

Standard Business Terms for ITEXIA GmbH (Last Revised: September 2022)

I. General provisions

§ 1 Scope of application

(1) ITEXIA GmbH, Hainstrasse 2, 01097 Dresden (“ITEXIA”) supplies its goods and services in dealings with entrepreneurs, legal entities under public law or special funds under public law exclusively on the basis of these Standard Business Terms unless provided otherwise in an *Individual Contract*. To the extent that the terms performance or services are used below, this is understood to comprise all supplies of goods and services of any type by ITEXIA to the customer. Where the masculine form is used in reference to persons, absent a provision to the contrary in a specific case, such reference shall likewise include female and other genders.

(2) ITEXIA does not provide services to consumers within the meaning of section 13 of the German Civil Code. With regard to the services referred to in paragraph (1), these Standard Business Terms also apply to all pre-contractual obligations as well as future contracts even if they are not expressly agreed again. In the case of future contracts, these Standard Business Terms do not apply, but rather a new version of the Standard Business Terms shall apply provided that ITEXIA has informed the customer of the new version and of a convenient method of reviewing its contents prior to or no later than upon conclusion of the contract.

(3) The customer must provide written notice to ITEXIA prior to or upon conclusion of the contract in the event that the customer objects to the application of the new Standard Business Terms. Any contradictory (purchasing) terms and conditions of the customer or those of any third party are rejected. Accordingly, any standard business terms of the customer or any third party do not apply even if ITEXIA does not separately object to their application in a specific case or if ITEXIA refers to correspondence that includes or refers to the standard business terms of the customer or a third party.

(4) No authorised dealer agreement or other distribution agreement shall be concluded between the Parties even in the event of repeated deliveries. Similarly, there is no agreement as to exclusivity or territorial protection. Any such agreements must be in writing. This also applies to any agreement to waive this written form requirement. The application, including the analogous application, of the law of commercial agents is excluded.

(5) References to the application of the statutory provisions are solely for purposes of clarification. Even without such clarification, the statutory provisions shall therefore apply, unless they are directly amended or expressly excluded in these SBT.

§ 2 Definitions

For the purposes of these Standard Business Terms, the following terms have the meanings described below:

1. *Business Days* are Monday to Friday with the exception of public holidays in Saxony as well as with the exception of ITEXIA's closure between 24 December and 31 December;
2. *Foreign trade restrictions* Prohibitions and restrictions based on the foreign trade laws applicable to any specific *individual contract* and its fulfilment (in particular export control and/or customs regulations including embargoes and supply prohibitions), in particular according to the foreign trade law of the Federal Republic of Germany or the country in which the customer has its registered office or to which or through which delivery is intended to be made;
3. *Supply prohibition* Prohibition on making funds, technical assistance or economic resources directly or indirectly available to certain persons, countries, entities or organisations;
4. *Order* refers to a binding offer from the customer to conclude an *Individual Contract*;
5. *Individual Contract* refers to a contract concluded in a specific case within the scope of these Standard Business Terms;
6. *Free License* refers to a royalty-free user license that permits the use, redistribution and modification of copyrighted works under certain conditions specified in the licensing terms (e.g. for open source software under the BSD license or LGPL license or for images under the Creative Commons License);
7. *Custom Software* refers to a computer program to be created by ITEXIA according to the customer's specifications, irrespective of its form (e.g. web programming, tools, program modules, script), which may also consist of the modification or extension of another computer program, including any documentation required to be provided;
8. *Content Data* refers to data uploaded to ITEXIA's servers by or on behalf of the customer or otherwise transferred to ITEXIA's IT systems by or on behalf of the customer;
9. *Work Product* refers to the product of ITEXIA's efforts;

10. *Response Time* refers to the period commencing with the error message until the point in time at which ITEXIA reacts to error message. If the *Response Time* is indicated in hours, this only includes hours during *Normal Business Hours*. If days are referred to, this refers to *Business Days*, unless the Parties have specifically agreed to troubleshooting outside of *Normal Business Hours*. Delays for which ITEXIA is not at fault result in an appropriate extension of the *Response Time* and do not give rise to claims for compensation by the customer;
11. *Service Level* refers to a guarantee to be available during specific hours and/or to commence the provision of specific services within specific *Response Times*;
12. *Software* is the generic term for *Standard Software* and *Custom Software*;
13. *Standard Software* refers to a computer program in whatever form (e.g. web programming, tools, program modules, script) that has been developed for the needs of a majority of customers on the market and not specifically by ITEXIA for the customer and includes any documentation to be provided, such as, in particular, the “seventhings” software from ITEXIA;
14. *Normal Business Hours* are 9:00 to 17:00 (CET) on *Business Days*;
15. *Unlawful Content Data* refers to *Content Data* that violates the law, a government order or morality, or contains or promotes malicious software. This includes, in particular, violations of the General Equal Treatment Act, and provisions relevant to youth protection and data protection, criminal and anti-competitive acts, violations of third party rights, namely the general right of personality, the right to one's own image, copyrights, rights to a name, trademark rights, company rights and other industrial property rights, violations of a trade or business secret as well as pornographic, violent, discriminatory, religiously offensive, racist or right-wing extremist content, hate speech, spam and other unwanted advertising, viruses, worms, Trojans and phishing links.

§ 3 Individual contract

An *Individual Contract*, and thus a contractual obligation for specific services, is concluded by means of an order confirmation from ITEXIA, by conclusive action, especially if ITEXIA commences contractual performance following an *Order* or if the customer accepts a binding offer from ITEXIA. Product and service descriptions from ITEXIA do not constitute binding offers. The customer is bound by an *Order* for fourteen (14) days.

§ 4 Scope of performance by ITEXIA

(1) The specific scope of performance owed by ITEXIA is specified in the *Individual Contract* subject to any and all agreed contract amendments and supplements.

(2) ITEXIA is entitled to make minor changes to the agreed scope of performance provided that they do not impair the quality of the respective good or service and are reasonably acceptable to the customer.

(3) Product descriptions, illustrations, test programs, etc. are performance specifications and do not comprise a quality guarantee. Guarantees must be in writing to be effective. They may only be effectively provided by a managing director or authorised officer of ITEXIA. Other employees of ITEXIA are not authorised to provide guarantees.

(4) With the exception of liability for material defects and defects of title (Clauses 19, 20), ITEXIA is obliged

- a) to supply and update, if applicable, in the case of goods with digital elements;
- b) to update digital products (e.g. *Software*)

only to the extent provided in an *Individual Contract*.

(5) As long as supplies of goods and services by ITEXIA are free of charge to the customer, such supplies by ITEXIA are purely voluntary and the customer has no claim against ITEXIA for continuation of the respective supply. ITEXIA reserves the right to discontinue its complementary supplies of goods and services at any time without prior notice. In this respect, the customer likewise has no right to receive updates.

(6) ITEXIA may also provide its services through third parties.

(7) All employees employed by ITEXIA at or for the customer shall remain organisationally related to ITEXIA regardless of whether they are deployed at the customers for a longer period of time. ITEXIA is exclusively authorised to give instructions to its employees. Any instructions by the customer shall only be regarded as suggestions and shall only be binding if ITEXIA accepts such suggestions and issues them to its employees as binding instructions. The customer must send suggestions regarding services to be provided exclusively to the relevant contact person named by ITEXIA and/or their alternate (Art. VI, Clause 51). Persons used by ITEXIA do not enter into an employment relationship with the customer, even if they provide services on the customer's premises.

§ 5 Place of performance by ITEXIA

Subject to any agreement to the contrary in the *Individual contract*, ITEXIA shall provide all services at the ITEXIA head office. In the event that access to the customer's systems is

required in order to render services, this shall generally be performed by way of remote maintenance.

§ 6 Remuneration; Ancillary costs

(1) Prices are specified in the *Individual Contract* concerned including any and all agreed contract amendments and supplements.

(2) In the absence of an express agreement, prices are based on the current price list in effect at the time an agreement for the provision of goods and services is reached. These terms may be requested from ITEXIA at any time.

(3) If the Parties have specified daily rates or person days within the context of remuneration on a time and materials basis, ITEXIA's obligations in this regard are limited to a maximum of eight person hours per calendar day. If ITEXIA provides additional person hours on a calendar day, such hours are to be additionally remunerated pro rata temporis, unless such excess hours conflict with an identifiable wish of the customer or its objective interests. If hourly rates are agreed, they will be remunerated per 30 minutes or part thereof.

(4) The prices indicated are subject to the costs of insurance, packaging and shipment and, in the case of international supplies of goods and services, any potential taxes, levies and customs duties, incidental costs of monetary transactions any the respectively applicable value added tax.

