

## SAP PartnerEdge

### Sell On Premise Specific Terms and Conditions

(together with the Sell On Premise Schedule and all documents referenced therein "Sell On Premise Model")

#### Article 1 Definitions and Interpretation

##### 1. Definitions

**"Discount Letter"** with regard to this Sell On Premise Model means the "SAP PartnerEdge Sell On Premise – Discount Letter" for this Sell On Premise Model applicable to the country in which End User is located which current version as updated from time to time in line with the Change Provisions of this Agreement is / will be published on SAP's partner-dedicated website or directly provided to Partner by SAP upon request.

**"End User Maintenance Agreement (EUMA)"** means the "SAP Delivered Support Agreement" which sets out the terms and conditions under which SAP provides support to End Users and which will be provided by SAP on a deal by deal basis.

**"Maintenance Services"** with regard to this Sell On Premise Model means SAP Delivered Support, VAR Delivered Support and VAR Delivered Support For Business One as further set out in Article 9 (Maintenance Services).

**"Price List"** with regard to this Sell On Premise Model means the "SAP List of Prices and Conditions (indirect sales)" consisting of the "SAP Pricing & Licensing Principles", "SUR" and "SAP Price List for PartnerEdge Channel Partners" for this Sell On Premise Model applicable to the country in which End User is located which is published on SAP's partner-dedicated website or directly provided to Partner by SAP.

**"Product Family"** means an SAP product family which may comprise one or several SAP software products or services as further set out in the applicable RSPI.

**"Program Requirements"** means certain minimum program entry requirements as well as ongoing program requirements to be fulfilled by Partner, some of which are general PartnerEdge requirements, some of which are specific for the "Sell Engagement" and some of which are specific for the different "On Premise" Product Families, including, without limitation, payment of the Program Fee(s), meeting certain minimum annual revenue requirements, upholding a Sell Authorization for at least one "On Premise" Product Family and other requirements as set out in detail in the PartnerEdge Program Guide and the RSPI.

**"SAP Delivered Support"** means SAP's support offering to directly provide support to End Users subject to the terms and conditions set out in the EUMA.

**"SAP GTCs"** means then-current version of the document "GENERAL TERMS AND CONDITIONS OF SAP GERMANY SE & CO KG FOR STANDARD SOFTWARE LICENSE AND SUPPORT", as used by SAP for "On Premise Software" which is made available on [www.sap.com/company/legal](http://www.sap.com/company/legal) (however excluding the application of its data protection provisions, especially its Annex Data Protection as well as its Exhibit [TOM] and any provisions for support). The SAP GTCs may be updated by SAP from time to time in the sense of a programmatic change within the meaning of Article 12 (Changes to Terms) Nr.2 of Part 1 of the PartnerEdge GTCs. The version current at the time of the execution of the Sell On Premise Model (excluding its Annex Data Protection as well as its Exhibit [TOM]) is incorporated herein as Exhibit 1).

**"Sell Authorization"** means the specific training and qualification requirements for the products included in an "On Premise" Product Family that Partner wants to resell as set out in detail in the PartnerEdge Program Guide and the applicable RSPI, to be fulfilled by Partner.

**"SUR"** means the then-current List of Prices and Conditions SAP Software and Support used by SAP which includes additional or supplemental terms and conditions under which Software is licensed and which is made available on [www.sap.com/company/legal](http://www.sap.com/company/legal). The SUR document is considered a Price List document in the meaning of Article 12 (Change to Terms) Nr.1 in Part 1 of the PartnerEdge GTCs.

**"VAR Delivered Support"** means the support that Partner can provide directly to End Users subject to the terms and conditions set out in the VAR Delivered Support Model which SAP and Partner can agree on by signing the VAR Delivered Support Schedule.

**"VAR Delivered Support For Business One"** means the support that Partner can provide directly to End Users for SAP Business One subject to the "Terms and Conditions for VAR Delivered Support for SAP Business One" which SAP and Partner can agree on by signing the Business One VAR Delivered Support Schedule .

2. Any terms not defined in this Sell On Premise Model will have the meaning ascribed to them in any other part of the Agreement (as defined in the Master Partner Agreement).

3. The headings in this Sell On Premise Model are for convenience only and are to be ignored in construing this Sell On Premise Model.

4. For clarification: Any reference in this Sell On Premise Model to a defined document is a reference to that defined document as amended, varied, novated or supplemented from time to time, in line with Part 1 Article 12 "Change to Terms" of the SAP PartnerEdge GTCs.

5. Where the context so admits, the singular includes the plural and vice versa.

6. Any defined document referenced in this SAP PartnerEdge Sell On Premise Model will be provided by SAP upon request.

#### Article 2 Engagement Model

1. Upon Partner meeting the Program Requirements for the first time and subject to Partner's compliance with all Program Requirements at all times during the term of this Sell On Premise Model, SAP hereby grants to Partner and Partner hereby accepts from SAP the right to:

- market and distribute those Software products for which Partner achieved and continues to uphold a successful Sell Authorization in its own name, at its own risk and for its own account; and
- position SAP Delivered Support for the Software purchased from SAP (excluding SAP Business One for which SAP Delivered Support is not available), if available for the respective Software product, and (for the Software distributed under this Sell On Premise Model) market, sell and provide VAR Delivered Support subject to the respective authorization under the applicable SAP VAR Delivered Support Schedule and/or market, sell and provide VAR Delivered Support For Business One subject to the provisions set forth in the Business One VAR Delivered Support Schedule.

to End Users located in the Territory (as defined in the Sell On Premise Schedule / the VAR Delivered Support Schedule / Business One VAR Delivered Support Schedule).

2. Partner will use its best efforts to market and position SAP Delivered Support or to market, sell and provide VAR Delivered Support, if Partner is authorized to provide VAR Delivered Support, or VAR Delivered Support For Business One for the Software distributed under this Sell On Premise Model.

3. Partner is solely responsible for accurately and completely representing the Software and the Maintenance Services. Partner assumes all financial and legal liability for the quality, reliability and accuracy of all representations and warranties made by Partner, its employees, agents and consultants beyond what is contained in the Documentation. Partner will give the SAP Group and its licensors appropriate credit for the ownership of the Software, Documentation and other SAP Materials.
4. Partner must not deliver or recommend any software or other products that are incompatible with the Software.
5. Partner will be solely responsible for setting its own prices vis-à-vis the End User for the distribution of the Software.

#### **Article 3 Specific Order Processes and Requirements**

1. Partner and SAP will enter into End User specific Order Forms for the Software, covering the license and (where applicable and authorized) Maintenance Services under the VAR Delivered Support Model. To this respect, Partner will send its order for Software and (where applicable and authorized) Maintenance Services from SAP from SAP using and filling out completely such forms and minimum order requirements as SAP may prescribe from time to time and must comply with any then-current order process for the specific Software product. Where applicable, Partner will use the electronic means provided by SAP for placing orders and for executing Order Forms.
2. With regard to each Software order for an End User, Partner must provide SAP with:
  - a) the name and address of the End User for whom the Software was ordered;
  - b) details of the Software ordered for the End User, including, without limitation, the product and country version as well as the number of users for each Software product;
  - c) details of any SAP Delivered Support agreement concerning the specific End User;
  - d) Partner's contact and billing information; and
  - e) any other data required by SAP in any then-current order process for the specific Software, Maintenance Services or both.
3. SAP is free to accept the order and issue an Order Form offering to Partner. In particular, SAP reserves the right to decline the order / to refuse issuing an Order Form offering if the Software is intended to be used on computers, operating and database management systems that SAP considers to be not suitable for use with the Software.

