.

#### 14.5 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 representative 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 representative 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.

#### 14.6 Additional Application Provisions

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

### 15. Additional Services

At the request of the Customer, the Contractor shall provide additional or more extensive performance in connection with the Order or the Agreement which cannot be compensated via the exchange-for-free principle (clause 14.2.3) in accordance with a separate order, unless this is unreasonable for the Contractor. Unless expressly agreed otherwise, these GPC-IT (Part L) shall also apply. The procedure described in clause 14.2.2 shall apply accordingly to the assessment of the costs of these additional or more extensive performance using the reference user stories on which the project is based. If the remuneration for additional performance is based on a maximum price (clause 13.3), a price per story point agreed under the project shall also be used to assess the remuneration for these additional services by way of an analogy estimate.

### 16. Rights of Use

#### 16.1 Ownership and Exclusive Rights of Use of the Customer

16.1.1 Title to all results and interim results of the Contractor's contractual services, e.g. performance specification, product backlog, user stories, other specification, studies, concepts, documentation including installation, user 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 the commented source and object code, as well as all intermediate results arising in this context and aids created for this purpose, and/or other performance results (together: "work results") shall pass to the Customer, insofar as they are embodied objects, upon the handing over of such objects.

16.1.2 Furthermore, for the due consideration of the agreed remuneration, the Contractor hereby grants the Customer the indefinite, worldwide, exclusive, permanent, irrevocable and sub-licensable as well as transferable rights to use and exploit these work results, unlimited as to content, from the time of their creation or, at the latest upon such being handed over. These rights of use includes all types of use including, particular storage, loading, execution, processing of data, processing including by third parties including the 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.

16.1.3 The Customer is entitled to grant sublicences 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 versions without any copyright designation.

## 16.2 Non-exclusive Rights of Use of the Customer

For the due consideration of the agreed remuneration, the Contractor hereby grants the Customer a non-exclusive, irrevocable, permanent, worldwide, transferable rights of use to works, other copyright or other 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 the performance, to use this Contractor's intellectual property to the extent necessary for the use and licensing of 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 such is necessary for the use of the work results - including within the scope of clause 16.1.

## 16.3 Standard Software

Notwithstanding clause 16.2, the Customer may only transfer the rights to use standard software to group companies or to third parties for use solely for purposes of the Customer or its group companies (§ 15 Stock Corporation Act (*AktG*)), unless otherwise stated in the Order or the Agreement in favour of the Customer.

## 16.4 Rights of Use for Configurations

Insofar as the Contractor configures its own software or software of third parties for the Customer, it shall grant the Customer the rights of use in accordance with clause 16.1, unless expressly agreed otherwise in the Order or the Agreement or in the technical performance specification. The Customer shall at least be entitled to the rights of use in accordance with clause 16.2 for the configuration services.

## 16.5 Limitations of the Customer's Rights of Use

If the Contractor is not in a position to grant the rights of use in accordance with clauses 16.1 to 16.4 in full, e.g. because it wants to use protected work results of third parties to create the work results, it must inform the Customer of such in writing before placing the Order, specifying the reasons. Such restrictions require a written agreement, and are otherwise not binding on the Customer.

## 16.6 Duty of Disclosure

16.6.1 The Contractor shall notify the Customer in writing - prior to the conclusion of the Contract - of all standard software, individual software of third parties, development tools and other works (such as documentation required for the further development and processing of the results of the Contractor's performance) to be used in connection with the development of the work results; such shall be listed in the Order or the Agreement or in an individual agreement. The Contractor shall in particular indicate which version was used and whether it is proprietary or market software. "Proprietary" shall refer to software developed by the Contractor itself and/or to which it has exclusive rights of use, or which can be obtained exclusively from the manufacturer itself and not, such as with market software, in the trade or via intermediaries.

16.6.2 The use of free and open source software ("FOSS") is generally not permitted; clause 3.5 of GPC-IT (Part A) shall apply.

16.6.3 Unless otherwise agreed in the Order or the Agreement or the technical performance specification, the Contractor hereby grants the Customer the rights of use to standard software, individual software of third parties, development tools and other works in accordance with clauses 16.2 and 16.3.

