

General Terms and Conditions (GTC) of ORDAT GmbH & Co. KG

Status 08/15/2022

I. General Provisions

1. Scope, Exclusivity

- 1.1. These General Terms and Conditions of ORDAT GmbH & Co. KG (in the following "**GTC**") and, if applicable, special contractual conditions for the respective services (in the following "**SCC**") are an integral part of the contract for the provision of IT services by ORDAT between ORDAT and the Customer (in the following "**Customer**").
- 1.2. In the event of contradictions between the GTC and the SCC, the SCC shall prevail.

2. GTC of the Customer

- 2.1 The Customer's general terms and conditions shall not apply, even if reference is made to them or their applicability in enquiries, requests or orders from the Customer.
- 2.2 Individual agreements expressly made in individual cases between the Customer and ORDAT shall take precedence over these GTC. The content of such individual agreements shall be governed by the respective contract between ORDAT and the Customer. This shall also apply if the beneficiaries of the services are affiliated companies of the Customer.

3. Order of Precedence, Contract Components

The components of the contract and the appendices thereto are set out in the respective contract. The order of precedence between the various contractual agreements concluded between ORDAT and the Customer is regulated in the respective contract.

4. Subject Matter of the Contract

- 4.1 The contractual service to be provided by ORDAT in each case results from the service description contained in the contract with the Customer.
- 4.2 ORDAT shall comply with the state of the art applicable to the services to be provided.
- 4.3 The Customer shall inform ORDAT without delay of any changes to agreed conditions of use, in particular to hardware and software.

5. Remuneration and Invoicing

- 5.1 Unless otherwise agreed, remuneration shall be charged on a time and material basis at ORDAT's prices generally applicable at the time of conclusion of the contract. The agreed hourly/daily rates and the regulations on remuneration and invoicing result from the respective contract between ORDAT and the Customer and, if applicable, the associated price and conditions agreement.
- 5.2 Price adjustments
 - 5.2.1 Insofar as IT consulting, IT development, rental or support contracts of ORDAT are affected which have a term of more than 12 months, ORDAT is entitled to adjust the agreed hourly and/or daily rates in accordance with the following paragraphs in the same proportion as the producer price index for IT services (DL-IT) of the Federal Statistical Office, meaning as far as applicable the individual indices DL-IT 01 (software and software licenses), DL-IT 02 (IT consulting and support), DL-IT 03 (software development and programming) as well as DL-IB (IT consulting and support (incl. management consulting)), available at www.destatis.de (section "GENESIS-Online") (in the following "**Index**") has been changed. The adjustments shall be made by ORDAT at its reasonable discretion and may only be based on such changes to the Index that arose after conclusion of the contract, were not foreseeable at this time and are not at the discretion of ORDAT. ORDAT may increase the hourly and/or daily rates in the same proportion as the index increases. ORDAT may increase the aforementioned prices at the earliest at the end of 12 months after conclusion of the contract and at most once per calendar year. The decisive factor for determining the amount of the increase is the percentage increase in the index on 1 September of a calendar year in relation to the value of the index on 1 September of the previous year. ORDAT shall inform the Customer of the price increase at least six weeks before it comes into effect.

ORDAT shall reduce the hourly and daily rates if and to the extent that the index decreases. The reduction shall correspond to the percentage reduction of the index.
 - 5.2.2 Insofar as IT consulting, IT development, rental or support contracts of ORDAT are concerned which have a term of more than 12 months, ORDAT may also adjust the agreed hourly and/or daily rates at its reasonable discretion if the total costs attributable thereto change due to circumstances which occur after conclusion of the contract, were not foreseeable at this time and are not at the discretion of ORDAT. The total costs relevant in this respect shall be composed of the following cost elements: Licence costs, hardware costs, energy costs, costs for third-party IT services, mobility costs, costs for insurance ("**Cost Elements**"). The change in the total costs shall be determined taking into account all reductions and increases in the Cost Elements by means of netting. ORDAT may increase the aforementioned prices at

the earliest at the end of 12 months after conclusion of the contract and only once per calendar year. ORDAT shall inform the Customer of the price increase at least six weeks before it comes into effect.

ORDAT shall reduce the agreed hourly and/or daily rates if the total costs attributable to the respective contract are reduced. The price reduction shall correspond to the amount of the total cost reduction.

- 5.2.3 The increase must be reasonable and in line with the market. If the price increase amounts to more than 10% of the hours and daily rates applicable at the time of the increase, the client shall be entitled to terminate the contract in writing within four weeks of receipt of the notification of the increase with effect from the time the increase would come into effect.
- 5.2.4 The price increases pursuant to Sections 5.2.1 and 5.2.2 are alternative, i.e. within one calendar year only one price increase may be implemented either pursuant to Section 5.2.1 or pursuant to Section 5.2.2.

6. Dates

Fixed dates for performances must be agreed explicitly in writing or in text form. Correct and complete self-delivery remains reserved. In the event of delays, ORDAT shall inform the Customer thereof without delay and agree a new delivery date with the Customer.

7. Deployment and Qualification of Personnel, no Employee Leasing (*Arbeitnehmerüberlassung*)

- 7.1 ORDAT shall provide the Services independently and on its own responsibility through suitable personnel.
- 7.2 The qualifications to be complied with result from the price and conditions agreement of ORDAT.
- 7.3 ORDAT's personnel shall be subject solely to the supervision and instructions of ORDAT or an agent of ORDAT.
- 7.4 The Customer is only authorized to issue technical instructions to ORDAT or a contact person appointed by ORDAT. These are in particular project- or order-related instructions that relate to the services to be provided.
- 7.5 ORDAT's personnel shall not be integrated into work processes or the operational organization of the Customer. In particular, the Customer shall not be entitled to issue direct labour-law-related instructions to ORDAT's personnel. Instructions within the meaning of the preceding paragraph may only be addressed to the contact person designated by ORDAT, who shall then ensure that they are passed on within his organization. Employee leasing is to be avoided under all circumstances.
- 7.6 ORDAT shall be entitled to replace personnel at any time, provided that there are objective reasons for doing so.

8. Cooperation and Project Organization

- 8.1 By project organization ORDAT and the Customer mean all arrangements necessary to organize the work within the scope of the performance of the service, in particular the determination of any necessary project committees including their responsibilities and the designation of contact persons on both sides.
- 8.2 ORDAT and the Customer shall, at the latest upon commencement of the provision of the Services, mutually designate one or more competent contact persons who can provide the necessary information and make binding decisions for ORDAT on the one hand and the Customer on the other hand.
- 8.3 Relationships under company law between ORDAT and the Customer shall not be established

9. Procedure for Service Changes

Both contracting parties may propose amendments to the service specifications. The procedure described below is agreed for this purpose.

