

## INTRODUCTION, PARTS AND DEFINITIONS

These General Terms and Conditions of SoftConEx GmbH for Services and Works comprise

- this Introduction,
- General Conditions, Part A,
- Special Conditions for Work Performance (“Werkleistungen”), Part B,
- Special Conditions for the Provision of Software-as-a-Service, Part C, and
- Special Conditions for the Provision of Software Products, Part D.

All parts including this Introduction are hereinafter jointly referred to as “**GTC**”.

The GTC apply to all contracts by which SoftConEx GmbH with registered office in Berlin, Germany – hereinafter referred to as “**SCE**” – renders or performs services and/or works – hereinafter jointly referred to as “**Services**” – to its commercial contractual partner – hereinafter referred to as “**Customer**”.

## PART A – GENERAL CONDITIONS

### 1. SCOPE OF APPLICATION, NO OTHER TERMS AND CONDITIONS APPLY

- 1.1 The provisions of Part A apply unless provided otherwise by the provisions of Part B to (including) Part D.
- 1.2 These GTC apply exclusively, as well as any additional Terms and Conditions of SCE, where expressly agreed with Customer.

Customer’s terms and conditions will not be deemed part of the contract even if SCE fails to explicitly reject them. If Customer does not agree to this, Customer is to notify SCE of this condition in writing without undue delay (“unverzöglich”).

This constitutes an explicit rejection of the standard notice of Customer’s general terms and conditions.

- 1.3 Renewed notice of the validity of these GTC in future offers by SCE is unnecessary.

### 2. AMENDMENTS TO GTC

- 2.1 SCE is entitled to amend the GTC even within a current contractual relationship provided that it complies with the following procedure, where

- material provisions of the contractual relationship are not amended to Customer’s disadvantage, and
- the ratio of service and consideration is not materially shifted to Customer’s disadvantage.

- 2.2 Customer will be informed by SCE of the planned change at least 30 days prior to its taking effect. Customer may reject the changes in writing within thirty days of receiving such notice. If no rejection is lodged and Customer continues to accept the Services after expiry of the rejection deadline, then the changes are deemed agreed for all Services rendered after expiry of the time limit.

### 3. OFFERS, COMING INTO EXISTENCE OF CONTRACTS

- 3.1 The general descriptions of SCE’s Services (e.g., on the website) are non-binding and do not constitute an offer to conclude a contract.
- 3.2 Any offer made by SCE (including licence certificates, if any, submitted as offer by SCE) is non-binding and subject to change unless an explicit binding period is included in the offer. If an offer by SCE is explicitly designated as binding

however without a stated deadline then the offer is deemed binding for fourteen calendar days after the offer date.

- 3.3 In the case of a binding offer by SCE pursuant to the foregoing subs. 3.2, then the contract is deemed consummated by Customer’s unqualified acceptance of the offer. Acceptance of an offer by Customer subject to changes creates a new offer by Customer. This offer is deemed accepted by SCE if SCE confirms the corresponding order in writing or begins to render the respective Services.
- 3.4 Customer is obliged to carefully examine all contractually relevant documents provided by SCE prior to concluding the contract.

## 4. CONTENT AND SCOPE OF SERVICES RENDERED

- 4.1 The content and scope of Services to be rendered by SCE are governed materially by SCE’s offer, including annexes, if any, and if applicable, documents to which explicit reference is made in the offer.
- 4.2 SCE reserves the right to make changes to the content and scope of Services in particular due to technical advances, changes in the legal situation as well as to prevent misuse, if and to the extent that such changes are reasonably acceptable to Customer.
- 4.3 Technical and other information and/or standards, in particular product and Service descriptions are subject to change and deemed to allow for the tolerances typical for the industry. To this extent, changes are deemed approved by Customer.

## 5. BASIC PRINCIPLES OF SERVICES RENDERED

- 5.1 SCE renders all Services itself or through third parties.
- 5.2 For Services that SCE renders at Customer’s request, at locations other than SCE’s place of business, travel costs and per diem expenses will be charged pursuant to sec. 17.
- 5.3 To the extent no specific procedure has been agreed, SCE renders the Services with reasonable discretion and according to the proven state of the art.
- 5.4 SCE is entitled to render partial Services - that may also be charged separately - if and to the extent that their acceptance does not constitute unreasonable expense for Customer and the benefit of the Service is not substantially impaired.

