

# GENERAL TERMS AND CONDITIONS OF IBSOLUTION GMBH FOR THE CONVENTION AND MAINTENANCE OF SOFTWARE (Software-GB)

## THE TERMS OF THE CONTRACT SHALL APPLY

In all contractual relationships in which IBSolution GmbH (hereinafter referred to as "IBSOLUTION") provides or maintains IBSOLUTION software to other companies, legal entities under public law or special funds under public law (hereinafter referred to as "Customer"), these General Terms and Conditions shall apply exclusively - unless otherwise agreed - and the IBSOLUTION price list valid at the time of conclusion of the respective contract shall supplement these General Terms and Conditions

The following provisions regarding IBSOLUTION software shall apply mutatis mutandis to third-party software that IBSOLUTION co-sells, unless otherwise stipulated in the software contract, these GTC or the price list.

## § 1. DEFINITIONS

1.1 "Add-On" means developments that are not modifications (as defined below), use APIs, and add new and independent functionality.

1.2 "API" means Application Programming Interfaces (API) and other code that enables other software products to communicate with or call the IBSOLUTION Software (e.g. IBSOLUTION Enterprise Services, BAPIs, IDocs, RFCs and ABAP calls or other user exits).

1.3 "Working days" means the weekdays from Monday to Friday (08:00 hours to 17:00 hours CET) other than the public holidays in the federal state of Baden-Württemberg and 24 and 31 December.

1.4 "Documentation" shall mean the technical and/or functional documentation of IBSOLUTION belonging to the contractual IBSOLUTION Software which is made available to the Customer together with the contractual IBSOLUTION Software.

1.5 "Third-Party Software" means (i) all standard software products and related documentation and content developed for or by companies other than IBSOLUTION or its affiliates that are not IBSOLUTION Software (as defined in Section 1.10); (ii) all new versions (including, without limitation, releases, updates, patches, corrections) of such Third-Party Software; and (iii) all full or partial copies thereof.

1.6 "Business Partner" means a natural or legal person who requires access to the IBSOLUTION Software in connection with the Customer's internal business transactions, e.g. customers, distributors and / or suppliers of the Customer.

1.7 "IP Rights" (or "Intellectual Property Rights") means, without limitation, all patents and other

rights to inventions, copyrights, trademarks, designs and other proprietary rights and all related rights of exploitation and use.

1.8 "Modification" means developments that (i) modify the delivered source code or metadata or (ii) use APIs, but do not add any new and independent functionality, but only enhance, enhance or modify the existing functionality of the IBSOLUTION Software. For clarification: Customizing and parameterization of the contractual IBSOLUTION Software do not constitute a modification, but are permitted within the scope of the contractual agreements.

1.9 "Maintenance" means the agreed IBSOLUTION support for the IBSOLUTION software.

1.10 "IBSOLUTION Software" means all (i) standard software products and related documentation developed for or by IBSOLUTION or its affiliates; (ii) new versions (including, without limitation, releases, updates, patches, corrections) of this IBSOLUTION Software; and (iii) full or partial copies thereof.

1.11 "Software Contract" means a specific contract between IBSOLUTION and Customer with agreements regarding the transfer and maintenance of IBSOLUTION Software and / or third party software that refers to these GTC.

1.12 "Affiliated companies" means companies which are affiliated with another company within the meaning of Section 271 of the German Commercial Code (HGB).

1.13 "contractual" means "made available to the customer in execution of the software contract".

1.14 "Confidential Information" means any information which IBSOLUTION or the Principal protects against unrestricted disclosure to third parties or which, under the circumstances of such disclosure or its contents, is to be regarded as confidential, including the Software Contract itself. In any case, the following information shall be considered confidential information of IBSOLUTION: information on research and development, product offers, pricing and availability of IBSOLUTION products and all IBSOLUTION software, programs, tools, data or other materials that IBSOLUTION makes available to the Customer prior to or on the basis of the Software Agreement.

## § 2. DELIVERY, OBJECT OF DELIVERY, GRANTING OF THE RIGHT OF USE, IP RIGHTS

2.1 Delivery; delivery item. IBSOLUTION delivers the contractual IBSOLUTION software according to the product description in the documentation. The product description in the documentation is conclusively decisive for the quality of the functionality of this IBSOLUTION Software. IBSOLUTION shall not be liable for any additional quality of this IBSOLUTION Software. In particular, the Customer may not derive such an obligation from other representations of the IBSOLUTION

Software in public statements or in IBSOLUTION's advertisements, unless IBSOLUTION has expressly confirmed in writing the additional quality. Guarantees require the express and written confirmation of IBSOLUTION's management.

In the absence of any other agreement, one (1) copy of the IBSOLUTION software that is the subject matter of the contract shall be delivered to the Customer in the version current at the time of delivery at the latest one month after conclusion of the software contract.