- 9.1 ORDAT will review a change request from the Customer and inform the Customer whether or not an extensive review of this change request is required.
- 9.2 If an extensive review of the proposed amendment is required, ORDAT shall notify the Customer in text form within a reasonable period of time of the time presumably required for the review, the effort and expense to be incurred by ORDAT for the review and the associated remuneration. The Customer shall, within a reasonable period of time, but at the latest within 14 days of receipt of the notification from ORDAT, issue or reject a binding order for the review in text form.
- 9.3 If an extensive review of the change request is not required or if the commissioned review has been completed, ORDAT will either
- (a) submit to the Customer a written offer for the implementation of the changes (hereinafter "**Change Offer**"). The Change Offer shall contain in particular the changes to the service specification and their effects on the performance period, the planned dates and the remuneration; or
 - (b) notify the Customer ORDAT that the proposed amendment cannot be carried out by ORDAT within the scope of the agreed services.
- 9.4 The Customer may either reject a change offer in writing within the reasonable acceptance period specified therein (hereinafter "**Acceptance Period**") or declare acceptance in writing, whereby text form shall suffice in each case. The Customer shall declare any rejection to ORDAT without delay.
- 9.5 ORDAT and the Customer may agree that services affected by a change request shall be interrupted until completion of the review or – if a Change Offer is submitted – until expiry of the Acceptance Period

9.6 Subject to the preceding paragraph, until acceptance of the Change Proposal and, if applicable, after rejection of the Change Proposal, the services shall continue on the basis of the previous contractual arrangements. The performance periods shall be extended by the number of calendar days on which the service was interrupted in connection with the change proposal or its review. ORDAT may demand reasonable remuneration for the duration of the interruption. This shall not apply insofar as ORDAT has otherwise deployed its employees affected by the interruption or has maliciously omitted to deploy them.

9.7 Any change to the service specification shall be agreed in the form agreed for the conclusion of a contract between ORDAT and the Customer.

10. Rights of Use

10.1 ORDAT grants the Customer rights of use to all services and work results to the extent stipulated in the contract upon full payment of the agreed remuneration. If the scope is not specifically agreed in the contract, this is a non-exclusive, non-transferable and non-sublicensable right of use to use the services and work results to the extent necessary to achieve the purpose of the contract. In particular, this does not include the right to transfer or sublicense or the right to have the services and work results used in any other way by third parties, although sublicensing to affiliated companies of the Customer within the meaning of Section 15 of the German Stock Corporation Act (AktG) is permitted. The rights of use do not include the right to convert and modify the services and work results or to have them converted and modified by third parties. In particular, the right to publicly reproduce or make accessible the services or work results by wire or wireless means or to make them available to third parties against payment or free of charge, e.g. by way of application service providing or as "software as a service", is also excluded. In cases of permanent provision of services (e.g. sale of software), the right of use is unlimited in time, in all other cases it is limited to the term of the respective contract.

10.2 If, for the purpose of outsourcing IT services (e.g. server housing or server hosting), the Customer wishes to grant third party service providers sub-licences to the services and work results, the parties shall discuss this in good faith at the appropriate time.

10.3 Rights of use based on statutory provisions (e.g. §§ 69d and 69e UrhG) shall remain unaffected.

10.4 Copyright notices, serial numbers and other features serving to identify the program must not be removed or altered.

10.5 Any rights of use regulated in the following SCC shall take precedence over the rights of use in these GTC.

10.6 The right of use only covers the use for internal purposes of the Customer.

10.7 Insofar as ORDAT uses open source components in software supplied or created by it, it shall draw the Customer's attention to these and the relevant open source licence conditions. By using the open source components the Customer accepts these licence conditions and in this respect concludes a licence agreement directly with the open source rights holder. Insofar as the Customer wishes to acquire rights of use to the open source components that go beyond the rights of use regulated in section 10.1, this shall also be done by concluding a licence agreement with the open source rights holder.

11. Third Party Rights

11.1 ORDAT shall ensure that copyrights or other industrial property rights of third parties are not infringed by the contractual use of the services and work results.

11.2 If the rights of third parties are infringed by the services or the work results of ORDAT or by their use, ORDAT shall either procure the right of unencumbered use for the Customer at its own expense or modify the concerned services or work results at its own expense in such a way that they are rendered free of third party rights.

12. The Customer's Obligations to Cooperate (*Mitwirkungspflichten*)

12.1 The Customer's obligations to cooperate (*Mitwirkungspflichten*) are regulated in the respective contract between ORDAT and the Customer and, subsidiarily, in these GTC and the SCC.

12.2 The Customer is obliged to support ORDAT as far as necessary and to create in its sphere of operation all conditions necessary for the proper performance of the services. To this end, the Customer shall in particular (without limitation) provide the necessary information and, if possible, enable remote access to the Customer's system. If remote access is not possible for security or other reasons, any deadlines affected thereby shall be extended appropriately; the contractual partners shall agree on an appropriate arrangement in order to address any further impacts. The Customer shall also ensure that competent personnel are available to support ORDAT.

12.3 The Customer shall ensure that all documents, information and data necessary and required for the performance of the services are made available to ORDAT completely, correctly, in good time and free of charge. ORDAT will assume that these documents, information and data are complete and correct, unless ORDAT recognizes or should have recognized that they are incomplete or incorrect. In addition, the Customer shall ensure that these documents, information and data will be updated.

12.4 Insofar as ORDAT deems it necessary that services are performed on the Customer's premises, the Customer shall provide sufficient workplaces and the necessary work equipment free of charge at ORDAT's request.

12.5 Further obligations to cooperate (*Mitwirkungspflichten*) of the Customer may be agreed in the course of the provision of services by ORDAT. This shall apply in particular if it becomes obvious after conclusion of the contract that further obligations to cooperate (*Mitwirkungspflichten*) of the Customer are required.

12.6 The Customer is obliged to ensure that the data in the systems of the Customer or its other service providers affected by the services of ORDAT are backed up regularly and in accordance with usual market standards. This also includes checking the readability of the back-up. This obligation of the Customer applies *mutatis mutandis* likewise to such data that are transferred to ORDAT's systems.

13. Acceptance for Services under a Contract for Works (*Werkvertrag*)

If the Customer refuses acceptance of services provided by ORDAT under a contract for works (*Werkvertrag*), ORDAT may set a deadline of 14 days in writing for the Customer to declare acceptance. Acceptance shall be deemed to have taken place if the Customer does not specify in writing within this period any material defects identified by it. Furthermore, acceptance shall always be deemed to have taken place as soon as the Customer uses the workresultss for business purposes. In this case, ORDAT shall only remedy defects within the scope of the statutory rights in respect of defects.

14. Claims due to Defects in the Services of ORDAT

14.1 The Customer shall immediately notify ORDAT of any defects in the services of ORDAT in writing or via the tools provided by ORDAT.

14.2 If necessary, the Customer shall support the rectification of defects by providing the required information and documents.

14.3 Insofar as ORDAT sells a movable item or software, performs works (*Werkleistungen*) or supplies a movable item or software to be produced (*Werklieferungsvertrag*), the following provisions shall apply in addition to Sections 14.1 and 14.2 with regard to claims based on defects of quality and defects of title that do not aim at compensation for damages or reimbursement of expenses:

14.3.1 The warranty for defects of quality shall not apply to malfunctions that are due to the fact that the movable item, software or work performance is used in a hardware or software environment that does not meet the requirements specified in the contract. The same applies to changes made by the Customer to the movable item, software or work performance, unless the Customer proves that the defect of quality or defect in title in question was not caused by such change.

14.3.2 Insofar as the services of ORDAT are of a commercial nature, the question of the existence of defects of quality shall be assessed exclusively on the basis of the subjective requirements arising from the contract. Objective requirements pursuant to § 434 (3) of the German Civil Code (BGB) shall be waived to this extent and shall be used exclusively for the determination of defects of quality insofar as nothing is stipulated in the contract.

