

## General Terms and Conditions of xSuite Group GmbH (GATC xSuite)

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## A) Licensing of Standard Software (Software License)

### 1. Subject Matter/Utilization Right

- 1.1. If the Customer purchases standard software programs (hereinafter referred to as "software" or "program") via xSuite on the basis of a purchase agreement, the terms of use and license terms of the respective software manufacturer or supplier (vendor) that xSuite passes on to the Customer when concluding the contract, and that xSuite encloses with the respective delivery, shall exclusively apply. The utilization contract is thus only concluded with the respective provider.
- 1.2. In the case of software developed by xSuite or if xSuite, as the supplier of the software, is the licensor, the Customer shall be granted the non-exclusive, permanent, functionally and regionally limited, transferable right to use the software and the associated documentation under the following conditions.
- 1.3. If the Parties agree on a test period, the utilization right specified in Section A. 1.2 will be limited to 3 months by means of protective technical mechanisms in the software. Upon expiry of the test period, and upon payment of the agreed remuneration, the Customer shall be granted a permanent utilization right.
- 1.4. The properties of the software are listed in the respective purchase agreement or in the enclosed program description. The price and the payment conditions for the software are also determined in the respective purchase agreement. The price lists of xSuite that are valid at the conclusion of the agreement plus any ancillary costs such as customs duty, packaging, delivery, and transport costs shall otherwise apply.
- 1.5. In these General Terms and Conditions, "utilization" refers to every permanent or temporary, full or partial reproduction (copying) by loading, displaying, running, transmitting, or storing the software for the purpose of executing it and processing the data it contains.
- 1.6. If the deployment of xSuite software necessitates licenses from other software manufacturers, e.g. operating systems, databases, or access rights for third-party systems, the Customer shall procure these and obtain the needed licenses. xSuite does not bear the costs or any liability for this.

### 2. Right of Reproduction and Access Protection

- 2.1. The Customer may reproduce the supplied software, insofar as the reproduction is necessary for using the program. In particular, necessary reproduction includes the installation of the program from the original storage medium to the mass storage medium of the deployed hardware and loading into the main memory.
- 2.2. Moreover, the Customer may reproduce the software for backup purposes. However, only one backup copy may be created and kept. This backup copy shall be identified as the backup copy of the licensed program.
- 2.3. If regular backups of all stored data are indispensable for data security reasons and to ensure quick reactivation of the computer system after a total failure, the Customer may create the needed number of backup copies. The storage media shall be accordingly identified. The backup copies may be used for archival purposes only.
- 2.4. The Customer shall not create other reproductions, e.g. by printing the program code on a printer or by photocopying the entire manual or major parts of it. Any additional manuals needed for employees shall be obtained via xSuite. In the event that the source code is provided to the Customer, the Customer shall not make it accessible to third parties in any form without the prior written approval of xSuite.

### 3. Limitation of the Scope of Use/Network Deployment

- 3.1. The Customer may deploy the software on all hardware owned exclusively by the Customer. If the Customer replaces the hardware, he must delete the programs from the hardware previously used. If the software is run at an external computing center, the Customer shall impose a corresponding obligation on the operator of the computing center.

- 3.2. The customer is authorized to use the software within one company network. The extended use outside this network and/or for third parties is subject to separate agreement with xSuite.
- 3.3. In client operation on an SAP system (identified by an SAP installation number = client) registered at SAP Deutschland AG & Co. KG or an SAP subsidiary or group company, the Customer is entitled to use the software via local network operation at one installation location. An extension of the use, e.g. to several clients, is subject to separate agreement with xSuite.
- 3.4. Concurrent storage, provision, or use on more than one hardware, or more than one network system as defined in the above Section is not permitted.
- 3.5. xSuite reserves the right to review whether software purchased under contract is being used properly, and in particular whether the customer uses the programs in accordance with the licenses purchased as regards quality and quantity. To these purposes, the customer must provide xSuite with information, i.e., perform the check itself. The customer is to allow xSuite to inspect relevant documents and papers upon request if xSuite deems it necessary. The hardware and software environment deployed at the customer may likewise be inspected by xSuite or by an auditing firm that has been chosen by both parties. If the review results in an excess of over 3% above the what has been licensed or any other sort of non-contractual use, then the customer must bear the costs of the audit; otherwise, xSuite will bear the costs. If the review reveals that actual use lies below or above the amount agreed upon contractually, then the parties will agree upon an adjustment of the contract as applies to future use.

#### **4. Decompilation and Program Modification**

- 4.1. Editing or modification of the source code is prohibited without the prior written approval of xSuite. Decompilation of the licensed program code to other code forms and other forms of reconstruction of the various manufacturing stages of the software (reverse engineering) as well as other program modifications are prohibited.
- 4.2. The Customer is authorized to connect the software with other intended computer programs (especially SAP) systems via the designated interfaces.
- 4.3. Removal of the copy protection or other similar mechanisms (especially technical license restrictions) is prohibited. However, if this protective mechanism impairs or prevents the error-free use of the program and xSuite does not eliminate the problem within a reasonable period, despite having been requested to do so, the Customer may remove the copy protection or the protective mechanism. The Customer bears the burden of proof that the protective mechanism impairs or prevents error-free use.
- 4.4. Copyright marks, serial numbers, and other characteristics serving the program identification shall not be removed or modified under any circumstances. The same applies to the suppression of the respective properties displayed on the screen.

