

# General Terms and Conditions of AGILITA Deutschland GmbH for Services

## 1 General

### 1.1 Scope

These General Terms and Conditions («GTC») apply to all contractual relationships (hereinafter referred to collectively as «Service Agreements» and individually as a «Service Agreement»), under which AGILITA Deutschland GmbH («AGILITA») provides services to third parties (in particular juristic persons governed by private law, corporate bodies under public law or special funds under public law; «Customers») that do not concern the provision and maintenance of standard software and/or the making available of cloud services («Services»).

Services include in particular the implementation, installation, parameterisation, configuration, customisation and development of software («Software to Be Introduced») and the instruction, introduction and training regarding the Software to Be Introduced.

Upon conclusion of a Service Agreement these GTC will form an integral part of the Agreement, excluding all other provisions not expressly recorded in writing. Verbal agreements are not valid.

In the event of any contradiction between the Service Agreement and these GTC, the provisions of the Service Agreement shall prevail.

### 1.2 Delimitations

The provisions of the respective software licence agreement and/or other general terms and conditions of AGILITA apply to the provision and maintenance of standard software and/or the making available of cloud services. If Services are provided in connection with the provision and maintenance of standard software and/or the making available of cloud services, these present GTC shall apply to the relevant Services.

### 1.3 Customer's general terms and conditions

Unless expressly agreed otherwise, only these GTC shall apply to Services in accordance with Section 1.1 hereof.

General terms and conditions of the Customer shall become a part of the contract only if AGILITA has expressly consented to them in writing. This shall apply also where AGILITA fulfils an order of the Customer without objecting to the Customer's general terms and conditions referred to in the purchase order.

### 1.4 Basis of the Service Agreement

Service Agreements shall be will provide the Services contractual document by all created upon receipt of the confirmation by AGILITA confirming that AGILITA («Order Confirmation») or upon the signing of an appropriate contracting parties. The Customer's notification stating that the Customer accepts an offer of AGILITA will result in the conclusion of a Service Agreement only if the offer includes a term of acceptance and AGILITA receives the acceptance notice within the term of acceptance. Offers of AGILITA without a term of acceptance are without commitment.

### 1.5 Customer's purchase orders

If, in addition to the Service Agreement (order confirmation or contractual document), the customer, for its internal handling procedures, needs to generate its own, separate purchase order, the Customer shall be obliged to formulate the text of the purchase order to be in compliance with these General Terms and Conditions and the provisions of the respective Service Agreement.

### 1.6 Deviating terms and conditions

Should the Customer send AGILITA a separate purchase order after conclusion of the Service Agreement, then any deviating terms and conditions in such purchase order shall become an integral part of the Agreement only if AGILITA expressly consents to them in writing.

AGILITA's obligations and Services and the scope and requirements of the Services are regulated and specified comprehensively and conclusively in the Service Agreement.

## 3 Service provision

### 3.1 Project manager and consultants

AGILITA shall decide which project manager and which consultants it uses to perform and fulfil the respective Service Agreement («Project») and reserves the right to replace them at any time. The Customer's consent shall not be required.

### 3.2 Involvement of third parties

AGILITA shall be entitled to have the Services owed under a Service Agreement provided by a third party in whole or in part. The Customer's consent shall not be required.

### 3.3 Place of provision of the Services

The Services may at AGILITA's option be provided on the premises of AGILITA, at the Customer's place of business or via remote access. The Customer shall not have the authority to give instructions to consultants deployed by AGILITA, even if the Services are provided at a Customer site. The consultants deployed shall not be integrated into the Customer's business operations. In compliance with the relevant contractual and statutory provisions, the Customer may give instructions exclusively to the project manager appointed by AGILITA but not directly to individual consultants.

### 3.4 Meeting minutes

AGILITA may take minutes of meetings serving to clarify and/or alter contractual facts and specifications, in particular the subject matter of the Agreement. The Customer shall check the minutes promptly and notify AGILITA in writing of any amendments and supplements which may be necessary. In the absence of such written notification, the contents of such minutes shall be deemed to have been acknowledged by the Customer.

### 3.5 Items provided prior to conclusion of a contract

Any items provided to the Customer by AGILITA prior to conclusion of a contract (e.g. suggestions, test programmes, concepts) are and shall remain the intellectual property of AGILITA or, if they stem from a contractual partner of AGILITA, of that contractual partner (cf. Section 8 of these GTC). They must not be reproduced and must not be made accessible to third parties. If no contract is concluded, the relevant items shall be returned or deleted and must not be used. Apart from this, the provisions of these GTC, in particular the exclusion of liability and the limitation of liability set forth in Section 8 of these GTC, shall apply also to the precontractual obligations.