#### **Article 4 Delivery of Software**

1. SAP will deliver the Software as described in the Documentation and the Price List and will also provide the appropriate license keys. With regard to the features, quality and functionality of the Software the product description in the Documentation and the Price List is solely decisive. SAP does not own any additional features, quality or functionality. Partner can, in particular, not assert any additional feature, quality or functionality from any public statements, publications or advertisements by SAP except to the extent SAP has expressly confirmed such additional feature, quality or functionality in writing. Any representation, warranty, undertaking or guarantee regarding additional features, quality or functionality is effective only if expressly confirmed by SAP's management in writing.
2. After execution of an Order Form, SAP will deliver to Partner one copy of the relevant Software:
  - a) on discs or other data media ("**Physical Shipment**"); or
  - b) by making it available for download through the internet (usually on the SAP ServiceMarket Place (<http://service.sap.com/swdc>)) ("**Electronic Delivery**") or its successor website as published by SAP.
3. The relevant Software and Documentation will be deemed delivered (including but not limited for the purpose of fixed delivery dates or timely delivery) and the risk passes to Partner:
  - a) in case of Physical Shipment, when the relevant disc or other data media is handed over to the freight carrier; or
  - b) in case of Electronic Delivery, when SAP has made an electronic copy thereof available for download and has informed Partner accordingly ("**Delivery**").
4. Upon Partner's request or if stipulated in the Order Form, SAP may agree to provide Software and the appropriate license key directly to the relevant End User instead ("**End User Delivery**"). In case of End User Delivery, the provisions set out in this Article 4 (Delivery of Software) will apply analogously; delivery to Partner will be deemed to occur upon Delivery to the End User.
5. SAP might be entitled to suspend the delivery of any or all SAP Products as well as applicable license keys to Partner or End User or both as further set out in this Sell On Premise Model as well as the PartnerEdge GTCs.
6. If Partner receives a new copy of the Software, Documentation and/or other SAP Materials that replaces previously provided Software, Documentation and/or other SAP Materials, Partner must distribute such newest copy provided and either destroy or upon SAP's request return previous copies.
7. Partner must not make the Software, Documentation and/or other SAP Materials available to the End User by any means other than by delivering the Software, Documentation and/or other SAP Materials as originally provided by SAP. Partner's right to pass on the Software, Documentation and/or other SAP Materials is subject to the provisions of this Agreement.

#### **Article 5 Resale Software Fee**

1. The general calculation basis for the Software is stipulated in the Price List and the applicable Discount Letter and will be specified in each Software order.
2. Partner will pay to SAP the fee for the Software ordered for any End User as set out in the corresponding Software Order Form.
3. In case of Physical Shipment, Partner will have to pay the costs of delivery and packaging.
4. In case of Electronic Delivery, SAP will make the relevant Software available for download at its own cost; Partner will bear the costs for downloading the Software and Documentation.
5. The fee for the Software ordered for an End User will be invoiced after Delivery of the relevant Software.

#### **Article 6 Tax**

1. Each Party will be responsible for the payment of its own taxes.
2. All taxes based on income that are imposed, or may be imposed, by any federal, state or local government entities for payments received under or in connection with any part of this Agreement will be borne by the recipient of the payment ("**Recipient**").
3. If the Party making such payments ("**Payer**") is required by law to withhold income or corporation tax or a similar tax ("**Withholding Tax**") from any gross payment to the Recipient under or in connection with any part of this Agreement, Payer will be entitled to withhold or deduct such tax from the gross amount to be paid if and to the extent that the Recipient may offset the withholding income and corporate tax liabilities according to the law the country of residence of the Recipient against its income or corporate tax liabilities. However, Payer must use all endeavours to reduce any such

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withholding payable to the lowest possible rate subject to compliance with all applicable laws and double taxation treaties. Recipient will cooperate with Payer to the extent that is necessary to apply for such reduction, especially by, but not limited to, providing necessary forms to Payer or the relevant tax authority. Otherwise, Payer is entitled to withhold tax at standard rates according to the relevant laws. The Payer will in the case of any withholding of any Withholding Tax provide to the Recipient a receipt from the relevant tax authority to which such Withholding Tax has been paid. In case the Recipient under or in connection with any part of this Agreement is not entitled to offset the withholding income and corporate tax liability according to the law of the country of residence, Recipient and Payer will mutually agree in writing whether the Payer will be entitled to withhold taxes on account of the Recipient from the contractually agreed payments. The fact that such offset is not possible (or not possible in a specific year) must be notified by Recipient to the Payer.

4. All other taxes or charges of any kind (including but not limited to, customs duties, tariffs, excise, gross receipts, sales and use and value added tax) except income tax or corporation tax (or similar taxes) will be borne by the Payer. Partner must communicate to SAP its VAT or GST identification number(s) attributed by the country where Partner has established its business. SAP shall consider the Software distributed or provided under or in connection with this Agreement to be for Partner's business operations and provided to the location(s) of the Partner in accordance with the provided VAT or GST identification number(s). If any such tax or duty has to be withheld or deducted from any payment under or in connection with any part of this Agreement, Payer must increase payment under or in connection with any part of this Agreement by such amount to ensure that after such withholding or deduction, Recipient has received an amount equal to the payment otherwise required. Any applicable direct pay permits or valid tax-exempt certificates must be provided to SAP prior to the execution of the Sell On Premise Schedule.

#### **Article 7 Protection of Rights**

On basis of this Sell On Premise Model Partner is not entitled to:

- a) Use the Software (except as necessary to perform VAR Delivered Support and/or VAR Delivered Support for Business One);
- b) make any Modifications, Add-Ons or other derivative work to the Software; and
- c) copy or otherwise reproduce temporarily or permanently in whole or in part the Software, not even for back-up purposes.

#### **Article 8 License (Indirect Model)**

1. Use rights for the Software that Partner agrees with SAP for a specific End User will be granted from SAP to Partner on the basis of an End User specific Order Form and then granted by Partner to an End User on the basis of an individual license agreement entered into between Partner and End User ("**Indirect License**"), as further described in this Article 8.

2. Partner must comply with the following provisions:

- a) SAP sells the Software to Partner for a specific End User subject to the Order Form and the then current SAP GTCs and SUR in consideration of the stipulations in this Sell On Premise Model, in particular this Article 8 (the Order Form and all documents referenced above hereinafter conclusively referred to as "**SAP Terms**"). SAP recommends that Partner agrees with End User on terms in the Indirect License that are not less restrictive than the ones set out in the SAP Terms (but excluding any commercial terms therein). Partner grants Use rights for the Software to an End User subject to terms in an Indirect License that are not less protective for SAP than the ones set out in the SAP Terms, in particular this Article 8. The SAP GTCs current at the time of the execution of this Sell Onpremise Model are attached hereto as Schedule 1.
- b) The Indirect License must in any case include clauses reflecting the content of the then-current SUR and the content of the provisions of the then-current SAP GTC (as well as the respective definitions of terms used therein) on the following matters but excluding any commercial terms therein:
  - i. DELIVERY, MATTER TO BE DELIVERED, LICENSE GRANT, IP RIGHTS, END OF LICENSE End User may only be granted a non-exclusive, perpetual (except for subscription based licenses) license to Use the Software, Documentation, and other SAP Materials at specified site(s) within the Territory (as defined in the Sell On Premise Schedule) to run End User's and its Affiliates (as further defined and described in the SAP GTCs) internal business operations (including customer back-up and passive disaster recovery) and to provide internal training and testing for such internal business operations, all as further described in the SAP GTCs. End User shall not: (i) use the SAP Materials to provide services to third parties (e.g., business process outsourcing, service bureau applications or training) other than to Affiliates (subject to the terms set out in the SAP GTCs); (ii) lease, loan, resell, sublicense or otherwise distribute the SAP Materials, other than distribution to Affiliates (subject to the terms set out in the SAP GTCs); (iii) distribute or publish keycode(s); (iv) make any Use of or perform any acts with respect to the SAP Materials other than as expressly permitted in accordance with this Article 8 no.2; (v) use Software components other than those specifically identified in the Software Order Form agreed between SAP and Partner for the relevant End User, even if it is also technically possible for End User to access other Software components or (vi) transfer Software to third parties except as stated in the SAP GTCs.;
  - ii. *intentionally left blank*
  - iii. RESERVATION OF RIGHTS. End User must accept that the SAP Materials and SAP's Confidential Information and all title, rights and interest, especially, without limitation, any Intellectual Property Rights embodied therein are the sole and exclusive property of the SAP Group or their licensors, subject to any rights, title or interest expressly granted to End User as set out in this Article 8 no. 2 a) i. and the provisions concerning Modifications/Add-ons in the SAP GTCs. Except for the rights set forth in this Article 8 no. 2 a) i. and the provisions concerning Modifications/Add-ons in the SAP GTCs, End User is not permitted to modify, create Add-Ons or otherwise make derivative works of the Software or other SAP Materials;
  - iv. *intentionally left blank*
  - v. CONFIDENTIALITY. End User must treat SAP's Confidential Information in a manner that is at least as protective to SAP as the rights and restrictions set forth in this Agreement; and
  - vi. SYSTEM AUDIT AND MEASUREMENT / ADDITIONAL LICENSES. End User must agree to permit SAP to directly audit (at least once annually and in accordance with SAP standard procedures as described in the SAP GTCs, which may include on-site and/or remote audit) the usage of the Software and other SAP Materials. In case the consent of the End User is required Partner ensures that such consent has been granted by the End User.
- c) Partner must use its best endeavors to shield all members of the SAP Group from any liability arising out of or in connection with an Indirect License. Furthermore, Partner must include express provisions in each Indirect License agreement to ensure that any claim relating out of or in connection with an Indirect License will be brought against the Partner and not a member of the SAP Group unless such claim exists by virtue of compelling law.
- d) Partner must ensure that all Software ordered for an End User is captured under a valid Indirect License with such End User.
- e) To this extent Partner must – in particular – ensure that:
  - i. each End User executes an Indirect License before ordering Software from a Partner; and
  - ii. the person signing an Indirect License is duly authorized to represent and has the full legal capacity to legally bind the End User.