14.3.3 Insofar as the handover or delivery of a movable item or software is owed, claims for defects against ORDAT shall require that the Customer has complied with its obligation to give notice of defects pursuant to § 377 of the German Commercial Code (HGB). The Customer must notify ORDAT in writing of obvious material defects and defects of title without delay, but at the latest within two weeks of receipt of the item or software. The Customer must notify ORDAT in writing of hidden defects of quality or defects of title immediately after discovery. In the event of a breach of these obligations, any claims based on defects shall be excluded.

14.3.4 If the Customer is entitled to claims for defects, it may demand subsequent performance from ORDAT. Subsequent performance shall be effected at ORDAT's discretion either by rectification of defects or by replacement delivery. Insofar as software is concerned, the Customer shall, if necessary, adopt a new version of the software as replacement delivery, unless this leads to unreasonable impairments. In the event of defects of title, the ORDAT shall, at its own discretion, provide the Customer with a legally unobjectionable possibility of using the contractual software or modify it in such a way that no third party rights are infringed any more.

14.3.5 If the subsequent performance (*Nacherfüllung*) fails or cannot be carried out for other reasons, the Customer may reduce the remuneration, withdraw from the contract and/or claim damages or reimbursement of expenses under the statutory conditions. A right of withdrawal does not exist in the case of only insignificant defects.

14.3.6 In the event the Customer is entitled to choose between different claims for defects, he shall exercise his right of choice within a reasonable period of time, as a rule within 14 calendar days from the point of time Customer was able to become aware of the right of choice.

14.3.7 Insofar as purchase contracts for new goods (including contracts for delivery of work -*Werklieferungsverträge*) or contracts for works (*Werkverträge*) are concerned, the limitation period for claims based on defects of quality and defects of title shall be one (1) year from the statutory commencement of the limitation period.

14.3.8 In all cases of wilful misconduct or gross negligence on the part of ORDAT, fraudulent concealment of a defect, the assumption of a guarantee for the quality of the delivered or manufactured movable item (§§ 444 and 639 of the BGB (German Civil Code)), injury to life, body or health and in the cases of § 439 (1) No. 2 or § 634a (1) No. 2 of the German Civil Code, the rights of the Customer and their limitation shall be governed exclusively by the statutory provisions.

14.4 Insofar as the services of ORDAT are of a lease contract nature (e.g. ASP, SaaS, temporary grant of use), the following provisions shall apply in addition to Sections 14.1 and 14.2 with regard to claims based on defects of quality and defects of title:

14.4.1 In the event of a defect of quality or defect of title, ORDAT shall remedy it without delay. In doing so, ORDAT shall be entitled to choose the means of remedying the defect at its own discretion, e.g. by means of a new release, a new version or other replacement delivery within a reasonable period of time.

14.4.2 ORDAT may carry out a workaround if the elimination of the actual defect would require a disproportionate effort and the workaround does not unreasonably impair the use of the affected item by the Customer.

14.4.3 ORDAT's strict liability pursuant to § 536a (1) Alt. 1 BGB (German Civil Code) for defects which were already present at the time of the conclusion of the relevant lease contract is excluded.

15. Liability

Insofar as claims for damages or reimbursement of expenses are concerned, ORDAT shall be liable for all resulting damages, irrespective of the legal grounds, in particular due to breach of contract (§§ 241 (2) and 311 (2) BGB), defects of quality or defects of title or due to tort, only in accordance with the following provisions:

- 15.1 In the event of intent, claims under the German Product Liability Act (*Produkthaftungsgesetz*), claims under the General Data Protection Regulation (GDPR), fraudulent concealment of the defect or the assumption of a guarantee for the quality of the software products (§ 444 BGB) as well as in the event of injury to life, body or health, ORDAT shall be liable exclusively in accordance with the statutory provisions.
- 15.2 In all other cases, the following regulations shall apply:
 - 15.2.1 In the event of gross negligence, ORDAT's liability shall be limited to compensation for the typical foreseeable damage.
 - 15.2.2 In the event of simple negligence, ORDAT shall only be liable if a material contractual obligation has been breached. In this case, liability shall be limited to the typical foreseeable damage, whereas the compensation or reimbursement of expenses per case of damage shall be limited to an amount of 150% of the annual contract value.
 - 15.2.3 In all other cases of simple negligence, liability is excluded.
 - 15.2.4 In the event of loss of data caused by simple negligence, ORDAT shall only be liable for the damage that would also have occurred in the event of proper and regular data backup by the Customer commensurate with the significance of the data; this limitation shall not apply if the data backup was impeded or impossible for reasons for which ORDAT is responsible.

16. Confidentiality

- 16.1 Neither party shall disclose to any third party any Trade Secrets and Confidential Information relating to the other party. In addition, such trade secrets and confidential information may only be used for the purposes of this Agreement.

"Trade Secret" means any information relating to a party that is defined as a "trade secret" under § 2 No. 1 of the German Trade Secrets Act (GeschGehG).

"Confidential Information" means any information, other than trade secrets, disclosed by a disclosing party pursuant to or in connection with this Agreement (i) that has been designated by the disclosing party as "Confidential Information" or similar or (ii) that, by its nature or the circumstances of its disclosure, is to be considered confidential. The following information shall not be deemed to be Confidential Information: Information that (i) has been independently developed by the receiving party without the aid, application or use of the Confidential Information, (ii) has been disclosed to the receiving party by a third party without breach of a confidentiality obligation, (iii) is or becomes generally available to the public through no fault or breach of the receiving party, or (iv) with respect to which the receiving party can demonstrate that it was lawfully in its possession prior to disclosure without the receiving party being bound by any confidentiality obligations in respect thereof.

- 16.2 Each receiving party shall be free to disclose Trade Secrets and Confidential Information without the consent of the disclosing party to the extent required by law, regulation or court order; in such cases, the receiving party shall promptly notify the disclosing party in writing of such obligation to the extent permitted by law.
- 16.3 Mandatory statutory provisions permitting the use and/or disclosure of trade secrets shall remain unaffected.
- 16.4 ORDAT shall ensure compliance with all applicable regulations on data protection within its area of responsibility. To the extent applicable, the provisions of the data processing agreement as agreed between ORDAT and the Customer shall apply.
- 16.5 This Clause 16 shall survive the termination of the contract.