### 3.6 Additional services

Should the Customer request an extended scope Service Agreement, such additional services Customer shall be agreed in an addendum to the of services exceeding the scope of the relevant and the remuneration payable for them by the Agreement (cf. Section 6 of these GTC).

Should AGILITA, without such an addendum but with the consent of the Customer, provide additional services exceeding the scope of the Service Agreements, the provisions and terms and conditions of the Service Agreement or, in the absence of such provisions, the AGILITA list price valid at the time of provision of the additional service shall apply to the additional services provided.

## 2 Obligations and Services AGILITA

### 3.8 Acceptance inspection

If acceptance inspection of individual Services is expressly agreed, the Customer shall inspect the relevant work results without delay in accordance with this Section 3.7. In such a case, AGILITA may request that an acceptance certificate be prepared which shall be signed by the Customer. In all cases of work results subject to acceptance inspection, AGILITA may request the Customer to provide a written declaration of acceptance.

Where the subject matter of a Service Agreement includes multiple individual items of work which the Customer can use independently of each other, these items of work shall be accepted separately.

If partial works are defined in a Service Agreement, AGILITA may demand acceptance inspection of the partial works. In subsequent acceptance inspections, only the functioning of the new partial works and the correct interaction of the partial works accepted earlier with the new partial works shall be examined.

If the Service Agreement includes the development of a concept, in particular regarding the specifics, modification or extension of standard software, AGILITA may request a separate acceptance inspection of the concept.

The Customer shall inspect the (partial) work result without delay after its delivery and shall without delay have its contact person either declare acceptance in writing or give written notice of the defects found, with a precise description and indication of the error symptoms. Should the Customer fail to do this within the time limit, the work result shall be deemed accepted. The same shall apply if the Customer gives notice of merely insignificant defects within the time limit. The use or putting into service by the Customer of (partial) work results for productive operations shall at any rate be deemed acceptance of the (partial) work result. Section 11 of these GTC shall apply to the warranty for defects.

If acceptance is deferred or refused because of major defects, the Customer shall be obliged to examine the work result forthwith after notification of rectification of the defect. Apart from that, the fifth paragraph of Section 3.7 of these GTC shall apply.

### 4 Customer's duties to cooperate

The Customer shall be obliged to perform all acts of cooperation and accessory obligations required for the provision of the Services under the Service Agreement in due time so as to ensure that AGILITA can properly fulfil the Service Agreement.

The Customer shall in particular provide the working environment necessary for the provision of the contractually owed Services («IT Systems»), where applicable in accordance with AGILITA's specifications.

The Customer shall free of charge to the necessary extent assist in the fulfilment of the Service Agreement, e.g. by providing staff, IT Systems, data and telecommunication equipment. The Customer shall grant AGILITA access to software (in particular to the Software to Be Introduced) and the IT Systems directly and by means of remote access. The Customer shall answer questions and check results. Where the Customer provides materials to AGILITA for the provision of the Services, the Customer shall ensure that they are free from third-party rights which might prevent provision of the Services by AGILITA.

The Customer shall, in writing, name a competent employee as contact person for AGILITA and provide a postal address and an email address at which the contact person can be contacted at any time. The contact person shall be able to make the necessary decisions for the Customer or to cause such decisions to be made without delay. The contact person shall ensure good cooperation with the contact person at AGILITA. The Customer's employees whose activities are required shall be released from other activities to an appropriate extent.

Before starting productive use of the Services provided by AGILITA under the Service Agreement, the Customer shall thoroughly test these Services for absence of defects and for usability in the specific situation. This shall also apply to Services provided to the Customer

in the context of supplementary performance in accordance with Sections 11.2.2 and 11.3.1 of these GTC.

The Customer shall take appropriate precautions for the case that the work results contain defects (e.g. back up data, diagnose faults, check the results on a regular basis). In the absence of an explicit written notice in a particular case, the consultants deployed by AGILITA may always assume that the Customer has backed up all data with which they may come into contact.

Moreover, the Customer shall perform all acts of cooperation necessary for the performance of the Agreement. Where applicable, the Service Agreement contains supplementary provisions.