## 6. DATES AND PERFORMANCE DEADLINES

- 6.1 All supply and delivery deadlines stated by SCE in the offer as well as performance deadlines for the Services to be rendered by SCE are non-binding orientation estimates to the extent that such dates and/or performance deadlines are not explicitly stated to be binding.

To the extent definite dates and/or performance deadlines are not agreed as binding, SCE renders the Services within a reasonable period.

- 6.2 All dates and performance deadlines are subject to the reservation that SCE itself has been correctly, completely and timeously supplied. However, this applies only where SCE is not responsible for the non-supply, in particular in the case that a congruent covering transaction is concluded with the relevant supplier.
- 6.3 All dates and performance deadlines are postponed or extended subject to reservation of other rights, for the period in which Customer is in payment default.

## 7. CUSTOMER CHANGE REQUESTS

- 7.1 Customer may propose changes or additions to the Services

at any time after the contract is concluded.

Changes and additions to the Services that have an impact on system functions or performance, dates, remuneration, prices and/or costs will be submitted by Customer in writing detailing the previous agreement, if applicable, the problems occurring, the proposed change or addition and its impact. SCE causes the change request to be analysed.

- 7.2 The precondition for the implementation of the changes and additions proposed by Customer after the contract was concluded is a written (e-mail suffices) agreement by the parties ("change agreement") as to the scope of Service, the remuneration, prices and/or costs, dates, support and assistance to be provided by Customer and other relevant contractual aspects.

To the extent that no agreement has been made in the change agreement regarding dates and/or performance deadlines, the implementation of a change agreement results in a postponement of the Service date as well as extension of the performance deadline corresponding to the change or addition expense required.

## 8. TERM OF CONTRACTS

- 8.1 Unless agreed otherwise, contracts on the provision of recurring Services (e.g., provision of Software-as-a-Service) are, as a principle, agreed with an indefinite term, with a minimum term of twelve months. Unless expressly agreed otherwise, the contract may be terminated with three months' notice with the termination taking effect as of the end of the month, for the first time effective at the end of the minimum term of the contract.

- 8.2 Contracts for work performance are subject to § 649 BGB (German Civil Code).

- 8.3 The right of each contract party to extraordinary and immediate termination of the contract for cause remains unaffected. For SCE, cause for immediate termination is given especially if Customer, despite reminder, breaches his payment obligations or violates fundamental contractual duties.

- 8.4 The termination is only valid when delivered in writing.

## 9. DELIVERY AND ACCEPTANCE OF SERVICES

- 9.1 Unless expressly agreed otherwise, Services are performed and delivered at the place of the respective data processing centre of SCE in cases of provision of Software-as-a-Service, otherwise and/or (i.e., for other Services) at SCE's place of business.

- 9.2 The dispatch of products and/or work results as well as the transmission of Services to Customer are at the latter's risk.

- 9.3 Customer is obliged to accept the Services at the time agreed. The statutory complaint obligations of § 377 HGB (German Commercial Code) apply.

## 10. RESERVATION OF TITLE

All Services remain property of SCE until full payment of the agreed remuneration.

## 11. SUPPORT AND ASSISTANCE BY CUSTOMER

- 11.1 Customer supports SCE in the rendering of the contractually agreed Services to the extent necessary and reasonable and assures as part of this duty to assist that in his area of responsibility all conditions for the proper execution of the contract are fulfilled timeously and at no expense to SCE.

In particular, Customer will, to the extent necessary and reasonable to Customer,

- transmit timeously all the documents and information needed by SCE to render its contractual Services,
- provide within a reasonable scope, all the necessary IT infrastructure (e.g., PC work stations, printers, computing time, test data) when the Services are to be rendered at Customer's premises,
- enable access to the relevant locations and Services to SCE and its agents during regular working hours, and
- assure that his employees cooperate with and assist SCE and its agents.

Further assistance to be performed by Customer is, if applicable, designated in the order and/or in other contractual documents.

- 11.2 To the extent compliance with particular legal, administrative or operating safety regulations is required, Customer will supply these regulations timeously to SCE prior to the rendering of Services.

- 11.3 Customer is to inform SCE of errors or defects in Services he finds without undue delay ("unverzüglich").

## 12. CUSTOMER'S PROVISIONS

- 12.1 All provisions agreed between the parties (e.g., technical specifications, test data, texts, graphics, logos) must be supplied to SCE timeously, free of charge and in the form and quality required for duly rendering the contractually agreed Services.