Delivery is via Electronic Delivery. In the case of Electronic Delivery, the time at which the contractual IBSOLUTION software is made available for download and the Customer is informed of this is the time at which the contractual IBSOLUTION software is made available for download in order to comply with delivery dates and the passing of risk.

2.2 Rights of IBSOLUTION, powers of the customer. IBSOLUTION, IBSOLUTION GmbH (the parent company of IBSOLUTION) or its licensors shall be exclusively entitled to all rights to the IBSOLUTION software - in particular copyright and other IP rights - in the relationship with the customer, even if IBSOLUTION software has been created as a result of the specifications or cooperation of the customer. The Customer shall only have the following non-exclusive rights to the IBSOLUTION software covered by the contract. Sentences 1 and 2 above shall apply mutatis mutandis to all other IBSOLUTION software, objects, work results and information entrusted to the Customer for the purposes of initiating and executing the contract, including subsequent performance and maintenance.

2.2.1 The Customer may only use the contractual IBSOLUTION software to the extent stipulated in the contract. The right of use is limited to the contractual IBSOLUTION Software to the extent regulated therein, even if the Customer has technical access to other software components. The customer receives the right of use for the contract type purchase for an unlimited time, for the contract type rental for the contractually agreed duration.

With regard to the creation and use of modifications or the use of the contractual IBSOLUTION Software for the creation of add-ons and the use of the contractual IBSOLUTION Software together with add-ons, Section 2.3 shall apply.

The Customer shall only be granted the rights to third-party software which are the subject of the contract and which are necessary for its use together with the IBSOLUTION software which is the subject of the contract. Details of the license to the third party software can be found in the software contract or the price list.

2.2.2 The Customer may only use the contractual IBSOLUTION software for the purpose of processing its internal business transactions and those of its affiliated companies. Rights to

reproduce this IBSOLUTION software are granted only to this extent. All rights beyond this, in particular the right to distribute including renting, translating, editing, arranging and making available the IBSOLUTION Software to the public shall remain exclusively with IBSOLUTION. The operation of computer centers for companies other than its affiliates or the use of the contractual IBSOLUTION software for the training of persons who are not employees of the customer or its affiliates is not permitted. Further details are determined according to the price list.

The contractual IBSOLUTION Software may be used via an interface delivered with the IBSOLUTION Software or as part of the IBSOLUTION Software, via an interface of the Customer or a third party, or via another intermediary system.

In particular, the Customer must have the necessary rights of use as defined in the price list for all persons who use the contractual IBSOLUTION software (directly and/or indirectly). Business partners are only permitted to use the contractual IBSOLUTION software by means of screen access and only in connection with the use by the Customer and are prohibited from using the software to process their own business transactions.

In the case of test provision, the Customer's powers of use shall be limited to such actions that serve to determine the condition of the IBSOLUTION software covered by the contract and its suitability for the Customer's operation. In particular, the creation of modifications and add-ons according to Section 2.3, decompilation according to Section 2.2.5, a productive operation of the contractual IBSOLUTION Software or the preparation of the productive operation are inadmissible.

In the absence of an express agreement to the contrary between IBSOLUTION and the Customer, the following shall apply if an affiliated company of the Customer with IBSOLUTION or with IBSOLUTION Affiliates or with an authorized IBSOLUTION sales partner holds independent transfer or maintenance contracts for IBSOLUTION Software: The contractual IBSOLUTION Software may not be used to process internal business transactions of this Affiliate of the Customer, and the Customer may not provide maintenance services received under the Software Contract to this Affiliate. This shall also apply if the independent maintenance contract of the Affiliated Company has been terminated or will be terminated.

2.2.3 All data processing equipment (e.g. hard disks and processors) to which the contractual IBSOLUTION software is copied, in whole or in part, temporarily or permanently, is located at the premises or in the direct possession of the Customer or one of its affiliated companies. If the Customer wishes to operate or have operated this IBSOLUTION Software on data processing devices for the processing of its internal business transactions that are located on the premises and

directly owned by a third company (outsourcing), this shall only be possible on the basis of a written agreement with IBSOLUTION, the conclusion of which IBSOLUTION is prepared to enter into while safeguarding its legitimate operational interests - in particular the compliance with the contractual provisions on the granting of the right of use to the contractual IBSOLUTION Software by the third company.

2.2.4 The Customer may perform data backup in accordance with the rules of technology and create the necessary backup copies of the contractual IBSOLUTION software for this purpose. A backup copy on a movable data carrier shall be marked as such and marked with the copyright notice of the original data carrier, unless this is technically unreasonable. The Customer may not alter or remove IBSOLUTION's copyright notices.

