

# General Terms and Conditions (GTC) of AGILITA Deutschland GmbH for Software Products

## 1 General

### 1.1 Scope

These General Terms and Conditions («GTC») apply to contracts for the permanent provision of AGILITA standard software and to contracts regarding the maintenance of AGILITA standard software.

### 1.2 Delimitation

Different terms and conditions of AGILITA apply to other services of AGILITA, such as the provision of services, installation of software, parameterisation or customisation or temporary provision of software, introduction or training. Such additional services are not the subject matter of the Agreement and need to be agreed separately.

### 1.3 Client'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 client 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 client without objecting to the client's general terms and conditions referred to in the purchase order. Any provisions in validly included general terms and conditions of the client, such as conditions of purchase, which deviate from these GTC are expressly objected to.

### 1.4 Client's purchase order

If, in addition to the signing of the contract, the client, for its internal handling procedures, needs to generate its own, separate purchase order, the client shall formulate the text of the purchase order to be in compliance with these General Terms and Conditions and the provisions of the respective contract.

### 1.5 Deviating terms and conditions

If the client, after conclusion of the contract, sends its own purchase order to AGILITA, any deviating terms and conditions in such purchase order shall become part of the contract only if AGILITA expressly confirms them in writing.

## 2 Delivery

### 2.1 Deliverables

If AGILITA and the client have concluded a contract for the permanent provision of AGILITA standard software («Software Provision Agreement»), AGILITA shall provide to the client the AGILITA standard software (hereinafter referred to as the «Software») specified in the contract, together with the documentation.

### 2.2 Version

Unless otherwise agreed in the Software Provision Agreement, the version of the Software that will be supplied shall be the version current at the date of delivery that is generally released for distribution by AGILITA.

### 2.3 Documentation

Together with the Software, AGILITA shall supply to the client the documentation belonging to the Software in a printable, electronic format, unless otherwise regulated in the Software Provision Agreement.

### 2.4 Conditions of use and range of functions

The conditions of use and the range of functions of the Software shall be as specified in the Software Provision Agreement and the product description in the documentation valid at the time of conclusion of the Agreement. In the event of any contradiction, the specifications in the Software Provision Agreement shall prevail. AGILITA shall not be obliged to provide any further condition of the Software. In particular, the client cannot deduce such an obligation from any other presentation of the Software in public statements or advertisements by AGILITA, unless a managing director of AGILITA

who is authorised to represent AGILITA has expressly confirmed the further condition in writing.

### 2.5 Delivery

Unless otherwise agreed in the Software Provision Agreement, AGILITA shall deliver the Software in electronic format.

### 2.6 Delay in delivery

Delivery shall be subject to correct and timely supply to AGILITA in the congruent covering transaction. AGILITA shall notify the client of any delay that becomes apparent.

## 3 Rights of use

### 3.1 Right of use

In return for payment of the agreed remuneration, AGILITA shall grant the client a permanent, non-exclusive right of use regarding the use as intended of the Software specified in the Software Provision Agreement and the documentation.

### 3.2 Scope of use

The scope of the intended use shall be determined by the agreements in the respective Software Provision Agreement and these present terms and conditions. In the event of any contradiction, the agreements in the Software Provision Agreement shall take precedence over the provisions in these GTC.

### 3.3 Copies

The client may create as many backup copies of the Software as are necessary for proper data backup. Copyright notices of AGILITA must not be altered or removed in such copies. Moreover, copies of the Software or the associated documentation shall be permissible only to the extent they are necessary for use as intended.

### 3.4 New version

If, e.g. in the context of supplementary performance, the client receives a new version of the licensed Software that replaces a version of the Software that was provided earlier, the client's rights of use in relation to the Software provided earlier and now replaced shall expire as soon as the client starts using the new Software for productive operations. Until such going live, the client may use the new version of the Software as a test system in parallel with the Software provided earlier and still used for productive operations.

### 3.5 Limitations of use

The client may install, load, run and use the Software only in the context of the limitations of use defined in the Software Provision Agreement and these General Terms and Conditions.