17 Termination of Contract and Returning of Documents

- 17.1 The time specifications and, if applicable, agreed dates for the provision of services as well as, if applicable, the duration of the provision of services are regulated in the respective agreement. Insofar as a contract between ORDAT and the Customer is to be qualified as a continuous obligation (*Dauerschuldverhältnis*), ORDAT and the Customer shall be entitled to terminate it with a three months' prior notice to 31 December of the current calendar year if the contract extends beyond the end of the calendar year. Otherwise, there is no ordinary right of termination.
- 17.2 § 648 BGB remains unaffected by the present provisions.
- 17.3 The right of both parties to an extraordinary termination for good cause shall remain unaffected. Such good cause for ORDAT exists in particular,
 - 17.3.1 if, in the case of recurring services, the Customer is in default of payment of the remuneration or of a not insignificant part of the remuneration for two consecutive dates,
 - 17.3.2 if the Customer is in default with the payment of the remuneration in a period extending over more than two payment dates by an amount equal to the remuneration for two payment dates, or
 - 17.3.3 if the financial circumstances of the Customer deteriorate in such a way that the further proper performance of the contractual relationship is at risk,
 - 17.3.4 if a deletion or liquidation of the Customer has been applied for or entered in the commercial register, or

- 17.3.5 if the Customer violates essential contractual obligations, in particular contractual restrictions on use, despite a written warning under threat of termination.
- 17.4 Notice of termination must be given in writing.
- 17.5 ORDAT and the Customer shall, in the event of a premature termination of contract, return to each other, without being requested to do so, all information, documents and files, including any copies thereof, or delete them instead at the express request of the respective other party.
- 17.6 ORDAT shall take such actions as are necessary in ORDAT's view to enable the uninterrupted continued provision of the Services after termination of the contract by the Customer, provided that this is possible and reasonable for ORDAT. The Customer shall be obliged to pay ORDAT reasonable remuneration for this in accordance with the most recently valid terms and conditions between ORDAT and the Customer, depending on the time and effort involved.
- 18. Customer Data and Naming of Customers as References**
- 18.1 ORDAT shall be entitled to create, collect and use anonymized information with regard to the use of ORDAT's services by the Customer (including usage data) for the purpose of analyzing the use of ORDAT's services and products and for improving such services and products as well as for other appropriate internal use and to aggregate such anonymized information with the anonymized information of other Customers for the aforementioned purposes. This applies only on condition that such information does not permit any inference to the identity of the Customer or users and cannot be used for this purpose and that ORDAT uses such information only for the aforementioned purposes.
- 18.2 ORDAT shall be entitled to name the Customer (including the Customer's name and logo) publicly (including on ORDAT's website) as a customer of ORDAT. The Customer shall be entitled to revoke its consent with effect for the future at any time by notifying ORDAT in text form.
- 19. Miscellaneous**
- 19.1 The parties are aware that software may be subject to export and import restrictions. In particular, there may be licensing requirements or the use of the software or related technologies may be subject to restrictions abroad. The Customer shall observe and comply with import and export control regulations of the Federal Republic of Germany, the European Union and the United States of America applicable to the deliveries or services, as well as all other relevant regulations, on its own responsibility. The performance of the contract by ORDAT is subject to the proviso that no obstacles based on national and international regulations of export and import law as well as no other statutory provisions prevent performance.
- 19.2 In the case of cross-border deliveries or services, the Customer shall bear any customs duties, fees and other charges incurred. The Customer shall handle legal or official procedures in connection with cross-border deliveries or services on its own responsibility, unless otherwise expressly agreed.
- 19.3 The Customer may only transfer claims against ORDAT to third parties with the written consent of ORDAT.
- 19.4 The Customer shall only be entitled to set-off or to assert rights of retention if the counterclaim has been finally legally established (*rechtskräftig festgestellt*) or is undisputed between the parties.
- 19.5 German law shall apply. The application of the UN Convention on Contracts for the International Sale of Goods is excluded.
- 19.6 Insofar as the Customer is a merchant, the exclusive place of jurisdiction for all disputes in connection with the present contract shall be Frankfurt am Main.
- 19.7 Should a provision, for whatever reason, be or become invalid or contain a loophole requiring regulation, this shall not affect the validity of the remaining provisions. In such a case, any loopholes shall be replaced by a provision that comes closest in economic terms to the ineffective or missing provision.

II. Special Contractual Conditions for the Permanent Transfer of Standard Software against Payment (§ 433 BGB)

1. Scope of Application

Insofar as ORDAT sells standard software to the Customer, the SCC contained in this Chapter shall apply in addition to Chapter

2. Subject Matter of the Service

- 2.1 The quality, functionality and scope of performance of the software as well as the details of the environment of use result from the service description in the documentation attached to the respective agreement between ORDAT and the Customer. The information contained therein is to be understood as performance descriptions and not as guarantees. A guarantee is only given if it has been expressly designated as such.
- 2.2 The software shall be delivered in executable form including electronic operating instructions (documentation or online help) and the electronic installation instructions. This is usually done as a download via the Internet, unless expressly agreed otherwise between ORDAT and the Customer. A transfer of the source code does not take place.
- 2.3 The software is installed and commissioned by the Customer.
- 2.4 Other services of ORDAT (in particular preparation for use, installation and demonstration of successful installation, training and consulting) shall be agreed and remunerated separately between ORDAT and the Customer. The GTC of ORDAT and the respective applicable SCC shall apply to these services.

3. Obligations of the Customer

- 3.1 The software shall be installed and commissioned by the Customer. Alternatively, the Customer may commission ORDAT with the installation in a separate contract against separate remuneration. If the Customer wishes to make use of ORDAT's support, the Customer shall ensure that expert personnel are available at the time of the download to support ORDAT and the use of the software.
- 3.2 The Customer shall inform ORDAT without delay of any changes to the operational environment.

III. Special Terms and Conditions for the Creation and Permanent Transfer of Software (*Werkliefervertrag*) (§ 650 BGB)

1. Scope of Application

Insofar as ORDAT creates software for the Customer and provides it to the Customer on a permanent basis, the SCC contained in this Chapter shall apply in addition to Chapter I.

2. Subject Matter of the Services

- 2.1 The nature and scope of the service as well as the details of the operational environment are set out in the service description attached to the respective contract between ORDAT and the Customer.
- 2.2 The copy of the software to be provided to the Customer by ORDAT contains only the object code. The source code shall not be handed over. The software shall be delivered in executable form including electronic operating instructions (user documentation or online help) and electronic installation instructions. The delivery or creation of further documentation requires a separate written agreement, in particular on the content and scope of the documentation.
- 2.3 ORDAT shall develop the subject matter of the services in accordance with the principles of proper professional practice.
- 2.4 Analysis, planning, consulting and training services as well as installation are not owed by ORDAT and are to be agreed and remunerated separately if necessary. The GTC of ORDAT and the respective applicable SCC shall apply to these services.
- 2.5 The software shall be installed and put into operation by the Customer. Alternatively, the Customer may commission ORDAT with the installation in a separate contract against separate remuneration.

3. Obligations of the Customer

- 3.1 The Customer shall inform ORDAT of its technical (functional) and non-functional requirements for the software in full and in detail and shall provide ORDAT with all necessary documents, information and data in good time.
- 3.2 The service description in accordance with Clause 2.1 conclusively reflects the owed quality of the software. Amendments to the service description shall only be made in accordance with the amendment procedure set out in clause 4 of the GTC.
- 3.3 ORDAT shall provide analyzes, planning and consulting services, including in connection with the service description, only on the basis of a separate contract in return for separate remuneration. This separate contract shall be deemed to be a contract for the provision of services by ORDAT pursuant to Chapter IV.
- 3.4 Upon ORDAT's request, the Customer shall provide suitable test cases and data for the quality test in machine-readable form.
- 3.5 If the Customer fails to hand over such test cases and data, ORDAT may itself select and create suitable test cases against additional remuneration.
- 3.6 The Customer is obliged to download any software made available for this purpose after notification of its provision.
- 3.7 The Customer shall - to the extent necessary - cooperate in the performance of the contract and provide any necessary analysis material.
- 3.8 Unless otherwise agreed, the Customer shall additionally store all documents, information and data handed over to ORDAT in such a way that they can be reconstructed on the basis of data carriers in the event of damage or loss.