2.2.5 Prior to decompiling the contractual IBSOLUTION software, the Customer shall request IBSOLUTION in writing, setting a reasonable deadline, to provide the information and documents necessary to achieve interoperability. Only after fruitless expiration of the deadline is the client entitled to decompilation within the limits of § 69 e UrhG (German Copyright Act). Prior to the involvement of third parties (e.g. pursuant to § 69 e (1) no. 1, (2) no. 2 UrhG), the Customer shall provide IBSOLUTION with a written declaration from the third party that the third party undertakes directly to IBSOLUTION to comply with the regulations contained in Section 2.

2.2.6 If the Customer receives from IBSOLUTION copies of new versions of a contractual IBSOLUTION software (e.g. within the scope of subsequent improvement or maintenance) which replace a previously provided IBSOLUTION software version, the right of use granted to the Customer shall apply exclusively to the most recently received version. The right of use with regard to the previously provided version expires as soon as the Customer implements the new version for use on productive systems. However, he may use the new version for three months for test purposes alongside the old productive version. The provisions of Section 5 shall apply to the replaced version.

### 2.3 Modifications/Add-Ons

2.3.1 The Customer may only use APIs and tools contained in the contractual IBSOLUTION Software or otherwise acquired by IBSOLUTION in compliance with the obligations to create or use modifications or add-ons set forth in this Section 2.3. For the avoidance of doubt, modifications or add-ons developed by IBSOLUTION or any company affiliated with IBSOLUTION for the Customer or as a product shall be conclusively subject to the provisions of the relevant contract and shall not be subject to the following provisions in this Section 2.3.

2.3.2 Unless otherwise agreed, the Customer shall not be entitled to create, use or make available to third parties any modifications or add-ons to the

IBSOLUTION Software that is the subject of the contract, unless this is expressly permitted by mandatory law or pursuant to this Section 2.3. Modifications may only be made in relation to the IBSOLUTION software delivered to the customer by IBSOLUTION in source code.

2.3.3 The Customer is responsible for any disruptions in the operation, security or performance of the contractual IBSOLUTION Software and other programs, as well as in the communication of the contractual IBSOLUTION Software and other programs (general "Disruptions"), which are caused by modifications or add-ons to the contractual IBSOLUTION Software. IBSOLUTION points out that add-ons as well as minor modifications to the contractual IBSOLUTION Software may lead to unforeseeable and significant disruptions. Such disruptions may also occur because an add-on or modification is not compatible with later versions of the IBSOLUTION Software. In particular, IBSOLUTION shall be entitled to modify the IBSOLUTION Software and APIs at any time without ensuring that modifications or add-ons used by the Customer are compatible with later versions of the IBSOLUTION Software.

2.3.4 IBSOLUTION is neither responsible for nor otherwise obligated to remedy any malfunctions caused by modifications or add-ons to the contractual IBSOLUTION Software, in particular for reasons of rectification of defects. IBSOLUTION shall also not be obliged to provide contractual maintenance services if and to the extent that their provision is impeded by modifications or add-ons to the contractual IBSOLUTION Software.

2.3.5 These modifications and add-ons may only be used together with the contractual IBSOLUTION software and only in accordance with the contractual right to use the contractual IBSOLUTION software. IBSOLUTION is entitled to develop its own modifications and add-ons to the IBSOLUTION Software at any time, but IBSOLUTION may not copy the Customer's software code. Modifications and add-ons must not be suitable for the following (subject to the further restrictions set forth herein): To circumvent the contractually agreed restrictions and/or to enable the Customer to access IBSOLUTION Software for which he has not acquired any rights of use; nor to make information about the IBSOLUTION Software itself accessible or available to the Customer.

2.3.6 The Customer undertakes not to assert any claims against IBSOLUTION or any of IBSOLUTION's Affiliates based on rights to (i) such modifications or add-ons or (ii) any other functionality of the IBSOLUTION Software accessed by such modifications or add-ons.

### 2.4 Transfer to third parties

2.4.1 The Customer may only transfer the IBSOLUTION software which he has acquired from IBSOLUTION under the contract type Purchase (including the IBSOLUTION software obtained through possible purchases or within the scope of

maintenance) to a third party in a uniform manner. The temporary or partial transfer to third parties or the transfer to several third parties is prohibited. The restrictions of sentences 1 and 2 shall also apply to corporate restructuring and legal succession, e.g. in accordance with the German Transformation Act (Umwandlungsgesetz).

2.4.2 In cases where IBSOLUTION software can be handed over uniformly by the Customer to a third party (new user) in accordance with Section 2.4.1, the following shall apply:

The customer must give up his use of the IBSOLUTION software completely and finally and pass on all copies to the new user or make them unusable.

He is obliged to make the terms of use and transfer for the IBSOLUTION software available to the new user from the software contract.

He shall immediately notify IBSOLUTION in writing of the transfer to the new user, stating his name and address.

2.4.3 The Customer may not transfer to third parties IBSOLUTION software that he has acquired in a manner other than according to the contract type Purchase.