- f) Partner must ensure that each Indirect License is legal, valid, binding and enforceable and that the obligations assumed by the Parties thereunder constitute legal, valid, binding and enforceable obligations.
- g) Partner must inform each End User that SAP will not accept the corresponding Software order for such End User and will, thus, neither deliver any Software nor the applicable license keys if SAP has not received from the Partner the confirmation that an Indirect License was duly signed by the End User for the Software agreed in the Order Form.
- h) Upon SAP's request, Partner must provide a copy of the signed Indirect License agreement to SAP (whereby blackening any references to commercial terms, especially prices). Partner must ensure that End User has given its consent for SAP to review each Indirect License.
- i) Partner bears all consequences and costs resulting from breach of its duties set forth in the Agreement, especially if Partner did not conclude an Indirect License, if the terms of an Indirect License do not fulfill the requirements set forth in this Article 8 no. 2, if an Indirect License is not legal, valid, binding or enforceable or if the obligations assumed by the Parties thereunder do not constitute legal, valid, binding and enforceable obligations.
- j) Partner must inform SAP immediately if Partner or an End User terminated an Indirect License as well as about the reasons for such termination.
- k) Partner is obliged to enforce the terms of the Indirect License if the Partner becomes aware that the End User's Use does not comply with the SAP Terms. If Partner becomes aware of circumstances indicating a breach, Partner is obliged to thoroughly investigate and take required actions to enforce the SAP Terms. Partner must inform SAP as soon as the Partner becomes aware of a breach or circumstances that indicate a potential breach. If it becomes apparent in an audit or otherwise that End User has used the Software outside the SAP Terms with regard to the agreed license volume and Metrics, SAP and Partner will execute an Order Form reflecting the required additional licenses. SAP reserves the right to claim damages and to claim late payment interest in accordance with the Agreement.

## **Article 9 Maintenance Services**

### **1. SAP Delivered Support**

- a) If an End User wants to order SAP Delivered Support and provided SAP offers SAP Delivered Support for the relevant Software products, the End User will need to conclude a EUMA directly with SAP.
- b) Partner must inform the End User that:
  - i. SAP will not deliver any SAP Delivered Support until SAP received End User's duly signed EUMA; and
  - ii. SAP has the right not to provide SAP Delivered Support as long as any of the adverse conditions as set out in this Article 9 (Maintenance Services) no. 1e) to f) is present.
- c) Partner must ensure that the person signing the EUMA is duly authorized to represent and has the full legal capacity to legally bind the End User.
- d) When Partner submits a Software order, Partner must also submit a copy of the EUMA signed by the End User for whom the Software is ordered if the relevant End User wants to order SAP Delivered Support. SAP will provide the means to attach, upload or otherwise submit a signed copy of the EUMA together with the Software order in the order process. If required in the country of the relevant End User, SAP will provide an address to which an originally signed copy of the EUMA by the End User must be sent.
- e) Partner is prohibited from making any changes to the EUMA but may have to insert certain additionally required information into the EUMA. Partner must further ensure that End User does not change the EUMA.
- f) If the relevant End User has not duly signed the EUMA or if the content of the EUMA was unduly changed or is incomplete, SAP will not accept the corresponding SAP Delivered Support order for such End User and will, thus, not provide SAP Delivered Support. Partner bears all consequences and costs resulting from breach of its duties set forth in the Agreement, especially if the EUMA was unduly changed or is incomplete.

### **2. VAR Delivered Support**

- a) VAR Delivered Support. If Partner wants to provide VAR Delivered Support, the Parties will, as a first step, have to agree on and sign the VAR Delivered Support Schedule, which refers to the VAR Delivered Support Model. Further requirements for the provision of VAR Delivered Support are set out in the VAR Delivered Support Model.
- b) VAR Delivered Support for SAP Business One. Every Partner authorized to market and distribute SAP Business One is authorized to market, sell and provide support to End Users located in the Territory (as defined in the Sell On Premise Schedule) for the SAP Business One products sold hereunder by Partner subject to the provisions of the SAP PartnerEdge Business One VAR Delivered Support Schedule as agreed between the Parties. SAP Delivered Support is not available for SAP Business One. VAR Delivered Support For Business One is the sole support delivery model for SAP Business One.

## **Article 10 Term and Termination for convenience**

1. Term. This Sell On Premise Model comes into effect as of the Effective Date defined in the Sell On Premise Schedule and remains in full force and effect until and including 31 December of the same year. Thereafter its term is automatically extended for subsequent periods of one year.
2. Termination for convenience. Either Party may terminate this Sell On Premise Model for convenience with three months' prior written notice to 31 December of each year.
3. Termination for non-compliance with Program Requirements. SAP may terminate this Sell On Premise Model with three months' prior written notice if Partner:
  - a) did not meet all of the Program Requirements for the first time within six months after the Effective Date defined in the Sell On Premise Schedule; or
  - b) does not comply with any of the Program Requirements excluding the Program Fee for which the termination periods set out in Article 10 (Termination for good cause) no. 1 a) and no. 2 a) of Part 1 of the PartnerEdge GTCs apply.
4. Extraordinary termination rights and the right to termination for just cause remain unaffected.

## **Article 11 Model-specific Effect of Termination**

1. If this Sell On Premise Model is terminated, rescinded or ends in any other way, Partner's right to:
  - a) market and distribute the Software; and
  - b) position SAP Delivered Support,
 to End Users located in the Territory under this Sell On Premise Model as set out in Article 2 (Engagement Model) immediately ends.

2. However, Partner will be allowed to distribute each Software product ordered from SAP for a specific End User for which SAP and Partner executed an Order Form before this Sell On Premise Model was terminated, rescinded or ended in any other way ("**Accepted Software**") without undue delay to the End User for whom the Software product was ordered. Obligations existing or arising under subsisting individual Order Forms remain unaffected.

SAP is entitled to refuse to accept orders if SAP has reasonable grounds to believe that the End User cannot go live with the Software during the term of this Sell On Premise Model.

3. Notwithstanding anything in Article 11 (Effect of Termination) of Part 1 of the PartnerEdge GTCs, Partner will be allowed to use the Documentation as well as the SAP Logo and other SAP trademarks which he was authorized to use as set out in Article 4 (Trademark License) of Part 1 of the PartnerEdge GTCs solely in connection with the Documentation in order to distribute the Accepted Software without undue delay to the specific End User for whom the Accepted Software was agreed under the executed Order Form.

#### **Article 12 Defects as to Quality, Defects in Title, Other Faults**

1. SAP warrants the agreed qualities of the Software purchased in each Order Form (with the exclusion of Software that was provided for no fee and / or under a trial license), in accordance with the law governing the sale of goods and warrants that the grant of the distribution rights as agreed herein to Partner does not infringe any third-party right. The following provisions in this Article 12 no. 2 to 8 apply with regard to each Order Form:

2. To discharge its liability for shown quality defects, SAP will remedy the defects either by providing to Partner a new Software version that is free of defects or, at its election, by eliminating the defects. SAP may also eliminate a defect by indicating to Partner a reasonable way to avoid the effect of the defect. To discharge its liability for shown defects in title, SAP will remedy the defects either by procuring for Partner the legally incontestable agreed rights with regard to the respective Software or, at SAP's election, providing equivalent replacement or altered Software. Partner must accept a new Software version that is functionally compliant unless it would be unreasonable to require Partner to do so.