(5) Unless otherwise agreed, the customer shall bear all documented out-of-pocket expenses, such as travel and accommodation expenses, meals and third-party claims for remuneration incurred in the course of the performance of the contract. Travel time is to be compensated.

(6) The customer is required to pay customary remuneration for any supply of goods or services by ITEXIA for which the Parties have not reached agreement concerning remuneration where the customer should expect to make payment for such goods and services based on the circumstances. In case of doubt, the prices requested by ITEXIA for its services are deemed to be customary.

§ 7 Payment and default

(1) Unless agreed otherwise, invoices from ITEXIA are due for payment immediately, however in any event no later than fourteen (14) days after receipt of the invoice without deduction. Invoices may be issued immediately in the case of permitted partial deliveries. Invoices may be issued electronically. If payment in advance has been agreed, ITEXIA will only perform after receipt of payment.

(2) The following shall apply to the payment of recurrent remuneration unless otherwise agreed in an *Individual Contract*. In cases in which such remuneration

- a) is independent of the scope of use or other variables, it shall be payable annually in advance in each case; if the contract begins or ends during a calendar month, such payment obligation shall be pro rata;
- b) is dependent on the amount of usage or other variables, invoicing is performed after the end of each billing month.

(3) If the customer does not pay on the due date, all outstanding amounts shall bear interest at 5 % p.a. from the due date. This is without prejudice to the right to claim a higher interest rate and to assert further damages in the event of default.

(4) If the customer is in default, it will be charged interest at the statutory rate from the relevant date. ITEXIA reserves the right to claim higher damages caused by default. This is without prejudice to other rights of ITEXIA. This applies in particular to ITEXIA's rights to refuse performance pursuant to sections 273 and 320 of the German Civil Code as well as ITEXIA's right of termination for good cause.

(5) Any conflicting terms and conditions of the customer notwithstanding, ITEXIA is entitled to apply payment first to the customer's older obligations and will inform the customer of how payments have been applied. If costs or interest have already been incurred, ITEXIA is entitled to apply payments first to costs, then to interest and finally to the principal obligation.

(6) Unless otherwise agreed in any *Individual Contract*, payment shall be made in euros by means of bank transfer to an account specified by ITEXIA. A payment is only considered to have been made once ITEXIA can dispose of the funds.

(7) ITEXIA is entitled to accelerate the due date for all remaining amounts outstanding if ITEXIA becomes aware of circumstances that objectively call the customer's creditworthiness into doubt, in particular if the customer suspends payments or if a direct debit is returned due to lack of sufficient funds. In such cases, ITEXIA is also entitled to demand advance payments or the provision of security.

(8) ITEXIA is entitled, subject to applicable statutory conditions, to demand payments on account for the value supplies of goods and services actually provided by ITEXIA and owed under the contract.

§ 8 Export controls and embargoes

(1) Supplies of goods or services are intended for use exclusively for the purposes specified in the *Individual Contract*. Subject to any agreement to the contrary in an *Individual Contract*, the customer warrants that supplies of goods or services will become part of a supply of goods or services by the customer or its end users in connection with any of the following technologies: Military technology, weapons, missiles that can carry weapons, and/or nuclear technology.

(2) The customer further warrants that the supply of goods or services will not be used by the customer or its end customers in violation of *Foreign Trade Restrictions*. The customer is required to review the desired supply of goods and services for all potential *Foreign Trade Restrictions* at the earliest possible time, before the order to the extent possible and reasonable, and inform ITEXIA if there are any indications of possible *Foreign Trade Restrictions* without undue delay. The relevant details should be addressed in the *Individual Contract*.

(3) ITEXIA may refuse to fulfil the obligations arising from the *Individual Contract* in the event that fulfilment is prohibited or adversely affected by *Foreign Trade Restrictions*. ITEXIA shall inform the customer of any such circumstances without undue delay.

(4) If ITEXIA refuses a supply of goods or services due to a *Supply Prohibition* and the customer disputes the applicability of a *Supply Prohibition*, the customer will, if possible and reasonable, request written confirmation from the competent authority according to which ITEXIA will not infringe foreign trade law as applied by such authority if ITEXIA satisfies its obligations under the *Individual Contract* concerned. If such confirmation is not provided within a reasonable period, the parties will assume that a *Supply Prohibition* applies. Similarly, the Parties will presume the applicability of a *Supply Prohibition* if it is impossible or unreasonable to request confirmation from the competent authority and there are objective indications that the infringement of a *Supply Prohibition* is possible.

(5) Claims for damages and reimbursement of expenses by the customer based on the aforementioned *Foreign Trade Restrictions* are excluded provided that ITEXIA is not responsible for the *Foreign Trade Restriction* (e.g. because ITEXIA is no longer deemed to be reasonable by the export control authorities in light of previous conduct by ITEXIA in violation of export control laws) or ITEXIA has fraudulently concealed the applicability of a *Foreign Trade Restriction* from the customer. ITEXIA is not liable for a lack of knowledge of a *Foreign Trade Restriction* due to simple negligence. Clause 22 ("Liability on the part of ITEXIA") applies with regard to the scope and amount of liability for damages and reimbursement of futile expenses related to a Foreign Trade Restriction for which ITEXIA is at fault.

(6) Without prejudice to additional legal or contractual obligations to provide information, the customer shall immediately inform ITEXIA of all circumstances and provide all documents required under the foreign trade law of any country

- a) In which the customer has its registered office;
- b) Into which, or through which, the intended supply of goods or services
- c) is intended to be made;

That is necessary or appropriate for the proper performance of ITEXIA's obligations. Without limitation, this includes information about the end customer, the country of destination and the intended use of the respective supplies of goods and services.

§ 9 Dates; Deadlines and obstacles to performance

(1) Delivery and performance dates or periods are agreed upon as non-binding. If they are intended to be binding in a specific case, this requires an express, written agreement. If shipment has been agreed, delivery periods and delivery dates refer to the time of handover to the forwarding agent, carrier or other third party commissioned to provide shipping services.

(2) ITEXIA is not liable for any impossibility of performance or delays in performance due to *force majeure* or other events not foreseeable at the time the contract was concluded, including without limitation operational disruptions of any kind, difficulties in the procurement of materials or energy, transport delays, pandemics, strikes, lawful lockouts, delays in the grant of permits, confirmations or similar requirements, including without limitation issues related to foreign trade law, official orders or missing, incorrect or untimely delivery by suppliers, even if they occur at ITEXIA's suppliers or their subcontractors, or problems with third party products (e.g. modifications, or defects in interfaces with associated third-party software) for which ITEXIA is not responsible. ITEXIA shall inform the customer of any such circumstances without undue delay.

(3) If events for which ITEXIA is not responsible within the meaning of paragraph (2) render performance by ITEXIA significantly more difficult or impossible, or the impediment and the hindrance are not temporary in nature, ITEXIA is entitled to release itself from the obligation to fulfil the contract; any consideration already paid for parts of the contract that will not be fulfilled will be refunded by ITEXIA without undue delay. If any such events lead to hindrances that are only temporary in nature, the respective delivery or performance deadlines shall be extended, or the delivery or performance dates shall be postponed for the duration of the hindrance plus a reasonable lead time. ITEXIA shall inform the customer of the expected new dates and/or deadlines without undue delay. If the hindrance lasts longer than two months, the customer is entitled to terminate the respective *Individual Contract* with regard to any parts that remain unfulfilled after setting a reasonable grace period with notice of intent to reject performance. This is without prejudice to any additional legal rights of the customer. Similarly, this is without prejudice to existing provisions of law related to the exclusion of the obligation to perform due to impossibility for the benefit of ITEXIA under section 275 of the German Civil Code.

(4) Paragraph (3), second sentence applies accordingly if the customer fails to comply with a duty of cooperation in breach of contract, for example does not provide notice, does not provide access, does not provide materials or does not make employees available or if the customer is in default of payment. However, in such cases the customer has no right of revocation or termination.

(5) Relevant deadlines shall be extended by a reasonable period if the parties subsequently agree to other or additional services which affect agreed deadlines.

§ 10 Reminder and grant of a grace period by the customer; Fault requirement in cases of rescission or termination

(1) The termination of further exchanges of goods and services as a result of disruptions in performance (e.g. in the case of contract rescission, termination for good cause, compensation for damages in lieu of performance), as well as a reduction in the agreed remuneration by the customer, must always be preceded by notification from the customer indicating the grounds and the grant of a reasonable grace period for cure. Termination or reduction, as applicable, may be effective upon expiry of the grace period. No deadline is required in cases to which section 323 (2) of the German Civil Code applies.