### **§ 3. SURVEYING / ADDITIONAL PURCHASE**

3.1 Any use of the contractual IBSOLUTION software that goes beyond the contractual agreements must be notified to IBSOLUTION in writing in advance. It requires a separate contract with IBSOLUTION regarding the additional scope of use (additional purchase). The additional purchase shall be made on the basis of the price list valid at the time of the additional purchase.

3.2 IBSOLUTION is entitled to verify the use of the contractual IBSOLUTION software (in principle once a year) and in accordance with IBSOLUTION standard procedures (as described in the price list) by measuring. Surveys shall regularly take place in the form of self-disclosure using the surveying tools provided by IBSOLUTION.

IBSOLUTION can also carry out remote measurements if the self-disclosure was refused or if it did not provide any meaningful results and there are objective indications for a violation of rights by the customer. IBSOLUTION may exceptionally carry out measurements on site if the remote measurement was refused or if it did not provide any meaningful results and there are objective indications for a violation of rights by the customer. The Customer shall cooperate reasonably with IBSOLUTION in carrying out such surveys, in particular by providing IBSOLUTION with the necessary insight into its systems for remote surveys and on-site surveys. IBSOLUTION shall announce on-site measurements with a reasonable period of notice. The confidentiality interests of the Customer as well as the protection of its business operations from impairment shall be taken into account in an appropriate manner. The reasonable

costs of surveying by IBSOLUTION shall be borne by the Customer if the surveying results demonstrate non-contractual use.

3.3 If the use of the contractual IBSOLUTION software by the Customer is found to exceed the scope of the contractual agreements, a contract shall be concluded with IBSOLUTION for the additional purchase. In this case, IBSOLUTION reserves the right not to grant agreed discounts in excess of the quantity discounts stipulated in the price list. Section 3.1 sentences 2 and 3 shall apply accordingly. Damages and the assertion of interest on arrears in accordance with Section 4.1.5 remain reserved.

### **§ 4. REMUNERATION, PAYMENT, TAXES, SUBJECT TO CHANGE**

#### **4.1 Remuneration**

4.1.1 The Customer shall pay IBSOLUTION remuneration in accordance with the software contract for the provision and maintenance of the contractual IBSOLUTION software. In the case of Electronic Delivery, IBSOLUTION shall place the contractual IBSOLUTION Software on the Internet at its own expense. The costs for the retrieval shall be borne by the customer. Discount is not granted.

4.1.2 IBSOLUTION may demand advance payments or full advance payments if there is no business relationship with the Customer yet, if the delivery is to be made abroad or if the Customer is domiciled abroad or if there are reasons to doubt the punctual payment by the Customer.

4.1.3 The client may only offset undisputed or legally established claims and base a right of retention only on undisputed or legally established claims. He may not assign his claims - notwithstanding the provision of § 354 a HGB - to third parties.

4.1.4 IBSOLUTION reserves all rights to the contractual IBSOLUTION software, in particular to versions made available within the scope of the maintenance contract, until full settlement of its claims under the software contract. The Customer shall immediately notify IBSOLUTION in writing of any access by third parties to the IBSOLUTION Software subject to the reservation and shall inform the third party of IBSOLUTION's rights.

#### **4.1.5 Invoicing and due date**

- Payments are due 14 calendar days after the invoice date. Upon maturity IBSOLUTION may demand default interest in the amount of the applicable statutory default interest rate.

- In the case of software purchase contracts, the invoice is issued after delivery of the IBSOLUTION software.

- In the case of software maintenance contracts, the payment obligation shall commence with the commencement of the maintenance contract. The payment is due annually in advance.

- The terms of payment for software rental shall be governed by the provisions of the rental agreement. Unless otherwise agreed, payment shall be due quarterly in advance and the payment obligation shall commence upon conclusion of the contract.

4.1.6 IBSOLUTION may change the remuneration for maintenance and software rental in each case with a notice period of two months with effect from 01.01. of a calendar year by means of a written adjustment declaration to the Customer at its discretion and in compliance with the following principles:

(a) IBSOLUTION may change the remuneration at most to the extent to which the index specified under (b) below has changed (change framework). In the case of the first adjustment to the remuneration, the index development between the index level published at the time the contract was concluded and the index level last published at the time the adjustment was declared shall be decisive for the change framework. If a remuneration adjustment has already taken place in the past, the frame of change shall be defined by the index development between the index level last published at the time of the preceding adjustment declaration and the index level last published at the time of the new adjustment declaration.

(b) For the determination of the framework of change, the index of the average gross monthly earnings of full-time employees in Germany for the economic activity Provision of Information Technology Services (currently published in quarterly figures by the Federal Statistical Office in Fachserie 16, Reihe 2.4, Gruppe J 62) is to be used. Should this index no longer be published, the index published by the Federal Statistical Office which most closely reflects the development of average gross monthly earnings in the aforementioned branch of the economy will be decisive for determining the framework of change.