Fulfilment by the Customer of the duties to cooperate is a contractual primary duty and a prerequisite to the proper provision of the Services by AGILITA.

The Customer shall bear the disadvantages and additional costs resulting from any breach of its obligations and shall in this respect indemnify AGILITA from any claims raised by a third party.

### 5 Service provision times

Deadlines and time limits for the provision of the Services are approximate indications and not binding, unless they are expressly agreed in writing in the Service Agreement to be binding.

While AGILITA is waiting for any collaboration or information by the Customer or is impeded in the fulfilment of the Service Agreement by any extraordinary circumstances as set forth in Section 13 of these GTC, the time limits for delivery and service provision shall automatically be deemed extended by the duration of the impediment plus a reasonable lead time after the end of the impediment. AGILITA shall notify the Customer of the impediment.

The time limits for delivery and service provision shall automatically be extended

appropriately if the scope of the Service Agreement is subsequently changed and/or extended.

### 6 Change request procedure

During the term of a project, the Customer's contact person (cf. fourth paragraph of Section 4 of these GTC) and the project manager appointed by AGILITA may at any time suggest changes in writing (in particular of the agreed Services, methods and deadlines).

In the case of a written change request by the Customer, AGILITA shall communicate whether the change is possible and what consequences it has on the Service Agreement, considering in particular time and remuneration. The Customer shall then inform AGILITA in writing within the time limit set by AGILITA whether the Customer wishes to uphold its change request on these conditions. If the change request is upheld, the additional services and the remuneration to be paid for them by the Customer shall be agreed in writing in an addendum to the Service Agreement («Change Request»). Where examination of any change request involves considerable expenses, AGILITA may separately charge the expenses caused by the examination on the conditions of the Service Agreement or, if no appropriate regulation exists in the Service Agreement, at the AGILITA list prices valid at the time of examination.

In the case of a change request by AGILITA, the Customer shall inform AGILITA within the time limit set by AGILITA whether or not the Customer consents to the change. If the Customer consents, the additional service shall be deemed ordered and the Customer shall be liable to pay the remuneration.

While there is no agreement as to the change (in particular because no notification in accordance with paragraph 2 or 3 of Section 6 of these GTC has been given), the work shall be continued in accordance with the existing Service Agreement. The Customer may instead demand that all or part of the work be interrupted or the work be finally aborted in accordance with the conditions of Section 10.2. In the event of interruption, a remuneration in the amount of the daily rate agreed in the Service Agreement or, if no appropriate regulation exists in the Service Agreement, at the AGILITA list price valid at the time of the interruption shall be owed and payable per day and

AGILITA employee in the project whose work is suspended, starting on the first working day.

## 7 Remuneration, invoicing, payment due dates and taxes

### 7.1 Remuneration

In return for the contractually agreed Services, the Customer shall be obliged to pay the remuneration defined in the Service Agreement. Should no remuneration for the provision of a Service be agreed in the Service Agreement, the Customer shall pay as remuneration to AGILITA the AGILITA list price valid at the time of provision of the Service.

### 7.2 Outlays and out-of-pocket expenses

The Customer shall be obliged to reimburse AGILITA for any expenses and disposals (in particular costs, out-of-pocket expenses and outlays) incurred in connection with the provision of the contractually agreed Services. Except where otherwise provided in the Service Agreement, the Customer shall reimburse or compensate AGILITA for the actual expenses and disposals. Travel times of AGILITA employees shall be deemed working hours and be paid for on the conditions agreed in the Service Agreement (e.g. daily and hourly rates).

### 7.3 Invoicing

AGILITA shall be entitled to issue invoices for parts of the contractually agreed Services.

The contractually agreed remuneration shall be charged on a monthly basis for the Services provided and the expenses accrued, subject to any provision to the contrary in the Service Agreement and subject to the third paragraph of Section 7.3 of these GTC.

AGILITA may request payments on account or full advance payments if a business relationship with the Customer does not yet exist, if a delivery shall be made to Customer sites outside of the Federal Republic of Germany, if the Customer has its registered seat outside of the Federal Republic of Germany or if any reason exists to doubt that the Customer will pay punctually.

If remuneration according to expenditure has been agreed, the expenditure charged in the invoice shall be deemed to have been acknowledged irrevocably, unless the Customer requests delivery of a detailed breakdown of the services in writing within 14 days.

