



General Terms and Conditions of Business for products and services of the ACP Group in Germany

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1. Scope

- 1.1. These General Terms and Conditions of Business for products and services are used by group companies belonging to ACP Holding Deutschland GmbH (hereafter "ACP Group") in transactions with companies as defined by Section 14 BGB (German Civil Code). The companies making up the ACP Group are listed on the website at <http://www.acp.de>. All products subject to sales contracts, services as defined by Section 650 BGB as well as works and services supplied by the relevant contracting company in the ACP Group (hereafter "ACP"), particularly in connection with the supply of hardware and software, the creation, amendment or modification of software and other deliverables, installations, implementation, data migration, consulting services and training, are provided exclusively on the basis of these General Terms and Conditions of Business.
- 1.2. These General Terms and Conditions of Business also apply to all future business relationships even if they are not explicitly agreed again.
- 1.3. The customer's terms and conditions of business are hereby explicitly rejected, and this rejection does not have to be repeated on receipt of corresponding conditions by ACP or upon any reference made by the customer to their conditions. In particular, the provision of services or their acceptance does not mean that ACP agrees to such conditions.

2. Conclusion of contract; quotation documentation

- 2.1. Unless explicitly defined otherwise in ACP's particular quotation, offers from ACP are always made without engagement.
- 2.2. An order from a customer is a binding contract offer. ACP can accept this offer pursuant to Section 145 BGB within ten (10) days by confirming the order in writing or by delivering or handing over the goods ordered or carrying out the contractual service as a result of which a contract comes into being between the parties (hereafter "individual contract").
- 2.3. ACP's sales, distribution and service employees are not authorized to make verbal side agreements or give verbal assurances which exceed the contents of an offer or order confirmation from ACP or the contents of an individual contract.
- 2.4. All property rights and copyrights in the documentation and materials given to the customer in respect of the conclusion of an individual contract (e.g. concepts, specifications, demo versions) remain with ACP; such documentation and materials may not be made accessible to third parties without the prior written agreement of ACP. This applies in particular if the documentation and materials are marked as "confidential".

3. Object of the contract

3.1. Supply of hardware and software or other deliveries of goods

The following conditions apply to the supply of hardware products and standard software defined in greater detail in the individual contract together with any associated documentation or other deliveries of goods by ACP, subject to any differing arrangements in the relevant individual contract.

- 3.1.1. Software is supplied to the customer in object code in executable form; the source code is not supplied. The individual contract will specify whether the software is provided on a suitable storage medium (CD, DVD, etc.) or by way of data transmission (download). The user documentation described in the individual contract forms part of the program. ACP grants the customer usage rights to the software and user documentation in accordance with the terms of use agreed in this contract. Unless otherwise agreed in the individual contract, operating system software is, as a general rule, not pre-installed on the hardware but is instead installed by the customer in accordance with the installation instructions.
- 3.1.2. Additional services such as setting up the hardware and establishing operational readiness, providing adaptation services with respect to the software, installing and loading the software in the customer's network or training staff in its use only form part of the contract if such services are explicitly agreed in the individual contract.
- 3.1.3. The software will only run on the hardware and system environment specified in the relevant individual contract or associated product description.
- 3.1.4. The characteristics agreed for the purchase items can be taken conclusively from the provisions of the relevant individual contract as well as from the description in the documentation supplied with the software or the product description of the hardware or other goods and also from any definition of their intended contractual use contained in the individual contract.
- 3.1.5. The user documentation provided is intended to facilitate proper operation of the hardware and software by the customer. The language, form and contents of the user documentation given to the customer are defined in the individual contract. The customer is not entitled to any user documentation that exceeds this definition.

3.2. Creation, amendment or modification of software

The following conditions apply to the creation, amendment or modification of software by ACP, subject in each case to any differing arrangements in the relevant individual contract.

- 3.2.1. Unless explicitly otherwise agreed in the individual contract, it is incumbent on the customer both to prepare the Statement Of Requirements in which the entirety of the customer's demands made of the products and services are described, and to create the performance specifications based on the SOR as the central Statement of Work in which the technical demands which the customer makes of the software to be created or the amendment or modification of the software, are described. If agreed in the individual contract, ACP will advise the customer with respect to preparing the Statement Of Requirements. This does not apply if the parties agree in writing in a separate contract that the performance specifications will be prepared by ACP in collaboration with the customer or jointly by both parties.

3.2.2. The Statement of Work specified in the previous clause defines the characteristics conclusively agreed between the parties containing all the services to be carried out by ACP with a full and accurate description of the scope of performance. It forms an annex to the relevant individual contract and is part of the contract.