(c) If the customer does not terminate the agreement on maintenance or software rental at the end of the calendar year within two weeks of receipt of the adjustment declaration (special right of termination), the new remuneration shall be deemed agreed. IBSOLUTION refers to this in the adjustment declaration. The provisions in section 10.6 sentences 4 to 6 apply accordingly.

4.2 Taxes. All prices are subject to the statutory value added tax applicable at the time.

### **§ 5. END OF THE RIGHT OF USE**

In all cases of termination of his right to use (e.g. by rescission, expiration of the agreed contract period or termination), the Customer is obliged to immediately cease using the contractual IBSOLUTION software and the Confidential Information.

Within one month after the end of the right of use, the Customer shall destroy all copies of the contractual IBSOLUTION Software in any form

irretrievably or - at IBSOLUTION's request - hand over all copies of the contractual IBSOLUTION Software to IBSOLUTION, unless their storage for a longer period is prescribed by law; in this case the return or destruction shall take place at the end of this period.

The Customer must assure IBSOLUTION in writing that he and all his Affiliates have complied with the obligations set forth in this Section 5.

## **§ 6. COOPERATION, OBLIGATION TO EXAMINE AND GIVE NOTICE OF DEFECTS**

6.1 The customer must inform himself about the essential functional features of the IBSOLUTION software and its technical requirements (e.g. with regard to database, operating system, hardware and data carrier). He bears the risk of whether the IBSOLUTION software corresponds to his wishes and circumstances. In case of doubt, he may seek advice from IBSOLUTION employees or expert third parties before concluding the contract. In addition, IBSOLUTION provides information on the IBSOLUTION online information platform on the technical operating conditions of the IBSOLUTION software and any changes thereto.

6.2 The Customer shall provide the working environment for the contractual IBSOLUTION software (hereinafter referred to as "IT systems"), if necessary in accordance with IBSOLUTION's specifications. It is his responsibility to ensure the proper operation of the necessary IT systems, if necessary by maintenance contracts with third parties. In particular, the Customer shall observe the requirements of the documentation and the instructions given on the IBSOLUTION online information platform.

6.3 The Customer shall cooperate free of charge in fulfilling the order to the extent required, e.g. by providing employees, work rooms, IT systems, data and telecommunications equipment. He shall grant IBSOLUTION direct access to the contractual IBSOLUTION software and to the IT systems by means of remote data transmission.

6.4 The Customer shall designate in writing a contact person for IBSOLUTION and an address and e-mail address at which the contact person can be contacted. The contact person must be able to make the necessary decisions for the customer or to bring them about immediately. The contact person ensures good cooperation with the contact person at IBSOLUTION.

6.5 The customer thoroughly tests the contractual IBSOLUTION software for freedom from defects before commencing its operational use.

6.6 The Customer shall take appropriate precautions in the event that the contractual IBSOLUTION software does not work properly in whole or in part (e.g. by data backup, fault diagnosis, regular checking of the results). In the absence of an express written notice in individual cases, all persons employed by IBSOLUTION within the framework of the provision of services may

assume that all data with which they may come into contact is secure.

6.7 With regard to all deliveries and services by IBSOLUTION, the Customer shall assume an obligation to inspect and give notice of defects in accordance with § 377 HGB (German Commercial Code). The customer declares complaints in writing with an exact description of the problem. Only the contact person (section 6.4) and the certified Customer Center of Expertise within the meaning of the price list are entitled to make complaints.

6.8 The customer shall bear any disadvantages and additional costs arising from a breach of his obligations.

## **§ 7. DEFECTS OF QUALITY, DEFECTS OF TITLE, OTHER PERFORMANCE DISTURBANCES**

7.1 IBSOLUTION warrants the agreed quality (section 2.1) of the contractual IBSOLUTION Software in accordance with the provisions of the German Sales Law and that the transfer of the agreed rights of use to the Customer (section 2) does not conflict with any rights of third parties.

7.2 IBSOLUTION shall provide a warranty for proven material defects by subsequent performance in such a way that IBSOLUTION, at its option, provides the Customer with a new, defect-free software version or rectifies the defect. The remedy of the defect may also consist in IBSOLUTION showing the Customer reasonable possibilities to avoid the effects of the defect. In the event of proven defects in title, IBSOLUTION shall provide a warranty through subsequent performance by providing the Customer with a legally flawless opportunity to use the IBSOLUTION software that is the subject of the contract or, at the Customer's option, an exchanged or modified equivalent IBSOLUTION software. The Customer must adopt a new software version if the contractual scope of functions is maintained and the adoption is not unreasonable.

7.3 If the supplementary performance finally fails after expiry of a reasonable grace period to be set by the client, he may withdraw from the contract or reduce the remuneration. The requirements of sections 11.1 and 11.5 shall be fulfilled when setting the grace period. IBSOLUTION shall pay damages or compensation for futile expenses due to a defect within the limits specified in Section 8.