If the Customer has requested AGILITA to deliver a list of services or if a list of services already was part of or attached to the invoice, the expenditure detailed in the list of services shall be deemed to have been acknowledged irrevocably if and to the extent to which the Customer does not object to the expenditure within 14 days of delivery of the list of services.

### 7.4 Terms of payment and payment due dates

Subject to any provision to the contrary in the Service Agreement, the invoices of AGILITA shall be due for payment without deduction (among other things, without deduction of any discount, expenses, taxes, levies etc.) and without a right of set-off within 14 days of the invoice date.

### 7.5 Indexation clause

AGILITA may change the remuneration for Services at each 1st January of a calendar year by giving two (2) months' notice, sending a written statement of adjustment to the Customer and observing the following principles:

- (1) AGILITA may change the remuneration by not more than the amount by which the index in accordance with Section 7.5 (2) of these GTC has changed («Change Limit»). For the first remuneration adjustment, the Change Limit shall be based on the development of the index between the index level published at the time of conclusion of the respective Service Agreement and the index level most recently published at the time of the statement of adjustment. If the remuneration has already been adjusted previously, the Change Limit shall be defined by the development of the index between the index level most recently

published at the time of the last preceding statement of adjustment and the index level most recently published at the time of the new statement of adjustment.

- (2) The determination of the Change Limit shall be based on the index of the average gross monthly earnings of full-time employees in Germany for the «Provision of Information Technology Services» branch of economic activity (currently published quarterly by the German Federal Statistical Office in subject-matter series 16, time series 2.2, group J 62). Should this index no longer be published, the index published by the German Federal Statistical Office which is the nearest indication of the development of the average monthly earnings in the abovementioned economic branch shall be used to determine the Change Limit.
- (3) The new remuneration shall be deemed contractually agreed, unless the Customer gives notice, within two weeks of receipt of the statement of adjustment, to terminate the Service Agreement at the end of the respective calendar year.

## 7.6 Taxes

All prices are quoted exclusive of the statutory value added tax.

## 8 Rights to work results

All rights (in particular all industrial property rights) to the Services and the work results, such as, in particular, to copyrighted works (in particular computer software, documents, records, manuals etc.) and to inventions which AGILITA and/or any third party involved by AGILITA creates or makes in the context of the fulfilment of the Service Agreement or on occasion («Work Results»), shall be due exclusively to AGILITA. Should any such Work Result have been created because of specifications or collaboration by the Customer and should, because of this, the Customer have become co-author of a Work Result, the Customer shall grant AGILITA the exclusive, absolute and irrevocable right to all known and unknown types of use of the Work Result.

Unless otherwise agreed in writing, the Customer, upon full payment of the contractually agreed remuneration, shall have a non-exclusive, non-transferable right to use the Work Results to the extent this is necessary for using the Software to Be Introduced. The Customer may use these Work Results and the knowledge imparted by AGILITA only for the purpose agreed in accordance with the Service Agreement within its own enterprise where the Services have been provided (but not in parent or sister companies) and must neither transfer them to a third party nor publish them without the written consent of AGILITA.

Use exclusively for testing prior to acceptance inspection to the extent necessary shall be permitted. The Customer shall be entitled to make necessary backup copies of the Work Results. Any backup copy shall be marked as such and be provided with the copyright notice of the original data carrier.

Unless otherwise agreed in writing, acquisition of the rights (in particular licensing rights) necessary for the lawful use of the Software to Be Introduced shall be the sole responsibility of the Customer.

## 9 Use of know-how

AGILITA shall be entitled to use free of charge for the performance of other work for itself or for any third party any idea, concept, method and/or know-how which AGILITA has acquired by itself or in cooperation with a third party or in cooperation with the Customer in the performance of Service Agreements, irrespective of whether the rights thereto have been transferred to the Customer in accordance with the Service Agreement.

## 10 Term and termination

### 10.1 Term

Unless otherwise provided in the respective Service Agreement, any Service Agreement shall come into force upon being signed by all parties and shall continue to be in force until the Services agreed under the Service Agreement have been provided to the full extent.

### 10.2 Termination

Either party may terminate the Service Agreement without notice at any time if it fully indemnifies the other party. In the event of such termination, the Customer shall in addition to this also pay AGILITA the remuneration for work already performed.

The right of termination for an important reason shall not be affected. An important reason shall in particular exist if the Customer after a written warning by AGILITA has failed to discharge a due material obligation as contractually agreed within 30 days (in particular if the Customer is in arrears with a payment under the respective Service Agreement by more than 30 days).