Any changes or adaptations to be made to the specification contained in the Statement of Work are governed by the rules for change requests in Clause 11 below.

3.2.3. The software created by ACP is supplied to the customer in object code in executable form; the source code is not supplied. The individual contract defines whether the software is supplied on a suitable storage medium (CD, DVD, etc.) or by way of data transmission (download), and whether the customer is given development documentation and/or user documentation with respect to the software created or the changes or adaptations made to the software. With respect to any user documentation supplied, the above arrangement in Clause 3.1.5 applies accordingly. ACP grants the customer usage rights to the software and any user documentation in accordance with the terms of use agreed in Clause 4 of these General Terms and Conditions of Business.

3.2.4. The installation of software on the customer's premises only forms part of the contract if a corresponding agreement together with rules governing the remuneration of the installation has been reached in the individual contract.

3.3. Provision of migration services

3.3.1. ACP will provide the customer with migration services if this is covered by the individual contract.

3.3.2. As a general rule, the individual contract between the parties will define the data format in which the customer must provide the data to be migrated.

3.3.3. If the contract does not define the data format, the customer will supply their real data, at the latest by the time the migration service is to be provided, in a suitable format which corresponds to the state of the art and is generally recognized. If modifications have to be made to the existing data in order to accept the real data (field descriptions, mapping, etc.), it is the customer's responsibility to make such changes unless the individual contract explicitly states that ACP will perform these tasks in return for separate remuneration.

3.3.4. The customer is responsible for ensuring that the data to be transmitted are complete and factually correct.

3.3.5. The customer is responsible for ensuring that their data have been adequately saved before beginning migration and they can be restored at any time. If further backups are required during the migration process and the customer is aware of this, they will also be responsible for making such backups. Otherwise, the provision found below in Clause 8.2.1 applies.

3.3.6. The customer is responsible for ensuring that all original software data carriers, product keys and any (administrator) passwords that may be required, are available during the migration process.

3.4. Provision of other services

If so defined in the individual contract, ACP will provide the customer with other services, in particular installation, induction, consulting and support services or training.

3.5. No provision of services to update software or maintain hardware

The provision of services to have software updated or hardware maintained by ACP will on no account be the subject

of any individual contract concluded on the basis of the present General Terms and Conditions of Business covering the delivery of hardware or software and the creation, amendment or modification of software, but can if necessary be agreed between the parties in a legally separate software maintenance contract or hardware service contract in which the term, in particular, is defined.

4. Granting rights and restricting usage

4.1. ACP software and deliverables

4.1.1. Software, databases, documentation, plans, concepts and similar material as well as other deliverables (hereafter designated as "software" or "deliverables") produced by ACP as part of the underlying individual contract, will be created for ACP by personnel deployed by ACP in the performance of their duties and in accordance with ACP's instructions. In the absence of any specific agreement to the contrary in the relevant underlying individual contract, ACP will be entitled to all industrial property rights in such deliverables as well as rights of use and exploitation under copyright law. If ACP creates any databases, ACP will be considered to be the manufacturer as defined by Section 87a of the Copyright Act (UrhG).

4.1.2. Unless otherwise agreed in the relevant individual contract, ACP grants the customer non-exclusive, permanent right of use to the software created or software modifications in their object code version as well as to other deliverables created by ACP in fulfilling its obligations arising from the underlying individual contract, in accordance with the provisions set out in Clauses 4.1.3 to 4.1.10 below (hereafter "intended use").

4.1.3. Unless otherwise agreed in the individual contract, the software may only be used simultaneously by the maximum number of persons specified in the individual contract ("concurrent users") for whom the customer has paid the fee agreed in the individual contract.

4.1.4. The customer may only use the software or deliverables for their own purposes to administer the internal business processes of their company. Usage in companies affiliated with the customer as defined by Section 15 of the German Stock Corporation Act (AktG) is not permitted unless this is explicitly agreed in the individual contract. The customer is not entitled to reproduce the software publicly through a wired or wireless connection, nor to hire it out, loan or make it temporarily accessible to third parties in any other way (particularly as part of any Application Service Provision or data center operation for third parties) unless this is explicitly agreed in the individual contract or ACP has issued prior written consent. Employees of the customer who require access to the software to fulfill their contractual duties, do not constitute third parties.

4.1.5. Copies of the software may only be made for its intended use. The customer is entitled to make a backup copy if this is necessary to secure future use. They are also authorized to duplicate the software as part of a state-of-the-art, proper, regular data backup. User documentation supplied may only be copied to the extent required for the intended use of the software.