#### **5. Transfer and Leasing**

- 5.1. The Customer may permanently transfer the software, including the user manual and other related material, to third parties, provided the obtaining third party acknowledges the continuation of the agreed terms of use, especially these General Terms and Conditions, toward the Customer and toward xSuite. In the event of a transfer, the Customer must also surrender all software copies, including any existing backup copies, to the new user or destroy copies not surrendered. Upon transfer, the old Customer's right to use the software expires.
- 5.2. The Customer may temporarily transfer the software, including the user manual and other related material, to third parties, provided this does not take place for leasing purposes for making profit. Section A. 5.1 shall apply accordingly.
- 5.3. The Customer shall not license the software to third parties if there is justified reason to suspect that the third party may violate the agreement terms, especially by way of unauthorized reproduction. This also applies to the Customer's employees.
- 5.4. The right to transfer the software according to Sections A. 5.1 and A. 5.2 is granted under the condition that xSuite will not incur any consequential costs of any kind (e.g., due to system-specific adaptations). Furthermore, xSuite shall not be liable for issues that the buyer encounters due to the fact that his system environment is different (i.e., not as agreed between the Customer and xSuite).

#### **6. Obligation to Exercise Due Care**

The Customer shall keep the original storage media supplied in a location secured against unauthorized third-party access, and clearly instruct his employees to comply with the provisions of this Agreement and copyright regulations.

#### **7. Information Obligations**

- 7.1. When licensing a program to third parties, the Customer is under the obligation to report the name and full address of the third party to xSuite in writing.

- 7.2. If the licensed programs include special software that is adapted to the hardware, operating systems, databases, or other applications of the Customer, the Customer shall report any change of the contractual system platform in writing to xSuite.
- 7.3. Regardless of the value of the licensed software, the Customer shall report the removal of a copy protection or a similar mechanism from the program code to xSuite in writing. The Customer shall provide a detailed description of the error that occurs while using the program for which such a program modification is permitted. The description obligation comprises a detailed portrayal of the error symptoms encountered, the suspected cause of the error, and in particular a comprehensive description of the implemented program modifications.

## 8. Warranty

- 8.1. The Agreement Parties acknowledge that it is not possible to develop software in such a way that it is free of errors in all possible deployment scenarios. For each software offered, xSuite shall provide an up-to-date program description that specifies the proper use and deployment conditions of the program.
- 8.2. xSuite guarantees the suitability for contractual use of the licensed software version, in accordance with the contractually-agreed properties. In the event of major deviations in the properties, xSuite shall be entitled and, unless disproportionate costs are involved, under the obligation, to rectify these. If xSuite is unable to rectify the deviations from the contractual properties or circumvent them in such a way that the Customer is able to use the program in the contractually intended way within a reasonable period, the Customer may request a reduction of the agreed remuneration. The rectification obligation ends 12 months after the delivery of the software, or 12 months after the end of an agreed test period.
- 8.3. The warranty does not cover defects caused by deployment conditions that are different from those intended for the program and described in the specifications.

## 9. Other Terms and Conditions

Additionally, the global terms and conditions pursuant to Part F shall apply.

## B) Software Maintenance Agreements

### 1. Subject Matter

- 1.1. The object of software maintenance agreements is the maintenance of standard software (hereinafter referred to as "software" or "program) supplied via xSuite under the conditions specified in the respective agreement (hereinafter referred to as "software maintenance agreement") for keeping the software operable for the customer, though interruptions of the operability are not excluded.
- 1.2. The maintenance does not comprise deployment consulting and special change services for the specific adaptation of the software to the needs of the Customer.
- 1.3. Maintenance services can only be provided if the license terms/terms of use of software that does not originate or was not supplied by xSuite, which the Customer is committed to, do not contain any limitations of the provision of this maintenance service, especially in the form of third-party editing rights. In the event of violations, the Customer indemnifies xSuite against all third-party claims in this regard.

### 2. Maintenance Service, Response and Service Times

Any maintenance services to be provided by xSuite within the scope of a software maintenance agreement include the following services:

- 2.1.1. Licensing of the latest released program version (in the form of service releases, updates) for the software specified in the software maintenance agreement. The license does not cover the installation or configuration of the software. If the Customer is not able to perform these himself, he shall order these services separately from xSuite.
- 2.1.2. Update of the software documentation.
- 2.1.3. Elimination of errors in the program code and in the documentation.
- 2.1.4. Consulting services for the Customer in writing and by phone in the event of problems in connection with errors that may need to be documented.
- 2.1.5. The phone consulting service (hotline) is available to the Customer on **workdays except Saturdays from 8 am to 6 pm CET/CEST**.
- 2.1.6. Error reports will be processed within the following response times and malfunction categories:

### **Category 1**

Malfunctions that do not enable operation or fully prevent operation. In this case, xSuite shall respond as quickly as possible, at the latest within 4 hours.

### **Category 2**

Malfunctions that substantially impair operation (basic functions are not operable). In this case, xSuite shall respond as quickly as possible, at the latest within 10 hours.

### **Category 3**

Malfunctions that impair operation to a minor extent or not at all. In this case, xSuite shall respond as quickly as possible, at the latest within 20 hours.

The response time is the time between the qualified error report pursuant to Section B. 5.2 and the commencement of the qualified processing of the incident by xSuite. The times stated above only apply during the availability of the hotline (workdays except Saturdays from 8 am to 6 pm CET/CEST).

Moreover, xSuite also provides the possibility of reporting errors via its Web portal on a 24/7 basis. However, errors reported via the Web portal will only be processed during the availability of the phone hotline, i.e. on workdays except Saturdays from 8 am to 6 pm CET/CEST; moreover, the response times only apply within these availability windows.

#### **2.2. The contractual maintenance services of xSuite do not include the following services:**

- 2.2.1. Maintenance services outside the said stand-by periods and on-site maintenance services.
- 2.2.2. Maintenance services that become necessary because the software is deployed on a different hardware system or a different operating system.
- 2.2.3. Maintenance services after unauthorized manipulation of the program code of the software on the part of the Customer.
- 2.2.4. Maintenance services concerning the interaction of the contractual software with other computer programs that do not constitute the object of the software maintenance agreement.
- 2.2.5. Support and consulting in the business process environment.