### 3.6 Intended use

Unless expressly provided otherwise in the Agreement, the client may use the Software only for internal business purposes. Any use in affiliated enterprises («Group Companies») is expressly excluded.

### 3.7 Provision of services to third parties

Any use of the Software for the purpose of providing EDP services to third-party enterprises shall require the granting of pertinent rights in the Agreement, expressly and in writing.

### 3.8 Operation by third parties

Should the client wish to have the Software operated by a third-party enterprise (e.g. a hosting provider or an outsourcing company), including affiliated enterprises of the client, for its own purposes, instead of operating the Software itself, this shall require a written agreement with AGILITA. Provided that its justified business interests are protected, in particular that the third-party enterprise comply with the contractual provisions regarding use and transfer of the Software, AGILITA shall not unreasonably refuse the conclusion of such an agreement.

### 3.9 Transfer to third parties

The client shall be entitled to transfer the Software to a third party (hereinafter: «**New User**»), provided that

- the client entirely relinquishes the use of the Software, including altered or edited versions, and deletes or otherwise destroys existing copies;

and

- the New User declares in writing its consent to the rights of use and limitations of use agreed with the client.

### 3.10 Transfer

The Software shall be transferred as a whole. Transfer of only parts of the Software is not permitted. Likewise, any transfer of copies or partial copies is not permitted.

### 3.11 Surrender of use

The client shall not have the right to rent out, lease out or otherwise make available the Software to third parties, neither permanently nor temporarily.

### 3.12 Reservation of rights

If the Software is delivered prior to complete payment of the agreed remuneration for the provision of the Software, the client shall, for the period of time between delivery and acquisition of the permanent right of use («**Interim Period**»), acquire a non-exclusive, non-transferable right to use the standard software and the associated documentation to the extent otherwise agreed («**Provisional Right of Use**»). During the Interim Period, the client's Provisional Right of Use can be revoked only in the event that AGILITA withdraws from the Agreement due to default in payment by the client following an unsuccessful warning. The client's Provisional Right of Use shall automatically expire upon acquisition of the permanent right of use if it has not expired prior to this due to AGILITA's lawful withdrawal.

### 3.13 Compensation for use beyond agreed scope

If the client uses the Software beyond the agreed scope and/or not as intended without previously having been granted appropriate rights by AGILITA, the client shall have to pay AGILITA a compensation for such excess use in accordance with the price list of AGILITA valid at the time.

### 3.14 Written notification in case of use beyond agreed scope

The client shall without delay notify AGILITA in writing if it exceeds the scope of the agreed intended use.

### 3.15 Violation of the rights of use

If the customer fails to comply with the above provisions regarding use according to the Agreement, all rights of use granted in the context of this Agreement shall expire immediately and shall automatically be returned to AGILITA. In such a case, the customer shall completely and without delay stop using the Software, delete all copies of the Software installed on its systems and delete or hand over to AGILITA any backup copies which it may have made.

## 4 Remuneration

### 4.1 Remuneration

For the delivery of the Software specified in the Software Provision Agreement and the granting of the rights of use regarding use as intended, the client shall pay to AGILITA the remuneration defined in the Agreement. Should no remuneration for the Software be agreed in the Agreement, the client shall pay as remuneration to AGILITA the AGILITA list price of the Software valid at the time of conclusion of the Agreement.

### 4.2 Payment due date

The remuneration for the provision of the Software shall be payable upon delivery and invoicing.

## 5 Retention of title

### 5.1 Rights in the Software

In relation to the client, exclusively AGILITA shall be entitled to all rights in the Software and the associated documentation, in particular the exercise of all property-law powers with respect thereto. The client shall only be granted the non-exclusive rights to use the Software agreed in the Software Provision Agreement.

### 5.2 Retention of title

Until complete payment of the agreed remuneration, AGILITA expressly reserves the permanent granting of the rights of use as intended in the Software and the documentation as well as title to the data carriers supplied and – in case of delivery on paper – to the documentation.