4.1.6. Pursuant to Section 69d (1) UrhG, the customer is only entitled to amend, edit or rework the software as defined by Section 69c No. 2 UrhG if this is necessary for its intended use including the correction of an error in the software. However, before errors are corrected by the customer or a third party commissioned by them, the customer must first grant ACP the chance to correct the error. If ACP corrects

the error by supplying an update or a new version of the software, the provisions contained in Clause 4.1 of the present T&Cs will apply to any such replacement.

- 4.1.7. Under Section 69e UrhG, the customer is permitted on the conditions specified there, to reproduce or decompile the software to establish interoperability with other programs on the additional condition that ACP has not provided them with the data required to do so within a suitable deadline following a written request. The customer will treat the information obtained by decompilation or provided by ACP in accordance with Clause 17 (1)(2) confidentially.
- 4.1.8. The customer is entitled to permanently pass on or sell the software to a third party on a one-off basis if the following conditions are cumulatively met:
 - (i) They hand over the software to the third party on the original data carrier supplied together with the user documentation supplied while fully renouncing any use of their own and deleting all copies of the software they have made.
 - (ii) they inform ACP in writing of the name and address of the third party without delay, and
 - (iii) they have required the third party in writing to observe the usage provisions of this contract.
- 4.1.9. Any usage exceeding the contractually agreed scope, particularly any usage which exceeds the agreed maximum number of persons entitled to use the software, is not permitted and requires an additional concession of rights.
- 4.1.10. Copyright notices, serial numbers or markings may not be removed from the software or changed. Any copies of the software or user documentation made by the customer must be marked as such and must include the manufacturer's copyright notice.

4.2. **Software from third-party manufacturers**

The following conditions apply to the supply of third-party software (i.e. software not produced by ACP).

- 4.2.1. With regard to the third-party software to be supplied by ACP, the customer will receive non-exclusive usage rights unlimited in time for its intended use **in accordance with the licensing terms of the third party**. The customer recognizes the corresponding **third-party software manufacturers' contractual terms and usage conditions** as legally binding and undertakes to observe them.
- 4.2.2. Otherwise, the provisions in Clause 4.1 above apply; in the event of conflict, however, the **licensing conditions of the particular third-party software manufacturer take precedence**.

5. **Delivery time; force majeure; transfer of risk; transport; partial performance**

- 5.1. Delivery and performance deadlines are agreed in the individual contract.
- 5.2. The agreement of fixed dates always requires written agreement; corresponding dates must be explicitly and literally designated as "fixed dates".
- 5.3. If no special agreement has been made on the delivery time, ACP will have the right to use its discretion in defining a binding delivery period. Besides the work required to provide the contractual service, ACP will also take into consideration its available capacity, the degree to which it is tied up with other orders as well as the customer's legitimate interests as communicated to ACP.
- 5.4. As long as ACP is prevented from providing services by an unforeseeable, extraordinary event which it cannot avert even by applying reasonable care, particularly in the event

of natural disasters, power cuts or operational disruptions, official intervention, labor disputes or other cases of force majeure, the delivery and performance deadlines will be extended by the amount of time for which it is so prevented plus an appropriate additional start-up period once the reason for the prevention no longer applies. If it is not possible for ACP to provide its services in such cases, it will be released from its contractual obligations.

- 5.5. Unless otherwise agreed in the individual contract, the purchase items will be shipped at the customer's expense. Risk will be transferred to the customer when the goods have been handed over to the person organizing transport or have left the supply plant or dispatch warehouse for the purpose of shipment. Transport insurance will be taken out at the customer's expense if the customer sends a written request to do so.
- 5.6. ACP is entitled to deliver partial performance if this is reasonable for the customer.

6. **Remuneration**

- 6.1. The level of remuneration for the contractual products and services to be provided by ACP can be taken from the relevant individual contract as a general rule.
- 6.2. The customer will bear the cost of transport as well as of any transport insurance they request (cf. Clause 5.6).
- 6.3. All ACP prices quoted are subject to the statutory rate of VAT.
- 6.4. Unless otherwise agreed in the individual contract, the agreed remuneration will be due and payable within 7 days from receipt of the invoice and delivery of the purchase items to the customer's premises or in the case of contractual work and services, from acceptance by the customer and for services, after their provision.
- 6.5. If the provision of services takes longer than a period of 4 weeks, ACP will be entitled to submit progress billings in accordance with the stage of completion. These will normally be submitted monthly.
- 6.6. In the event of partial acceptance in accordance with Clause 10.5, ACP will be entitled to request partial payments commensurate with the partial service accepted proportional to the overall service — unless otherwise agreed in writing.