4. Quality Inspection by the Customer

- 4.1 The Customer shall immediately - as a rule within 14 calendar days - examine all service results handed over, in particular software or executable parts of the software agreed as a partial delivery, to ensure that they are free of defects, in particular that they are in accordance with the agreement (quality inspection). The Customer shall use practical and suitable test cases and data for this purpose. ORDAT may coordinate with the Customer regarding the test procedures and also accompany and support the quality inspection on site. This requires an agreement in the individual case. The Customer is obliged to carry out the quality test within 30 days.
- 4.2 The Customer shall duly notify any defects occurring during or after the quality inspection without delay, at the latest seven calendar days after becoming aware of them.
- 4.3 In addition, the commercial obligation to examine and give notice of defects (§ 377 HGB) shall apply. The Customer shall report defects to ORDAT in such a way that the defects can be reproduced or otherwise proven.

IV. Special contractual conditions for Services (*Dienstleistungen*)

1. Scope of Application

Insofar as ORDAT provides services (*Dienstleistungen*) (with the exception of support services) to the Customer, the SCC contained in this Chapter shall apply in addition to Chapter I.

2. Subject Matter of the Services

- 2.1 The quality and the scope of the services are detailed in the service description attached to the respective contract between ORDAT and the Customer.
- 2.2 The Customer shall bear the responsibility for the project and its success. ORDAT shall provide the services in accordance with the principles of proper professional practice.
- 2.3 The subject matter of the services may consist of a one-off service, which also may be provided in parts, or may be of a permanent nature.

3. Provision the Services by ORDAT

- 3.1 The place of performance shall be the registered office of ORDAT, unless otherwise agreed.
- 3.2 ORDAT shall provide the service through suitable employees. The Customer has no claim to the provision of services by certain employees of ORDAT.
- 3.3 ORDAT determines the manner in which the service is provided. The Customer shall have no authority to issue instructions to the employees of ORDAT involved in the provision of the service.

V. Special Contractual Conditions for Support Services

1. Scope of Application

Insofar as ORDAT provides support services for the Customer, the SCC contained in this Chapter shall apply in addition to Chapter I

2. Subject of the Services

- 2.1 The services to be provided by ORDAT are detailed in the service description in the contract. This concerns in particular the provision of so-called patches and releases with regard to standard software. However, this does not apply to software from third-party suppliers. ORDAT shall provide the Customer with generally offered patches and releases as follows:
 - a) Patches within the meaning of these provisions are revised or modified versions of standard software already purchased by the Customer in connection with the elimination of errors.
 - b) Releases within the meaning of these provisions are versions of a standard software already purchased by the Customer which have been extended in their functionality or other performance in sub-areas.
 - c) Software patches and releases are made available to the Customer by way of "download".
- 2.2 Subject to deviating provisions in the contract, the scope of services also includes the analysis of reported malfunctions of ORDAT software as well as advice to the Customer on how to circumvent detected malfunctions. Furthermore, the scope of services includes access to further general information and announcements of ORDAT on the internet (ORDAT Support Online - OSO).
- 2.3 If the effort required to rectify the error in a program version is not economically justifiable and the error has already been rectified in a more recent release or such rectification can be done with economically justifiable effort, ORDAT reserves the right to refer the Customer to a more recent release with regard to the rectification of the error.
- 2.4 Insofar as maintenance services are agreed, the maintenance relates to the programmes listed in the service description in their respective current version as well as the previous versions notified to the Customer by ORDAT stating the support end dates.
- 2.5 Troubleshooting services within the meaning of this clause shall only be owed for those releases of standard software which, according to ORDAT Support Online (OSO), are still within the support periods regulated below in accordance with clause 6.

3. Type of Support and Transmission Media

- 3.1 The Customer shall communicate problems, malfunctions and enquiries to ORDAT via the ORDAT Support Online (OSO). In urgent cases, the transmission may also be made by telephone or by e-mail to the e-mail address communicated by ORDAT for this purpose. E-mails addressed to e-mail addresses of individual ORDAT employees will not be processed.
- 3.2 Assistance and support shall be provided by telephone, by e-mail, by remote connection or via the ORDAT Support Online (OSO), at ORDAT's discretion.

4. Services to be Remunerated Separately

- 4.1 Software products for which the Customer has not yet acquired a license are not the subject of these performance obligations and must be acquired and remunerated separately by the Customer on request.

In case of doubt on the question of valuation, ORDAT's view shall prevail, provided that ORDAT generally treats the disputed product vis-à-vis Customers as an unlicensed software product.

4.2 The following services shall be agreed and remunerated separately:

4.2.1 Support in the event of malfunctions due to faulty or improper use. 3.2.2 Support for further services such as

- a) Training and advising users on the handling of products.
- b) Advice on and rectification of faults or problems that are demonstrably not software errors.
- c) Expenses for problems arising in connection with the hardware (servers, workstations, printers, etc.), system software (operating systems, database, backup software, etc.) or the network used by the Customer, unless explicit support agreements have been made with ORDAT for this purpose.
- d) Expenses incurred as a result of negligent conduct on the part of the Customer, intervention by the Customer or by a third party not authorized by ORDAT or the use of software products not supplied by ORDAT.

4.2.3 Advising the Purchaser with regard to the specific use of the software in the creation of user software and/or with regard to general IT technical questions.

4.2.4 Realization services and support of Customer-specific adaptations of the software (customizing). Realization services include, among other things, Customer-specific adaptations of the software such as

- a) Customized programming of functionalities (individual adaptations) and their introduction;
- b) Customer-specific adjustments such as masks, forms/documents and evaluations, views, scripts and jobs (customizing);
- c) Creation of Customer-specific interfaces to external systems;
- d) Realization of data transfers from legacy systems.

4.2.5 Supporting the Customer in troubleshooting and correcting Software Products not covered by this contract.

4.2.6 If applicable, installation costs for upgrades or patches made available to the Customer.

4.2.7 On-site activity by ORDAT employees or persons acting on behalf of ORDAT.

4.3 If the Customer requests services in accordance with this clause 4, ORDAT shall be entitled to provide these at its own discretion, taking particular account of the respective current performance and capacities. ORDAT shall inform the Customer promptly after receipt of the request about its acceptance. An obligation to perform on the part of ORDAT shall only be established upon acceptance by ORDAT.

5. Hotline

5.1 Services of the Hotline

The Customer is entitled to the following services from ORDAT with the software hotline:

- 5.1.1 Provision of professionally qualified personnel as well as an appropriate infrastructure;
- 5.1.2 Receipt of faults, documented and qualified by the Customer;
- 5.1.3 Services to remedy faults;
- 5.1.4 Providing information on problem cases documented by the Customer.

5.2 The following services are not part of the software hotline

- 5.2.1 Customer-specific configuration of the software or application;
- 5.2.2 Introduction of new functionalities or previously unused functionalities;
- 5.2.3 Technical and business advice or training and education on topics related to the use of the application;
- 5.2.4 Updating the software by installing software updates or software versions.