In the event of termination of the respective Service Agreement, all Confidential Information (as defined in Section 14 of these GTC) of the parties shall be returned without delay to the respective disclosing party or, at the request of the disclosing party, be destroyed and proof of destruction shall be furnished.

## **11 Material defects, defects of title and other impairments of performance**

### **11.1 General**

For Work Results subject to the statutory warranty of quality and title, AGILITA shall warrant, subject to this Section 11, that the Work Result has the explicitly agreed quality features and that no third-party rights conflict with the Customer's right of use in accordance with the second paragraph of Section 8 of these GTC. Where a specific quality is not agreed, the object of the warranty shall be that the Work Result is suitable for the contractually intended use, otherwise the usual use, and is of a quality which is usual for a Work Result of the kind and which the Customer can expect for a Work Result of the kind. AGILITA gives no warranty and/or assurances whatsoever with respect to Work Results (in particular software) stemming from a third party.

### **11.2 Material defects**

#### **11.2.1 Obligation to examine and to give notice of defects**

The Customer shall be obliged to examine the Work Results for material defects without delay after delivery and to give substantiated written notice to AGILITA without delay of any material defects found. The written notice of defects shall describe the material defects in detail and comprehensibly to AGILITA and include the information which is useful for the rectification of the defects.

The Customer shall give substantiated written notice to AGILITA immediately upon detection of any material defect that could not be detected by proper examination («**Hidden Material Defects**»).

If the Customer does not, not in due time and/or not properly examine the Work Results, any material defect that would have been detectable in a proper examination shall be deemed approved by the Customer. In such a case, the Customer shall not have any warranty rights.

#### **11.2.2 Rights in the case of defects**

In the event of a material defect, the Customer shall initially only have the right to request supplementary performance within a reasonable time limit to be fixed by the Customer. In the context of supplementary performance, AGILITA shall be entitled to rectify the material defect at its option either by providing a new version of the Work Result that is free from defects or by eliminating the material defect (subsequent improvement). A material defect may at AGILITA's option also be rectified by way of supplementary performance by AGILITA showing the Customer options acceptable to it how to prevent the effects of the material defect (in particular work around or suppress the material defect) in such a way that the Work Result can still be used substantially without restrictions. The Customer shall be obliged to accept a new version of the Work Result, provided that the contractually agreed range of functions is preserved and acceptance is not unreasonable.

If AGILITA cannot rectify a material defect within a reasonable time limit to be fixed by the Customer or if subsequent improvement or new delivery is to be regarded as having ultimately failed for any other reason, the Customer may at its option withdraw from the Agreement or reduce the remuneration. In the case of a continuing

obligation, the Customer shall have the right to terminate the Agreement without notice instead of the right of withdrawal. During the reasonable period of time granted for subsequent improvement or new delivery, AGILITA shall be free to decide on the number of attempts of supplementary performance. Failure of subsequent improvement or new delivery can be assumed only if AGILITA earnestly and finally refuses supplementary performance or unreasonably delays supplementary performance or if other particular circumstances apply that make it unacceptable to the Customer to wait any longer.

AGILITA shall pay damages within the limits defined in Section 12 of these GTC.

#### **11.2.3 Period of limitation and forfeiture**

The Customer's claims based on breach of the warranty in accordance with Section 11.2 of these GTC shall become statute-barred and be forfeited upon expiry of one year from the date of acceptance of the respective Work Result.

### **11.3 Defects of title**

#### **11.3.1 Rights in the case of defects**

In the event of a defect of title, the Customer shall initially only have the right to request supplementary performance within a reasonable time limit to be fixed by the Customer. In the context of supplementary performance, AGILITA shall be entitled to rectify the defect of title at its option either by procuring a flawless right of use to the Work Results in accordance with the second paragraph of Section 8 of these GTC or to exchanged or modified equivalent Work Results. The Customer shall be obliged to accept a new version of the Work Result, provided that the contractually agreed range of functions is preserved and acceptance is not unreasonable.