## 16.7 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 clauses 16.1, 16.2 and 16.4 in each case.

## 16.8 Rights to Inventions

The Customer shall be put in a position by the Contractor so that it can permanently use an invention created during the performance free of charge within the scope of the rights of use granted to it. 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 within the scope of the rights of use to be granted. 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. If this is not possible, clause 16.5 and clause 16.6 apply accordingly.

## 16.9 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.

16. These rights of use to these updates and subsequent performance must have at least the same scope as the Customer's rights of use to the contractual performance.

## 16.10 Continued Validity

Any sublicences or rights of use granted shall remain unaffected by a withdrawal from or termination of the Contract. In the event of withdrawal, the Contractor shall be entitled to an appropriate lump sum remuneration for the rights of use remaining with the Customer for services already created, insofar as the Customer does not waive the use of such rights. The same shall apply in the event of termination, insofar as the Contractor has not yet received a corresponding pro rata remuneration.

## 17. Acceptance

### 17.1 Test and Trial Operations

- 17.1.1 The acceptance test of the contractual performance by the Customer shall commence only after the Contractor has demonstrated its completeness and functionality on the basis of the functional and non-functional requirements by means of suitable written evidence (e.g. test protocols) for a test and trial operation.
- 17.1.2 Within the scope of such test and trial operations, the Contractor shall check the respective contractual performance for completeness, performance and functionality. Insofar as defined, the test cases defined per user story, the underlying test strategy and the quality plan, including the procedures and criteria set out therein, shall be decisive for determining such. Otherwise, the test criteria for each sprint shall be defined in consultation with the Contractor before the test operations are carried out.
- 17.1.3 If test and trial operations at the Customer's premises has been agreed to in writing, the Contractor shall provide the Customer with the system or test software required for this purpose.
- 17.1.4 In the event of tests by the Customer, the Contractor shall instruct and advise the Customer to the extent necessary. Insofar as the Customer's cooperation is required or has been agreed, clauses 10.6, 10.7 and 11 shall apply accordingly.
- 17.1.5 The test and trial operations shall be recorded in writing at the end of the test and trial operations, including any deficiencies that may have occurred. The protocol shall be signed by both Parties. The Customer shall confirm a successful demonstration in writing without undue delay. If requirements are not met and such not only insignificantly restrict the use of the contractual services, the Customer may refuse to confirm. User stories that have not been correctly implemented by the Contractor shall be returned to the product backlog - if necessary after adjustment (clause 4) at the Contractor's expense. If both Parties are responsible for the incorrect implementation, the costs shall be shared. In this case, deferred user stories shall be prioritised according to the Customer's specification.
- 17.1.6 Upon confirmation by the Customer that the trial operation 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 support for such to the extent required. If the Customer expressly waives the test and trial operations, the Contractor shall declare to the Customer in writing that it is ready to carry out the acceptance procedure.
- 17.1.7 Contractual performance to be delivered in writing or in text form (*Textform*), such as the product backlog or individual user stories, do not require test and trial operations.

### 17.2 Acceptance Procedures

- 17.2.1 An acceptance test shall only be incumbent on the Customer upon presentation of the complete contractual performance including the documentation to be provided as well as the proven test and trial operations, insofar as the Customer has not expressly waived such.
- 17.2.2 The duration and scope of acceptance tests shall be determined by the Customer after consultation with the Contractor, unless such are determined by the test strategy and the test cases. The place of the final acceptance tests shall be the place of use of the contractual performance at the Customer's premises, unless otherwise agreed in writing.
- 17.2.3 Insofar as acceptance tests are to be carried out at the Customer's premises, the Contractor shall provide the Customer with the system or test software required for this purpose.
- 17.2.4 Within the framework of the acceptance tests for individual sprint results, the Contractor shall prove that the sprint result meets the acceptance criteria of the user stories on which the sprint result is based and - if agreed - the criteria defined in the definition of done and, if applicable, further criteria defined by the Customer.
- 17.2.5 Within the scope of the final acceptance test, the Contractor shall prove that the overall performance fulfils all the requirements described in the product backlog and - if agreed - in the definition of done under conditions similar to those in productive operation. In particular, the integrative parts of the system that still have to be verified, i.e. functions that can only be verified through the overall integration, as well as the performance of the overall system shall be tested.
- 17.2.6 The acceptance tests do not constitute productive use of the contractual performance.