5.3 Hotline business hours

Support services are provided within ORDAT's usual business hours as follows:

- Monday to Friday 8 a.m. to 5 p.m., but not on Saturdays, Sundays or public holidays in Hesse.
- In addition, there is the possibility of requesting temporary on-call duty outside the aforementioned business hours by arrangement and for separate remuneration.

5.4 Dialogue languages

The acceptance of fault reports and information in the event of problems can only be provided in German or English. Other languages can be agreed upon on an individual basis if necessary.

6. Obligations To Cooperate (Mitwirkungspflichten) of the Customer

6.1 The Customer shall notify ORDAT immediately of any faults detected in the program processes, stating the content or description of the faults as precisely as possible.

6.2 The Customer shall be obliged to provide reasonable assistance in remedying the defect.

6.3 Detected malfunctions must be documented to ORDAT in reproducible form and reported to ORDAT via the ORDAT Support Online (OSO).

- 6.4 To the extent necessary, the Customer shall provide ORDAT with unhindered remote access to its systems and the ORDAT standard software by means of Team Viewer or a comparable remote support system in order to provide the support services. Team Viewer shall be provided by ORDAT.
- 6.5 The Customer shall assign an employee familiar with the system for the period from the initial notification of the error to the elimination of the error who is able to describe or demonstrate the error complained of and who provides the service personnel commissioned by ORDAT with the access required within the scope of the elimination of the error.
- 6.6 ORDAT shall not be responsible for the integrity of the Customer's data files in the case of activities within the scope of software support. The Customer is required to carry out an adequate data backup before any intervention in the overall system. He is also obliged to test new patches and releases immediately and in detail. The computational results of new patches and releases are to be checked by the Customer in a timely manner by means of expert tests and any complaints are to be notified to ORDAT in writing.
- 7. Interruption of the Contract and Interruption of Performance**
If a terminated support contract is to be reactivated at a later date, this is possible under the following regulations:
- 7.1 The Customer must be a valid licensee of the software applications to be supported at the time of resumption.
- 7.2 A resumption of the support contract is possible within 24 months after the end of the contract.
- 7.3 Within the first six months, reinstatement may take place if the support costs that would have been incurred if the contract had continued untermiated are paid in arrears.
- 7.4 From the seventh month onwards, a reinstatement fee shall be payable in addition to the subsequent payment of the support costs. This amounts to 20% of the additional payment to be made.
- 7.5 If a support contract is resumed in order to obtain and use a current release of the standard software after the 24th month, the software licenses must be purchased again and taken under maintenance.
- 8. Interruption of Performance due to Outstanding Payments**
If the Customer is more than one month in default with the payment of the remuneration, ORDAT reserves the right to suspend services. This may mean the temporary suspension of services such as the provision of releases, patches or the hotline. Should this suspension exceed a period of six (6) months, the above clauses 6.4 and 6.5 shall apply accordingly.

VI. Special Contractual Conditions for the Sale of Hardware

- 1. Scope of Application**
Insofar as ORDAT sells hardware to the Customer, the SCC contained in this Chapter shall apply in addition to Chapter I.
- 2. Subject Matter of the Services**
- 2.1 The quality and the performance scope of the hardware as well as the approved environment of use are detailed in the product description and, in addition, in the operating instructions, unless otherwise agreed.
- 2.2 The hardware is supplied including installation instructions. An operating manual (operating instructions or online assistance) in electronic form is only supplied to the extent necessary for the intended use.
- 2.3 If the delivery of the hardware includes software that is absolutely necessary for its functionality, the Customer shall only have the right to use it with this hardware. For other software, the respective applicable SCC of ORDAT shall apply.
- 2.4 Unless otherwise agreed, the hardware shall be installed and commissioned by the Customer.
- 2.5 Other services of ORDAT (in particular preparation for use, installation and demonstration of successful installation, training and consulting) shall be agreed and remunerated separately between ORDAT and the Customer. The GTC of ORDAT and the SCC applicable in each case shall apply to these services.
- 3. Transfer of Risk (*Gefahrübergang*)**
The risk shall pass to the Customer directly at leaving the premises of ORDAT. The Customer shall transport the hardware entirely at its own expense and shall release ORDAT from any transport and handling costs.
- 4. Obligations of the Customer**
- 4.1 The Customer shall establish the necessary operating and usage conditions (e.g. space, energy, climate) for the hardware. The necessary conditions result from the contract, insofar as not regulated there, from the product description or operating instructions.
- 4.2 The Customer shall, within the scope of the necessary support, in particular grant ORDAT free access to the installation site of the hardware, provide the necessary work equipment there to a reasonable extent and communicate relevant information (e.g., on conditions of use or changes to the hardware).

VII. Special Contractual Conditions for Work Performances (§ 631 BGB)

1. Scope of Application

Insofar as ORDAT performs work services (*Werkleistungen*) for the Customer, the SCC contained in this Chapter shall apply in addition to Chapter I.

2. Subject Matter of the Services

2.1 The work performance to be rendered by ORDAT results from the service description in the contract.

2.2 ORDAT shall bear responsibility for success only insofar as

- (a) the relevant criteria for this were specifically and conclusively defined in the service description in terms of scope and effect at the time the contract was concluded and have become the subject matter of the contract, and
- (b) the Customer fulfils its obligations to cooperate in a timely and proper manner, unless these have no effect on the performance of the service.

2.3 The service description is based on the technical (functional) and non-functional requirements of the Customer communicated by the Customer. The performance specification conclusively states the agreed performance criteria and any test criteria to be applied for this purpose.

2.4 Any analysis, planning and consulting services for the service description shall only be provided by ORDAT on the basis of a separate contract.

3. Obligations to Cooperate (Mitwirkungspflichten) of the Customer

3.1 The Customer shall hand over the test means defined in accordance with clause 3.3 and, if applicable, specified in the contract, in a timely and proper manner.

3.2 If the Customer is in default with the handover of suitable testing means (cooperation performance), ORDAT shall be entitled to create or procure suitable testing means at the Customer's expense.

3.3 Unless agreed in the service requirements, the contracting parties shall agree on the test means, such as test cases, to be implemented for their verification on the basis of the agreed service requirements by a date agreed in the contract, otherwise within a reasonable period after signing of the contract. Insofar as the test means have not been agreed within a reasonable period after the date provided for this purpose, ORDAT may for its part define suitable test means in a binding manner. The interests of the Customer shall be taken into account appropriately.

4. Acceptance

4.1 The Customer shall declare acceptance within 14 calendar days after receipt of the written or textual request for acceptance and provision of the work by ORDAT, unless another period has been agreed. During this inspection period the Customer shall verify, if necessary by means of the test equipment, whether the work performances are in accordance with the contract.

4.2 Unless otherwise agreed, a notified defect shall be assigned to one of the following categories:

- (a) Category 1
The work performance is afflicted with a defect that makes its use impossible or only permits it with serious restrictions.
- (b) Category 2
The work performance is afflicted with a defect that restricts the use without a category 1 defect being present.
- (c) Category 3
The work performance is afflicted with a defect that only insignificantly restricts the use.

4.3 In the event of a category 1 defect, the Customer may refuse the declaration of acceptance. This also applies if several defects of category 2 together lead in their intensity to effects comparable to those of category 1.