7.4 The limitation period for claims according to Sections 7.1 to 7.3 is one year and begins with the delivery of the contractual IBSOLUTION Software. This shall also apply to claims arising from withdrawal and reduction pursuant to Section 7.3 sentence 1. The shortening of the limitation period shall not apply in the event of intent or gross negligence on the part of IBSOLUTION, fraudulent concealment of the defect, personal injury or defects in title within the meaning of § 438 paragraph 1 no. 1 a BGB (German Civil Code).

7.5 In the case of defects in rectification services, circumventions or new deliveries by way of

subsequent performance, the statute of limitations shall also end at the time specified in Section 7.4. However, if IBSOLUTION, in agreement with the Customer, examines the existence of a defect or provides subsequent performance, the limitation period shall be suspended until IBSOLUTION informs the Customer of the result of its examination or declares subsequent performance to be terminated or refuses subsequent performance. The statute of limitations shall commence at the earliest three months after the end of the suspension.

7.6 If IBSOLUTION provides services during troubleshooting or troubleshooting without being obliged to do so, IBSOLUTION may demand payment in accordance with Section 11.7. This applies in particular if a reported material defect cannot be proven or cannot be attributed to IBSOLUTION, or if the contractual IBSOLUTION software is not used in accordance with the documentation. In particular, IBSOLUTION shall also be reimbursed for the additional costs incurred in eliminating defects that arise at IBSOLUTION as a result of the Customer not properly fulfilling its obligations to cooperate, improper use of the IBSOLUTION software that is the subject of the contract, or failure to use IBSOLUTION services recommended by IBSOLUTION.

7.7 If a third party asserts claims that conflict with the exercise of the contractually granted right of use, the Customer must inform IBSOLUTION immediately in writing and comprehensively. If the customer ceases to use the contractual IBSOLUTION software for reasons of damage reduction or other important reasons, he shall be obliged to inform the third party that the cessation of use does not constitute an acknowledgement of the alleged infringement of industrial property rights. He shall only conduct the legal dispute with the third party in agreement with IBSOLUTION or authorize IBSOLUTION to conduct the dispute.

7.8 If IBSOLUTION does not perform or does not perform properly outside the scope of liability for material defects and defects of title, or if IBSOLUTION commits any other breach of duty, the Customer shall always notify IBSOLUTION of this in writing and grant IBSOLUTION a grace period within which IBSOLUTION is given the opportunity to properly perform the service or to remedy the situation in any other way. Section 11.1 shall apply. The limits specified in Section 8 shall apply to damages or reimbursement of futile expenses.

## **§ 8. LIABILITY**

8.1 In all cases of contractual and non-contractual liability, IBSOLUTION shall pay damages or compensation for futile expenses only to the extent determined below:

(a) IBSOLUTION shall be liable in the event of intent in the full amount, gross negligence and the absence of a quality for which IBSOLUTION has assumed a guarantee, only to the extent of the

foreseeable damage which was to be prevented by the breached obligation or guarantee;

(b) in other cases: only in the event of breach of an essential obligation (cardinal obligation) and up to the limits of liability referred to in the following subparagraph. A breach of a cardinal obligation within the meaning of this Section 8.1 (b) shall be deemed a breach of an obligation the fulfilment of which is essential for the proper performance of the contract or the breach of which endangers the achievement of the purpose of the contract and on the fulfilment of which the Principal may regularly rely.

Liability is limited to EUR 50,000.00 per claim in the cases specified in Section 8.1 (b), up to a maximum of twice the contractual amount.

8.2 The objection of contributory negligence (e.g. from Section 6) remains open. The limitations of liability pursuant to Section 8.1 do not apply to liability for personal injury and liability under the Product Liability Act.

8.3 For all claims against IBSOLUTION for damages or compensation for futile expenses in the case of contractual and non-contractual liability, a limitation period of one year applies. The limitation period begins at the time specified in § 199 Para. 1 BGB (German Civil Code). It shall commence at the latest 5 years after the claim has arisen. The provisions of sentences 1 to 3 of this paragraph shall not apply to liability in the event of intent or gross negligence or in the event of personal injury or under the Product Liability Act. The deviating limitation period for claims due to material defects and defects of title (Sections 7.4 and 7.5) shall remain unaffected by the provisions of this paragraph.

## **§ 9. CONFIDENTIALITY, DATA PROTECTION**

9.1. Use of Confidential Information. The parties undertake to treat all Confidential Information of the respective other party obtained before and within the framework of the performance of the contract as they protect their own comparable Confidential Information for an unlimited period of time, but at least with reasonable care. A transfer by the receiving party to third parties is only permissible if this is necessary to exercise the rights of the receiving party or to fulfil the contract, and these persons are subject to essentially comparable confidentiality obligations as regulated herein. Reproductions of confidential information of the other party must - as far as technically possible - contain all references and notes regarding its confidential or secret character which are contained in the original.