### 17.3 Defect Classes

Unless otherwise agreed, in particular in the test strategy or agreed in writing, defects detected during the acceptance tests shall be assigned by the Customer to the following classes:

(a) Class 1: System Standstill

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

(b) Class 2: System Function(s) Failure(s)

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.

(c) Class 3: System Function(s) Significantly Impaired

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

(d) Class 4: 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.

(e) Supplementary Regulations for Class Allocation

The Contractor may object to the 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.

17.4 Refusal of Acceptance

- 17.4.1 The Customer shall be obliged to declare acceptance (see clause 17.5) only if the contractual performance is complete, in accordance with the Contract and has only insignificant defects.
- 17.4.2 The Customer may refuse acceptance and abort the acceptance test if a Class 1 and/or Class 2 and/or Class 3 defect is found.
- 17.4.3 In the case of Class 3 defects, the Customer may only refuse acceptance if, when considered as a whole, the contractual performance is not only insignificantly defective, e.g. smooth and trouble-free work is not only insignificantly impeded as a result.
- 17.4.4 If anything to the contrary is agreed in an agreed test strategy, the stipulations therein shall apply.
- 17.4.5 If the contractual performance is defective, the user stories on which the defective service is based shall be returned to the product backlog, if necessary after adjustment (clause 4). Clause 17.1.5 applies accordingly. In this context, deferred user stories are to be prioritised in such a way that their realisation is made up for in a timely manner, taking into account the agreed dates and deadlines.
- 17.4.6 If the Contractor exceeds agreed dates and deadlines within the scope of catching up on the performance, the Contractor shall be in default with its performance. In the event of a justified refusal of acceptance, the Contractor shall not be entitled to a postponement or extension of a deadline.

17.5 Acceptance Declaration

- 17.5.1 The Customer shall declare acceptance in writing if it is established that complete performance in accordance with the Contract has only insignificant 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 protocol on the overall performance together with the acceptance declaration.
- 17.5.2 If acceptance is refused, the Customer shall be obliged only to carry out a new acceptance if the Contractor declares the elimination of any defects that prevent acceptance and proves this by means of a renewed test and trial run (see clause 17.2).
- 17.5.3 The Contractor shall be obliged to include insignificant defects in the acceptance report and to remedy such within a reasonable period of time. Unless otherwise agreed, the Contractor may also provide such within a reasonable period of time as part of a regular delivery of corrections, patches, updates, upgrades, new versions or similar together with the respective updated documentation thereon (collectively "updates").
- 17.5.4 If the Customer accepts the contractual performance despite recognising defects that are not merely insignificant, such shall be recorded by the Contractor in the acceptance report and remedied by the Contractor without undue delay in accordance with the procedure described in clause 17.4.5.

17.6 Approvals and Partial Acceptances

Confirmation of parts of the performance, concepts, specification or milestones shall not be deemed to be acceptance or partial acceptance, but shall merely involve release of the relevant clause of the performance, whereupon the Contractor shall continue to provide the performance to the agreed extent. The procedure described under clause 17.5 shall apply accordingly.

17.7 Start of Limitation Period

Limitation periods for claims for defects shall only 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 refused, shall be deemed to be the acceptance date. Insofar as not only insignificant defects or missing functions or malfunctions are recorded in the acceptance protocol, the date of acceptance shall be the first day on which the last significant defect has been eliminated or the last missing significant function has been integrated without defects and accepted.

**18. Defects and Deficiencies in Performance**

18.1 Agreement on Quality

- 18.1.1 A deviation of the contractual performance from contractually agreed specifications shall always constitute a defect.

- 18.1.2 A defect in the documentation exists if a reasonable user with the knowledge normally to be expected for the application of the system is unable to either understand the operation of individual functions with the help of the documentation with a reasonable amount of effort or to solve problems that arise.
- 18.1.3 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 malfunctions on the basis of industry standards.
- 18.1.4 The Contractor further warrants that the contractual performance is fully interoperable with the systems used by the Customer in connection with the contractual performance and of which the Contractor must be aware.
- 18.1.5 The Contractor further warrants that the contractual performance complies with the applicable statutory 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 the part of the contractual performance affected thereby.

## 18.2 Limitation

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, provided that such shall end at the latest after the expiry of 5 years after acceptance. The limitation period shall be suspended by any notice of defect by the Customer.