### **3. Remuneration**

- 3.1. The remuneration for the software maintenance depends on the respective software maintenance agreement, and will be billed in advance for one calendar year. The invoice amount is due for payment in advance, at the latest on the first workday of each accounting period. The pro-rata remuneration for a maintenance term prior to the first full accounting period will be billed on a pro-rata basis before the end of the year and is due for payment within 14 days from the issue of the invoice.
- 3.2. xSuite reserves the right to adjust the monthly remuneration with 3 months' prior notice. In the event of an increase of the maintenance fee by more than 7.5% within 12 months since the last assessment, the Customer shall be entitled to terminate the agreement with one month's prior notice, effective at the end of the month, before the increase comes into force.

### **4. Termination**

Unless otherwise agreed in an individual agreement, a software maintenance agreement is concluded for an indefinite term and can be terminated in writing with 4 months' notice, effective at the end of the calendar year.

### **5. Cooperation Obligations of the Customer**

- 5.1. The Customer shall have competent employees, who are trained in the product, install any services releases and updates supplied by xSuite on his system immediately upon delivery, in order to establish and maintain the latest software version.
- 5.2. The Customer must provide as many details as possible (qualification) in his error reports and/or inquiries. To this end, he must make use of competent employees who are trained for the respective product. In particular, a qualified report includes a precise specification/description of the malfunction. In turn, this includes information about the deployed software product, module, and release, a functional description of the error, the urgency and effects of a malfunction, and information about any changes in the system environment. Upon request by xSuite, the Customer shall also provide xSuite with all needed data, log files, minutes, and other information that may be needed for processing the incident.
- 5.3. Use of the Web portal developed by xSuite is recommended as the most efficient means of reporting, describing, isolating, and determining errors.

- 5.4. During needed test runs, the Customer shall be personally present or deploy competent employees who are trained in the product, and who are authorized to assess and decide on errors, functional extensions, functional curtailment, and changes in the program structure. If necessary, other operations with the computer systems shall be suspended during the maintenance work.
- 5.5. On request, the Customer shall grant xSuite access to his systems and programs via remote access. The Customer shall provide the needed connection on the Customer side in coordination with xSuite at his own expense.
- 5.6. The Customer shall ensure that competent employees who are trained in handling the system and the software are available during the agreement term. The Customer shall ensure that xSuite has free access to the systems and the software. At his own expense, the Customer shall make all required technical facilities including energy supply, phone lines, and data transfer lines available and keep them in an operable state for the term of the services at his own expense.
- 5.7. xSuite is relieved from its obligation to maintain the software as long as the Customer does not fulfill his cooperation obligations as stated above.
- 5.8. xSuite is entitled to deploy subcontractors to perform its obligations from software maintenance agreements.

## **6. Warranty**

- 6.1. xSuite guarantees that the maintenance services correspond to the agreed services pursuant to the software maintenance agreement. The Customer shall document any deficiency of the software maintenance results in a concrete error report according to Section B. 5.2. If xSuite is unable to eliminate substantial deviations from the agreed services within a reasonable period, the Customer shall grant xSuite a reasonable grace period. If xSuite is unable to rectify the deviations from the contractual properties or to circumvent them in such a way that the Customer is able to use the program in the contractually intended way within the grace period, the Customer may terminate the software maintenance agreement without prior notice. The same applies in the event that the software delivered by xSuite contains a proven bug.
- 6.2. The warranty ends 12 months after the acceptance of the service result, or, if no formal acceptance takes place, 12 months after the respective service result is commissioned or 12 months after the termination of the agreement. It does not cover errors or other defects resulting from a deviation of the contractually-agreed deployment conditions. The warranty does not apply if the Customer modifies the maintenance results or has them modified by third parties.

## **7. Other Terms and Conditions**

Additionally, the global terms and conditions pursuant to Part F shall apply

## **C) Hardware Purchase Agreements**

### **1. Subject Matter**

- 1.1. The object of hardware purchase agreements is the purchase of computer hardware including the associated documentation (hereinafter referred to as "hardware"), consisting of the devices, elements, and additional equipment listed in the respective purchase agreement, including the specified properties, characteristics, and other agreement terms and conditions and, if applicable, the date of delivery.
- 1.2. The Customer bears the responsibility for the selection of the hardware (including the results to be achieved by deploying such). xSuite thus expressly refuses to grant any guarantee of success.

### **2. Prices and Payment Conditions**

The price and the payment conditions for the hardware are determined in the respective purchase agreement. The price lists of xSuite that are valid at the conclusion of the agreement plus any ancillary costs such as customs duty, packaging, delivery, and transport costs shall otherwise apply.

### **3. Delivery, Inspection Duty, and Duty to Report Defects**

- 3.2. The exact delivery terms and data are determined in the respective purchase agreement.
- 3.3. The Customer shall inspect all delivered hardware, including the manuals and other documentation, within 8 workdays from delivery, in particular with regard to the completeness of storage media and manuals and the operability of basic program functions. Detected or detectable defects shall be reported to xSuite within the following 8 workdays in writing in the form of a detailed defect report. The description of the defect in the defect report shall be as detailed as possible.
- 3.4. Defects that cannot be identified within the scope of the described due inspection must be reported within 8 workdays after they are discovered, adhering to the reporting requirements specified in the preceding Section.
- 3.5. In the event of violation of the inspection and reporting obligation, the hardware will be deemed approved, despite the respective defect.