If AGILITA cannot rectify a defect of title within a reasonable time limit to be fixed by the Customer or if subsequent improvement or new delivery is to be regarded as having ultimately failed for any other reason, the Customer may at its option withdraw from the Agreement or reduce the remuneration. In the case of a continuing obligation, the Customer shall have the right to terminate the Agreement without notice instead of the right of withdrawal. During the reasonable period of time granted for supplementary performance, AGILITA shall be free to decide on the number of attempts of supplementary performance. Failure of supplementary performance can be assumed only if AGILITA earnestly and finally refuses these actions or unreasonably delays them or if other particular circumstances apply that make it unacceptable to the Customer to wait any longer.

AGILITA shall pay damages within the limits defined in Section 12 of these GTC.

Other rights based on defects of title shall be excluded.

#### **11.3.2 Prerequisite to the rights in the case of defects**

The Customer's rights laid down in Section 11.3.1 of these GTC shall exist only if (cumulatively)

- the Customer informs AGILITA in writing without delay of any infringement of a property right claimed against the Customer;
- the Customer supports AGILITA to a reasonable extent in the defence against the claims raised;
- the Customer enables AGILITA to change or replace the delivery or service;
- the Customer authorises AGILITA to conduct the defence (including acceptance of compromises) and all defensive measures, including out-of-court settlement, are reserved to AGILITA;
- the property right infringement is not based on a directive given by the Customer; and
- the property right infringement was not caused by the Customer having altered the Work Results of AGILITA without authorisation or having used the Work Results in a way not in accordance with the Agreement.

The statutory warranty rights in case of defects of title shall not be affected by this.



### 11.3.3 Property right infringement by Customer

If and to the extent to which the Customer is responsible for the property right infringement, claims against AGILITA are excluded.

### 11.3.4 Period of limitation and forfeiture

With the exception of claims for damages, the Customer's claims based on breach of the warranty in accordance with Section 11.3 of these GTC shall become statute-barred and be forfeited upon expiry of one year from the date of acceptance of the respective Work Result.

### 11.4 Other impairments of performance

If AGILITA, outside of the area of warranty of quality and title, fails to provide a service or provides a service not as contractually agreed or if AGILITA breaches any other duty, the Customer shall always give written notice of this to AGILITA forthwith and grant AGILITA a reasonable period of grace of not less than 30 days within which AGILITA shall be given opportunity to perform the service as contractually agreed or to provide remedy in any other way. AGILITA shall pay damages within the limits defined in Section 12 of these GTC.

### 11.5 No defect / no impairment of performance

If AGILITA provides error search or error correction services without being obliged to do this, AGILITA shall be entitled to demand a remuneration in accordance with Section 7.1 of these GTC. This shall apply in particular if the error or defect reported is not attributable to AGILITA, is based on unsuitable or improper operation, faulty installation of the Software to Be Introduced by the Customer or any third party commissioned by the Customer, use of the Software to Be Introduced in a non-agreed system environment or improper intervention by the Customer or any third party commissioned by the Customer into the Service of AGILITA (e.g. for the purpose of error correction). In particular, the Customer shall also pay for the additional expenditure for the remedy of defects incurred by AGILITA due to the fact that the Customer fails to properly fulfil its duties to cooperate, improperly operates the Software to Be Introduced or the Work Results or has not used any Service of AGILITA recommended by AGILITA.

### 11.6 Duty to collaborate in error search

The Customer shall support AGILITA free of charge to the necessary extent in error search and error handling, in particular provide the information and files necessary for the remedy of a defect, and in the case of a material defect in the Software to Be Introduced take those measures on its side that are necessary to enable AGILITA, if needed, to access the Software to Be Introduced and its respective system environment also via remote access.

## 12 Liability

Unlimited liability: AGILITA shall be liable without limitation in the case of wilful intent and gross negligence and in accordance with the German product liability act [Produkthaftungsgesetz].

In the event of ordinary negligence, AGILITA shall be liable for damage caused by injury to life, body or health.

Apart from this, the following limited liability shall apply: In the event of ordinary negligence, AGILITA shall be liable only in the case of breach of a material contractual obligation the fulfilment of which makes proper performance of the Agreement possible in the first place and discharge of which the client may typically rely on (material contractual obligation [Kardinalpflicht]). The amount of liability for ordinary negligence shall be limited to the typical damage that must be expected to occur as foreseeable at the time of conclusion of the Agreement. This limitation of liability shall also apply for the benefit of the vicarious agents of AGILITA.

## 13 Force majeure

AGILITA shall not be liable for delays in delivery and impairments of performance caused by a force majeure event.