The place to which provisions are supplied is the respective place of business of SCE.

- 12.2 Customer is solely responsible for the provisions. In particular, the provisions may not violate applicable law (including criminal law, copyright as well as other third party rights).

- 12.3 To the extent that Customer provisions are protected by copyright or other intellectual property law or other protective law, such as the Markengesetz (German Trademark Law), Customer hereby grants SCE temporarily, but limited to the duration of the contractual relationship, a non-exclusive right to use the provisions in the context of the contractual relationship. All other rights are retained by Customer.

## 13. DISRUPTIONS OF ASSISTANCE OR FAILURE TO RENDER ASSISTANCE OR FULFIL PROVISION DUTIES, COST CONSEQUENCES

- 13.1 If Customer fails to perform his assistance and provision duties, SCE may refuse the performance due until such relevant contractual assistance and provisions are fulfilled. Such delays by Customer lead to a corresponding postponement and/or extension of any binding dates and/or performance deadlines.

- 13.2 Customer is obliged to reimburse SCE for any damage incurred due to lacking or defective assistance and/or lacking or defective Customer provisions.

## 14. DUTIES OF CUSTOMER PERTAINING TO PROPERTY RIGHTS INFRINGEMENTS

- 14.1 If third parties should allege vis-à-vis Customer infringement of their rights on grounds of use of Services under the contract or should claims against Customer be filed otherwise on such grounds before the court or out of court, then Customer is to inform SCE of such alleged rights infringements and/or claims without undue delay ("unverzüglich").

- 14.2 In such cases Customer will - to the extent reasonably acceptable to him - defer the sole legal defence to SCE, at its request, (including all defence and settlement options) and upon request render SCE all reasonable support in defence

against such claims at SCE's expense.

**15. FURTHER DUTIES AND RESPONSIBILITIES OF CUSTOMER**

15.1 It is the responsibility of Customer to create, in the area under his control, the conditions (e.g., connection to the data network, procurement and operation of necessary hardware and software, supply of storage capacity) for the contractual use of SCE's Services.

SCE is under no contractual obligation to provide advisory Services in this respect. SCE will nevertheless advise Customer in the case that the latter uses technical systems that are obviously unsuitable for using the Services or if Customer acts on the basis of inappropriate technical prerequisites.

15.2 SCE undertakes all reasonable measures to eliminate the risk of virus infection. However, SCE cannot guarantee that its systems and software are entirely free of viruses. Therefore Customer is also obliged within the area subject to his responsibility to undertake all reasonable measures to protect his system from virus infection.

**16. REMUNERATION AND PRICES**

16.1 To the extent not otherwise explicitly agreed, all Services are rendered and charged according to time expended pursuant to the hourly or per diem rates stated in the offer; in other cases according to the respectively valid SCE price list. All expense calculations included in the offer are non-binding if these have not been explicitly designated as fixed prices or as binding maximum limits.

SCE records time expended in hours and maintains appropriate time records (cost records). The time expended is to be confirmed in writing by Customer at any time requested by SCE, in any case when the specific Services are rendered.

Troubleshooting time is also deemed remunerable working time to the extent not rendered for purposes of remedying defects pursuant to legal or contractual regulations.

16.2 If a binding fixed price has been agreed as remuneration for a Service, then this fixed price only covers the Services specified and designated as included in this fixed price in SCE's offer, or the Services otherwise agreed between the parties.

**17. OTHER COSTS AND EXPENSE**

17.1 Travel costs for business trips will be charged to Customer as follows to the extent not otherwise explicitly agreed:

- Travel time will be charged as working time whereby the hourly rate agreed will apply. If no such rate has been agreed then the hourly rate for travel time is EUR 100.00.
- Per Diem expense will be charged according to the respective maximum rates under current tax law.
- Overnight accommodation costs will be charged at the full amount expended and documented.
- Costs for public transport (rail, bus, air, etc.) will be charged in full as documented. For travel by car the respective maximum applicable kilometre rate under tax law will be charged.

The least expensive means of transport will be selected, taking the agreed hourly rate and the travel time into account.

Business trips are all those trips taken by SCE employees necessary to render contractual Services and/or taken at the request of Customer.

17.2 A flat rate shipping fee will be charged for dispatching and returning materials by post to the extent not explicitly agreed otherwise.