3. If Partner sets a reasonable limited additional time period for SAP to remedy the defect and SAP finally fails to do so in that time, Partner has the right to rescind the Order Form or reduce the remuneration. Subject to the exclusions and limitations in Article 13, SAP undertakes to compensate for loss or wasted anticipatory expenditure caused by a defect.

4. The time bar for claims under no 1 to 3 comes into effect one year after delivery of the Software under the Order Form. This also applies to rights arising out of rescission or reduction of remuneration under no. 3, sentence 1. The reduction in the time before the time bar comes into effect does not apply in cases of SAP's intent or gross negligence, of fraudulent concealment of a defect, of personal injury, or of defect in title to which the German Civil Code (BGB), section 438 (1) No.1 (a) applies.

5. The time bar for claims for defects in works or services to eliminate or avoid a defect provided in discharge of defect liability also comes into effect at the time specified in no. 4. However, the time before the bar comes into effect is tolled while, with Partner's consent, SAP is checking the existence of a defect or is remedying a defect, until SAP informs Partner of the results of its check, gives notice that the remedy is complete, or refuses to remedy the defect. The time bar comes into effect no earlier than three months after the end of the toll.

6. If SAP provides defect identification or elimination works or services without being under obligation to do so, SAP is entitled to a specific remuneration. This applies in particular to any reported quality defect that is not reproducible or not imputable to SAP or in cases where the Software is not used in compliance with its Documentation. Without prejudice to the generality of the foregoing, SAP is entitled to remuneration for additional work it does to eliminate any defect that arises out of Partner's failure to properly discharge its duty to collaborate, inappropriate operation of the Software, or failure to take the SAP services that SAP recommends.

7. If a third party claims that the exercise of the rights granted to Partner under the SAP PartnerEdge Sell On Premise Model infringes its rights, must fully inform SAP in writing without delay. If Partner ceases to exercise its rights granted hereunder to mitigate loss or for other just reason, Partner must notify the third party that such cessation does not imply any recognition of the claimed infringement. Partner will conduct the dispute with the third party both in court and out of court only in consultation and agreement with SAP or authorize SAP to assume sole conduct of the dispute.

8. If SAP fails to properly perform any of its duties herein that is not within the ambit of defect liability, or is otherwise in breach, Partner must give written notice of the failure or breach to SAP and fix a limited additional time period during which SAP has the opportunity to properly perform its duty or otherwise rectify the situation. SAP will compensate for loss or wasted anticipatory expenditure subject to the exclusions and limitations in Article 13.

9. Partner duty to collaborate includes the obligation to give notice of all defects including sufficient detail for SAP to analyse the alleged defect and to ensure that End User also provides commercially reasonable assistance to SAP in any defect identification or elimination works or services. SAP may fulfill its warranty obligations directly vis-à-vis Partner's affected End Users.

#### **Article 13 Liability**

1. SAP's liability in contract, tort, and otherwise for loss including but not limited to wasted anticipatory expenditure, under this Sell On Premise Model is subject to the following provisions :

a) In cases of intent, SAP's liability extends to the full loss; in cases of gross negligence, SAP's liability is limited to the amount of foreseeable loss that would have been prevented through the exercise of due care; in cases of absence of a guaranteed quality, SAP's liability is limited to the amount of foreseeable loss that would have been prevented by the presence of the guaranteed quality.

b) In other cases: SAP is not liable except for breach of a major obligation (Kardinalpflicht) and only up to the limits in Article 13 no. 1 c). A breach of a major obligation in the meaning of this is assumed where the duty itself is a necessary prerequisite for the contractual performance, or where the breach of the relevant duty jeopardizes the purpose of the contract and where Partner could legitimately rely upon its fulfillment.

c) Liability in cases under Article 13 no. 1 b) is limited to € 200,000 per incident and limited in total to €500 ,000 for all claims arising out of this Sell On Premise Model.

2. Contributory fault and contributory negligence may be claimed. The limits of liability in Article 13 no. 1 do not apply to personal injury liability or liability under the German Product Liability Act (Produkthaftungsgesetz).

3. For all claims against SAP in contract, tort, or otherwise for loss or wasted anticipatory expenditure the time bar comes into effect after a period of one year. That period begins at the point in time specified in the German Civil Code (BGB), section 199 (1). The foregoing provisions in this Article 13 notwithstanding, the time bar comes into effect not later than five years after the claim arises. The provisions in sentences 1 to 3 in this Article 13 no. 3 do not apply to liability for intent or gross negligence, liability for personal injury, or liability under the German Product Liability Act. The provisions in this Article 13 no. 3 do not affect the other time bar for claims arising out of defects as to quality and defects in title (Article 12 no. 4 and no. 5).

**“GENERAL TERMS AND CONDITIONS OF SAP GERMANY SE & CO KG FOR STANDARD SOFTWARE LICENSE AND SUPPORT”**

**Version 5-2016**



**GENERAL TERMS AND CONDITIONS OF SAP GERMANY SE & CO KG FOR STANDARD SOFTWARE LICENSE AND SUPPORT  
("GTC")**

APPLICABILITY.

Except as otherwise agreed, in any contractual relationship in which SAP Deutschland SE & Co. KG (herein "SAP") provides or supports SAP Software to another company or public-law entity or special fund (herein: "Licensee"), only these GTC and the provisions of SAP's List of Prices and Conditions SAP Software and Support in the version valid at the time the contract is concluded ("LPC") apply.

They apply to precontractual relations accordingly. The following terms and conditions of these GTC relative to "SAP Software" apply to SAP-provided Third Party Software accordingly, except as otherwise stated in the Software Agreement, herein, or in the LPC.

1. DEFINITIONS.

1.1 "Add-on" means any development that adds new and independent functionality, but is not a Modification (defined below), and that uses APIs.

1.2 "API" means application programming interfaces or other code, that allow other software products to communicate with or call on SAP Software (for example, SAP Enterprise Services, BAPIs, IDocs, RFCs, and ABAP calls or other user exits).

1.3 "Working Days" means weekdays from Monday to Friday (8 a.m. to 6 p.m. CET) except statutory holidays in the German federal state of Baden-Württemberg and December 24 and 31.

1.4 "Documentation" means SAP's technical or functional documentation pertaining to the contractual SAP Software which is delivered or made available to Licensee with the contractual SAP Software.

1.5 "Third Party Software" means any and all (i) standard software products (as well as relevant documentation) and content, all as developed for or by companies other than SAP or its affiliated companies and that do not constitute SAP Software (as defined in section 1.10); (ii) new versions (especially without being limited to releases, updates, patches, corrections) thereof and (iii) complete or partial copies of any of the foregoing.

1.6 "Business Partner" means a natural or juridical person that requires access to SAP Software in connection with Licensee's internal business operations, such as customers, distributors and/or suppliers of Licensee.

1.7 "IP Rights" ("Intellectual Property Rights") means without limitation any patents and other rights to inventions, copyrights, trademarks, trade names, and service marks and any other intangible property rights and all related rights of use or commercialization.

1.8 "Modification" means any development that (i) changes the delivered source code or metadata; or (ii) uses APIs but does not add new and independent functionality and only customizes, enhances, or changes existing functionality of the contractual SAP Software. For clarification: customizing and parametrization of contractual SAP Software is not considered a Modification but allowed within the contractually agreed use.

1.9 "Support" means agreed SAP Support provided for SAP Software.

1.10 "SAP Software" means any and all (i) standard software products (as well as relevant documentation) all as developed by or for SAP or any of its affiliated companies; (ii) new versions (especially without being limited to releases, updates, patches, corrections) thereof and (iii) complete or partial copies of any of the foregoing.

1.11 "Software Agreement" means a contract between SAP and Licensee for licenses and / or support for SAP Software that references these GTC.

1.12 "Affiliate" means any legal entity that is affiliated with another company within the meaning of the German Stock Corporation Act (AktG), section 15.

1.13 "Contractual" means provided to Licensee in performance of the Software Agreement.

1.14 "Confidential Information" means all information which SAP or Licensee protect against unrestricted disclosure to others, or that are deemed confidential according to the circumstances of their disclosure or their content, including the Software Agreement. In any case, the following information is considered to be Confidential Information of SAP: information regarding SAP research and development, product offerings, pricing and availability of SAP products and SAP Software, programs, tools, data, and other material that SAP provides to Licensee before or on the basis of the Software Agreement.