(2) All declarations by the customer in this context, in particular notifications and the grant of any grace periods, must be in writing in order to be effective. All grace periods must be reasonable. Any deadlines set by the customer of less than two (2) weeks are only reasonable in cases of special urgency.

(3) The customer may only rescind or terminate a contract due to a breach of duty not involving a defect if ITEXIA is responsible for the breach concerned.

§ 11 Price changes in the case of continuing obligations

(1) Ongoing remuneration in the case of continuing obligations (e.g. for Software as a Service for hardware leasing) may be adjusted annually as appropriate in line with pricing changes if the producer price index for IT services published by the German Federal Statistical Office has changed by at least one percentage point since the start of the agreement or, in the case of changes that have already been made, since the last change.

(2) For such purposes, the party requesting an adjustment may submit a written proposal to the other party prior to the beginning of the new contractual year with regard to the amount of the price adjustment, which shall be based on changes to the producer price index for IT services published by the Federal Statistical Office, taking into account equitable considerations, and which the other party may accept or reject in writing within one (1) month.

(3) In the event of rejection, the amount of the adjustment shall be determined by a publicly appointed and sworn expert in accordance with the standard agreed above. At the request of the Party wishing the adjustment, the expert shall be appointed by the chamber of commerce and industry locally responsible for ITEXIA. The decision of the expert as arbitrator shall be binding on both parties; this is without prejudice to right to challenge the decision on grounds of obvious error. The costs of the expert shall be borne by the parties in equal parts.

(4) In the event of acceptance of the proposal by the other party or determination by the expert, the new price shall apply - likewise retroactively - from the first month of the new contract year.

(5) The preceding paragraphs are without prejudice to rights of the parties to adjust or terminate the contract due to change in circumstances (section 313 of the German Civil Code). The Parties are in agreement that, without limitation, inflation in excess of normal levels (e.g. as a result of the corona virus pandemic), comprises changed circumstances in the contractual basis on the basis of which ITEXIA may demand a pricing adjustment even without satisfying the requirements set out in the preceding paragraphs and/or may terminate a continuing obligation pursuant to section 313 (3) of the German Civil Code.

§ 12 Set-off; Retention and assignment

(1) The customer is only entitled to a right of set-off and retention if counterclaims that have fallen due have been finally determined by a court, are undisputed or are ripe for judgement. However, the customer is also entitled to exercise a right of set-off absent satisfaction of the additional requirements set out in the first sentence of this paragraph if it intends to set-off a claim of ITEXIA that is reciprocal to the customer's claim (e.g. set-off a claim for compensation for damages based on non-performance or default against a claim for payment of remuneration owed).

(2) Except within the scope of section 354a of the German Commercial Code, the customer may only assign its claims in relation to ITEXIA with ITEXIA's prior written consent, unless ITEXIA has no legitimate interest in the prohibition of assignment.

§ 13 Supplies by the customer; Free licenses

(1) If the customer supplies materials (e.g. texts, graphics, pictures, videos, third-party programs including *Free Licenses*), the use of which could conflict with the rights of third parties (e.g. copyrights and industrial property rights, right to one's own image), the customer is obliged to clarify and obtain relevant rights in advance to the extent required to achieve the purpose of the contract. Without limitation, the customer must check whether the customer has the necessary rights to use such materials within the scope of the contract both itself, and in relation to performance of the contract by ITEXIA, prior to each supply of materials described in the first sentence of this paragraph. Upon request, the customer will provide proof of sufficient ownership or acquisition of relevant rights to ITEXIA without undue delay.

(2) In relation to the customer, ITEXIA is not obligated to verify whether the customer has acquired sufficient rights.

(3) The customer shall compensate ITEXIA for any damages resulting from claims asserted by third party based on the infringement of industrial property rights and other rights, unless the customer is not responsible for such damages. The customer shall indemnify ITEXIA with

regard to all detriments incurred by ITEXIA as a result of claims made by third parties related to injurious acts of the customer for which the customer is responsible.

(4) To the extent this facilitates performance of the contract, ITEXIA may, on behalf of the customer, copy suitable materials from publicly available sources that are under a *Free License* and make them available to the customer. This requires no separate authorisation by the customer. At any time upon request, ITEXIA will inform the customer of which materials subject to a *Free License* have been used by ITEXIA or are intended for use in future. Paragraphs (1) to (3) apply accordingly, but only to the extent and only from the point in time at which ITEXIA has informed the customer of the use of respective materials subject to a *Free License* and the customer has had sufficient opportunity to examine the clarification of the relevant rights.

§ 14 Change requests

(1) The customer must submit a change request to ITEXIA if the customer wishes to change the contractually determined scope of the services to be provided by ITEXIA.

(2) Deadlines and dates affected by a change request shall be postponed under consideration of the duration of the review of the change request and, where appropriate, the duration of the change requests to be executed, plus a reasonable start-up period where necessary, without need for express notification thereof.

(3) ITEXIA may, for its part, submit proposals to the customer for changes to supplies of goods and services, schedules and previously agreed remuneration. The preceding paragraphs shall apply accordingly.

§ 15 General ancillary and cooperation obligations for the customer

(1) The customer must support ITEXIA in ITEXIA's performance of the contract to an appropriate extent.

(2) In particular, the customer shall

- a) Ensure that all preconditions within the customer's sphere of operations are satisfied to the extent necessary for contractual performance by ITEXIA. This includes, for example, access to the necessary rooms, systems and documentation as well as the availability of the relevant technical contact persons by telephone. The customer must provide ITEXIA detailed information concerning any circumstances that must be considered when ITEXIA is performing work on the customer's premises and systems;
- b) Provide ITEXIA all necessary information and documents upon request by ITEXIA without undue delay and voluntarily as soon as their possible relevance has

become apparent to the customer; this applies in particular to hardware, programs, interfaces and databases, insofar as these items originate within the customer's sphere of control or responsibility and may be relevant for the performance of the contractual services.

(3) Unless otherwise agreed in an *Individual Contract*, the customer must provide the necessary hardware and software infrastructure and take the necessary precautions to prevent unauthorised access to its systems from external sources, loss of data and infection with and distribution of malware (e.g. by means of anti-virus programs, firewalls, penetration tests, data backup and in particular appropriate back-up routines in accordance with the respective state of the art for both data and programs, fault diagnosis, regular testing of the results, contingency planning).

(4) The customer is obliged to take suitable precautions to protect any *Software* provided to it, or made available to it, by ITEXIA from unauthorised third-party access. The customer shall, in particular, securely store access data and user documentation for such purposes. In addition, the customer will clearly instruct its employees, vicarious agents and other users who use the *Software* in accordance with the provisions of the *Individual Contract* to comply with these contractual conditions and the provisions of copyright law.

(5) The customer shall

- a) Provide complete and truthful information for required registrations and other queries necessary to achieve the purpose of the contract;
- b) To the extent required at the time of registration, choose a username that may neither infringe the rights of third parties nor any other rights to a name or trademark or offend common decency;
- c) Keep passwords secret and not disclose them to third parties under any circumstances; the customer must inform ITEXIA without undue delay if there are indications that their access is being or has been misused by third parties;
- d) Inform ITEXIA of any subsequent changes to queried data without undue delay.

Paragraph (4), second sentence applies to registrations and the use of user accounts *mutatis mutandis*.

(6) The customer undertakes to inform ITEXIA if there is a change in personnel, address, name, legal form or company without undue delay.

(7) All obligations of the customer to cooperate are primary obligations. The customer shall cooperate at its own expense.

§ 16 Industrial property rights

(1) Subject to any provision to the contrary in these Standard Business Terms and in an *Individual Contract*, the copyright, patent rights, trademark rights and all other industrial property rights to all items which ITEXIA supplies to or makes available to the customer in the context of the initiation and performance of respective contract are exclusively vested in ITEXIA as between the parties.

(2) ITEXIA will have corresponding rights of use in the event that third parties possess property rights in such items or they are under a *Free Licence*; in such cases, the applicable licensing terms shall have priority over these terms and conditions.

(3) In the event that ITEXIA has attached references to its authorship, to other proprietary rights including the proprietary rights of third parties, to terms of use and licensing conditions as well as to safety and warning notices, disclaimers and limitations of liability, trademarks and logos to such items, in the case of *Software* within the source code in particular, as well as on the user interface, the customer may not remove, falsify or otherwise alter these references without the consent of ITEXIA; ITEXIA will not refuse consent if there is good cause for any such modification.