### 5.3 Duty to notify

Should any third party levy execution against the client's property during the Interim Period, the customer shall be obliged to make such third party aware, explicitly, of the retentions of title and reservations of rights to the Software and the documentation that are effective during that period. The same shall apply towards the insolvency administrator in the event that insolvency proceedings are instituted against the client's property.

## 6 Expiry of the right of use

In all cases where the client's right to use the Software expires (e.g. due to justified withdrawal), the client shall return to AGILITA all deliveries and copies on data carriers of the Software and delete all other copies of the Software, except where the client is under a legal obligation to preserve records for a longer period of time. In such a case, the claim to return and deletion shall be extended by the term of the legal obligation to preserve records.

The client shall assure AGILITA in writing that it has done this.

## 7 Services as part of software maintenance

### 7.1 Maintenance services

If AGILITA and the client have concluded a contract for the maintenance of AGILITA standard software («**Maintenance Agreement**»), AGILITA shall provide the maintenance services specified below in accordance with the agreements in the Maintenance Agreement and the following provisions in return for payment of the agreed maintenance fees.

### 7.2 Support

#### 7.2.1 Application problems

If any application problem arises during the term of the Maintenance Agreement, AGILITA shall support the client by providing advice as to the correction, prevention and workaround of errors.

#### 7.2.2 Support hours

The AGILITA support is available via the support portal from Monday to Friday, 8 a.m. to 5 p.m., except on public holidays in Berlin («**Support Hours**»).

#### 7.2.3 Qualification

AGILITA makes the client aware that the support is not a substitute for the technical knowledge about how to operate the Software that is necessary to use the Software. Therefore, the AGILITA support staff are authorised to reject inquiries by the client if the reason for an inquiry is insufficient knowledge on the part of the personnel used by the client. AGILITA reserves the right to refer the client to training courses in the case of questions for which training courses are offered.

### 7.3 New releases

#### 7.3.1 New releases

In addition to this, the client shall during the term of a Maintenance Agreement receive on demand all new releases of the software products covered by the software maintenance. A new release is available when AGILITA has released for general distribution a modified or improved new version of the Software. At AGILITA's option, the new version of the Software shall be made available electronically to the client on demand.

#### 7.3.2 Implementation

The use of a new release of the Software usually requires implementation of the new release by a specialist, which may cause additional expenses. Under the Maintenance Agreement, AGILITA does not owe the implementation of a new release.

#### 7.3.3 Testing

AGILITA makes the client aware that the compatibility of a new release of the Software with other computer programmes may change compared to a previous release of the Software. Therefore, AGILITA advises the client to first test a new release of the Software in a test environment not used for productive operations.

- 7.3.4 Rights of use**  
For any new software release supplied, AGILITA shall grant the client the same rights of use as have been granted to the client originally when the Software was provided.
- 7.4 Correction of errors**
- 7.4.1 Reporting of errors**  
If the client reports an error in the Software during the term of a Maintenance Agreement, AGILITA shall support the client to find the root cause of the error and take over the correction of the error or measures how the error can be worked around or bypassed, as detailed below.
- 7.4.2 Errors**  
An error is present if the Software, if used according to the Agreement, does not perform or only faultily performs any of the functions specified in the product description and this has an effect on the contractually assumed use which is not inconsiderable. The basis for assessment in case of an error shall be the range of functions of the standard software of the respective manufacturer (e.g. SAP).
- 7.4.3 Error classes**  
Errors are classified into the following error classes  
**Error class 1** Error preventing operation:  
An error in the Software makes use of the Software impossible.  
**Error class 2** Error significantly impairing operation:  
Essential functions of the Software are restricted or unusable because of an error in the Software.  
**Error class 3** Other errors:  
All other errors in accordance with Section 7.4.2 not classified as class 1 or class 2 errors.
- 7.4.4 Error classification**  
AGILITA and the client shall consensually assign a reported error to one of the error classes. Should consensual classification not be possible, AGILITA shall classify the reported error in accordance with the client's information and taking into account the client's interests.
- 7.4.5 Response times**  
Based on the classification, the client shall be given feedback about the start of error correction and the status of the processing within the following response times:
- Error class 1 – within 1 working day
  - Error class 2 – within 5 working days
  - Error class 3 – within 10 working days
- The response time shall be calculated from the point in time at which the error report was received by the AGILITA support.  
If an error is reported outside of the Support Hours, the response time shall commence at the next start of work of the support team.
- 7.4.6 Action**  
AGILITA shall correct within a reasonable period of time any error in the Software or the documentation that is reported. Error correction options include, but are not limited to, the following actions:
- Delivery of a new available release
  - Delivery of available support packages or patches
  - Provision of a workaround
  - Instructions (information) for eliminating or working around the error
  - Error service via remote access
- 7.4.7 Error correction**  
If AGILITA offers the client a new release, a support package, a patch or a workaround for preventing or correcting an error in the Software, the client shall be obliged to accept this. The client may refuse acceptance only if acceptance causes unreasonable consequences at the client, e.g. adjustment or conversion problems.
- 7.4.8 Remote access**  
To guarantee proper error service, the client shall grant AGILITA remote access to the Software installed at the client during the term of the Maintenance Agreement.