2. DELIVERY, MATTER TO BE DELIVERED, LICENSE GRANT, IP RIGHTS.

2.1 Delivery, Matter to be Delivered

SAP will deliver the contractual SAP Software in accordance with the product description in the Documentation and with the LPC. The product description in the documentation conclusively defines the functional qualities of the contractual SAP Software. SAP does not owe any duty with regard to any further quality. In particular, Licensee can imply no such duty from any other published SAP description or advertisement for SAP Software except to the extent SAP has expressly confirmed that other quality in writing. Guarantees are effective only if expressly confirmed in writing by SAP's management.

Unless otherwise agreed, Licensee will be provided with one (1) copy of the relevant version of the contractual SAP Software current at the time of shipment, within one month after conclusion of the Software Agreement.

SAP will deliver, at its election, by supplying to Licensee the contractual SAP Software on disc or other data media to the agreed delivery address (Physical Shipment) or by making it available for download on SAP Service Marketplace (<http://service.sap.com/swdc>) (Electronic Delivery). For the purpose of ascertaining whether delivery is timely, delivery of a Physical Shipment is deemed effected at the time SAP passes the discs or other data media to the forwarding agent, and an Electronic Delivery is deemed effected at the time SAP makes the contractual SAP Software

available for download and informs Licensee accordingly, and risk passes at the time of such Physical Shipment or Electronic Delivery.

## 2.2 SAP's Rights; Licensee's Licensed Use.

As between Licensee and SAP, all rights in SAP Software – especially without being limited to all copyright and other IP Rights – shall be the sole and exclusive property of SAP, SAP AG (SAP's parent company) or their licensors, including without limitation SAP Software created to address a requirement of or in collaboration with Licensee. Licensee's only rights in respect of contractual SAP Software are the following nonexclusive rights. Sentences 1 and 2 apply likewise to all other SAP Software, goods, works and information provided to Licensee precontractually or in performance of contract, including without limitation those provided in performance of warranty or Support.

2.2.1 Licensee may use the contractual SAP Software only in the contractually defined scope. The license is limited to the contractual SAP Software, even if it is also technically possible for Licensee to access other SAP Software components. Where Licensee purchases (as distinct from rents) the contractual SAP Software, its license is perpetual; where Licensee rents the contractual SAP Software, the license term is as contractually agreed.

Licensee's right to develop and use Modifications and Licensee's use of the contractual SAP Software to develop Add-Ons as well as the use of the contractual SAP Software together with Add-Ons is stipulated in section 2.3.

Licensee enjoys only those rights in contractual Third Party Software that are necessary to use it in association with the contractual SAP Software. Details of the license for Third Party Software are set out in the Software Agreement and the LPC.

2.2.2 Licensee may use the contractual SAP Software only to run Licensee's and its Affiliates' internal business operations. Licensee is granted the right to copy the contractual SAP Software only for the purposes of such licensed use. All other rights, notably the right to distribute SAP Software, including without limitation the rights of rental, translation, elaboration and arrangement, and the right to make SAP Software available to the public are retained exclusively by SAP. Licensee may not use contractual SAP Software to provide business process outsourcing or service bureau applications other than to its Affiliates or use contractual SAP Software to provide trainings to any person who is not Licensee's employee or the employee of a Licensee Affiliate. The related terms and detail in the LPC also apply.

Use of the contractual SAP Software may occur by way of an interface delivered with or as a part of SAP Software, a Licensee or third-party interface, or another intermediary system.

Licensee must hold the required licenses as stated in the LPC for any individuals that use the contractual SAP Software (directly or indirectly). Business Partners may use contractual SAP Software only through screen access and solely in conjunction with Licensee's use and may not use it to run any of Business Partners' business operations.

Where SAP Software is provided for test purposes, the sole purpose of Licensee's use of contractual SAP Software must be to ascertain its properties and assess its suitability for Licensee's business. Notably, Licensee must not create Modifications or Add-Ons (section 2.3), decompile (section 2.2.5) the contractual SAP Software or use it or prepare to use it for live operation.

If Licensee has an Affiliate with a separate license or support agreement for SAP Software with SAP, any SAP Affiliate or any other authorized SAP distributor, the following shall apply unless otherwise expressly agreed between Licensee and SAP: The contractual SAP Software shall not be used to run such Licensee Affiliate's business operations and such Licensee Affiliate shall not receive any Support services provided to Licensee under the Software Agreement, even if such separate support agreement has expired or is terminated.

2.2.3 The contractual SAP Software may only be copied temporarily or permanently in whole or in part on information technology devices (e.g. hard disks or central processing units) which must be located at Licensee's or its Affiliates' facilities or are in Licensee's or its Affiliates' direct possession. Where Licensee wishes to outsource the contractual SAP Software, that is to say run the contractual SAP Software or have the contractual SAP Software run for running Licensee's internal business operations on information technology devices that are located at the facilities and in direct possession of a third party, Licensee must first obtain the agreement of SAP in writing, which agreement SAP is ready to give provided that its proper business interests are upheld, notably that the third party respects the agreed conditions concerning the license for the contractual SAP Software.

2.2.4 Licensee is permitted to back up data in accordance with good information technology practice and for this purpose to create the necessary backup copies of the contractual SAP Software. Backup copies on transportable discs or other data media must be marked as backup copies and bear the same copyright and authorship notice as the original discs or other data media, unless this would be technically infeasible. Licensee must not change or remove SAP's copyright and authorship notices.

2.2.5 Prior to decompiling the contractual SAP Software, Licensee must give written notice requiring SAP within a reasonable period of time to provide the information and documentation necessary to produce interoperability. Licensee is entitled to decompile the contractual SAP Software to the extent permitted in the German Copyright and Related Intellectual Property Rights Act (UrhG) section 69e only after SAP has failed to comply with such notice within the limited time period. Before involving a third party (e.g. pursuant to the UrhG section 69e (1) No.1 or (2) No.2), Licensee must obtain for SAP's direct benefit the third party's written undertaking to comply with the provisions in this section 2.

2.2.6 If, for example by way of defect remedy or Support, Licensee receives from SAP copies of new versions of the contractual SAP Software that replace a previously provided SAP Software version, Licensee has only the right to use the most recent version obtained. Licensee's license to use the previous version ends when Licensee implements the new version on live systems. Licensee is however permitted for a period of three months to use the new version on a test system while also still using the previous version live. Section 5 governs the replaced version.

## 2.3 Modifications / Add-Ons

2.3.1 Licensee may use any API or tools contained in the contractual SAP Software or otherwise obtained from SAP in order to develop or use Modifications or Add-Ons, subject to Licensee's fulfilling its obligations set forth in this Section 2.3 in relation to Modifications and/or Add-Ons. For clarification: Any Modifications or Add-Ons developed by SAP or any of the SAP Affiliates on behalf of Licensee or as a product are exclusively subject to the provisions of the respective agreement and not subject to the provisions of this Section 2.3 below.

2.3.2 Except as otherwise agreed and except as expressly required by law or expressly permitted in this section 2.3, Licensee is not entitled to create, use, or make available to any third party any Modification or Add-On to contractual SAP Software. Modifications may only be made in relation to contractual SAP Software delivered by SAP in source code.

2.3.3 Licensee is responsible for any deficiencies in the running, security or performance of the contractual SAP Software and other programs, and in communications between the contractual SAP Software and other programs ("Deficiencies") caused by Modifications or Add-Ons to the contractual SAP Software. SAP points out that Add-Ons to and even minor Modifications to the contractual SAP Software may lead to possibly unpredictable and significant Deficiencies. Such Deficiencies may also arise because an Add-On or Modification not being compatible with later versions of contractual SAP Software. SAP is entitled to change the SAP Software, APIs, or both, without care for the compatibility of any Modification or Add-On that Licensee uses with any later version of the SAP Software.

2.3.4 In addition, SAP is neither responsible for Deficiencies caused by Modifications or Add-Ons to the contractual SAP Software nor obliged to provide remedies under warranty or other obligations in relation to Deficiencies caused by Modifications or Add-Ons to the contractual SAP Software. SAP is not obliged to provide any contractually agreed SAP Support services if and to the extent the provision of such SAP Support is aggravated because of Modifications or Add-Ons to the contractual SAP Software. SAP recommends that Licensee registers via SAP's registration procedure at <http://support.sap.com/sscr> such Modifications or Add-Ons in order to help SAP to identify the reason for possible support issues.