4.4 ORDAT will cure duly reported defects with category 1 effects within a reasonable period of time so that there are no longer any category 1 effects. As long as the acceptance test cannot be properly continued due to such a defect, its effects or its elimination, the audit period for the Works affected by it will be extended appropriately.

4.5 Claims for defects after declaration of acceptance shall remain unaffected.

4.6 Partial acceptances already declared shall remain unaffected by subsequent acceptance tests for other services. The same applies to tests already carried out, except insofar as these are affected by a defect or its elimination.

4.7 If there are no category 1 defect effects, the performance shall be deemed ready for acceptance.

4.8 The work performances shall be deemed accepted - even without an express declaration and without a request for acceptance on the part of ORDAT,

- 4.8.1 if the Customer uses the work for purposes other than testing, or
- 4.8.2 with payment, unless the Customer has justifiably refused acceptance, or
- 4.8.3 if the Customer does not give notice of defects within the inspection period that prevent acceptance, or

- 4.8.4 if the Customer does not give notice of defects preventing acceptance within a reasonable additional period set by ORDAT for this purpose and ORDAT has pointed out this consequence when setting the deadline, or
- 4.8.5 when the Customer transfers the Work into its productive system.
- 4.9 Unless otherwise agreed, limited partial works shall also individually be subject to acceptance pursuant to these provisions. The warranty for defects for these partial services begins with their acceptance.
- 5. Early Termination**
If the Customer terminates the contract for work (*Werkvertrag*) before acceptance of the performance, ORDAT shall be entitled to demand the agreed remuneration; ORDAT must, however, deduct the expenses ORDAT saves as a result of the termination of the contract or the amounts ORDAT acquires or maliciously refrains from acquiring through other use of its labour. It shall be presumed that ORDAT is entitled to 20 per cent of the agreed remuneration for the part of the work not yet performed.

VIII. Special Contractual Conditions for the Sale of Third-Party Software (Microsoft, etc.)

- 1. Scope of Application**
Insofar as the contractual services of ORDAT contain software from third party providers or are based on such software, the Customer shall, at ORDAT's request, conclude an independent purchase contract with the third party provider. This shall take place either through the mediation of the contract by ORDAT or through a so-called "click-through contract" in which the Customer accepts the terms of use of the third-party provider for the purpose of downloading the third-party software.
- 2. Provision of Software through ORDAT**
If ORDAT provides third party software to the Customer within the scope of a purchase contract without the Customer concluding an independent contract with the third party provider, the following shall apply in addition to the defect provisions in the GTC:
- 2.1 ORDAT shall provide the Customer with the contractual terms and conditions of the third-party provider prior to the conclusion of the contract. These shall become an integral part of these GTC insofar as the rights and obligations of the Third-Party Provider in relation to the Third-Party Software are concerned, and shall take precedence over these GTC to that extent. ORDAT shall take the place of the third party provider in this respect. Insofar as the contractual terms of the third party provider contain information and/or audit rights, ORDAT shall be entitled to pass on the information obtained in this way to the third party provider.
- 2.2 The quality, functionality and scope of services as well as the details of the operating environment for software from third party suppliers result from the service description and documentation of the third party provider.
- 2.3 If ORDAT is not in a position to remedy the defect or to renew the goods free of defects, it shall show or offer the Customer ways of avoiding the defect. Insofar as these are reasonable for the Customer, they shall be deemed to be a subsequent performance (*Nacherfüllung*).
- 2.4 In relation to third-party software, ORDAT shall act only as a reseller. ORDAT shall not be obliged to check such third-party software for freedom from defects; moreover, neither the knowledge nor any fault of the provider or the manufacturer of the third-party software shall be imputed to ORDAT.
- 2.5 ORDAT will immediately forward defects reported by the Customer to the software provider and request the manufacturer to provide subsequent performance. As soon as the third-party provider has forwarded a supplementary performance, ORDAT will make it available to the Customer. In the event of failed subsequent performance, the Customer shall retain the other rights due to defects in accordance with these GTC (clause 14).
- 2.6 ORDAT is not obliged to decompile third-party software in order to remedy defects in the third-party software.

IX. Special contractual conditions for the Rental of Third-Party Software

- 1. Scope of Application**
Insofar as ORDAT provides to the Customer software from third-party suppliers on a rental basis, the SCC contained in this Chapter shall apply in addition to Chapter I.
- 2. Software Leased Directly from the Third-Party Supplier**
Insofar as the services of ORDAT include or are based on the temporary provision of third-party software, the Customer, at ORDAT's request, shall conclude independent software rental agreements with the provider of such third-party software. This shall be done either by ORDAT mediating the contract or by means of so-called "click-through contracts", in which the Customer accepts the terms of use of the third-party provider for the purpose of downloading the third-party software.
- 3. Software Provision by ORDAT**
If ORDAT provides third party software to the Customer on a temporary basis (rental agreement) without the Customer concluding a direct contract with the third party provider, the following shall apply:

- 3.1 ORDAT shall provide the Customer with the contractual terms and conditions of the third-party provider prior to the conclusion of the contract. These shall become an integral part of these GTC insofar as the rights and obligations of the third-party provider in relation to the third-party software are concerned, and shall take precedence over these GTC to that extent. ORDAT shall take the place of the third party provider in this respect. Insofar as the contractual terms of the third party provider contain information and/or audit rights, ORDAT shall be entitled to pass on the information obtained in this way to the third party provider.
- 3.2 The quality, functionality and scope of services as well as the details of the operating environment for software from third party suppliers result from the service description and documentation of the third party provider.
- 3.3 In the event of defects, ORDAT shall be obliged to remedy the defect, whereby this may take the form of rectification or replacement delivery, at ORDAT's discretion.
- 3.4 If ORDAT is not in a position to remedy the defect or to renew the goods free of defects, it shall show the Customer ways of avoiding the defect. Insofar as these are reasonable for the Customer, they shall be deemed to be supplementary performance.
- 3.5 In relation to third-party software, ORDAT shall act only as a dealer. ORDAT shall not be obliged to check such third-party software for freedom from defects; moreover, neither the knowledge nor any fault of the provider or the manufacturer of the third-party software shall be imputed to ORDAT.
- 3.6 ORDAT will immediately forward defects reported by the Customer to the software provider and request the provider to remedy the defect. As soon as the third-party provider has forwarded a defect remedy, ORDAT will make it available to the Customer. In the event of failed defect rectification, the Customer shall retain the other rights relating to defects.
- 3.7 ORDAT is not obliged to decompile third party software in order to remedy defects in the third party software.
- 4. Further Developments**

ORDAT or the third party provider are entitled to further develop the software in order to adapt it to the respective state of the art or changed legal framework conditions.