7. **Retention of title and rights**

- 7.1. ACP will retain title to the contractual delivery items until all claims arising from the existing business relationship which ACP has against the customer now or in the future, have been met (retention of title).
- 7.2. The customer may only sell on reserved goods in the normal course of business. As collateral, the customer hereby assigns their claims against third parties arising from any such resale or on other legal grounds, including all ancillary rights, to ACP, even to the extent that the goods have been processed or installed. In the latter case, the assignment will cover the proportion of the value represented by the reserved goods in the overall product.
- 7.3. At the request of the customer, the collateral will be released if its value exceeds the claims to be secured by more than 20%.
- 7.4. Usage rights to software or other deliverables are only transferred to the customer when the agreed remuneration has been paid in full. Before that, the customer will only be granted a provisional, personal right of use for the purpose

of testing the software to enable it to fulfill its obligation to inspect and give notice of defects or — in the case of work and services or if an obligation of acceptance has been agreed — its obligation to declare its acceptance. Clause 10.6 below will remain unaffected (declaration of acceptance).

8. Customer's duties of cooperation

- 8.1. The customer is obliged to cooperate free of charge if this is necessary and reasonable to enable ACP to provide the services it owes.
- 8.2. In particular, the customer will provide the following cooperative services.
 - 8.2.1. The customer is obliged to back up their data properly and on a regular basis. This applies in particular before ACP begins providing services which represent relevant measures for the pool of data such as migration services (cf. Clause 3.3.5); but even after such services have been completed, the customer will be obliged to carry out data backups at regular intervals. This does not apply if ACP has undertaken in the relevant individual contract to carry out backups for the customer.
 - 8.2.2. The customer will nominate in writing a person responsible and if applicable their deputy who has all the necessary decision-making authority and powers of attorney for the purpose of implementing the individual contract; error messages must only be sent by the person responsible or in their absence, by their deputy.
 - 8.2.3. In the event of error messages, the customer will make a detailed observation of the symptoms that have occurred, the system and hardware environment and — if necessary, using the forms provided by ACP — report an error detailing the pertinent information for correcting the error, e.g. by describing the system and hardware environment as well as any simultaneously loaded third-party software, and by sending the appropriate documentation.
 - 8.2.4. The customer will use their best endeavors to support ACP in searching for the cause of the error, and if necessary task their employees and external service providers with cooperating with ACP's employees and any sub-contractors deployed by ACP.
 - 8.2.5. The customer will grant ACP unfettered access to ACP's products and services for the purpose of rectifying any defects. At the request of the customer, the individual contract can stipulate that measures to rectify defects can be implemented by ACP by way of remote maintenance. In this case, the customer will create the necessary technical conditions for such maintenance at their own expense.
 - 8.2.6. The customer will grant the employees and sub-contractors tasked by ACP with carrying out the services access to their infrastructure to the extent required for ACP to provide the services.
 - 8.2.7. The customer will provide the appropriate system environment, particularly hardware and operating system software, to the extent required to enable ACP to provide the services agreed as part of the individual contract.
 - 8.2.8. If ACP obtains access to personal data in providing the services agreed as part of the individual contract, it will be obliged to observe the provisions contained in data protection legislation. If it proves impossible to rule out ACP accessing personal data, the customer will sign a written agreement with ACP for contract data processing pursuant to Article 28 of the General Data Protection Regulation

(GDPR), or ensure that all appropriate data protection consents required to enable ACP to meet its obligations under this contract without breaching data protection provisions, are available at all times from the persons concerned at the time when the service is provided.