- 8 Maintenance of old releases of the Software, obligation to update**
- 8.1 Maintenance of old releases of the Software 1**  
Once a new release has been issued, the client shall receive services under this Maintenance Agreement for error correction, for delivery of new releases and for support only for the current and the two most recent releases of the Software previously issued by AGILITA for general distribution. If the client is using an older version of the Software, it shall be up to AGILITA's discretion to still provide services under the Maintenance Agreement, unless otherwise provided below.
- 8.2 Maintenance of old releases of the Software 2**  
The services of AGILITA under this Maintenance Agreement for the current and the two preceding releases of the Software shall be provided for the Software versions of the system environments of SAP for which the respective release was issued by AGILITA and for which SAP AG itself is still offering general maintenance services. If SAP discontinues the maintenance services for a version, AGILITA's obligation to continue to provide services for that version of the SAP system environment under the Maintenance Agreement shall likewise cease to exist.
- 8.3 Maintenance of old releases of the Software 3**  
If SAP is still offering general maintenance services for a Software version of the SAP system environment for which the current or one of the two preceding releases of the Software is not issued, AGILITA shall continue to maintain the latest release issued for that SAP system environment until SAP discontinues the maintenance services for that Software version of the system environment.
- 8.4 Obligation to update**  
If the client changes its system environment, in which it operates the AGILITA standard software, to a newer SAP version, the client at the same time undertakes to change the AGILITA standard software to the latest release issued for general distribution by AGILITA for that newer SAP version.
- 9 Client's duties to cooperate**
- 9.1 Information**  
In the context of the maintenance services, the client shall provide to AGILITA promptly and free of charge all necessary information, such as information about the system environment or a detailed error description. Likewise, the client shall support AGILITA free of charge to the extent necessary in the provision of the maintenance services.
- 9.2 Central contact persons**  
The client shall appoint an employee working at the place of installation to act as central point of contact for AGILITA. Moreover, the client shall appoint a sufficient number of deputies of the central contact person who, like the central contact person, have in-depth knowledge of the Software to be maintained and the existing system environment, so as to ensure that a competent contact person will be available at the client's at all times.
- 9.3 Installation**  
It shall be the client's obligation to install new release versions, patches and workarounds properly and according to instructions at the client's expense.
- 9.4 System environment**  
Where the installation and use of the new release versions, patches and workarounds so require, it shall be the client's responsibility to create the necessary prerequisites in the system environment. This shall apply in particular with respect to the installation of new versions of the operating system or other third-party software necessary for using the new release versions, patches and workarounds.
- 9.5 Patches, workarounds and new release versions**  
The client shall inspect new release versions, patches and workarounds for completeness of the delivery and apparent faults without delay after receipt and shall immediately notify AGILITA of any defects.