9.2 Exceptions. The foregoing Section 9.1. shall not apply to Confidential Information which (a) has been independently developed by the Recipient without recourse to the Disclosing Party's Confidential Information, (b) has become generally publicly available without breach of contract by the Recipient or has been lawfully obtained without obligation to maintain secrecy from a third party

entitled to provide such Confidential Information, (c) was known to the Recipient without restriction at the time of disclosure, or (d) is exempted from the foregoing provisions after written consent of the Disclosing Party.

9.3 Confidential contract contents; public. Neither party shall use the other party's name in any publicity, advertising, or similar activity without the other party's prior written consent. However, IBSOLUTION is entitled to use the name of the customer in reference customer lists or at times acceptable to both parties within the framework of IBSOLUTION's marketing activities (including references and success stories, customer opinions reproduced in the press, reference customer visits). IBSOLUTION may disclose information about the Customer to its Affiliates for marketing and other business purposes. Insofar as this includes the provision and use of contact data of the Customer's contact persons, the Customer shall obtain any necessary consent.

9.4 Data protection. The regulations on data protection obligations of the contracting parties within the scope of possible order data processing (in particular within the scope of maintenance services or the elimination of defects within the scope of software provision) result from the agreement on data processing for IBSOLUTION Maintenance and Professional Services referred to in the software contract.

## **§ 10. ADDITIONAL REGULATIONS FOR RENT AND MAINTENANCE**

10.1. In the case of rental agreements, maintenance is part of the range of services; it can only be terminated with the rental agreement. For IBSOLUTION software purchased according to the contract type Purchase, maintenance is provided on the basis of a separate maintenance contract.

10.2. IBSOLUTION provides as maintenance the services specified in the valid price list for the maintenance model agreed in the software contract.

10.3 IBSOLUTION is entitled to adapt its range of services to the maintenance of further development of the IBSOLUTION software and technical progress. In the event that a change in performance may adversely affect the legitimate interests of the Customer, IBSOLUTION shall notify the Customer of such change in performance in writing or by electronic means at least three months before it becomes effective and shall draw the Customer's attention in this notification to the Customer's right to terminate the contract as set forth below and the consequences of not exercising the right to terminate the contract. In this case, the Customer shall have the right to terminate the maintenance contract, if applicable the rental contract, prematurely with a notice period of two months from the time the change takes effect (special right of termination). Section 10.6 sentences 4 to 6 shall apply accordingly. If the client does not exercise his right of termination,

care will be continued with the changed range of services.

10.4 IBSOLUTION provides maintenance within the life cycle of the IBSOLUTION Software and in accordance with its release strategy, which is available on the IBSOLUTION online information platform, for the current version of the contractual IBSOLUTION Software as well as for older versions, if applicable. Maintenance for third-party software by IBSOLUTION may require the use of support services of the respective third-party providers. If third-party providers no longer provide necessary support services to IBSOLUTION, IBSOLUTION shall have a special right of termination to partially terminate the maintenance contract relationship for the respective third-party software within a reasonable period of time, but at least three months, to the end of a calendar quarter.

10.5 Section 7 applies mutatis mutandis to material defects and defects of title of IBSOLUTION Software delivered within the scope of maintenance or rental. The withdrawal from the contract shall be replaced by an extraordinary termination of the maintenance or rental contract. Subject of a possible reduction right is the remuneration owed within the scope of the maintenance or rental contract. In the case of rental contracts, strict liability for defects already existing at the time of conclusion of the contract is excluded pursuant to § 536 a Para. 1 BGB (German Civil Code).

10.6 Each maintenance contract is initially concluded until the end of the full calendar year following the start of the contract (minimum term). If the contract begins on 01.01. of a calendar year, the minimum term of the maintenance contract runs until 31.12. of this calendar year. Subsequently, the maintenance contract is automatically extended by a further calendar year (extension). Maintenance always refers to the Customer's entire stock of IBSOLUTION Software, insofar as IBSOLUTION offers maintenance for this. The Customer must always maintain all installations of the IBSOLUTION Software for which IBSOLUTION offers maintenance (including any later purchases or maintenance of purchased IBSOLUTION Software) in full at IBSOLUTION or terminate the maintenance in its entirety. This provision also includes IBSOLUTION software which the Customer has purchased from third parties and for which IBSOLUTION offers maintenance. Additional purchases oblige the customer to extend the maintenance on the basis of separate maintenance contracts with IBSOLUTION.

10.7 The termination of care contracts is always possible in writing with a notice period of three months to the end of a calendar year, but for the first time at the end of the minimum term. The termination of rental agreements is always possible in writing with a notice period of three months to the end of a calendar quarter, but for the first time at the end of the minimum term. Section 10.6 sentences 4 to 6 shall apply mutatis mutandis to

rental agreements. Special termination rights and terminations for good cause remain reserved.