2.3.5 These Modifications and Add-Ons must be used only together with the contractual SAP Software and only in accordance with the license to use the contractual SAP Software granted in the Software Agreement. SAP retains the right to develop its own Modifications or Add-ons to the SAP Software but SAP is not entitled to copy Licensee's software code. Modifications or Add-Ons must not (and subject to other limitations set



forth herein); enable the bypassing or circumventing of any of the restrictions set forth in the Software Agreement and/or provide Licensee with access to the SAP Software in excess of Licensee's use rights duly obtained nor render or provide any information concerning the SAP Software.

2.3.6 Licensee covenants not to assert against SAP or any SAP Affiliate any rights in any (i) Modifications or Add-Ons, or (ii) other functionality of the SAP Software accessed by such Modifications or Add-Ons.

#### 2.4 Transferring SAP Software

2.4.1 Licensee may transfer to one third party all of the SAP Software it has acquired from SAP by license purchase (including any SAP Software obtained by way of additional purchase or Support) as one unit only. Any temporary transfer in part or in whole or transfer to multiple third parties constitutes a breach. The restrictions in sentences 1 and 2 in this section also apply to reorganizations and successors, e.g. in the meaning of the German Reorganization Act (Umwandlungsgesetz).

2.4.2 The following provisions apply where Licensee transfers SAP Software as one unit to one third party ("Transferee") in accordance with and as permitted in section 2.4.1:

Licensee must entirely cease and desist from its own use of SAP Software and must pass all copies to Transferee or make them unusable.

Licensee must make available to Transferee the license terms in the Software Agreement that apply to the transferred SAP Software.

Licensee must without delay notify SAP in writing of the transfer and of the name and address of Transferee

2.4.3 Licensee must not transfer to a third party any SAP Software that Licensee acquired by any means other than under a license purchase contract.

#### 3. SYSTEM AUDIT AND MEASUREMENT / ADDITIONAL LICENSES.

3.1 Licensee must give SAP prior written notice of any use of the contractual SAP Software outside the contractually permitted use. It requires its own contract with SAP with regard to the additional license required ("Additional License"). The Additional License is subject to the provisions of the LPC in force at the time of the execution of the Additional License.

3.2 SAP is permitted to audit the usage of the contractual SAP Software (ordinarily once a year) in accordance with SAP standard procedures (described in the LPC) by system measurement. Ordinarily, Licensee can conduct the measurement itself using the tools provided by SAP for that purpose.

SAP is permitted to conduct the audit remotely if Licensee refuses to conduct the measurement itself, or if the measurement does not produce meaningful results and there are reasonable grounds to suspect a breach or infringement by Licensee. In exceptional cases, SAP is permitted to conduct the audit at Licensee's installations if Licensee refuses to allow the remote audit or if the remote audit does not produce meaningful results and there are reasonable grounds to suspect a breach or infringement by Licensee. Licensee must cooperate reasonably with SAP in the conduct of audits remotely and at Licensee's installation and must, among other things, afford SAP insight into its systems to the required extent. SAP will give Licensee reasonable prior notice of an audit to be conducted at Licensee's installation. SAP will have reasonable regard to the interests of Licensee's confidentiality and to the protection of Licensee's business operations from compromise. If an audit reveals any breach by Licensee, Licensee must bear the reasonable expense to SAP of conducting the audit.

3.3 If it becomes apparent in an audit or otherwise that Licensee has used the contractual SAP Software outside the Software Agreement, SAP and Licensee will execute an Additional License. In those circumstances, SAP reserves the right not to give any agreed discount except the quantity discount in the LPC. Section 3.1, sentences 2 and 3, apply. SAP reserves the right to claim damages and to claim late payment interest in accordance with section 4.1.5.

#### 4. PRICE / TAXES / PAYMENT / RETENTION OF RIGHTS.

##### 4.1 Fees.

4.1.1 Licensee shall pay to SAP license fees for the contractual SAP Software and fees for SAP Support on the terms in Software Agreement. Fees for SAP Software delivery include costs of delivery and packaging for Physical Shipment. In cases of Electronic Delivery, SAP makes the contractual SAP Software available for download from a network at its own cost. Licensee is responsible for the cost of downloading the SAP Software. No cash discount is granted.

4.1.2 SAP may require full or part payment in advance if there is no prior business relationship with Licensee, if delivery is to be made outside Germany, if Licensee's registered office is outside Germany or if there are any grounds to doubt that Licensee will render payment punctually.

4.1.3 Licensee may offset only claims or claim rights of retention that are uncontested or have been finally determined by the court. Subject to the provisions of the German Commercial Code (HGB), section 354a, Licensee cannot assign its claims to a third party.

4.1.4 SAP retains all rights in the contractual SAP Software, especially versions of the SAP Software that have been provided under the support agreement, until full satisfaction of its claims under the Software Agreement. Licensee must immediately notify SAP in writing if any third party gains access to the SAP Software in which SAP retains title or rights and must also inform the third party of SAP's rights.

##### 4.1.5 Invoicing; Due Date

- Payments are due 14 calendar days from the date of the invoice. Any fees not paid when due shall accrue interest at the applicable statutory interest rate.
- Under Software purchase contracts, the invoice shall be presented after delivery of the Software.
- Under SAP Support contracts, the duty to pay shall begin with Effective Date of the SAP Support contract. The fee will be billed quarterly in advance.
- Payment terms for rental contracts shall be included in the relevant rental contract. Except as provided otherwise, the fee will be billed quarterly in advance and the duty to pay shall start with the execution of the rental contract.

4.1.6 By giving Licensee a written two months' notice effective from January 01 of the following calendar year, SAP is entitled to amend the remuneration for support and / or rental at its discretion subject to the following guidelines:

(a) The change applied to the fee must not be greater than the change in the index at (b) below ("discretionary applicable change"). For the first fee adjustment under the contract, the discretionary applicable change is the change from the index published at the date of the execution of the contract to the index that has most recently been published when the fee adjustment notice is given. If the fee has already been adjusted in the past, the discretionary applicable change is the change from the index that had been most recently published when the previous fee adjustment notice was given to the index that has most recently been published when the new fee adjustment notice is given.

(b) The index used to determine the discretionary applicable change is the index of mean monthly salaries of fulltime employees in Germany in the information technology services sector ("Index der durchschnittlichen Bruttomonatsverdienste der vollzeitbeschäftigten Arbeitnehmer in Deutschland für den Wirtschaftszweig Erbringung von Dienstleistungen der Informationstechnologie", currently published by the German Federal Statistics Office in quarterly figures at "Fachserie 16, Reihe 2.4, Gruppe J 62"). If publication of that index is discontinued, the applicable index for determination of the discretionary applicable change will be the index published by the Federal Statistics Office that most closely reflects changes in the mean monthly salaries of the sector named above.

(c) The fee adjustment is deemed to be agreed by the parties unless Licensee, by giving notice within two weeks from receipt of the fee adjustment, terminates the support or rental contract with effect from the end of the calendar year (extraordinary termination right). SAP will draw attention to this in the fee adjustment notice. The provisions in section 10.6, sentences 3 to 5 apply accordingly.



4.2 Taxes. All fees are subject to applicable statutory value-added tax (VAT).

## 5. END OF LICENSE.

Upon any termination of the license hereunder (e.g. by rescission, end of agreed license term or termination), Licensee shall immediately cease use of all contractual SAP Software and Confidential Information.

Within one (1) month after any termination of the license, Licensee shall irretrievably destroy or upon SAP's request deliver to SAP all copies of contractual SAP Software and Confidential Information in every form, except to the extent it is legally required to keep it for a longer period in which case such return or destruction shall occur at the end of such period. Licensee must certify to SAP in writing that it and its Affiliates have satisfied the obligations under this section 5.

## 6. DUTY TO COLLABORATE, DUTY TO INSPECT AND GIVE NOTICE OF DEFECTS.

6.1 Licensee undertakes that it knows the essential functional characteristics of the contractual SAP Software and its technical requirements (e.g. with regard to the database, operating system, hardware and data media). Licensee bears the risk that the SAP Software does not meet its wishes and requirements. In case of doubt Licensee should consult employees of SAP or third-party experts before concluding any contract. Furthermore, SAP supplies notes on the technical prerequisites for the SAP Software and any changes thereto on its online information platform.