- 3.6. On request of the Customer, xSuite is prepared to duly dispose of old hardware or packaging material of the products it delivers. Details shall be governed by the respective purchase agreement and the legal requirements.

#### 4. Withdrawal Right of xSuite

- 4.1. xSuite shall be entitled to withdraw from an agreement if the performance obligation involves hardware or service results of other companies (suppliers) that xSuite itself must procure from another supplier and this supplier, after the conclusion of the agreement, refuses to provide his services or makes his services contingent upon materially changed or new conditions or considerations that xSuite could not have foreseen when concluding the respective agreement with the Customer. In such cases, xSuite must declare its withdrawal without delay and refund any considerations of the Customer to the Customer without delay.
- 4.2. Moreover, xSuite may withdraw from a purchase agreement and request delivered products to be returned under the conditions specified in Section 323 ff of the German Civil Code (BGB), especially if the Customer is still in default of payment of more than 10% of the purchase price even after the expiry of a grace period granted after the due date.

#### 5. Hardware Setup

- 5.1. If, and to the extent that xSuite has assumed a contractual obligation to set up the hardware, the Customer shall specify the set-up location in the purchase agreement. The Customer shall specify the set-up and connection requirements in documentation to be provided to xSuite prior to the conclusion of the agreement.
- 5.2. The Customer shall meet the spatial, technical, and other set-up and connection requirements up to the agreed delivery data, in order to enable xSuite to make the hardware ready for operation.
- 5.3. The Customer shall duly provide xSuite with information and advice about any later changes or additions. When setting up the hardware and making it ready for operation, xSuite is not responsible for connecting the delivered hardware to other devices or programs. Upon completion of the set-up work, xSuite will promptly inform the Customer that the hardware is ready for operation.

#### 6. Operating System Software

If operating systems are also part of the purchase agreement, along with the delivery of the hardware, these are only intended for the contractual operation of the hardware. To this extent, the provisions for the licensing of software pursuant to Section A. 1.2 of these General Agreement Terms and Conditions shall not apply. The rights that xSuite transfers to the Customer are limited to the rights associated with the delivery of the hardware, which are granted to xSuite by the operating system manufacturer and/or supplier. The required utilization agreement is realized exclusively with the respective operating system manufacturer and/or hardware supplier. Any advanced utilization is subject to the approval of the manufacturer and/or supplier of the respective operating system.

#### 7. Warranty for Defects

- 7.1. xSuite **guarantees** that the hardware has the properties described in the purchase agreement. If the properties of the hardware are not agreed in detail, xSuite guarantees that the hardware is suitable for the utilization purpose assumed under the agreement, or, if no specific utilization purpose is assumed under the agreement, that it is suitable for general utilization and has properties that are typical for hardware of the same type and can be expected by the Customer; a minor reduction of the value or suitability shall not be taken into account. xSuite does not provide any further warranty.
- 7.2. The warranty term for new hardware is 12 months, beginning from the date of delivery of the hardware. Second-hand hardware is always sold without any warranty. For tested and refurbished second-hand items, xSuite provides a 6-month warranty.
- 7.3. The Customer shall report any defects arising during the warranty term to xSuite with all discernible details, if possible in reproducible form. In this connection, the Customer shall observe the problem analysis and error elimination instructions of xSuite within the reasonable scope.
- 7.4. xSuite shall begin with the defect-elimination activities in adequate time limit. xSuite shall eliminate duly reported defects prior to the expiry of the warranty term, at its own expense. Should it be revealed out that xSuite is not responsible for a reported defect, xSuite may request time-based remuneration for its work, on the basis of the price list that is valid at the particular time. If the Customer moves purchased products to a location other than his headquarters after the delivery, he shall, if the relocation of the products does not correspond to their intended use, bear the additional expenses incurred within the scope of the supplemental performance.
- 7.5. The warranty does not cover the elimination of defects resulting from normal wear, external influences, or incorrect handling. The warranty does not apply if the Customer modifies devices, elements, or additional equipment, or has them modified by third parties without the approval of xSuite, unless the Customer produces evidence that the particular defects were not completely or partly caused by such modifications and that the modifications will not make the elimination of the defects more difficult. If the reported defect proves to be the result of a handling, operation, or input error, if it was caused by utilization in breach of the agreement with an unreleased operating system or in combination with other non-xSuite programs, or if control measures were not observed, xSuite shall be exempted from the warranty

obligation. This also applies to cases in which the rectification work of xSuite is impeded, impaired, or if its scope is expanded to an extent that is not merely negligible.

- 7.6. Within the scope of its warranty obligation, xSuite may repair or replace faulty devices, elements, additional equipment, or parts. Prior to the replacement, the Customer shall remove programs (including his application programs), data, storage media, modifications, and extensions to the extent necessary for this purpose. The Customer shall give xSuite the needed time and opportunity for the supplemental performance. The claim to supplemental performance is excluded if the supplemental performance would involve disproportionate costs for xSuite. Parts replaced in the course of the supplemental performance shall be property of xSuite, provided the retention of title to the hardware itself is still valid.
- 7.7. If possible and appropriate with respect to the effects of the defect, xSuite shall provide a temporary workaround to circumvent the defect until the final elimination; the workaround may also consist of the provision of a comparable fallback system.
- 7.8. In the event of the failure or unacceptability of the supplemental performance, the Customer may cancel the agreement (withdrawal) or reduce the purchase price (reduction).

## 8. Other Terms and Conditions

Additionally, the global terms and conditions pursuant to Part F shall apply.