10.8 Notices of termination for good cause must be in writing to be effective. The rules on setting grace periods in Section 11.1 shall apply mutatis mutandis. IBSOLUTION reserves the right to terminate the contract for good cause, in particular in the event of multiple or gross violation of material contractual obligations (e.g. Sections 2, 6 and 9). In this case IBSOLUTION retains the claim to the remuneration incurred up to the termination and can demand an immediately due claim for lump-sum damages in the amount of 60 % of the remuneration incurred up to the point in time at which the Customer could have terminated the contract properly for the first time. The Customer reserves the right to prove that IBSOLUTION has incurred a lower loss.

10.9 Note: In those cases where maintenance for IBSOLUTION software does not exist from delivery of the IBSOLUTION software, but is agreed later, the Customer shall, in order to get up to date with the current software version, pay the maintenance fee which he would have had to pay if maintenance had been agreed from delivery. The subsequent payment is due immediately and in full. This shall apply accordingly in the event of termination and subsequent reactivation of care. The possibilities for changing the nursing model are given in the valid price list.

10.10 These General Terms and Conditions may be amended in accordance with the following sentences with regard to rental and maintenance contracts, provided that this does not alter the contents of the rental or maintenance contract which are essential for the equivalence relationship between the parties and the amendment is reasonable for the client. IBSOLUTION will inform the customer in writing of the change to the GTC. If the Customer does not object to the amendment in writing to IBSOLUTION within four weeks of receipt of the notification, the amendment shall be deemed to have been approved and the amended version of the GTC shall apply to rental or maintenance contracts existing between IBSOLUTION and the Customer from this point in time. IBSOLUTION shall expressly draw the Customer's attention to this consequence when notifying the change.

## **§ 11. CONCLUDING PROVISIONS**

11.1 Time limits set by law or contract for the contracting authority must be at least ten working days, except in urgent cases. If the fruitless expiry of a set deadline should entitle the client to terminate the contract (e.g. by rescission, termination or damages instead of performance) or to reduce the remuneration, the client must threaten these consequences of the fruitless expiry of the deadline in writing together with the setting of the deadline. IBSOLUTION may, after expiry of a period set in accordance with sentence 2, demand that the Customer exercise his rights resulting from

the expiry of the period within two weeks after receipt of the request.

11.2 IBSOLUTION can accept offers from clients within four weeks. IBSOLUTION's offers are subject to confirmation unless otherwise agreed in writing. In case of doubt, the offer or order confirmation by IBSOLUTION shall be decisive for the contents of the contract.

11.3 The IBSOLUTION software is subject to the export control laws of various countries, in particular the laws of the United States of America and the Federal Republic of Germany. The Customer undertakes not to hand over the contractual IBSOLUTION Software to a government authority for examination of any granting of rights of use or other official approval without the prior written consent of IBSOLUTION and not to export it to countries or natural or legal persons to whom export bans apply in accordance with the corresponding export laws. Furthermore, the Customer shall be responsible for compliance with all applicable laws of the country in which the Customer's principal place of business is located and other countries with respect to the use of the contractual IBSOLUTION Software by the Customer and its Affiliates.

11.4 All contractual and non-contractual claims shall be governed exclusively by German law without the UN Convention on Contracts for the International Sale of Goods. The conflict of laws provisions shall not apply. The exclusive place of jurisdiction for all disputes arising from and in connection with the software contract shall be Heilbronn, provided that the customer is a merchant, a legal entity under public law or a special fund under public law.

11.5 Amendments and supplements to the contract as well as all declarations of intent relevant to the contract and declarations concerning the exercise of rights, in particular notices of termination, reminders or deadlines must be made in writing. This also applies to the waiver of the written form requirement. The written form requirement may also be met by correspondence or (apart from notices of termination) by electronically transmitted signatures (fax, transmission of scanned signatures via e-mail, or other agreed electronic contract conclusion procedures provided by or on behalf of IBSOLUTION, such as the IBSOLUTION Store). § However, Section 127 (2) and (3) BGB shall not apply in all other respects.

11.6 Terms and conditions of the Customer that contradict or supplement the software contract - in particular General Terms and Conditions - shall not become part of the contract, even if IBSOLUTION executes a contract without expressly contradicting such terms and conditions.

11.7 Other services which are not covered by the express descriptions of services in the purchase, rental, leasing or maintenance contracts shall be agreed separately. Unless otherwise agreed, these services shall be subject to IBSOLUTION's General

Terms and Conditions for Consulting and Services and the payment obligation in accordance with the IBSOLUTION price list valid at the time.

IBsolution GmbH, Im Zukunftspark 8, 74076 Heilbronn (March 2019)