- 8.2.9. The customer will provide information on their own organization if it is important for fulfilling the contract.
- 8.2.10. The customer will implement suitable measures to secure know-how, industrial property rights and copyrights belonging to ACP as well as to any third-party software manufacturers from the customer's employees and third parties, and protect them from access by unauthorized third parties.
- 8.2.11. The customer will provide support in handling insurance claims.
- 8.2.12. The customer will provide support in the event of unlawful attacks by third parties.
- 8.2.13. The customer will obtain all approvals and permits from third parties or authorities relevant to the project which forms the subject of the particular individual contract.
- 8.2.14. The customer will heed the information contained in the user documentation or product description for operating the hardware and software.
- 8.2.15. The customer will permit ACP on request to review whether the customer is observing the provisions of the present contract with regard to the legitimate use of the software, particularly with respect to the maximum number of authorized users agreed. To this end, they will provide information to ACP and grant access to their offices and sight of all significant documents and files. The customer can demand that this review is only carried out by a member of the tax or management consulting professions sworn to a professional duty of confidentiality or an independent expert sworn to a duty of confidentiality, and that this person has a contractual obligation towards the customer only to divulge any information obtained in the course of the review to ACP if and to the extent that this is necessary for the enforcement of claims due to a license violation. The review will be carried out during the customer's normal business hours in their offices, and care will be taken as far as possible to ensure that the customer's operations are not interrupted or only to a reasonable degree. As a general rule, inspections will not be carried out more frequently than once a year.
- 8.3. Further special duties of cooperation on the part of the customer may be defined in the individual contract.
- 8.4. If the customer breaches their duties of cooperation, ACP will not be obliged to provide its services to the extent that and as long as it is prevented from doing so by such failure to cooperate. The performance deadlines listed in the individual contract will be extended appropriately. ACP reserves the right in this case to demand compensation. If ACP incurs delays as a result, these must be compensated in accordance with ACP's price list in force at the time the contract is concluded — unless otherwise agreed in the individual contract.

9. Customer's duty to inspect and give notification of defects

- 9.1. The assertion of rights and claims in the event of material defects in accordance with Clause 14 below for the sale of products and services pursuant to Section 650 BGB presupposes that the customer meets their duty to inspect and give notification of defects owed under Sections 377, 381 (2) HGB. The customer must give written notification of any defects without delay after their discovery. In the event of a

breach of the duty to inspect and give notification of defects, the object will be deemed to have been approved with respect to the defect in question.

- 9.2. The customer's duty to inspect and give notice of defects does not apply to services which are subject to acceptance in accordance with Clause 10.

10. Acceptance of work and services

If the services to be provided by ACP constitute work and services susceptible to acceptance, or the need for acceptance was agreed in the individual contract between the parties for the particular service, the following provisions apply.

- 10.1. ACP will inform the customer when services are ready for inspection. The customer will perform its acceptance test promptly on receiving notification of readiness for inspection.
- 10.2. If the acceptance test shows that the services match the Statement of Work or the performance specifications or that in any case only minor defects are in evidence, the customer will immediately declare their acceptance of the service to ACP in writing.
- 10.3. If ACP has set a reasonable deadline for the customer to carry out their inspection following completion of the work, and the customer has not refused acceptance by this deadline, pointing out at least one defect, this is deemed to be equivalent to acceptance.
- 10.4. Any defects identified during the acceptance test will be documented by the customer in a way that is transparent for ACP and then remedied free of charge by ACP. In the event of defects which prevent acceptance and make it impossible to continue with the inspection, such defects are first corrected, and the product is re-presented for acceptance after the relevant defects have been remedied.
- 10.5. The provisions above apply to the acceptance of partial performance accordingly. ACP is entitled to demand partial acceptance of work which the customer can deploy in a way that makes economic sense, regardless of any overall acceptance of the work. Any partial acceptances thus issued constitute genuine acceptances as defined by Section 640 of the German Civil Code (BGB).
- 10.6. Unless otherwise agreed in the individual contract, the customer is only granted the right to roll out the products after the entire work has been accepted and the invoice has been paid in full (cf. Clause 7.4 above on retention of rights).

11. Retrospective changes to the work (change requests)

- 11.1. Any requests for changes from the customer with respect to the characteristics of products and services agreed in the particular individual contract, constitute a change request.
- 11.2. At the customer's request, ACP will check the customer's change requests in return for a fee for time and material, and if applicable, submit an offer for implementing the changes. ACP is not under any obligation to submit an offer or carry out the changes.
- 11.3. It is entirely within ACP's discretion to implement the desired changes in return for an appropriate additional fee. Any delivery and performance deadlines agreed will be extended in ACP's favor in accordance with the additional work caused by the changes including the time and effort required to check the request as outlined in Clause 11.2 above.

12. No warranties provided by ACP

- 12.1. The technical data, specifications, explanations of functions and potential uses as well as other details given in the product descriptions, Statements of Work and user documentation are to be regarded exclusively as a description of the characteristics of the work and not as an independent warranty or guarantee of quality and durability issued by ACP.
- 12.2. Statements made by ACP about the product or services only constitute an independent warranty or guarantee of quality and durability in a legal sense if they are made in writing by the management of ACP and marked explicitly and literally as "independent warranty", "guarantee of quality" or "guarantee of durability".