(4) ITEXIA reserves ownership or copyright in and to all offers and cost estimates submitted by ITEXIA as well as in and to drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and aids made available to the customer. The customer may not share any of the foregoing, as such or their content, with third parties, disclose them, use them itself or via third parties, or reproduce them, without ITEXIA's express consent. Upon request of ITEXIA, the customer must return such items to ITEXIA in their entirety and destroy any copies that may have been made if they are no longer required by it in the ordinary course of the customer's business or if negotiations do not lead to the conclusion of a contract.

§ 17 Contract term and termination for individual contracts

(1) The start and end of any *Individual Contract* is specified in the *Individual Contract* concerned.

(2) In the event that a minimum term is specified in the *Individual Contract*, such *Individual Contract* may first be terminated by giving three (3) months' notice to the end of the agreed minimum term. After expiry of the minimum term, the *Individual Contract* will be renewed for a further year in each case as long as it is not terminated within the period specified in the first sentence.

(3) Where an *Individual Contract* specifies a fixed term or a fixed termination date, such *Individual Contract* will terminate on that date. The Parties should therefore hold talks on whether and how to extend the contract concerned on a timely basis.

(4) An *Individual Contract* that establishes a continuing obligation on the basis of which recurring services and consideration are to be provided that does not contain any information on the term of such contract may be terminated by giving three (3) months' notice to the end of a calendar month.

(5) This is without prejudice to the right to terminate the contract for good cause. Without limitation, good cause for termination by ITEXIA includes:

- a) A breach of a primary contractual obligations in an *Individual Contract* or of an essential contractual obligation in an *Individual Contract* by the customer;
- b) Should there be indications supporting legitimate doubts as to the financial standing of the customer;
- c) A significant direct or indirect (e.g. through contractual agreements, control agreements, trust agreements) change in the customer's ownership ("change of control"). For sake of clarity, the mere appointment of an insolvency administrator does not constitute a change of control. In any case, the customer must notify ITEXIA of any changes without undue delay;
- d) The unsuccessful expiry of a reasonable grace period set for payment in the event of default in payment by the customer; or if the customer owes monthly remuneration, the customer is in default of payment for two consecutive periods, in total or for a material portion of such remuneration, or is in default of payment for a period that extends beyond two consecutive periods, in total or in an amount that equals payment for two months;
- e) The violation of employee protection according to Clause 24 of these Standard Business Terms;
- f) A breach of the obligation to maintain confidentiality and data protection pursuant to Clause 25 of these Standard Business Terms;
- g) Any other significant breach of obligations arising under these Standard Business Terms.

(6) Notice of termination of an *Individual Contract* must be in text form.

§ 18 Defect classes

(1) The parties define the following defect classes:

| Defect class | Description | Examples |
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|---|--|--|
| <p>Class 1</p> <p>Critical operating errors</p> | <p>The error prevents operation of the contractually supplied goods or services by the customer; there is no workaround.</p> | <p>Malfunctions of central functions leading to complete failure.</p> |
| <p>Class 2</p> <p>Non-critical operating errors</p> | <p>The error significantly impedes operation of the contractually supplied goods or services by the customer, but its use is possible with workarounds or with restrictions or impediments that may be acceptable temporarily.</p> | <p>Despite the loss of a central function, the intended results can be achieved by means of a workaround.</p> <p>A less central function is fails; meaningful use of the contractually supplied goods or services is still possible even though a workaround is not available.</p> <p>Frequent failures or system crashes and/or significantly reduced performance.</p> |
| <p>Class 3</p> <p>Other defects</p> | <p>Other defects</p> | <p>(Cosmetic) defects.</p> <p>Errors in the (if contractually owed) documentation that do not cause subsequent errors.</p> <p>Faults in user-friendliness.</p> <p>Individual functions take too long compared to the state of the art, without this leading to unacceptable impediments.</p> <p>Temporary or other acceptable performance losses, faults that can be easily eliminated with workarounds, faults that have no direct impact on operation.</p> |

In cases where the overall effect of Class 3 defects is to materially impair use of the contractually supplied goods or services, the overall effect of such errors may comprise a Class 1 or Class 2 defect.

§ 19 Material defects

(1) The supply of goods or services shall have the agreed qualities, is suited for use as intended in the contract, or otherwise for customary use, and has the same quality as is customary for goods or services of the same type.

(2) Claims based on material defects are precluded in particular in the case of

- a) Contractual relationships for which the law does not permit claims based on material defects, e.g. service contracts;
- b) Supplies of goods and services by ITEXIA for which the customer owes no consideration;
- c) Minor deviations from the agreed qualities and minor impairment of usability;
- d) Impairments resulting from use outside the agreed environmental conditions, incorrect operation, modification in breach of contract, faulty transport, faulty installation, faulty storage or use by the customer of spare parts or consumables not conforming to the original specifications or of an item provided or cooperation rendered by the customer, provided that ITEXIA is not at fault;
- e) Defects of which the customer remained unaware at the time of conclusion of the contract due to gross negligence;
- f) A supply of goods or services to a destination outside the Federal Republic of Germany and in the event that such goods or services are intended to be resold or used in an area outside the Federal Republic of Germany, provided such goods or services violate technical standards or statutory or other regulatory provisions that apply in the respective territory of which ITEXIA was not aware of nor should have been aware of; ITEXIA is not obliged to research the particular provisions of foreign law;
- g) A contract for the supply of previously used goods.

This is without prejudice to all other legal or contractual exclusions of claims for defects.

(3) The customer shall support ITEXIA in performing an error analysis and remedying defects by providing a specific description of any problems that occur and providing comprehensive information to ITEXIA. In particular, the customer shall notify ITEXIA of any defects including a detailed description of the effects of the error and any expected functional behaviour and shall additionally provide informative logfiles and screenshots to the extent practical. The customer shall inform ITEXIA of any changes in error symptoms without undue delay subject to a detailed description of any such change. The customer shall grant ITEXIA the time and opportunity necessary to investigate and cure the alleged defect. If the goods concerned are

movable, the customer shall, at ITEXIA's discretion, either send the goods in question to ITEXIA for examination or make them available for examination on site.

(4) ITEXIA may elect to remedy the defect by repairing the defect on site or at ITEXIA's business premises or by supplying goods that are free of defects. At least three (3) attempts at cure must be permitted in relation to a defect. ITEXIA may remedy the defect via remote maintenance if technically possible and reasonably acceptable by the customer; in such cases, the customer shall ensure that all necessary technical requirements have been met at its own expense and grant ITEXIA corresponding electronic access upon prior notice.

(5) A defect may be remedied on a temporary basis until it is finally resolved, which must be completed in a timely manner. This may also be accomplished by ITEXIA showing options to avoid the effects of the defect in the form of a workaround if and to the extent this is reasonably acceptable to the customer. If the defect relates to *Standard Software*, the customer must accept a new or a previous program version that does not contain the defect if this would be reasonable for the customer.

(6) If the item is located at a place other than the place of intended use, the customer shall bear the additional expenses resulting therefrom related to the examination and cure of the respective defect.

(7) If a defect reported by the customer cannot be verified or if ITEXIA, in particular according to paragraph (2)(d), is not responsible for the impairment concerned, the customer will bear the costs incurred by ITEXIA according to the agreed and/or customary prices unless the lack of a defect was not apparent to the customer.

(8) In the event of defects in goods manufactured or supplied by third parties which are part of the respective supply of goods and services by ITEXIA that ITEXIA is unable to remedy for licensing or practical reasons, ITEXIA may, at its discretion, either enforce its defect claims against such third party or assign them to the customer. Claims for defects according to the provisions of this Clause 19 may, in the event of assignment to the customer, only be asserted against ITEXIA in the event that an attempt to enforce such claims against the third party by ITEXIA was unsuccessful without fault on the part of the customer or, for example, is futile as a result of insolvency. The statute of limitations applicable for the customer to assert claims against ITEXIA for the relevant defects is tolled during the pendency of litigation. ITEXIA shall reimburse the customer for eligible costs related to the legal action according to applicable cost ordinances provided that the customer and its legal representatives reasonably considered them to be necessary under the circumstances and ITEXIA is not able to collect such costs from the third party.

(9) The customer may not reduce current remuneration for defects in the event of the transfer of an object or any other grant of a right of use for a defined period. This is without prejudice to any other potential right to demand repayment of remuneration paid subject to a reservation. Any claim for damages or reimbursement of futile expenses due to a defect which was present

at the time of conclusion of the contract shall only be available if ITEXIA is responsible for the defect concerned; liability for initial defects according to section 536a (1) of the German Civil Code, if applicable in connection with section 548a of the German Civil Code, shall be excluded.

(10) The exclusions and limitations applicable to the rights of the customer according to this Clause 19 do not apply if ITEXIA acted fraudulently or assumed a guarantee for the quality of the goods.