## 18.3 Costs for Error Analysis

In cases of disruptions that were not caused or not only caused 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.

## 18.4 Subsequent Performance

18.4.1 The Contractor shall remedy any defects without undue delay and within a reasonable period of time, taking into account the Customer's interests, either by delivering a defect-free 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.

18.4.2 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.

## 18.5 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 or - at its discretion - terminate the Contract extraordinarily for good cause. If the Customer withdraws from the Contract, the Contractor shall be entitled to demand an appropriate usage fee for the period up to that point, taking into account the defects, on the basis of a linear four-year depreciation.

## 18.6 Retention and Set-off

Insofar as the Contractor does not fulfil its obligations, the Customer may withhold the remuneration for the contractual performance to a reasonable extent 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 duty.

## 18.7 Further Rights and Claims

Any further rights and claims of the Customer, including claims for damages and reimbursement of expenses, shall remain unaffected hereby.

## 19. Data Protection, Information Security and Data Backup Measures

19.1 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.

19.2 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 service provision, the inclusion of this Annex is not necessary. The Customer shall document such.

## 20. Commencement, Termination and Ending of Contract

### 20.1 Commencement

The Contract shall commence upon conclusion of the Contract, insofar as no other date has been agreed in writing and shall end upon the complete provision of the contractual performance by the Contractor.

### 20.2 Termination without Good Cause

- 20.2.1 The Customer is entitled to terminate the Contract prematurely at any time, even without good cause, subject to a notice period of one (1) sprint. In this case, the Customer shall pay only for the performance rendered up to the time of termination; it is not necessary for the performance to be ready for acceptance.
- 20.2.2 The Customer's right to terminate in accordance with § 648 Civil Code (BGB) shall remain unaffected.
- 20.3 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 or, if facts become known which give rise to the presumption of bogus self-employment on the part of the Contractor. Termination must be made in writing (*Schriftform*) in order to be effective.
- 20.4 Contract Termination
- 20.4.1 In the event of a full or partial termination of the Contract - for whatever reason - the Contractor shall hand over to the Customer the contractual performance in full in accordance with the ascertained degree of completion, unless the Customer expressly refuses such. 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. The Contractor shall have no rights of retention or rights to refuse performance in respect of the system, data or other documents to be surrendered.
- 20.4.2 Furthermore, the Contractor shall support the transfer of the objects of performance previously rendered by it under the relevant individual contract to the Customer itself or to a successor provider in return for reasonable remuneration. The provision support includes everything that is necessary or expedient for a proper transfer of the objects of performance to the Customer itself or to a successor provider.
- 20.4.3 Support include in particular:
- (a) The appropriate and timely support of the Customer in the preparation and implementation of tenders for the subjects of performance concerned;
  - (b) Cooperation with the Customer for the purpose of a proper transition of the performance concerned, including the development and implementation of a detailed transition plan;
  - (c) The training, instruction or other provision of knowledge required by the Customer for the transition, including information about the systems, procedures and processes used;
  - (d) The release of all data, information and documents to which the Customer is contractually entitled, in each case in a mutually agreed form usable with standard tools available on the market.
- 20.4.4 Insofar as the Contractor is obliged to make information available to the Customer, the Customer is also entitled to make such information available to a successor contractor for the purpose of completing the system for the Customer. In this respect, the Customer shall impose a confidentiality obligation on the successor providers.

## 21. Special Features of Contractual Performance

- 21.1 Insofar as the Contractor advises the Customer on conceptual and/or specification services, this may, in individual cases, be expressly agreed in writing as contractual performance. In this case, the Contractor shall always be liable for the best possible professional performance thereof.
- 21.2 The specification in clause 17.1 shall apply accordingly to the manner in which such performance is handed over. The Customer shall check the performance thus handed over by the Contractor for its conformity with the Contract.
- 21.3 In the event of improper performance, the Contractor shall be entitled to subsequent performance insofar as the performance is amenable to subsequent performance. If the subsequent performance fails or is not possible, the Contractor shall have no claim or only a reduced claim to the agreed remuneration, insofar as the Customer is entitled to a claim for damages for this reason. The Customer may set off claims for damages against any claims of the Contractor.
- 21.4 The procedure pursuant to clause 5 of the GPC-IT (Part A) shall apply to any changes in the performance.