6.2 Licensee must provide the operating environment (herein: IT systems) necessary for the SAP Software, in accordance with SAP's guidance where given. It is the responsibility of Licensee to secure proper operation of the IT systems by entering into maintenance contracts with third parties if necessary. In particular, Licensee must comply with the specifications in the Documentation and the notes on SAP's online information platform.

6.3 Free of charge, Licensee must provide all collaboration that SAP requires in connection with performance of the contract, including, for example, human resources, workspace, IT systems, data, and telecommunications facilities. Customer must grant SAP direct and remote access to the contractual SAP Software and the IT systems.

6.4 Licensee must nominate in writing a contact for SAP, with an address and e mail address at which the contact can be reached. The contact must be in a position to make necessary decisions for Licensee or ensure that they are made without delay. Licensee's contact must maintain effective cooperation with SAP's contact.

6.5 Before commencing live operation with the contractual SAP Software, Licensee must test it thoroughly for freedom from defects.

6.6 Licensee must take appropriate precautions against the possibility that the contractual SAP Software or any part thereof does not function properly (e.g. by performing data backups, error diagnosis and regular results monitoring). Except where otherwise expressly indicated in writing in individual cases, SAP employees are always entitled to act on the assumption that all data with which they come into contact is backed up.

6.7 Licensee must inspect all goods, works, and services delivered or provided by SAP and give notice of all defects pursuant to the German Commercial Code (HGB), section 377. The notice must be in written form and contain a detailed description of the problem. Notice of a defect is effective only if given by the contact (section 6.4) or the certified Customer Center of Expertise in the meaning of the LPC.

6.8 Licensee bears all consequences and costs resulting from breach of its duties.

## 7. DEFECTS AS TO QUALITY, DEFECTS IN TITLE, OTHER FAULTS.

7.1 SAP warrants the agreed qualities of the contractual SAP Software (section 2.1) in accordance with the law governing the sale of goods and warrants that the grant to Licensee of the agreed rights (section 2) does not infringe any third-party right.

7.2 To discharge its liability for shown quality defects, SAP will remedy the defects either by providing to Licensee a new software version that is free of defects or, at its election, by eliminating the defects. SAP may also eliminate a defect by indicating to Licensee a reasonable way to avoid the effect of the defect. To discharge its liability for shown defects in title, SAP will remedy the defects either by procuring for Licensee the legally incontestable right under license to use the contractual SAP Software or, at SAP's election, providing equivalent replacement or altered SAP Software. Licensee must accept a new software version that is functionally compliant unless it would be unreasonable to require Licensee to do so.

7.3 If Licensee sets a reasonable limited additional time period for SAP to remedy the defect and SAP finally fails to do so in that time, Licensee has the right to rescind the contract or reduce the remuneration. The requirements in sections 11.1 and 11.5 must be met with regard to fixing a reasonable limited additional time period. Subject to the exclusions and limitations in section 8, SAP undertakes to compensate for loss or wasted anticipatory expenditure caused by a defect.

7.4 The time bar for claims under sections 7.1 to 7.3 comes into effect one year after delivery of the contractual SAP Software. This also applies to rights arising out of rescission or reduction of remuneration under section 7.3, sentence 1. The reduction in the time before the time bar comes into effect does not apply in cases of SAP's intent or gross negligence, of fraudulent concealment of a defect, of personal injury, or of defect in title to which the German Civil Code (BGB), section 438 (1) No.1 (a) applies.

7.5 The time bar for claims for defects in works or services to eliminate or avoid a defect provided in discharge of defect liability also comes into effect at the time specified in section 7.4. However, the time before the bar comes into effect is tolled while, with Licensee's consent, SAP is checking the existence of a defect or is remedying a defect, until SAP informs Licensee of the results of its check, gives notice that the remedy is complete, or refuses to remedy the defect. The time bar comes into effect no earlier than three months after the end of the toll.

7.6 If SAP provides defect identification or elimination works or services without being under obligation to do so, SAP is entitled to remuneration under section 11.7. This applies in particular to any reported quality defect that is not reproducible or not imputable to SAP or in cases where the contractual SAP Software is not used in compliance with its documentation. Without prejudice to the generality of the foregoing, SAP is entitled to remuneration for additional work it does to eliminate any defect that arises out of Customer's failure to properly discharge its duty to collaborate, inappropriate operation of the contractual SAP Software, or failure to take the SAP services that SAP recommends.

7.7 If a third party claims that the exercise of the license granted under the contract infringes its rights, Licensee must fully inform SAP in writing without delay. If Licensee ceases to use the contractual SAP Software to mitigate loss or for other just reason, Licensee must notify the third party that such cessation does not imply any recognition of the claimed infringement. Licensee will conduct the dispute with the third party both in court and out of court only in consultation and agreement with SAP or authorize SAP to assume sole conduct of the dispute.

7.8 If SAP fails to properly perform any of its duties herein that is not within the ambit of defect liability, or is otherwise in breach, Licensee must give written notice of the failure or breach to SAP and fix a limited additional time period during which SAP has the opportunity to properly perform its duty or otherwise rectify the situation. Section 11.1 applies. SAP will compensate for loss or wasted anticipatory expenditure subject to the exclusions and limitations in section 8.

## 8. LIABILITY.

8.1 SAP's liability in contract, tort, and otherwise for loss including but not limited to wasted anticipatory expenditure, is subject to the following provisions:

(a) In cases of intent, SAP's liability extends to the full loss; in cases of gross negligence, SAP's liability is limited to the amount of foreseeable loss that would have been prevented through the exercise of due care; in cases of absence of a guaranteed quality, SAP's liability is limited to the amount of foreseeable loss that would have been prevented by the presence of the guaranteed quality.

In other cases: SAP is not liable except for breach of a major obligation (Kardinalpflicht) and only up to the limits in the following subsection. A

breach of a major obligation in the meaning of this section 8.1 (b) is assumed where the duty itself is a necessary prerequisite for the contractual performance, or where the breach of the relevant duty jeopardizes the purpose of the contract and where Licensee could legitimately rely upon its fulfillment.

Liability in cases under section 8.1 (b) in this section is limited to € 200,000 per incident and limited in total to € 500,000 for all claims arising out of the contract.

8.2 Contributory fault (e.g. breach of section 6 duties) and contributory negligence may be claimed. The limits of liability in section 8.1 do not apply to personal injury liability or liability under the German Product Liability Act (Produkthaftungsgesetz).

8.3 For all claims against SAP in contract, tort, or otherwise for loss or wasted anticipatory expenditure the time bar comes into effect after a period of one year. That period begins at the point in time specified in the German Civil Code (BGB), section 199 (1). The foregoing provisions in this section notwithstanding, the time bar comes into effect not later than five years after the claim arises. The provisions in sentences 1 to 3 in this section do not apply to liability for intent or gross negligence, liability for personal injury, or liability under the German Product Liability Act. The provisions in this section do not affect the other time bar for claims arising out of defects as to quality and defects in title (sections 7.4 and 7.5).

## 9. CONFIDENTIALITY: DATA PROTECTION.

9.1. Use of Confidential Information. Both parties undertake forever to protect the other party's Confidential Information acquired before and in connection with contract performance, as confidential to the same extent they protect their own Confidential Information, and not less than a reasonable standard of care. Confidential Information of the other party may only be shared with or disclosed to third parties who are under obligations of confidentiality substantially similar to those herein and only to the extent this is necessary to enable the receiving party to exercise its rights or perform its obligations under the Software Agreement. Any reproduction of any Confidential Information of the other party shall contain any and all confidential or proprietary notices or legends which appear on the original, as far as this is technically feasible.

9.2 Exceptions. Section 9.1 above shall not apply to any Confidential Information that: (a) is independently developed by the receiving party without reference to the disclosing party's Confidential Information, (b) is generally available to the public without a contractual breach by the receiving party or is lawfully received free of restriction from a third party having the right to furnish such Confidential Information; (c) at the time of disclosure, was known to the receiving party free of confidentiality restrictions; or (d) the disclosing party agrees in writing is free of such restrictions.