(11) Clause 22 ("Liability on the part of ITEXIA") applies with regard to the scope and amount of liability for damages and reimbursement of futile expenses related to a material defect for which ITEXIA is at fault.

§ 20 Defects in title

(1) Unless otherwise agreed in an *Individual Contract*, ITEXIA guarantees that supplies of goods and services are not subject to any third party rights within the Federal Republic of Germany. ITEXIA is only obligated to examine conflicting industrial property rights or other intellectual property rights of third parties for the territory of the Federal Republic of Germany.

(2) In the event of a supply of goods and services to a destination outside of the Federal Republic of Germany, and in the event that such goods and services are to be resold or are intended for use outside of the Federal Republic of Germany, conflicting industrial property rights or other third-party intellectual property rights only constitute a defect in title if ITEXIA was or should have been aware of such rights upon conclusion of the contract. Accordingly, the customer must conduct all required intellectual property searches itself prior to delivery and/or use in a foreign country.

(3) In the event of defects in title, ITEXIA warrants that, at the option of ITEXIA, ITEXIA will

- a) Modify or replace the goods or service in such a way that the defect in title is eliminated and does not lead to a reduction in quality, quantity or value and is otherwise reasonable for the customer; or
- b) obtain a right of use for the customer by concluding a license agreement.

(4) The customer must inform ITEXIA in writing if third parties assert proprietary rights (e.g. copyrights, trademark or patent rights) in and to the respective supply of goods and services without undue delay. The customer authorises ITEXIA to resolve the dispute with the third party concerned on its own. If ITEXIA makes use of this authorisation, the customer may not acknowledge the third party's claims without ITEXIA's consent. ITEXIA will then defend against the claims of such third party. In the event that the customer is responsible for the assertion of a claim to the infringement of a proprietary right (e.g. as a result of use in breach of contract or failure to conduct property right research by the customer), the customer shall indemnify

ITEXIA against all reasonable costs associated with the defence against such claims and shall reimburse ITEXIA for all damages and expenses in excess thereof; in such cases ITEXIA shall be entitled to payment of a reasonable advance.

(5) Clause 22 (“Liability on the part of ITEXIA”) applies with regard to the scope and amount of liability for damages and reimbursement of futile expenses related to a defect in title for which ITEXIA is at fault.

(6) Clause 19, paragraph (2), (a), (b), (d) and (e), second sentence, as well as paragraphs (8), (9) and (10), shall apply accordingly.

§ 21 Supplier recourse

(1) Otherwise applicable statutory provisions concerning supplier recourse are modified as follows:

1. Sections 478, 445a, 445b and sections 445c, 327 (5), and 327u of the German Civil Code are inapplicable if ITEXIA and the customer have agreed on equivalent compensation, e.g. within the framework of a quality assurance agreement.
2. Section 445a (1) and (2) of the German Civil Code is inapplicable if the final delivery of newly manufactured goods is made to an entrepreneur. In no case will the Parties apply section 445a (1) or (2) of the German Civil Code in the case of final delivery to an entrepreneur if the newly manufactured goods concerned were traded internationally at any point in the supply chain (international supply chain).
3. If the final delivery of newly manufactured goods is made to an entrepreneur, the limitation period of section 445b (1) of the German Civil Code shall be reduced to six (6) months.
4. If the final delivery of newly manufactured goods is made to an entrepreneur, the suspension of the expiry of section 445b (2) of the German Civil Code shall end no later than three (3) years after ITEXIA has delivered the respective goods to the customer.

(2) Except as provided above, the otherwise applicable statutory provisions concerning supplier’s recourse shall remain applicable.

(3) Clause 22 (“Liability on the part of ITEXIA”) applies with regard to the scope and amount of liability for damages and reimbursement of futile expenses.

§ 22 Liability on the part of ITEXIA

(1) ITEXIA's liability for damages, regardless of legal grounds (e.g. impossibility, delay, defective or incorrect delivery or performance, breach of contract or in tort), is limited in accordance with this Clause 22 ("Liability on the part of ITEXIA") to the extent that liability requires fault on the part of ITEXIA.

(2) ITEXIA has no liability in cases of simple negligence provided that there has been no breach of a material contractual duty the fulfilment of which is essential to the proper performance of the contract, the observance of which the customer is entitled to rely upon and the non-fulfilment of which endangers achievement of the purpose of the contract ("essential obligation"). In cases where such an essential contractual obligation has been breached, liability on the part of ITEXIA in cases of simple negligence is limited to damages that are typical to the contract and foreseeable at the time the contract was concluded. However, ITEXIA's liability in the event of simple negligence shall not exceed the liability limits agreed in the *Individual Contract*.

(3) In cases involving gross negligence, liability on the part of ITEXIA is limited to damages that are typical to the contract and foreseeable at the time the contract was concluded.

(4) The foregoing exclusions and limitations on liability set out in paragraphs (2) and (3) apply to the same extent, even retroactively, to breaches of duties during contract negotiations.

(5) In the event that ITEXIA is not itself obliged to perform data backups, typical damages foreseeable at the time of conclusion of the contract shall correspond to typical recovery costs in the event of data loss. Typical recovery costs shall be calculated on the basis of the damage that would have occurred if the customer had taken reasonable precautionary measures based on the standard of care applicable to a prudent businessman.

(6) Liability on the part of ITEXIA is entirely excluded in cases of simple negligence involving a breach of an obligation by ITEXIA concerning supplies of goods and services provided to the customer by ITEXIA free of charge (e.g. as a gift, loan, gratuitous agency and courtesies). Furthermore, liability on the part of ITEXIA for gross negligence is excluded if the customer is an entrepreneur, a legal entity under public law or a special fund under public law. In cases where ITEXIA provides technical information or acts in an advisory capacity following conclusion of the contract and such information or advice is not part of the contractually agreed scope of services owed by ITEXIA, such acts are performed gratuitously and subject to the exclusion of any and all liability for negligently false information or advice.

(7) The exclusions and limitations on liability set out in this Clause 22 ("Liability on the part of ITEXIA") apply to claims for reimbursement of futile expenses accordingly.

(8) The exclusions and limitations on liability set out in this Clause 22 (“Liability on the part of ITEXIA”) apply to the same extent for the benefit of ITEXIA’s executive bodies, legal representatives, employees and other agents.

(9) The limitations set out in this Clause 22 (“Liability on the part of ITEXIA”) do not apply to liability on the part of ITEXIA based on intentional conduct, injury to life, limb or health, in cases of bad faith, the assumption of a guarantee or claims under the Product Liability Act (*Produkthaftungsgesetz*).

§ 23 Limitations period for claims by the customer

(1) The limitations period for claims against ITEXIA by its customers is

- a) For claims to repayment of remuneration following contract revocation, or for a reduction in remuneration based on claims arising from defects in quality or defects in title, one year from submission of a valid declaration demanding revocation or a reduction in remuneration. Notice of contract revocation or a reduction in remuneration is only valid if provided within the deadline provided in b) for defects in quality and c) for defects in title;
- b) One year in the case of claims based on defects in quality that do not demand repayment of remuneration following contract revocation or a reduction in remuneration;
- c) Two years in the case of claims based on defects in title that do not demand repayment of remuneration, revocation or a reduction in remuneration; The foregoing notwithstanding, the statutory limitations period applies if the defect in title relates to an exclusive right of a third party on the basis of which such third party may demand the surrender or destruction of objects provided to the customer;
- d) Two years for claims for repayment of remuneration, compensation for damages or reimbursement of futile expenses not based on material defects or defects of title.

(2) Subject to provisions in an *Individual Contract* to the contrary, the limitations period commences as provided in applicable statutory provisions, in particular applicable warranty law, in cases referred to in paragraph (1)(b) and (c) and from the time at which the customer became aware of the circumstances giving rise to the claim or should have become aware of them but for gross negligence, in cases referred to in paragraph (1)(d). A replacement delivery or repair does not result in the start of a new limitations period or the extension of the limitations period unless ITEXIA has stated its acknowledgement within the meaning of section 212 (1) no. 1 of the German Civil Code in the specific case. A claim is time-barred at the latest upon expiry of the maximum limitations periods referred to in section 199 of the German Civil Code.

(3) The foregoing notwithstanding, the applicable statutory limitations periods apply in the following cases:

- a) In the case of claims for damages and reimbursement of futile expenses based on gross negligence and in the cases described in Clause 22, paragraph (9); and
- b) In the case of claims for reimbursement of expenses after termination of a rental agreement; and
- c) For all cases other than those referred to in paragraph (1).