## D) Hardware Maintenance Agreements

### 1. Subject Matter

- 1.1. The object of hardware maintenance agreements comprises the hardware specified in the respective individual agreement. The maintenance includes the elimination of hardware errors upon request of the Customer (repair). The maintenance serves to keep the hardware operable, but does not include a guarantee that the hardware will always be functional.
- 1.2. The maintenance obligations of xSuite apply to the set-up location specified in the service agreement. If the Customer later wants to set up all or part of the hardware at other locations, he shall inform xSuite of this in advance in writing. xSuite may only refuse its consent to performing the maintenance at other set-up locations in the Federal Republic of Germany for good cause. xSuite may request that specialists designated by xSuite be involved in the transport and installation work associated with a change of the set-up location. All direct expenses and ensuing costs for xSuite that are directly associated with the change of the set-up location shall be borne by the Customer.

### 2. Scope of Service

- 2.1. During the service times outlined in Section D. 3, xSuite shall repair the hardware upon request of the Customer.
  - 2.1.1. For this purpose, xSuite operates a hotline-based troubleshooting service that enables xSuite to respond to inquiries of the Customer within no more than four hours in order to provide the Customer with diagnostic support and consulting services on the basis of the Customer's error report.
  - 2.1.2. If the error cannot be eliminated immediately by means of phone support, xSuite shall, within the response time specified in the service agreement, start the repair work at the set-up location and continue until the operational readiness is restored.
  - 2.1.3. The response times for on-site services are as follows:
    - 24 hours in the event of total failure (use of the affected hardware is no longer possible = 100%)
    - 48 hours in the event of severe errors (use of the affected hardware is only possible under considerable operational limitations = at least 75%)
    - 120 hours in the event of minor errors and damages (use is possible with operational limitations = 0 to 75%)
  - 2.1.4. The obligation to perform repair work does not apply, if it turns out that the operational readiness cannot be restored, or if this would incur disproportionate expenses. The expenses are deemed to be disproportionate if the total personnel and/or material costs incurred by xSuite would exceed 100% of the value of the hardware item to be repaired.
- 2.2. For the maintenance work, xSuite shall deploy qualified personnel who are familiar with the properties of system type used by the Customer. xSuite shall provide maintenance material, tools, documentation, diagnosis equipment, and other utilities in the required scope at its own expense.
- 2.3. For repair work during the service times, xSuite shall bear all costs associated with the dispatch, deployment, and accommodation of his personnel and with the repair or replacement of parts, provided the errors occurred within the scope of the proper use of the hardware.

- 2.4. Parts delivered for replacement shall be new or refurbished and in a sound, fully-functional state. The replaced parts shall remain property of xSuite, unless the Customer purchases the replaced parts. The Customer assures that this replacement and transfer of title is not hindered by any third-party rights.
- 2.5. The maintenance services do not include:
  - 2.5.1. Repair work outside the service times specified in Section D.3.
  - 2.5.2. Measures for eliminating errors caused by handling errors, other improper treatment, technical manipulations by the Customer or third parties, or external influences for which xSuite is not responsible.
  - 2.5.3. Costs of replacement parts subject to special wear and storage media. Wear-and-tear parts are usually designated as such by the respective hardware manufacturer.
  - 2.5.4. Maintenance of accessories not listed in the service agreement, modifications, extensions, or other equipment.
  - 2.5.5. Electrical work outside the hardware
- 2.6. Upon request by the Customer, xSuite shall provide additional services of the type specified in the above paragraph within a reasonable time, provided enough maintenance personnel is available at the particular time and the maintenance conditions at the Customer are not unacceptable. All personnel, travel, accommodation, and material costs incurred within the scope of such additional services shall be billed according to the generally applicable rates of xSuite quoted in the price list, irrespective of the remuneration specified in the service agreement.
- 2.7. xSuite shall record the type and duration of the maintenance work in service reports that shall be countersigned by the Customer, and store these data in a database for later use.
- 2.8. If there are several technical repair options, xSuite shall be entitled to select the most inexpensive option. If the Customer wishes a technical solution that is more expensive than the one selected by xSuite, he shall bear the incurred additional costs.
- 2.9. Under these General Agreement Terms and Conditions, xSuite shall be under no obligation to eliminate an error if the Customer has implemented changes or extensions to the devices without the approval of xSuite or if the devices have been manipulated by personnel not authorized by xSuite, unless the Customer provides evidence that the error was not caused by such circumstances.
- 2.10. xSuite may engage and fully or partly deploy subcontractors for the performance of the maintenance work.

### 3. Service Times

Maintenance services will be provided on **workdays except Saturdays from 9 am to 5 pm CET/CEST**. Any additional service times must be agreed separately in the service agreement. The service times agreed in the service agreement may be changed by both Agreement Parties by written announcement with 6 weeks' prior notice, effective at the end of the quarter.

### 4. Remuneration

- 4.1. The remuneration for the hardware maintenance depends on the respective service agreement and will be billed in advance for 12 months. The invoice amount is due for payment in advance, at the latest on the first workday of each accounting period. The pro-rata remuneration for a maintenance term prior to the first full accounting period will be billed on a pro-rata basis and is due for payment within 14 days from the issue of the invoice.
- 4.2. xSuite reserves the right to adjust the monthly remuneration with 3 months' prior notice. In the event of an increase of the maintenance fee by more than 7.5% within 12 months since the last assessment, the Customer shall be entitled to terminate the agreement with one month's prior notice, effective at the end of the month, before the increase comes into force.

### 5. Cooperation Obligations of the Customer

- 5.1. While using the hardware and reporting and isolating errors, the Customer shall follow the operating instructions and other information of xSuite. Within a reasonable scope, the Customer shall take any needed measures to facilitate the identification of the errors and their causes and shorten repeated runs.
- 5.2. The Customer shall give xSuite the needed time and opportunity to perform the maintenance work. In particular, xSuite shall be granted free access to the hardware and the needed space for storing devices, tools, spare parts, etc. The Customer shall keep all technical equipment needed for the maintenance (including phone lines and data transfer connection) in a functional state and make these available to the maintenance personnel of xSuite free of charge and in an adequate scope.
- 5.3. Upon request by xSuite, the Customer shall designate a representative who is familiar with the hardware, its programs, and workflows as competent contact partner for the support of the maintenance personnel at the set-up location.