13. Manufacturer's warranty

- 13.1. Any guarantee given by the hardware manufacturer and passed on to the customer by ACP constitutes an independent warranty from the manufacturer as defined by Section 443 BGB which acts as a separate basis for liability besides the existing contract with ACP and the warranty for defects. The manufacturer's particular warranty conditions can be taken from any warranty card enclosed with the product which ACP passes on to the customer. Any resulting warranty claims must be asserted exclusively against the manufacturer and not against ACP.
- 13.2. The customer will inform ACP of any assertion of claims and implementation of the guarantee by the manufacturer.

14. Rights and claims in the event of material defects

Statutory regulations apply to the customer's rights and claims in the event of material defects in products or services supplied on the basis of a sales or service contract as well as in work as defined by Section 650 BGB, unless the following provisions in Clauses 14 and 16 hereof stipulate otherwise.

- 14.1. A material defect applies if the hardware or software supplied together with data carriers and/or user documentation supplied with them or other delivery of goods or the software adaptation or other deliverable produced by ACP as part of a contract for work and services as defined by Clause 4.1.1, fail to exhibit the contractually agreed characteristics.
- 14.2. If defects are found, ACP will rectify them at the request of the customer by opting either to correct the defect (remedial work) or to supply a product free of defects (new delivery). The customer can request a different kind of rectification to that chosen by ACP by an appropriate deadline if the type of rectification chosen by ACP is unacceptable to them. ACP's rights under Sections 635 (3), 439 (3), 275 (2) and (3) BGB remain unaffected.
- 14.3. In the event of material defects in the software, ACP will be entitled to rectify them by supplying a patch, update or new version of the software program. ACP will be entitled to supply a new version of the software program if it contains the same functional scope as the contractual version of the software, and the customer can be reasonably expected to accept it and will not incur any substantial disadvantages as a result. If a new version is supplied, the customer is obliged to return or delete the defective software.
- 14.4. ACP is entitled to identify temporary workarounds for the customer and to correct the defect later by supplying the next update or new version of the software program released by ACP or — in the case of third-party software — by the relevant manufacturer, as long as this is acceptable

to the customer. If ACP makes use of this right, this must be taken into account when determining the suitability of the rectification deadline in accordance with Clause 14.6 below.

- 14.5. The customer will heed the instructions issued by ACP by telephone, in writing or electronically as part of its rectification. ACP can issue such instructions to the customer particularly with regard to the installation of patches, updates or new versions of the software program delivered for the purpose of rectification as well as to identify temporary workarounds.
- 14.6. If the customer sets ACP a suitable deadline for rectification and rectification fails within this period, and the special statutory preconditions are met, the customer will have more extensive rights to choose between reducing the price or withdrawing from the contract, and, if ACP is responsible for the defect, claims for compensation instead of performance or for the reimbursement of expenses incurred in vain as defined by Section 284 BGB in accordance with the liability restrictions individually agreed in the individual contract or — if there is no individual agreement — in accordance with the provisions set out in Clause 16 below. However, the customer is only entitled to withdraw and assert claims for compensation instead of performance if the defects are substantial. Any extension of time, declaration of withdrawal as well as the assertion of compensation claims instead of performance must be made in writing to be valid. Any deadline to be set by the customer can be dispensed with in cases specified by German law in Sections 281 (2), 323 (2), 440, 636 BGB.
- 14.7. If a deadline set for rectification passes fruitlessly in accordance with Clause 14.6 above, the customer must explain to ACP in writing by a suitable deadline whether they wish to continue demanding rectification or to assert the more extensive rights specified in Clause 14.6 Sentence 1. If the customer continues to demand rectification and ACP announces that it will be supplied without delay, the customer must grant ACP a further suitable deadline for such rectification before which the customer will not be entitled to assert the rights specified in Clause 14.6 Sentence 1. Clause 14.6 Sentence 4 remains unaffected.
- 14.8. If investigations in connection with defects reported by the customer reveal that the customer has no claims or rights against ACP as part of Clause 14 hereof, ACP will be entitled to invoice the customer for its expenses incurred in the course of its investigations in accordance with ACP's current prices if the customer has recognized or negligently failed to recognize that no defect applies and that the reason for the defect objected to by the customer originates from their own sphere of responsibility.
- 14.9. ACP will not be liable if the customer or third parties have edited or amended the software unless the customer can demonstrate that any errors that have occurred are not due to such editing or amendments.
- 14.10. The customer's claims due to a defect will expire in twelve (12) months. In the case of the sale of products and for deliveries in accordance with Section 650 BGB, the statute of limitations begins from delivery and in the case of contractual work and services or if an obligation of acceptance has been agreed, from acceptance. In the case of willful or grossly negligent breaches of duties, concealing a defect with fraudulent intent, third-party claims for the surrender of property as defined by Section 438 (1) (1) BGB, personal injury, claims under the Product Liability Act and if a guar-

antee of quality is given, the statute of limitations is governed by statutory provisions; however, if a warranty is given, this only applies if the warranty agreement does not contain anything to the contrary.