- 9.7 Reporting of errors**  
The client shall notify AGILITA via the support of any error in the Software to be maintained, providing such information as can be gathered by the client with reasonable effort and is useful for an analysis of the error
- 9.8 Third-party enterprises**  
Where it is not clear which system component provokes a malfunction, the client shall jointly with AGILITA personnel perform an analysis of the system environment of the Software and, if necessary, at its own expense involve third-party enterprises having the necessary know-how of the system environment
- 9.9 Remote access**  
To give AGILITA remote access to the Software to be maintained and its system environment, the client shall at its own expense provide the technical infrastructure installations required on its side (e.g. lines, modems) and keep them available for the term of the Maintenance Agreement.
- 9.10 Data backup**  
Proper data backups are the client's responsibility. Proper data backup shall include any and all technical and/or organisational measures which are required to ensure the availability, integrity and consistency of the IT systems, data and programmes affected by possible errors in the Software to be maintained and to enable the immediate or at least rapid restoration of the original condition.
- 10 Term and termination**
- 10.1 Term**  
The term of the Maintenance Agreement shall commence on the date of contract commencement specified in the Maintenance Agreement. If no such date of contract commencement is specified, the Maintenance Agreement shall commence upon conclusion of the Maintenance Agreement.
- 10.2 Termination**  
The Maintenance Agreement may be terminated by either party at the end of a calendar year by giving three months' written notice, however, for the first time at the end of the calendar year in which two full contract years have elapsed, counted from the date of commencement of the Maintenance Agreement. Partial termination of the Maintenance Agreement is not admissible.
- 10.3 Termination for an important reason**  
Termination for an important reason shall not be affected by the above provision.
- 11 Remuneration and adjustment of the remuneration**
- 11.1 Annual remuneration**  
The client shall pay AGILITA the initial annual maintenance flat rate stated in the Software Maintenance Agreement.
- 11.2 Maintenance flat rate**  
If no initial annual maintenance flat rate is stated in the Maintenance Agreement, the flat rate shall be 20% of the net list price of the Software covered by the Maintenance Agreement which is valid at the time of conclusion of the Maintenance Agreement.
- 11.3 Price increases – maintenance flat rate**  
AGILITA shall be entitled to increase the annual maintenance flat rate at the beginning of each new contract year by up to 5% referred to the maintenance flat rate of the preceding contract year.
- 11.4 Price increases – extension of use**  
The provision of Section 11.3 shall not apply to price increases that are based on an extension of use by the client. In such a case, AGILITA shall be entitled to charge and invoice the maintenance flat rate for the extended use with immediate effect based on the list price of AGILITA valid at the time.
- 11.5 Invoicing of the maintenance fees**  
Unless otherwise agreed in the Software Maintenance Agreement, the maintenance fees shall be invoiced proportionally in the middle of each calendar year.
- 11.6 Supplementary payments**  
If the client wishes to conclude a Maintenance Agreement although it has licensed an outdated release version of the Software at that time (e.g. because the client has not concluded a Maintenance Agreement upon acquisition of the Software or has previously terminated an existing Maintenance Agreement), the client shall, in addition to the agreed maintenance flat rate, pay the supplementary payment amount agreed in the Maintenance Agreement as a one-off payment, so as to get to the current release version that is necessary at the start of the Agreement. The supplementary payment shall be payable in full upon the start of the Maintenance Agreement. Unless otherwise agreed in the Maintenance Agreement, the supplementary payment shall be equal to the amount that would have been payable to AGILITA for a Maintenance Agreement from the date of acquisition of the Software on or in case of uninterrupted continuation of the Maintenance Agreement. However, the client shall not be entitled to claim subsequent or repeated conclusion of a Maintenance Agreement with AGILITA.
- 12 Right of retention**  
AGILITA shall be entitled to withhold the maintenance services in full or in part if the client is in arrears with the payment of any agreed maintenance fees for more than 30 days. Further rights shall remain unaffected.
- 13 Obligation to examine and to give notice of defects**
- 13.1 Obligation to examine**  
Upon receipt of a delivery, the client shall immediately inspect the delivery for completeness and defects and give notice of any defect to AGILITA without delay. The warranty cannot be claimed if the client fails to comply with its obligation to examine and give notice of defects. This shall also apply to hidden defects detected at a later time, from the time of detection.
- 13.2 Obligation to give notice of defect**  
The client shall explain any notice of defect by describing the defect precisely and comprehensibly and, on AGILITA's request, in writing.
- 14 Measurement**
- 14.1 Scope of use**  
In addition to the client's obligation in accordance with Section 5.6 to give notice of use beyond the agreed scope, the parties agree that the licensed Software shall be measured once a year. In addition to the measurement, the client shall on AGILITA's written request confirm to AGILITA in writing the actual scope of use, e.g. that the licensed Software is and was used only within the bounds of the intended use according to contract.
- 14.2 Annual measurement**  
The installations and the usage volume of the Software shall be measured once in each calendar year. To this end, the client shall start a routine of the Software and transmit the measuring results to AGILITA, or AGILITA shall, after consultation with the client, take the measurement via remote access.
- 14.3 Right to supplementary claim**  
If a measurement or a confirmation by the client shows any use of the products beyond the agreed scope, AGILITA shall be entitled to subsequently claim the licence fees payable for such use beyond the agreed scope in accordance with the then-current AGILITA list price pursuant to Section 5.5.
- 15 Client's claims for defects**
- 15.1 Material defects**
- 15.1.1 Warranty**  
AGILITA shall warrant the contractually agreed condition of a delivery or service at the time of passing of the risk to the client.
- 15.1.2 Material defect**  
If at the time of passing of the risk to the client there is a material defect in the delivery or service of AGILITA, AGILITA shall at its option be entitled to rectify the material defect either by new delivery or by means of rectification (subsequent improvement).