- 5.4. Before parts or devices are replaced, the Customer shall, upon request of xSuite, promptly remove and back up programs, data, storage media, changes, and installations.
- 5.5. xSuite is relieved from its maintenance obligation as long as the Customer does not fulfill his cooperation obligations as stated above.

## 6. Warranty

- 6.1. xSuite guarantees that the maintenance services correspond to the agreed services pursuant to the service agreement. The Customer shall document any deficiency of the maintenance results in an error report that shall be as concrete as possible. If xSuite is unable to eliminate substantial deviations from the agreed services within a reasonable period, the Customer shall grant xSuite a reasonable grace period. If xSuite is unable to rectify the deviations from the contractual properties or to circumvent them in such a way that the Customer is able to use the hardware in the contractually intended way within the grace period, the Customer may terminate the service agreement without prior notice.
- 6.2. The warranty ends 12 months after the acceptance of the service result, or, if no formal acceptance takes place, 12 months after the respective service result is commissioned, but no later than 12 months after the termination of the agreement. It does not cover errors or other defects resulting from a deviation of the contractually agreed deployment conditions. The warranty does not apply if the Customer modifies the maintenance results or has them modified by third parties.

## 7. Termination

Unless otherwise agreed in an individual agreement, a maintenance agreement is concluded with xSuite for an indefinite term and can be terminated in writing with 4 months' notice, effective at the end of the calendar year.

## 8. Other Terms and Conditions

Additionally, the global terms and conditions pursuant to Part F shall apply.

## E) Agreements for General IT Services

### 1. Subject Matter

- 1.1. General IT services by xSuite shall be governed by an xSuite service agreement between the Parties and these General Terms and Conditions.
- 1.2. xSuite shall provide consulting services and other services to the best of its knowledge, according to the specifications of the standard determined for the particular software, and for the purpose of enabling the Customer to work with his hardware and software according to the specifications of the scope of service agreed in the respective individual agreement, but without providing any guarantee for the success of the services. The Customer always bears responsibility for the project and its success.
- 1.3. xSuite may engage and fully or partly deploy subcontractors for the provision of the IT services.

### 2. Collaboration between the Parties to the Agreement

- 2.1. The Customer shall exclusively communicate wishes concerning the services to be provided to the contact person designated by xSuite in the agreement, and not issue any orders to the other persons deployed by xSuite.
- 2.2. If a person deployed by xSuite for the performance of the agreement is replaced by another person at the request of the Customer, and if this person needs to be trained, the costs shall be borne by the Customer. In its selection, xSuite shall take the interests of the Customer into consideration to a reasonable extent.
- 2.3. The Customer may request the replacement of a person deployed by xSuite for the performance of the agreement if this person repeatedly becomes guilty of serious violations of contractual duties. The costs incurred due to this replacement shall be borne by xSuite.

### 3. Rights to the Physical Service Results

- 3.1. xSuite grants the Customer the non-exclusive, permanent, and transferable right to use the physical service results provided within the scope of the service agreement in accordance with the purpose and utilization area of the agreement. These rights include the agreed intermediate results, training documents, and utilities.
- 3.2. Deviations from these terms of use must be agreed in the respective service agreement.

### 4. Cooperation of the Customer

- 4.1. The Customer shall support xSuite within reasonable scope in the provision of the contractual services. In particular, the Customer shall duly provide xSuite with all required documents. Any additional cooperation obligations must be agreed separately in the agreement.

- 4.2. Before and during the provision of services, the Customer shall be responsible for data backups.

## 5. Remuneration

- 5.1. Unless otherwise agreed, a time-based remuneration agreed in the agreement represents the compensation for the time spent for the provision of the contractual services. Material expenses shall be remunerated separately. Waiting periods of xSuite for which the Customer is responsible shall be remunerated like working time. Unless otherwise agreed, xSuite will issue monthly invoices in arrears. A time-based remuneration shall be due upon receipt of an auditable invoice and the service report signed by xSuite and approved and countersigned by the Customer, provided no other form of service report has been agreed. The records of the project staff member of xSuite and the resulting reports from the service recording system of xSuite, which shall be enclosed as annex to the invoice, shall constitute the basis for the remuneration for activities that take place outside the facilities of the Customer.
- 5.2. The service reports of xSuite shall also be deemed approved, if and to the extent that the Customer does not assert any objections within 14 calendar days after receiving them. If an upper limit is determined for an agreed time-based remuneration, xSuite shall render its services in full even if this limit is reached.
- 5.3. A fixed price agreed in the agreement represents the compensation for all contractual services which become due upon full provision of the service. The amount shall only become due upon receipt of an auditable invoice.
- 5.4. Travel times, travel costs, and ancillary costs shall be remunerated according to the valid price list of xSuite.