15. Rights and claims in the event of defects of title

- 15.1. The customer's rights and claims in the event of defects of title are governed by statutory regulations unless the following provisions in Clauses 15 and 16 hereof stipulate otherwise.
- 15.2. A defect of title applies if the rights required for the contractually agreed use of the products and services are not effectively granted to the customer.
- 15.3. If a third party asserts a claim against the customer alleging a breach of property rights, the customer will
 - (i) notify ACP in writing without delay,
 - (ii) authorize ACP to conduct the legal dispute and any settlement negotiations with the third party at its own expense and as far as possible on its own, and will only conduct legal proceedings with the approval of ACP and
 - (iii) give ACP all reasonable support and furnish it with the required information and documentation available to the customer as well as the necessary powers of attorney.
- 15.4. ACP will not be liable for claims arising from legal breaches based on
 - (i) the use of obsolete or altered versions of the software if a breach of this nature could have been avoided by the use of a current, unaltered version of the software which the customer could have obtained from ACP or — in the case of third-party software — from the relevant manufacturer, or
 - (ii) combining, operating or using software supplied in accordance with the individual contract with programs or data not supplied by ACP if a breach of this nature could have been avoided by using the software without such programs or data, or
 - (iii) use of the software in a way that does not conform to the documentation.
- 15.5. In the event that third-party rights are infringed by the software, ACP will rectify the breach by a method of its choosing, either by
 - (i) changing the software in such a way that it no longer violates the law while delivering appropriate performance and preserving the functional scope for the customer in accordance with the contract, or
 - (ii) acquiring a usage right on the customer's behalf, sufficient for the purposes of the contract, to continue using the software, and granting it to the customer, or
 - (iii) replacing the software by different software which is equivalent for the customer with respect to the agreed characteristics of the software, delivers matching performance and entails no substantial disadvantages for the customer, or
 - (iv) supplying a new version of the program which does not infringe any third-party property rights if used in accordance with the contract, which contains the same functional scope as the previous version and which the customer can be reasonably expected to accept and does not lead to any substantial disadvantages for the customer.

In cases where Sentence 1 Alternatives (ii) to (iv) apply, the customer will be obliged to return or delete the software containing the defects of title.

15.6. Otherwise, the rules governing material defects contained in Clauses 14.5, 14.6, 14.7, 14.9 and 14.10 apply accordingly in the event of defects of title.

16. Liability restrictions

Arrangements on restrictions of liability will generally be separately agreed in the particular individual contract between the parties. If no individual contract is signed, ACP will be liable for claims for compensation or claims for the reimbursement of expenses incurred in vain as defined by Section 284 BGB — regardless of the legal basis — in accordance with the following provisions.

16.1. ACP will bear unlimited liability in accordance with statutory provisions for damages arising from injury to life, limb or health, damages based on willful intent or gross negligence as well as for damages covered by a warranty, guarantee of quality or guarantee of durability given by ACP unless the relevant guarantee agreement stipulates otherwise.

16.2. ACP is liable for damages other than those specified in Clause 16.1 which are based on a slightly negligent breach of important contractual duties (cardinal duties), limited to compensation for foreseeable damage typical for the contract. Important contractual duties as set out above are duties which if breached put the achievement of the contractual purpose at risk, the fulfilment of which enables the contract to be properly implemented in the first place and which the customer normally relies upon to be observed.

16.3. Otherwise, any more extensive liability for damages other than those specified in Clause 16.1, based on the slightly negligent breach of duties other than those specified in Clause 16.2, is excluded.

16.4. Liability under the Product Liability Act remains unaffected.

16.5. The liability restrictions outlined above also apply with respect to the personal liability of ACP's employees, vicarious agents, legal representatives and statutory bodies.

16.6. If the customer breaches the obligation incumbent on them to back up data properly, ACP's level of liability will be limited within the bounds of the provisions outlined above in the event of loss of data to damages which would still have been incurred by the customer even if it had properly backed up its data on a regular basis.