§ 24 Employee solicitation

The customer undertakes not to solicit employees of ITEXIA, or have them solicited by third parties, or to promote or support third parties with regard to such solicitation actions for a period of two (2) years after termination of the respective contractual cooperation.

§ 25 Confidentiality and data protection

(1) The customer undertakes to treat the contents of *Individual Contracts* concluded on the basis of these Standard Business Terms, as well as all information and knowledge obtained in connection with contract negotiations and performance, as confidential and not to disclose any of the foregoing to third parties provided that ITEXIA has expressly stated that such information is confidential or is identifiable as confidential in light of the respective circumstances, unless disclosure is necessary for performance of the contract, disclosure is legally required or a court or authority has ordered disclosure. Provided that such notification is lawful, the customer will inform ITEXIA in advance of any compelled disclosure and limit disclosure to the necessary extent. Consultants, auditors, banks or insurance companies who are subject to confidentiality obligations are not considered third parties. This is without prejudice to any legal obligations concerning confidentiality.

(2) The customer is required to observe all currently applicable data protection laws and regulations. This also includes technical security measures based on the current state of the art (Art. 32 GDPR) and subjecting employees to commitments to maintain the confidentiality of personal data (Art. 28(3)(b) GDPR). In cases of commissioned data processing (Art. 28 GDPR) or joint controllers (Art. 26 GDPR), the customer is obliged at any time, at the request of ITEXIA to conclude a data protection agreement with ITEXIA that complies with the requirements of the EU General Data Protection Regulation.

(3) The obligations to maintain confidentiality pursuant to paragraph (1) and to comply with data protection obligations pursuant to paragraph (2), shall apply for an unlimited period.

(4) In case of doubt, any non-disclosure agreement already concluded, or to be concluded, between the Parties shall take precedence over the foregoing Clause 25.

§ 26 Contractual penalties

In the event of a culpable breach of an obligation under Clause 24 (“Employee solicitation”) or Clause 25 (“Confidentiality and data protection”), the customer undertakes to pay ITEXIA a contractual penalty to be determined by ITEXIA at its reasonable discretion on a case-by-case basis and which may be reviewed by the competent court in the event of a dispute as to its appropriateness. However, in the case of a breach of a duty under Clause 25 (“Confidentiality and data protection”), the obligation to pay a contractual penalty is limited to breaches within five (5) years of performance of the last *Individual Contract* performed on the basis of these Standard Business Terms. The penalty for breach of contract does not preclude claims for additional damages.

§ 27 No obligation to pay contractual penalties by ITEXIA

ITEXIA is not obliged to pay a contractual penalty to the customer regardless of legal grounds. Without limitation, this applies specifically in the event of delays on the part of ITEXIA.

II. Software as a Service

§ 28 Subject matter of the contract

(1) In cases in which ITEXIA makes *Standard Software* available to the customer for access via the Internet within the agreed scope of availability (Clause 31) (“Software as a Service” - SaaS), the relevant details, in particular concerning the features and scope of services, type and number of licenses and the rights of use granted via such licenses, are set out in the respective *Individual Contract*.

(2) The customer has no right to be provided with the source code. In cases where there is an obligation to provide documentation, it will be provided via the program menu function under “Help” or a comparable function.

(3) Subject to any agreement to the contrary in an *Individual Contract*, ITEXIA is not required to

- a) Modify the *Software* in response to changes in the relevant technical, economic or legal nature environment;
- b) Modify the *Software* to reflect other changes in overall circumstances;
- c) Make enhancements in the areas of quality and modernity.

This does not affect the obligation to supply new program versions, in particular bug fixes and patches, to eliminate existing material defects, in particular related to security defects or functional defects, as well as defects in title.

(4) ITEXIA is obliged to provide data backup and recovery services only to the extent this has been agreed separately in the *Individual Contract* concerned.

§ 29 Activation

(1) Within a reasonable period following conclusion of an *Individual Contract*, as well as following receipt of payment in cases in which advance payment has been agreed, ITEXIA will inform the customer of the time at which fee-based access to the *Standard Software* will be activated.

(2) The obligation to pay agreed remuneration commences on the date of such notice by ITEXIA. If monthly billing has been agreed in the *Individual Contract* and the activation date notified by ITEXIA does not fall on the first day of a month, remuneration for the first month and the last month shall be calculated on a *pro rata* basis in each case.

(3) If ITEXIA is prevented from activating access because the customer has not performed some duty of cooperation provided for in the *Individual Contract*, this does not change the duty to pay on the part of the customer commencing on the date notified by ITEXIA.

§ 30 Mobile app downloads

(1) To the extent that the *Standard Software* represents or comprises mobile apps, ITEXIA shall make it available to the customer for download via relevant app download platforms (e.g. Google Play Store, Apple App Store).

(2) ITEXIA has no ability to control the operation of app download platforms provided by third parties. Accordingly, ITEXIA is not responsible for ensuring that the customer has unimpeded access to the respective app download platform nor does assume responsibility for its availability. ITEXIA's duties do not include ensuring the availability of download options provided by the operator of the respective app download platform. Accordingly, ITEXIA assumes no responsibility for the functionality of the respective app download platform.

§ 31 Availability of Standard Software

(1) ITEXIA will provide *Standard Software* to the customer based on 98% availability on an annual average. This does not include periods during which *Standard Software* use is interrupted or impaired due to necessary maintenance work (Clause 32) or on grounds for which ITEXIA is not responsible.

(2) ITEXIA's obligations do not extend to the customer's access to the Internet or the operation of data lines or data networks as parts of the public Internet. ITEXIA therefore assumes no responsibility for the functionality of such data networks or such data lines to its servers with the exception of the data lines between its servers and the respective transfer point to the

public Internet. In particular, ITEXIA assumes no responsibility for power failures or for network or server failures insofar as these affect the public Internet.

(3) ITEXIA is likewise not responsible for the *Content Data* to be transferred by or at the instigation of the customer required for the trouble-free operation of the *Standard Software*. Similarly, ITEXIA is not responsible for third-party software of the customer that is connected via an interface. In particular, malfunctions and failures that are the result of the failure to provide, or the poor quality of, *Content Data* or are caused by third-party software connected by the customer are not considered when determining availability to the extent that ITEXIA is not at fault.

§ 32 Maintenance

ITEXIA's regular maintenance window is between 21:00 and 24:00 CET. ITEXIA will notify the customer three (3) *Business Days* in advance of the time and the exact duration of the work as well as the specific scope of any limitations on usage. If appropriate in a specific case, in particular to eliminate IT security risks, maintenance work may also be performed outside the regular maintenance window and with less notice or no notice at all. The total duration of all maintenance work may not exceed twelve (12) hours per quarter.

§ 33 Response times for troubleshooting

The Parties agree on the following *Service Levels* unless otherwise agreed in an *Individual Contract*:

| Defect class | <i>Response time</i> |
|---------------------------------|-----------------------------|
| Class 1 Critical defects | <i>1 Business Day</i> |
| Class 2 Non-critical defects | <i>3 Business Days</i> |
| Class 3 Other defects | <i>14 Business Days</i> |

§ 34 Updates

(1) ITEXIA shall update *Standard Software* provided within the scope of Software as a Service to reflect changes in conditions of a technical, commercial or legal nature on the basis of the

schedule set out in the *Individual Contract* concerned or, absent such a schedule, within a reasonable period provided that such changes are material to the contractual use of the *Software*. This obligation is limited by ITEXIA's commercial and operational capacities and shall not apply in cases in which any such modification would represent an undue burden for ITEXIA. Enhancements related to quality or modernity that go beyond the work described above are only required to the extent provided in an *Individual Contract*.

(2) Without limitation, the obligation to provide updates as provided in paragraph (1) does not apply in cases in which changes have been made to third-party software provided by the customer and/or their respective interface configurations that affect or could affect the functionality of *Software* provided by ITEXIA. The customer shall notify such pending changes to ITEXIA without undue delay so that ITEXIA can offer the customer a solution that must be separately remunerated in the event that the customer engages ITEXIA to implement the solution concerned. The details shall be agreed by the parties in an *Individual Contract*.

(3) Subject to any agreement to the contrary in an *Individual Contract*

- a) The obligation to provide updates does not include new versions that have an extended range of functions or other expanded features, in particular Upgrades and Major Releases; ITEXIA may provide the customer such program versions at a reasonable price. Such price shall be based on the scope of the extended range of functions and features in relation to the current program version.
- b) The agreed provisions concerning rights of use to the preceding program version shall apply *mutatis mutandis* to the rights of use to a new program version.

§ 35 Support

(1) ITEXIA will respond to inquiries from the customer and its employees concerning the *Standard Software* and its functionality in cases in which an *Individual Contract* includes support.