A force majeure event shall mean any event external to the company caused by natural forces or actions of a third party which, based on human insight and experience, is unforeseeable, cannot be prevented or rendered harmless with commercially reasonable efforts even by exercising the most extreme diligence to be reasonably expected based on the factual situation and cannot be accepted by the company also due to its frequency.

Force majeure events shall include in particular the following: War, warlike events, declaration of a state of emergency, mass demonstration, strike, lawful in-house industrial action, war, terrorist attacks, unrest, acts of God amounting to catastrophe, earthquakes, pandemics (but not the COVID-19 pandemic persisting since 2019), epidemics, fire, sabotage attacks by third parties or the repeal of permits without own fault.

AGILITA shall notify the Customer of the occurrence of a force majeure event.

## 14 Confidentiality

AGILITA and the Customer undertake and shall procure that they and their employees will treat as confidential for an indefinite period of time, and will use only in the context of the performance and processing of contracts, all information obtained prior to and in the context of the performance of the Agreement which AGILITA or the Customer protect against unrestricted disclosure to third parties or which according to the circumstances of disclosure or its content is to be regarded as confidential (in particular the content of the Service Agreements, Software to Be Introduced, documentations, programmes and data) («Confidential Information»). Section 9 of these GTC remains unaffected.

Reproduction of Confidential Information in any form is prohibited, except in the context of contract processing and to fulfil the purpose of the respective Service Agreement. Any reproduction of Confidential Information (where permitted) of the other party must contain all references and notes regarding their confidential or secret nature that are contained in the original.

With respect to Confidential Information of the other party (i) each party shall take all reasonable steps to treat Confidential Information as confidential and (ii) each party shall grant access to Confidential Information of the other party only those persons that need to have access for the performance and processing of contracts.

Exempted from the obligation of secrecy is Confidential Information which (i) needs to be disclosed due to legal obligations, (ii) is necessary to protect rights under the Service Agreement and/or these GTC, (iii) is in the public domain, (iv) has already been public at the time of disclosure to the other party and (v) becomes public after disclosure to the other party without that party's fault.

## 15 Data privacy

The parties undertake to comply with the applicable provisions of data protection laws.

As far as access by AGILITA to personal data which are processed by the Customer is not necessary for the fulfilment of the Service Agreement, the Customer shall protect these data in such a way that AGILITA does not have access to these data.

Where access by AGILITA to personal data of the Customer for the purpose of performing a contract cannot be excluded, the Customer shall conclude a commissioned data processing agreement in accordance with Art. 28 GDPR with AGILITA beforehand to comply with the data protection law regulations.

Should, in connection with this Agreement, personal data be processed as intended by an external third party at its own responsibility, reference is made to that third party's data privacy statement as regards the data processing by that party.

## 16 Non-solicitation agreement

The Customer shall be obliged to not actively entice away any AGILITA employee involved in the fulfilment of the Service Agreement, neither for itself nor for a third party. Enticement shall also mean any situation where the Customer uses services of any

AGILITA employee outside of the Service Agreement during the term of the Service Agreement or where the Customer employs any AGILITA employee during the term of the Service Agreement or during a period of three years after the end of the Service Agreement.

## **17 Final provisions**

### **17.1 Severability clause**

Should any of the provisions of the Service Agreement and/or these GTC be void, invalid or unenforceable in whole or in part, this shall not affect the validity and enforceability of the remaining provisions of the Service Agreement and/or these GTC. Such void, invalid or unenforceable provision shall be replaced with a provision coming as close as possible to the originally intended economic purpose. This shall apply mutatis mutandis to any gap in this Agreement.

### **17.2 Transfer**

Transfer of the Service Agreement or any part thereof shall be permitted only with the consent of AGILITA. A change of ownership of the Customer or of AGILITA (including merger, sale of the enterprise) shall not be a reason for termination and, therefore, shall not release from the obligation to fulfil the Service Agreement.

### **17.3 Prohibition of set-off**

The Customer may set off a claim, or exercise a right of retention with respect to a claim, only if the claim is undisputed or has been determined without further legal recourse.

### **17.4 Governing law and place of jurisdiction**

The Service Agreement and these GTC as well as (contractual and non-contractual) claims arising from or in connection with the Service Agreement and/or these GTC shall be governed by German substantive law, excluding application of conflict-of-law rules, in particular excluding application of the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

Any dispute or claim arising from or in connection with the Service Agreement and/or these GTC shall be decided on exclusively by the courts of law in Berlin, Germany.