9.3 Confidential Terms and Conditions; Publicity. Neither party shall use the name of the other party in publicity, advertising, or similar activity, without the prior written consent of the other. However SAP may use Licensee's name in customer listings (reference listings) or quarterly calls with its investors or, at times mutually agreeable to the parties, as part of SAP's marketing efforts (including reference calls and stories, press testimonials, site visits, SAPPHIRE participation). SAP may share information on Licensee with its Affiliates for marketing and other business purposes. Insofar as this includes the provision and use of contact information of Licensee's contact persons, Licensee will secure the appropriate permissions where necessary.

9.4 Data Protection. Comprehensive Data Protection obligations of the parties pertaining to possible commissioned data processing (especially in the context of providing SAP Support services or providing defect remedy in the context of the provision and license of the Software) are set forth in the Annex Data Protection attached to these GTC. In that Annex, the SAP Support agreement is referred to as the "Main Contract".

## 10. SUPPORT AND RENTAL: ADDITIONAL PROVISIONS.

10.1 Under rental contracts, SAP Support is part of the rental service offered and can only be ended by terminating the rental contract. In respect of SAP Software that is acquired under a purchase contract, SAP provides SAP Support on the basis of a discrete support contract.

10.2 SAP Support services for the contractually agreed support model are provided as specified in the LPC valid from time to time.

10.3 SAP may adapt the scope of the SAP Support services to reflect the continuing development of the SAP Software and technical advances. In the event that a change may negatively affect the justified interests of Licensee, SAP will inform Licensee in writing or by electronic means, at least three (3) months before the change is scheduled to take effect, drawing attention to the termination option as described below and to the consequences of non-termination. In this case, Licensee is entitled to early termination of the SAP Support contract / the rental contract as may be applicable, with effect from the time the change takes effect by giving two months' prior notice (extraordinary termination right). Section 10.6 sentences 3 to 5 apply accordingly. In the event Licensee does not opt for early termination, the support contract will be continued with the changed scope of services.

10.4 Subject to the Life Cycle of the SAP Software and in accordance with the SAP release strategy posted on SAP's online information platform, SAP provides SAP Support for the most recent contractual SAP Software currently being shipped and – where applicable – for older SAP Software. SAP's provision of SAP Support for Third Party Software can require the use of support services provided by the vendor in question. If the vendor does not provide the support services required by SAP, SAP has the right to give reasonable notice of at least three months effective at the end of a calendar quarter of extraordinary and partial termination on the contractual relationship for maintenance for the Third Party Software concerned.

10.5 The provisions in section 7 apply analogously to defects as to quality and defects in title in the SAP Software delivered in performance of support duties. The right to terminate the support or rental contract for just cause replaces the right to rescind the contract. Any right to reduction of remuneration applies to remuneration under the support or rental contract. For rental contracts, the no-fault liability as provided in the German Civil Code (BGB) section 536a (a) for defects that existed at the time of contract execution is excluded.

10.6 The initial term of SAP Support agreement is the remainder of the current calendar year and the next full calendar year (except in cases where the support agreement starts on January 1st of a respective calendar year, in which case the initial term will run until December 31st of the respective calendar year) ("Initial Term"). Thereupon the SAP Support agreement is automatically extended from calendar year to calendar year ("Extension"). So far as SAP offers SAP Support for it, all of Licensee's SAP Software must be covered by the support. Licensee must always have all of its installations of the SAP Software for which SAP offers SAP Support (including respective subsequent additionally licensed SAP Software) fully covered by SAP Support or terminate the SAP Support completely. This provision also includes SAP Software provided to Licensee by third parties, for which SAP offers SAP Support. For any additional SAP Software license contracts Licensee shall extend the SAP Support on the basis of discrete support contracts with SAP.

10.7 Either party can effect regular termination of the SAP Support agreement by giving three (3) months' written notice that takes effect at the end of a calendar year, subject however, to the Initial Term. Either party can effect regular termination of a rental contract by giving three (3) months' written notice that takes effect at the end of a calendar quarter, subject however, to the Initial Term. Sections 10.6 sentences 3 to 5 apply accordingly to rental contracts. Extraordinary termination rights and the right to termination for just cause remain unaffected.

10.8 Notice of termination for just cause is effective only if given in written form. The provisions in section 11.1 concerning notices setting limited extra time also apply. SAP reserves the right to terminate for just cause where Licensee is repeatedly or seriously in breach of major contractual obligations (e.g. those in sections 2, 6 and 9). Such termination is without prejudice to SAP's entitlement to remuneration outstanding at the time of termination, and SAP is entitled to claim liquidated damages due immediately in the amount of 60 % of the remuneration that would otherwise have become due up to the earliest time at which Licensee could have effected termination with regular notice. Licensee retains the right to show that SAP's actual loss is less.

10.9 Note: In cases where SAP Support does not start with delivery of the SAP Software, but later, Licensee must, to obtain the current release, pay all past support fees that it would have had to pay had it agreed to take SAP Support from the time of delivery of the SAP Software.

Such payment falls due immediately and in full. These provisions also apply if Licensee takes up the SAP Support again after a termination. The options to switch an SAP Support model are detailed in the LPC valid from time to time.

10.10 These GTC can be changed with regard to SAP Support and rental agreements, provided that the change does not have any impact on the content of the SAP Support or rental agreement that is material for the equivalency of services and remuneration between the parties and provided that such change is reasonably acceptable for Licensee. SAP will inform Licensee about the change of the GTC in writing. If, in this case, Licensee does not expressly disagree in writing within 4 weeks after receipt of the change notice, the change will be deemed to be effected as is the changed GTC version is the basis for existing SAP Support or rental agreements between SAP and Licensee from that point in time. SAP will draw attention to this consequence in the change notice.

## 11. FINAL PROVISIONS.

11.1 Except in emergencies, a limited time fixed by Licensee pursuant to the law or contract must not be less than 10 working days. Failure to comply with any fixed time limit entitles Licensee to be released from the contract (e.g. by rescission, termination, or claim for damages in lieu of performance) or to a price reduction for breach only if this was threatened in writing in the notice fixing the limited time as a consequence of failure to comply with that time limit. After a limited time fixed in accordance with sentence 2 expires, SAP is entitled to give notice to Licensee requiring that any rights arising out of the expiration be exercised within two weeks of receipt of the notice.

11.2 SAP has four weeks to accept offers made by Licensee. SAP's offers are nonbinding unless otherwise agreed in writing. In cases of conflict, the contract terms and details that apply are those in SAP's offer or confirmation.

11.3 The SAP Software is subject to the export control laws of various countries, including without limit the laws of the United States and Germany. Licensee agrees that it will not submit contractual SAP Software to any government agency for licensing consideration or other regulatory approval without the prior written consent of SAP, and will not export the SAP Software to countries, persons or entities prohibited by such laws. Licensee shall also be responsible for complying with all applicable legal regulations of the country where Licensee is registered, and any foreign countries with respect to the use of contractual SAP Software by Licensee and its Affiliates.

11.4 German law applies exclusively to all claims in contract, in tort or otherwise, and the UN sales laws convention as well as the rules of conflict of laws are excluded. If Licensee is a merchant within the meaning of the German Commercial Code (HGB), section 1, or a public-law juristic person or special fund, the sole place of jurisdiction for all differences arising out of or in connection with the Software Agreement shall be Karlsruhe.

11.5 Amendments or additions and contractually relevant declarations as well as declarations directly influencing a legal relationship, especially without being limited to termination notices, reminders, or notices to set time limits, require written form. The foregoing provision also applies to any waiver of the written-form requirement. The written-form requirement can also be met by exchange of letters or (except in the case of termination notices) with an electronically transmitted signature (facsimile transmission, e-mail transmission with scanned signatures, or other agreed form of contract conclusion provided by or on behalf of SAP, such as SAP Store). Except in that respect, however, the provisions in the German Civil Code (BGB), sections 127 (2) and (3) do not apply.

11.6 No conditions that are conflicting with or amending the Software Agreement – notably Licensee's general terms and conditions – form any part of the contract, even where SAP has performed a contract without expressly rejecting such provisions.

11.7 A separate agreement is required for any other goods, works and services that are not expressly described in the purchase, rental, leasing or SAP Support agreements. Unless otherwise agreed, such goods, works and services are provided subject to SAP's General Terms and Conditions for Consulting and Services and SAP is entitled to remuneration for them in accordance with the relevant SAP list of prices and conditions.