17. Confidentiality

17.1. The contracting parties undertake to treat all information or objects transferred or brought to the attention of the other party as part of preparing or implementing the contract which represent business or trade secrets or are designated as confidential ("confidential information"), as confidential for an indefinite period of time and only to use them for the purpose of carrying out the contract. The contracting parties will secure such confidential information so as to ensure that access by unauthorized third parties can be ruled out. The customer's right to pass on the purchase items one time remains unaffected (cf. Clause 4.1.8).

17.2. The customer will only make confidential information available to employees and other third parties who require access to fulfill their obligations towards the customer, and only within the scope of the rights of use granted to the customer on the basis of this contract. Employees and third parties who receive legitimate access to confidential information will be instructed by the customer on their duty of confidentiality, and such persons will be obliged in writing to keep such information confidential and only to use it to

the extent specified above unless they have already undertaken to maintain confidentiality to the extent specified above for a different legal reason.

17.3. The duties of confidentiality outlined above do not apply to confidential information belonging to one contracting party which

(i) is already public knowledge at the time of its communication, or

(ii) becomes public knowledge after its communication by the disclosing contracting party through no fault of the receiving contracting party, or

(iii) was already in the legitimate possession of the receiving contracting party at the time of its communication by the disclosing contracting party, or

(iv) was legitimately communicated to it by a third party after its communication by the disclosing contracting party with no restriction with regard to confidentiality or use, or

(v) was generated by the receiving contracting party without using the confidential information, or

(vi) has to be disclosed by the receiving contracting party due to statutory provisions, on condition that the receiving contracting party immediately informs the disclosing contracting party of this circumstance before any disclosure, and supports the disclosing contracting party in preventing disclosure by lodging an appeal.

18. Data protection

18.1. ACP will respect all relevant statutory data protection regulations, especially if ACP is granted access to the customer's operation or their hardware and software. ACP will also require its employees or other agents before taking up their work to observe data protection provisions.

18.2. In the course of implementing the individual contract, ACP does not intend to process or use any personal data on behalf of the customer. Personal data will only be transferred in exceptional circumstances as a side effect of ACP's contractual performance. Personal data will be treated by ACP in compliance with data protection provisions. As the "owner of the data", the customer is responsible for observing data protection provisions, particularly with regard to data pertaining to its employees and customers. If it proves impossible to rule out ACP accessing personal data, the customer will sign a written agreement with ACP for contract data processing pursuant to Article 28 GDPR, or ensure that all appropriate data protection consents required to enable ACP to meet its obligations under this contract without breaching data protection provisions, are available at all times from the persons concerned at the time when the service is provided.

19. Set-off and right of retention

19.1. The customer may only set off counterclaims against ACP invoices if they are uncontested, upheld by a court of law or due for adjudication.

19.2. The customer is only authorized to exercise their right of retention if the counterclaim on which it is basing its right of retention, is uncontested, upheld by a court of law or ready for adjudication, and based on the same contractual relationship.



20. Other provisions

- 20.1. All agreements between the parties are contained in the contractual deed of the individual contract and its schedules. There are no further-reaching agreements.
- 20.2. Changes and/or additions to this contract will only be effective if they are made in writing. Cancellation of the requirement for written form must also be made in writing in order to be effective.
- 20.3. The customer can only assign rights and obligations arising from this contract with the prior written agreement of ACP. Section 354a of the German Commercial Code (HGB) remains unaffected.
- 20.4. ACP is entitled to engage sub-contractors to fulfill its contractual obligations.
- 20.5. The contract is subject to the law of the Federal Republic of Germany, excluding any legal standards which reference a different jurisdiction; the application of the UN Sales Convention (CISG) is explicitly excluded.
- 20.6. To the extent that the customer is a businessman, a legal entity under public law or a special public fund, the sole place of jurisdiction for any disputes arising from and in connection with this contract is the registered office of the company in the ACP Group concluding the contract (ACP). However, ACP is also entitled to opt to take legal action against the customer at their general place of jurisdiction.
- 20.7. Should any provision of these General Terms and Conditions of Business be or become invalid or unenforceable or reveal a loophole, this will not affect the validity or enforceability of the remaining provisions of these General Terms and Conditions of Business or the individual contract if it can be assumed that the parties would still have concluded the contract. Instead of the invalid provision, a provision will be deemed to have been agreed which corresponds to the statutory regulation. If the parties have overlooked an item requiring regulation in their contractual arrangements, a regulation is deemed to have been agreed which they would have included in the contract if they had recognized the loophole, taking account of both parties' interests.