## 6. Service Changes

- 6.1. After the conclusion of the agreement, the Customer may request xSuite to implement changes to the services within the scope of capacity of xSuite, unless this is unacceptable for xSuite. The change procedure is subject to individual written agreement between the Parties.
- 6.2. xSuite shall review the Customer's change request and inform him within 10 workdays whether the change request is unacceptable or unfeasible for xSuite. If the change request is acceptable and feasible, xSuite shall also provide information as to whether or not a comprehensive review is necessary.
- 6.3. If a comprehensive review of the change request is necessary, xSuite shall also submit an offer for the review with details about the remuneration. The Customer shall either place or reject the review order within 10 workdays. If a comprehensive review of the change request is not necessary, xSuite shall either submit a realization offer with details about the performance period, planned dates, and effects on the remuneration, or agree the implementation of the requested changes.
- 6.4. The Customer shall either accept or reject the realization offer of xSuite within the period during which the offer is binding. Agreed service changes must be documented in binding form by adapting the agreement.
- 6.5. The Customer and xSuite may agree that the services affected by the request for change are to be suspended until the needed amendments are made to the contractual provisions.
- 6.6. If the needed adaptation of the contractual provisions does not take place within the period during which the realization offer is binding, the work shall be continued on the basis of the existing agreement. The performance periods shall be extended by the number of workdays on which the work was interrupted due to the change request, or due to the review of the change request. For the duration of the interruption, xSuite may request the agreed time-based remuneration or an appropriate increase of the agreed fixed price, unless xSuite has deployed its employees who are affected by the interruption elsewhere, or has maliciously refrained from deploying them.

## 7. Deficient Performance, Reporting Obligation

- 7.1. If a service is not rendered in a contractual manner, or if it is deficient for reasons for which xSuite is responsible, xSuite shall render the service in a contractual manner within a reasonable period, without any additional costs for the Customer. This is conditional upon a report by the Customer, which shall be submitted without delay, at the latest within 2 weeks after learning of the deficiency. If the contractual provision of material parts of the service of xSuite cannot be rendered despite an expressly specified reasonable grace period, the Customer shall be entitled to terminate the agreement with immediate effect.
- 7.2. The right to termination with immediate effect for good cause remains unaffected.
- 7.3. xSuite shall always be entitled to remuneration for the services rendered under the agreement until the termination takes effect. However, the remuneration shall not be due for services for which the Customer states, within 4 weeks after notice of termination is served, that he does not need them.
- 7.4. Further claims of the Customer due to deficient performance are excluded. This exclusion does not apply in the event of intention, gross negligence, and injury to life, body, and health.

## 8. Other Terms and Conditions

Additionally, the global terms and conditions pursuant to Part F shall apply.

## F) Global Terms and Conditions for All Aforesaid Agreements

### 1. Applicability of the Terms and Conditions

All agreements, supplies, and services are exclusively concluded pursuant to the provisions of these General Agreement Terms and Conditions (GATC). Opposing terms and conditions of the Customer shall only apply if expressly acknowledged by xSuite in writing. Silence on the part of xSuite does not constitute an acknowledgment, even if such terms and conditions are received.

These General Terms and Conditions shall apply unless otherwise agreed in the respective individual agreement.

### 2. Contract Conclusion

Information from xSuite in brochures, ads, etc. is provided without any commitment. Offers by xSuite are not binding and are subject to revocation. If the Customer submits a purchase order on the basis of an offer of xSuite, the Customer shall be bound to this offer for 6 weeks. The agreement only becomes binding upon written acceptance of the purchase order by xSuite.

### 3. Prices and Payment Conditions

All prices and remunerations agreed with xSuite are net prices, which are subject to legal VAT. Unless otherwise regulated in the respective agreement or the above terms and conditions, supplies and services shall become due for payment without any deductions when the invoice is issued. xSuite does not accept bills of exchange.

### 4. Retention of Title

- 4.1. All products delivered by xSuite remain the unlimited property of xSuite until the Customer pays the purchase price in full, or, if payment is made by check, until its amount is credited to an account of xSuite.
- 4.2. The retention of title shall apply even if the products are installed and/or further processed and/or treated by the Customer (extended retention of title), subject to the following provisions:
  - 4.2.1. The processing or alteration of the delivered products by the Customer is always performed on behalf of xSuite, yet without imposing any obligation on xSuite. If a product is processed with other items that do not belong to xSuite, xSuite will become the co-owner of the new object in the ratio of the value of the delivered product (total invoice amount including VAT) to the other processed items at the time of the processing. The new object that results from the processing is otherwise subject to the same provisions as products delivered with retention of title.
  - 4.2.2. If delivered products are inseparably merged with other items that do not belong to xSuite, xSuite shall become co-owner of the new object in the ratio of the value of the product (total invoice amount including VAT) to the other merged items at the time of the blending. In case the blending takes place in such a way that the object of the Customer must be considered as the main object, the Parties agree that the Customer shall transfer pro-rata co-ownership to xSuite. The Customer shall keep the sole property or joint property that arises in this way for xSuite at his own expense.
- 4.3. In the event of culpable default of payment of the Customer or in the event of material violations of the obligation to exercise diligence and care, the assertion of retention of title by xSuite shall not be deemed as a withdrawal from the agreement, unless xSuite expressly communicates this to the Customer.
- 4.4. The Customer's right to continue to use the products expires when xSuite asserts retention of title. In this case, all program copies made by the Customer must be surrendered to xSuite or deleted.

### 5. Delivery Dates, Consequences of Default

- 5.1. Delivery dates specified in agreements are not binding. Upon expiry of a non-binding delivery period of 4 weeks, the Customer may request delivery from xSuite within a reasonable period. Default of delivery can be instituted with this reminder.
- 5.2. If xSuite is in default of performance of a material obligation, the Customer may only withdraw from the agreement or request compensation of damages due to non-performance if he previously granted, in writing, a grace period for the fulfillment or rectification and this period expired without success.

### 6. Liability for Violations of Obligations

- 6.1. xSuite shall not be liable for violations of obligations for which it is not responsible.
- 6.2. xSuite is fully liable for damages from injury to life, body, or health due to negligent violation of obligations on the part of xSuite, or intentional or negligent violation of obligations on the part of a legal representative or agent of xSuite.