(2) Support may be limited to a maximum number of hours per month in the respective *Individual Contract*.

(3) The following provisions shall apply to support unless provided otherwise in an *Individual Contract*:

- a) Support will be provided as e-mail support. E-mail support will be provided within three (3) *Business Days* after receipt of an e-mail.
- b) In addition, 1:1 support can be agreed in the individual contract for scheduled online meetings.

(4) Additional details on the type and scope of support may be agreed in an *Individual Contract* -in particular by agreeing to specific *Service Levels*.

§ 36 Specific secondary obligations of the customer

(1) For the purpose of ensuring proper use of the *Software* the customer is subject to duties of conduct, non-compliance with which may lead to penalties, in particular to termination of the *Individual Contract* and claims for damages.

(2) Without limitation, the customer is obliged not to use the *Software* in an unlawful or immoral manner and to respect the laws and the rights of third parties. This includes the following duties:

- a) Prior to processing *Content Data*, the customer shall ensure that the customer is not processing *Prohibited Content Data*.
- b) *Content Data* may only contain personal data to the extent that this is absolutely necessary to achieve the relevant processing purpose and anonymization or pseudonymization is impossible or impractical. If *Content Data* contains personal data, the customer shall comply with all data protection requirements, in particular inform the data subject sufficiently about the data processing concerned, obtain any necessary consents from the data subject and document and retain evidence of compliance with applicable data protection requirements. Such records are to be destroyed as soon as they are no longer required. In addition, with regard to *Content Data*, the customer is the “controller” within the meaning of the General Data Protection Regulation and therefore, to such an extent, is responsible for compliance with all other obligations of a controller under the General Data Protection Regulation.
- c) The customer shall, prior to processing any *Content Data*, check whether the customer is possesses the necessary rights to the work (e.g. texts, photographs, images, graphics) as well as to brand names, company names, logos and other trademarks and rights. In the case of photographs, further verification is required as to whether the necessary consent has been obtained from persons depicted in such images; processing without such consent is not permitted. The customer grants ITEXIA usage rights required for the proper supply of goods and services on the part of ITEXIA
- d) Excessive loads on systems operated by ITEXIA resulting from improper use are prohibited.

(3) The customer is required to compensate ITEXIA for any damages resulting from any breach of a duty set out in paragraph (2), unless the customer is not responsible for the damages concerned. The customer shall indemnify ITEXIA with regard to all detriments incurred by

ITEXIA as a result of claims made by third parties related to injurious acts of the customer for which the customer is responsible. ITEXIA is entitled to demand payment of a reasonable advance with respect to any costs of legal defence and/or legal advice.

§ 37 Blocking, interruption, erasure

(1) ITEXIA may temporarily block the customer's access for good cause and/or interrupt a connection to resources made available by ITEXIA to the customer via the Internet. Without limitation, good cause to block and/or disable access comprises instances in which

- a) the customer violates any of the duties referred to in Clause 36 ("Specific secondary obligations of the customer"), paragraph (2);
- b) ITEXIA is notified by third parties that the customer is providing or disseminating prohibited *Content Data* unless the allegation of infringement is clearly untrue; or
- c) Provided that the customer is required to pay remuneration for the respective supply of goods and services, it is in default of payment in whole or material part of such remuneration.

In cases described in sentence 2(a) and (b) ITEXIA may temporarily block or permanently erase affected *Content Data* in lieu of disabling access. This is without prejudice to the customer's continuing duty to pay remuneration for fee-based services unless the customer is not responsible for the relevant good cause for blocking, interruption and/or erasure.

(2) Blocking access, disabling connections, as well as blocking and/or deleting *Content Data* is only permissible following expiry of a period set for remedial action without result or following a warning without result. Setting a deadline for remedial action and providing a warning are not required in cases where there has been a final refusal to perform or if there are special circumstances that justify such an action upon weighing the interests of both parties.

(3) In cases in which goods and services are provided free of charge, ITEXIA may temporarily block the customer's access at any time and/or interrupt a connection to resources made available to the customer via the Internet. ITEXIA may temporarily block or permanently delete affected *Content Data* in lieu of such an interruption. In such cases, ITEXIA shall give due consideration to the concerns of the *Users* and, upon request of a user, shall communicate the grounds for its actions to the user. The *User* must always store all data it requires separately so as to be able to use such data even after any free service has been discontinued.

(4) This is without prejudice to further claims and rights on the part of ITEXIA, in particular to suspension of performance, termination as well as claims for damages.

III. Sales of goods

§ 38 Subject matter of the contract

(1) In cases in which ITEXIA sells goods to the customer, including goods that are manufactured according to customer specifications (e.g., labels), specific details, in particular regarding the quality and scope of performance, shall be set out in the respective *Individual Contract*.

(2) In cases where there is an obligation to provide documentation in connection with the supply of hardware, such documentation will be supplied in a common file format (e.g. PDF, Word, TXT) subject to any agreements to the contrary in the respective *Individual Contract*.

(3) Other services relating to hardware, in particular setting up, installing, adjusting and maintaining the hardware, shall only be owed if this is stipulated in the respective *Individual Contract*.

§ 39 Delivery; Passage of risk; Responsibility for costs; Partial delivery; Retention of title

(1) All deliveries will be made at the risk and expense of the customer unless agreed otherwise (e.g. agreement to INCOTERMS) in an *Individual Contract*. The risk of accidental loss or accidental deterioration of the respective item shall pass to the customer as soon as ITEXIA hands over such item to the party charged transporting the item concerned.

(2) ITEXIA is entitled to specify the type of shipment, in particular the carrier, packaging and transport route itself provided the details regarding delivery are not addressed in the *Individual Contract*. In general, goods are shipped solely within the European Union. If shipment is made to a country outside the European Union in a specific case, the customer shall be responsible for proper import customs clearance and shall bear the costs thereof and all other costs associated with such import.

(3) ITEXIA is entitled to make partial deliveries provided that the partial delivery can be used by the customer within the scope of the intended contractual purpose, the delivery of the remaining goods and services on order is assured and the customer does not incur any significant additional outlays or costs as a result, unless ITEXIA states that it is willing to bear such costs itself. This is without prejudice to the customer's legal rights with regard to timely delivery.

(4) Goods that have been delivered shall remain the property of ITEXIA until full payment has been made by the customer.

§ 40 Return of special packaging

The customer is entitled to return transport packaging, as well as other special packaging within the meaning of section 15 (1), first sentence of the Packaging Act (*Verpackungsgesetz - VerpackG*), to ITEXIA. The place of return shall be the registered office of ITEXIA unless otherwise agreed in the *Individual Contract*. The customer shall bear the costs of returning the packaging. The customer must consult with ITEXIA in advance concerning the date and the manner of return. ITEXIA will reuse or properly dispose of any returned packaging. Sentences 1, 2, 3, 4 and 5 shall apply accordingly if ITEXIA's obligation to accept the return of packaging is based on a comparable law or regulation (e.g. a foreign law applicable in a specific case).

§ 41 Duties of inspection and providing notice of defects

Claims of defects on the part of the customer first require the customer to have satisfied its statutory duties of inspection and providing notice of defects (sections 377, 381 HGB). An inspection must be carried out immediately before processing in all cases with regard to goods intended for installation or other further processing. If a defect appears during delivery, inspection or at any later point in time, this must be reported to ITEXIA in writing without undue delay. In any case, obvious defects shall be notified no later than ten (10) calendar days following delivery and defects that were not apparent during the inspection within the same period of time after discovery. If the customer fails to carry out a proper inspection and/or report a defect, liability on the part of ITEXIA for a defect that was not reported at all or for which notice was too late or not properly given is excluded in accordance with applicable provisions of law.

§ 42 Disposal of waste electronic equipment

The customer shall assume the respective obligation in the event that ITEXIA is obliged to properly dispose of waste electronic equipment under the Electrical and Electronic Equipment Act (*Elektro- und Elektronikgerätegesetz - ElektroG*). The customer shall dispose of goods purchased from ITEXIA at its own expense and shall observe and comply with all applicable statutory provisions. ITEXIA does not accept the return of, nor does it provide facilities for the return of, waste electronic equipment within the meaning of the ElektroG. The customer accordingly releases ITEXIA from all obligations arising under section 19 of the Electrical and Electronic Equipment Act. Sentences 1, 2, 3, and 4 shall apply accordingly if ITEXIA's obligation to properly dispose of waste electronic equipment is based on a comparable law or regulation (e.g. a foreign law applicable in a specific case).