**15.1.4 Rectification of material defects**  
A material defect may at AGILITA's option also be rectified by AGILITA giving the client reasonable instructions by telephone, in text or in electronic format detailing how the material defect can be avoided.

**15.1.5 Withdrawal or reduction**  
If AGILITA cannot rectify a material defect within a reasonable period of time or if subsequent improvement or new delivery is to be regarded as having failed for any other reason, the client may at its option withdraw from the Agreement or reduce the remuneration. In the case of a continuing obligation (e.g. a Maintenance Agreement), the client 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 these actions or unreasonably delays them or if other particular circumstances apply that make it unacceptable to the client to wait any longer.

**15.1.6 No material defect**  
Should it be found during the fault-finding process that there was no material defect in the delivery or service of AGILITA at the time of passing of the risk, AGILITA shall be entitled to charge the client for the expenditure incurred for error analysis and error handling in accordance with the price list of AGILITA for services valid at the time. This shall apply in particular if the error reported is based on unsuitable or improper operation, faulty installation by the client or any third party commissioned by the client, use of the Software in a non-agreed system environment or improper intervention by the client or any third party commissioned by the client into the delivery or service of AGILITA (e.g. for the purpose of error correction).

**15.1.7 Period allowed for giving notice of defects**  
Notice of a defect shall be given without delay after detection in accordance with Sections 13.1 and 13.2. Warranty claims shall become statute-barred one year after overall acceptance. With the exception of claims for damages, warranty claims based on material defects shall become statute-barred after one year. The period of limitation shall commence at the time of delivery of the Software. After rectification of a defect claimed, the periods of time for the rectified part shall start running anew. Fraudulently concealed defects can be claimed within a period of ten years after overall acceptance.

**15.1.8 Deviating guarantees**  
Deviating guarantees for third-party products shall be regulated in the contractual document.