- 6.3. For other liability claims, xSuite is only fully liable for non-existence of a guaranteed property or obligation and for intentional acts and gross negligence, also on the part of its legal representatives and executive staff. For violations by other agents, the liability of xSuite is limited to the scope of liability for slight negligence pursuant to Section F 6.4 of these liability clauses.
- 6.4. xSuite is only liable for slight negligence if an obligation is violated whose compliance is especially important for the achievement of the objective of the agreement (cardinal obligation). In the event of violation of a cardinal obligation, the liability amount is limited to three times the agreed purchase price, the agreed remuneration, or the monthly maintenance fee; moreover, the liability is limited to damages whose occurrence can typically be expected within the scope of the conclusion of the agreement. The same limitations also apply to indirect or consequential damages that were not foreseeable for xSuite. Moreover, if the damage incident is covered by the third-party liability insurance of xSuite, the obligation to pay compensation is limited to the insurance benefits.
- 6.5. The liability for loss of data is limited to the typical recovery expenses that would have been incurred if regular and risk-oriented backups had been created.
- 6.6. The aforesaid provisions also apply to the employees, representatives, or agents deployed by xSuite.
- 6.7. This does not affect the liability under the German Product Liability Act (Section 14 ProdHaftG).

## 7. Offsetting

Only undisputed or legally established claims of the Customer may be offset against claims of xSuite from agreements.

## 8. Third-Party Intellectual Property Rights

- 8.1. If a third party asserts claims against the Customer due to the violation of intellectual property rights arising from the use of the supplied products or the provision of service results, and if this impairs or prohibits their use, the liability of xSuite shall be as follows:
- 8.2. At its own discretion and expense, xSuite shall either modify the supplied products and/or services or replace them in such a way that they do not violate the intellectual property right, but nevertheless correspond by and large to the agreed properties and functions in a manner that is acceptable for the Customer, or discharge the Customer from license fees to the owner of the intellectual property rights or third parties. If xSuite is not able to do this under reasonable conditions, xSuite shall take the products back and refund the remuneration paid, less an amount in consideration for the time it was used. In this case, the Customer must return the products.
- 8.3. The liability of xSuite according to the preceding Section shall only apply if the Customer informs xSuite of third-party claims without delay, does not acknowledge the alleged violation of intellectual property rights, and either leaves any dispute, including any extrajudicial settlement to xSuite or conducts such only with the approval of xSuite. xSuite shall bear the court and legal expenses that the Customer incurs from the legal defense.
- 8.4. Should the Customer suspend use in order to contain the damage or for other important reasons, he must inform the third party that the suspension of use does not represent an acknowledgement of the alleged violation of intellectual property rights.
- 8.5. Any claims against xSuite are excluded, to the extent that the Customer himself is responsible for the violation of intellectual property rights.
- 8.6. Further claims of the Customer due to violation of third-party intellectual property rights are excluded. This exclusion does not apply in the event of intention, gross negligence, and injury to life, body, and health.
- 8.7. The Customer shall do everything in his power to assist xSuite with information and in other forms for the purpose of fending off or settling a claim.

## 9. Confidentiality and Data Protection

- 9.1. The Agreement Parties shall treat the information and documents received from each other at the conclusion and during the performance of the Agreement, which are not evident (confidential information), as strictly confidential and take all needed measures to prevent third-party access and utilization. In particular, this applies to all information about internal concerns of the other Agreement Party. Confidential information may also be information that becomes known during an oral presentation or discussion and that is designated as confidential. Confidential information may be used exclusively for the purpose of providing the contractual services. These obligations shall continue even after the Agreement is terminated.
- 9.2. The confidentiality obligation does not apply to information that is already legally known to the other Agreement Party, or that becomes known outside the scope of this Agreement without any violation of a confidentiality duty.
- 9.3. The employees of the Agreement Parties that come into contact with information and documents that must be kept confidential shall be bound to confidentiality, provided this obligation has not already been imposed on them in their

employment contracts. The same applies to agents of the Agreement Parties. The disclosure of information to third parties is subject to the prior written approval of the other Agreement Party.

- 9.4. Upon termination of this Agreement, each Agreement Party shall, at the option of the other Agreement Party, immediately destroy internal business information and business secrets of the other Agreement Party and promptly confirm this in writing upon request of the other Agreement Party or return them to the other Agreement Party without retaining copies in any form.
- 9.5. By means of these terms and conditions, the Customer is informed that xSuite will store and process his data for the performance of the Agreement. **By acknowledging these General Agreement Terms and Conditions, the Customer consents to this.**
- 9.6. The Parties to the Agreement undertake to observe and comply with the legal provisions on data protection in their business operations. The Agreement Parties shall impose the same obligations on their employees and other persons that come into contact with the products.

## 10. Export Regulations

If the Customer intends to export products supplied by xSuite in any way, he shall comply with the export regulations of Germany and the import regulations of the country the products are to be exported to (e.g., USA).

## 11. Miscellaneous

- 11.1. To be legally valid, all amendments and supplements to these Agreement terms or the underlying individual agreements, including the enclosed Annexes, are subject to the written approval of both Agreement Parties. Any change to the clause requiring written form must also be made in writing.
- 11.2. **The requirement for written form shall be deemed fulfilled if it is implemented in electronic form. The Parties to the Agreement expressly agree to the (additional) use of unencrypted e-mail communication.**
- 11.3. All legal relationships between xSuite and the Customer shall be governed exclusively by the laws of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply. Only the German version of the General Agreement Terms and Conditions is legally valid and binding. Any translation merely serves as information for the Customer.
- 11.4. The place of jurisdiction is Hamburg.

**Ahrensburg, January 2020**