IV. Hardware leasing

§ 43 Subject matter of the contract

(1) In cases in which ITEXIA provides the customer with hardware for temporary use (hardware leasing), the further details, in particular regarding the quality and scope of performance as well as any assembly, shall be set out in the respective *Individual Contract*.

(2) Article III. Clause 38 ("Subject matter of the contract"), paragraph (2), shall apply accordingly.

§ 44 Specific secondary obligations of the customer

(1) Unless otherwise agreed in the *Individual Contract*, the customer is not entitled to use the hardware outside the customer's business or to make it available to third parties and may not sublease the forgoing in particular.

(2) The customer must handle the hardware with the care of a prudent businessman. In particular, the customer shall ensure and take efforts to ensure, by means of suitable instruction or training, that its employees and vicarious agents use and operate the hardware in accordance with the contract.

(3) Subject to any agreement to the contrary in the *Individual Contract*, the customer undertakes to insure the hardware adequately against damage, destruction and theft and to provide evidence of the conclusion and the existence of such an electronics insurance policy at the request of ITEXIA.

(4) The customer shall notify ITEXIA of any damage to, destruction of, or theft of the hardware without undue delay.

(5) In cases in which ITEXIA has supplied hardware in packaging, Art. III. Clause 40 ("Return of special packaging") shall apply accordingly.

§ 45 Obligation to return hardware

(1) The customer is obliged to return the hardware, including any documentation and other accessories provided, to ITEXIA at the end of the lease term.

(2) Prior to the return, the customer shall permanently remove any *Software* installed by the customer, as well as any stored data, from the hardware to the extent this is possible and reasonable for the customer.

(3) Shipping shall be at the customer's expense and risk and only with the prior written consent of ITEXIA.

V. Programming, consulting and/or support services pursuant to a service contract

§ 46 Subject matter of the contract

In cases in which ITEXIA provides consulting and/or support services, including the performance of workshops, briefings and training courses, to the customer under a services contract, the further details, in particular regarding the scope of services, shall be based on the respective *Individual Contract*.

§ 47 Performance and rights

(1) ITEXIA regularly provides services under a service contract, in particular in cases where ITEXIA is obliged to provide the service alone according to applicable contractual agreements; this is the case, for example, when collaborating on larger projects under the management of the customer. ITEXIA is not obliged to produce a specific work or otherwise to achieve a specific result. The customer, in particular its project manager, bears the overall responsibility for the workmanlike, timely and budgetary realisation of the project.

(2) If *Work Product* is created in the course of the provision of services under the service agreement, the specific contents of rights of use shall be governed by the *Individual Contract* or alternatively based on the purposes of the service contract. The acquisition of such right of use is subject to the condition precedent of full payment of all remuneration owed.

(3) ITEXIA is not obliged to examine *Work Product* for conflicting industrial property rights or other intellectual property of third parties.

(4) As between the Parties, documents, proposals, test programs and other objects belonging to ITEXIA that are associated with the services provided under the service contract and were supplied to the customer before or after conclusion of the contract, shall be deemed to be intellectual property and business and trade secrets of ITEXIA. To the extent not otherwise provided above, they may not be used in any form without the written authorisation of ITEXIA and must be kept confidential as provided in Article I., Clause 25 ("Confidentiality and data protection"). In all other respects, Article Clause 16 ("Property rights") paragraphs (3) and (4) shall apply accordingly.

(5) Subject to express agreement to the contrary in an *Individual Contract*, all supplies of goods and services beyond the discrete service to be provided by ITEXIA according to a service contract are excluded. Without limitation, the customer must provide all materials related to the service (e.g. texts, graphics, pictures, videos, third party programs including *Free Licenses*) in accordance with Article I., Clause 13 ("Supplies of goods and services by the customer").

VI. Miscellaneous provisions

§ 48 Exclusions

(1) Without limitation, absent express agreement, the scope of services of an *Individual Contract* concluded on the basis of these Standard Business Terms does not include:

- a) All services performed at the customer's request outside *normal business hours* unless the contractually agreed service is required to be performed outside *normal business hours*;
- b) All services performed at the request of the customer at a location other than the registered office of ITEXIA;
- c) Defect remediation after the end of the warranty liability and outside of a hardware maintenance and support contract;
- d) Work and services that become necessary as a result of improper use by the customer, regardless of whether this was done by the customer, its vicarious agents or other persons within the customer's sphere of influence;
- e) Work and services that become necessary due to *force majeure* events or other circumstances for which ITEXIA is not responsible;
- f) Work and services resulting from changed or new specific usage requirements of the customer;
- g) Work and services on hardware and software not covered by the contract.
- h) Work and services rendered necessary by use ITEXIA's IT systems by the customer or its vicarious agents which exceeds the usual extent, e.g. frequent mass dispatch of documents, permanent exports in full synchronisation and the effects of such a use, such as in particular increased data traffic, increased use of storage space and computing power on the servers, increased utilisation of the networks and data lines as well as additional outlays of work and personnel on the part of ITEXIA.

(2) Services referred to in paragraph (1) shall only be provided on the basis of a specific agreement in the *Individual Contract* concerned and only upon payment of separate remuneration. The obligation to pay separate remuneration does not apply solely in cases where expressly so provided in the *Individual Contract* concerned.

§ 49 Use as a reference

ITEXIA is authorised to include the customer's company name and logo, as well as a brief description of the project, in reference lists and to publish and disseminate them on the Internet, in print media, in presentations or otherwise for purposes of providing factual information. Any additional use is prohibited unless provided otherwise.

§ 50 Notifications and declarations

(1) Unless provided otherwise, text form as provided in section 126b of the German Civil Code (e.g. email) is sufficient, but not required, for all declarations and notifications. However, declarations for which these Standard Business Terms or applicable law expressly so provide, must be in writing (section 126 of the German Civil Code), whereby transmission by means of telecommunications is sufficient to comply with deadlines provided that the recipient receives the original without undue delay.

(2) Subject to proof to the contrary, an email is deemed to originate from the other party if the email contains the name and email address of the sender and a rendering of the sender's name at the conclusion of the message.

§ 51 Contact person

(1) The Parties shall each designate a contact person and an alternate in the *Individual Contract* who can take decisions within the scope of the representative authority available to them in the *Individual Contract*, or obtain such decisions on short notice, and who can provide information. Without further definition in an *Individual Contract*, in case of doubt the contact person's representative authority, and that of their alternate, is limited to decisions concerning the further clarification and/or specification of the supply of contractual goods and services, commissioning modifications and expansions of agreed supplies of goods and services, modifying binding or non-binding agreed dates and to provide binding statements.

(2) Each Party must give notice of changes in designated contact persons and/or their alternates to the other Party without undue delay. Until receipt of such notice, the previously designated contact persons and/or their alternate shall be deemed authorised to make and receive declarations within the scope of their representative authority.

§ 52 Assignment of rights and obligations

ITEXIA may transfer all rights and obligations arising under an *Individual Contract* to third parties at any time. The customer may object to such a transfer within one month if legitimate interests of the customer are impaired by the transfer concerned, e.g. because the acquiring company is a direct competitor of the customer, does not offer the required knowledge and qualifications or there are legitimate doubts about its economic performance capacities.

§ 53 Final Provisions

(1) These Standard Business Terms, and all *Individual Contracts* concluded with reference thereto, are subject exclusively to German law.

(2) If the customer is a merchant, legal person under public law or a special fund under public law, or if the customer does not have a place of jurisdiction in the Federal Republic of Germany, the *exclusive place of jurisdiction* for any and all disputes related *Individual Contracts* concluded with reference to these Standard Business Terms shall be the location of ITEXIA's head office. In addition, ITEXIA may bring suit against the customer at any other lawful place of jurisdiction. The preceding provisions do not affect exclusive places of jurisdiction prescribed by law.

(3) The agreements related to the place of jurisdiction under paragraph (2) are based exclusively on the laws of the Federal Republic of Germany.

(4) A complaint may only be lodged with the court once the Parties have attempted to resolve the matter outside of the courts. For such purposes, the parties should agree to a neutral third party as arbitrator. The limitations period for the relevant claim subject to dispute is tolled until the end of the arbitration process upon initiation of an attempt at resolution by one of the Parties. Section 203 of the German Civil Code shall apply *mutatis mutandis*. Summary proceedings or lodging a complaint in order to toll a statutory limitations period that cannot be extended by agreement of the Parties is permitted at any time.

(5) In the event that any *Individual Contract* concluded with the customer on the basis of these Standard Business Terms contains loopholes, any such loophole shall be deemed to be filled by a legally effective provision that would have been agreed between the parties in light of the business purpose of the *Individual Contract* concerned had the parties been aware of the respective loophole.