X. Special Terms and Conditions for Managed Services (Contract Outsourcing, Server Monitoring, etc.)

- 1. Scope of Application**

Insofar as ORDAT provides so-called managed services to the Customer, the special contractual conditions contained in this Chapter shall apply in addition to Chapter I. Managed services include in particular services such as active server administration at the Customer's premises, the assumption of payroll accounting activities for the Customer or EDI management, whereby these services may be performed either on ORDAT's systems, the Customer's systems or the systems of a third party commissioned by the Customer.
- 2. Obligations to Inform and Cooperate**

The Customer's obligations to cooperate - including the prerequisites for the provision of the service (technical prerequisites and required configurations) - are detailed in the respective offer/service description. In the absence of overriding regulations in the offer/service description, such cooperation obligations in relation to managed services include the following in particular:

 - 2.1 The Customer shall keep the relevant usage and access authorizations as well as agreed identification and authentication safeguards secret, protect them from access by third parties and not pass them on to unauthorized users. The Customer shall inform ORDAT immediately if it is suspected that the aforementioned access data have become known to unauthorized persons.
 - 2.2 The Customer shall set up the agreed access requirements.
 - 2.3 For the transmission and processing of personal data, the Customer shall ensure that the legal permissions or consents are available.
 - 2.4 Before sending data and information to ORDAT, the Customer shall check them for viruses and use state-of-the-art virus protection programs.
 - 2.5 Insofar as the provision of data and information (e.g., in the context of payroll accounting) is required for the provision of services by ORDAT, the Customer shall be obliged to provide such data and information in a timely and complete manner.
 - 2.6 If the Customer transmits data and information to ORDAT for further processing, in particular the generation of application data, the Customer shall back them up regularly and in accordance with the significance of the data and shall make its own back-up copies to enable reconstruction of the data and information in the event of loss.
 - 2.7 If and to the extent that the Customer is given the technical opportunity to do so, the Customer shall regularly back up the data stored on ORDAT's systems, including application data, by download.
- 3. Data Protection**

If ORDAT collects, processes or uses personal data on behalf of the Customer, the Customer warrants that it is entitled to do so in accordance with the applicable provisions, in particular the provisions of data protection law, and shall indemnify ORDAT against claims by third parties in the event of a breach. For this purpose, the parties shall conclude an data processing agreement that complies with the provisions of the DS-GVO.

4. Duties Upon and After Termination of the Contractual Relationship

- 4.1 Upon termination of the contractual relationship, ORDAT shall make all data and information stored in its systems (including the application data) available to the Customer or a third party commissioned by the Customer or delete them at the Customer's request.
- 4.2 ORDAT will, at the Customer's request, cooperate with the Customer or a third party designated by the Customer for a maximum period of 30 days after termination of the contractual relationship in order to rewind the contractual relationship. This cooperation is limited to the transfer of the data and information stored in ORDAT's systems (including application data) and the instruction of the third party regarding the Customer's circumstances. The cooperation shall be remunerated separately for time and effort. Remuneration shall be made at ORDAT's remuneration rates valid at the time of termination of the contract.
- 4.3 Upon termination of the contract, the Customer is obliged to delete any installed access software (including any copies) and to return to ORDAT all data carriers containing the access software.

XI. Special Contractual Conditions for Software as a Service (SaaS)

1. Scope of Application

Insofar as ORDAT makes software available to the Customer for a limited period of time as a cloud solution by way of remote access (SaaS), the SCC contained in this Chapter shall apply in addition to Chapter I.

2. Contractual Services

- 2.1 In accordance with the offer/service description, ORDAT shall provide the Customer with the software (hereinafter "**Application Software**") and storage space for the Customer's application data on its systems (hereinafter "**Application Server**").
- 2.2 Insofar as agreed between the parties, ORDAT shall provide the Customer with access software for remote access to the application software in accordance with the offer/service description.
- 2.3 In addition, ORDAT shall provide the Customer with the number of user names and passwords for remote access agreed in the offer/service description, which the Customer shall immediately change to user names and passwords known only to him.
- 2.4 The transfer point for the use of the application software and the Customer's application data is the router exit of ORDAT's data center.

3. System Requirements at the Customer

The requirements for the system requirements to be provided by the Customer as a duty to cooperate result from the offer/service description. ORDAT shall not be responsible for the quality of the required hardware and software on the part of the Customer or for the telecommunications connection from the Customer to the transfer point.

4. Access Software

- 4.1 Insofar as ORDAT provides access software for remote access to the software, the Customer shall be obliged to use exclusively this access software for remote access. For this purpose ORDAT grants the Customer a non-exclusive, non-sublicensable, non-transferable right of use to the access software limited to the term of the contract on the use of the software. This includes the installation and use of the access software on the Customer's systems for the purposes of the present offer/service description.
- 4.2 The Customer shall take reasonable precautions to prevent the use of the access software by unauthorized persons.

5. Obligations of the Customer

- 5.1 The Customer shall keep the access and usage data transmitted to him (in particular user names and passwords) as well as any agreed identification and authentication safeguards secret and protect them from access by unauthorized persons.
- 5.2 The Customer shall create the agreed access requirements in its systems.
- 5.3 The Customer shall comply with any agreed restrictions of use in relation to the software and shall also oblige the authorized users to comply with the restrictions of use.
- 5.4 Insofar as the Customer processes personal data when using the Software, the Customer shall ensure that all requirements under data protection law (such as consents pursuant to Art. 6 (1) a) and Art. 7 DS-GVO) are met.
- 5.5 Before sending data and information to ORDAT, the Customer shall check them for viruses and other malware and use state-of-the-art virus protection programs.
- 5.6 The Customer shall back up data and information which it transmits to ORDAT within the scope of the use of the software on a regular basis and in accordance with the significance of the data, so that in the event of a loss of data its reconstruction is possible. Insofar as the Customer has been given the technical opportunity to do so by mutual agreement, it shall regularly back up the data stored on the Application Server by download in accordance with the preceding sentence.

6. Data Protection

- 6.1 If the Customer processes personal data in connection with the present offer/service description, it warrants that it is entitled to do so in accordance with the applicable provisions of data protection law and, in the event of a breach, indemnifies ORDAT against claims by third parties.
- 6.2 Insofar as personal data is processed by ORDAT as the Customer's processor within the scope of the cooperation, the parties shall conclude a data processing agreement pursuant to Art. 28 DS-GVO.

7. Termination of the Contractual Relationship

- 7.1 Upon termination of the contractual relationship, ORDAT shall make the data stored on the Application Server available to the Customer in an agreed data format or delete the data at the Customer's request.
- 7.2 If the Customer so wishes, ORDAT shall in this case also make the data available in an agreed data format to a third party named by the Customer and cooperate with this third party in an appropriate manner (termination support), insofar as this is possible with reasonable effort. This termination support shall be remunerated by the Customer on a time and effort basis.

XII. Special Terms and Conditions for Software as a Service (SaaS) via Third-Party Cloud Solutions

1. Scope of Application

Insofar as ORDAT makes software available to the Customer for a limited period of time as a cloud solution by way of remote access (SaaS) and uses cloud solutions (in particular data center services) of third party providers for this purpose, the SCC contained in this Chapter shall apply in addition to Chapter I.

2. Applicable Contractual Provisions

- 2.1 The provisions of Chapter XI. above shall apply accordingly, unless otherwise provided below.
- 2.2 At the request of ORDAT, the Customer shall conclude an independent contract with the third-party provider of the cloud solution regarding the use of the cloud resources. This shall take place either through the mediation of the contract by ORDAT or through direct conclusion of the contract with the third-party provider. In this case, the provisions of the contract between the Customer and the third-party provider shall apply exclusively to the services of the third-party provider, which shall supersede the relevant provisions of Chapter XI. to this extent. ORDAT assumes no obligation and no liability for the services of the third party provider.