## **15.2 Client's duty to cooperate**

**15.2.1 Duty to cooperate**  
The client shall without delay give AGILITA notice of material defects detected, stating the kind of the material defect and, where applicable, the programme flow during which the material defect occurs. The client shall support AGILITA free of charge to the necessary extent in error search and error handling, in particular provide the data, information and files necessary for the handling of a material defect, and in the case of a defect in Software delivered take those measures on its side that are necessary to enable AGILITA, if needed, to access the Software and its respective system environment also via remote access

**15.2.2 New installation**  
In the case of a Software defect, the client shall take over, and install at its own expense, a new version of the Software delivered by AGILITA, provided that the intended range of functions is preserved and the installation does not cause unreasonable adjustment or conversion problems to the client.

## **15.3 Defects of title**

**15.3.1 Property right infringement by AGILITA**  
Where use as intended of the deliveries or services of AGILITA causes any infringement of copyright or other industrial property rights, AGILITA shall at its own expense and its own option either provide the client with the right to continue the intended use or alter or

replace the delivery or service in a way acceptable to the client in such a way that the infringement no longer exists.

Should this not be possible at economically reasonable conditions or within a reasonable period of time, the client shall be entitled to withdraw from the Agreement – in the case of a Maintenance Agreement, this right of withdrawal shall be replaced by the right to terminate the Agreement without notice.

Moreover, AGILITA shall indemnify the client from and against claims raised by the relevant property rights holder that are undisputed or have been determined without further legal recourse.

### **15.3.2 AGILITA's obligations**

The obligations of AGILITA mentioned in Section 15.3.1. above shall apply only i

- the client informs AGILITA without delay of any infringement of a property right claimed against the client;
- the client supports AGILITA to a reasonable extent in the defence against the claims raised; or
- the client enables AGILITA to change or replace the delivery or service;
- 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 client; and
- the property right infringement was not caused by the client having altered the delivery or service of AGILITA without authorisation or having used the delivery or service 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.

### **15.3.3 Legal defence**

Any necessary court and lawyer fees incurred by the client for the legal defence shall be charged to AGILITA.

### **15.3.4 Property right infringement by client**

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

## **16 Liability for damage**

### **16.1 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.

### **16.2 Elevated risks**

Specific agreements shall be made for elevated risks.

### **16.3 Loss of data**

In the context of the liability agreed here, AGILITA's liability for loss of data of the client shall be limited to that recovery expenditure that would have been incurred if the client had backed up the data on a regular basis and in a way appropriate to the risks.

## **17 Prices, prohibition of set-off**

### **17.1 Prices**

Except where otherwise stated, the applicable value added tax will be added to all prices, except where a sale is exempted from value added tax.

### **17.2 Discount**

Discounts are not allowed.

### 17.3 Prohibition of set-off

The client 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.

### 18 Subcontractors

AGILITA shall be entitled to involve subcontractors for services to be provided.

### 19 Secrecy, data privacy

#### 19.1 Secrecy

AGILITA and the client 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 client 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 individual contracts, software to be introduced, documentations, programmes and data) («**Confidential Information**»).

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.

#### 19.2 Data privacy

AGILITA shall comply with the provisions of the General Data Protection Regulation (GDPR). If AGILITA is given access to the client's EDP systems, this shall not be for the purpose of processing of personal data by AGILITA. Therefore, the client shall protect its personal data stored on its systems in such a way that AGILITA cannot access these data. Where processing of personal data by AGILITA for the purpose of performing a contract cannot be excluded, the client 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.

### 20 Written form

All agreements and legally relevant statements, including changes to all contracts concerning software, require written form to be valid. This also applies to the amendment of this written form clause itself.

### 21 Severability clause

Should any of the provisions of the Agreement become invalid or void, or should a gap be found in the Agreement, this shall not affect the validity of the other provisions of the Agreement. However, in such a case the contracting parties undertake to replace the invalid provision with a valid provision or to fill the gap with a provision coming as close as possible to the desired economic purpose.

### 22 Governing law and place of jurisdiction

The legal relationship shall be governed by German law, excluding application of conflict-of-law rules and of the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

The contracting parties agree that Berlin, Germany, shall be the place of jurisdiction. Unless provided otherwise in the Agreement, the place of fulfilment shall be the place where AGILITA has its registered office. However, AGILITA shall have the right to sue the client at the place of the client's registered office.

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