17.3 Costs and expense incurred for Services not covered by contractual agreements as well as costs incurred in connection with the use of third party systems (e.g., scanning costs in reservation systems) are to be borne by Customer.

The same applies to costs and expense incurred by SCE due to

- incorrect or incomplete Customer information,
- other defective assistance or provision by Customer or
- Customer complaints of defects that prove incorrect (e.g., since the relevant defect is not covered by SCE's contractual or statutory duty to remedy defects or the defect occurs because Services were changed by Customer without SCE's consent) and/or due to work performed to remedy such defects.

**18. PAYMENT CONDITIONS, BILLING, PAYMENT DEFAULT**

18.1 All agreed remuneration is understood to be subject to addition of the valid VAT at the statutory rate applicable when the Service is rendered.

18.2 To the extent not otherwise explicitly agreed (e.g., agreement of a deviating billing period), SCE invoices its Services as follows:

- for remuneration of Services rendered on a time and material basis and Service-related remuneration (e.g., remuneration per booked passenger): monthly;
- for regular/recurring remuneration (e.g., provision of Software-as-a-Service): advanced payment at the beginning of the respective month;
- for fixed prices and non-recurring remuneration (e.g., server set up fee): upon acceptance (in the case of work performance - "Werkleistungen") and/or upon contract conclusion (for other Services).

SCE reserves the right to only perform Services in return for advanced payment.

18.3 Travel costs will be billed to Customer in the month of the travel or in the month thereafter. The invoice includes the travel expense statement by the SCE employee and corresponding receipts, if applicable, also the time sheets.

18.4 The agreed remuneration is due upon receipt of the invoice and is payable within fourteen calendar days from receipt of the invoice without deductions. Discount deductions are not permitted.

18.5 In the case of payment default by Customer, interest in the amount of 8 percent above the base rate will be charged. Collection charges will also be charged in the case of payment default. Other claims by SCE arising from payment default remain unaffected.

**19. SET-OFF AND RETENTION**

19.1 Customer is only permitted to offset SCE claims against such counterclaims as have been established by a final non-appealable court decision or are undisputed.

19.2 Customer may only exercise retention rights with respect to claims arising out of the same contractual relationship.

**20. LIABILITY AND LIMITATION OF LIABILITY; LIABILITY FOR DEFECTS**

20.1 Information given by SCE in brochures, advertisements, documentation and on the website do not constitute guarantee declarations nor warrants as to qualities ("Zusicherung von Eigenschaften").

20.2 Insofar as the Telecommunications Act (TKG) is applicable,

SCE's liability is limited in accordance with § 70 Telecommunications Act (TKG).

20.3 Outside the scope of application of the Telecommunications Act, SCE's liability is governed by the following provisions:

- a) SCE only accepts liability for its own fault (i.e., wilful or negligent conduct) as well as for any fault (i.e., wilful or negligent conduct) on the part of its legal representatives, executive employees, vicarious agents and other persons employed by SCE in the performance of its obligations ("Erfüllungsgehilfen"), and only according to the following rules.
- b) If Customer suffers damage as a result of SCE providing, rendering or performing Services free of charge, SCE is only liable to the extent that the damage was caused by Customer using these Services in accordance with the agreement and only in the event of intent (including fraudulent intent) and gross negligence on the part of SCE or its legal representatives, executives or vicarious agents.
- c) Within the scope of the provision, performance and/or execution of Services subject to payment, SCE is liable without limitation for intent and gross negligence also on the part of its legal representatives, executives and vicarious agents

In cases of slight negligence in the breach of a duty whose fulfilment Customer is entitled to expect and whose satisfaction constitutes a prerequisite for the proper performance of the contract (referred to as cardinal duty – "Kardinalpflicht"), SCE's liability is limited to the damage that must typically be expected to arise in the context of the present Service relationship (referred to as contract-typical foreseeable damage). In other respects no liability is accepted for damage arising from slight negligence.

In the cases of a liability of SCE under the foregoing paragraph, SCE's liability under the respective contractual relationship is limited to the amount of EUR 250,000.00 per case of damage and to a total, i.e., for all damage events during the contractual relationship, of EUR 500,000.00.

In the case of contracts for the provision of recurring Services, the second-mentioned amount is deemed to be the limit per calendar year.

SCE assumes that the amounts indicated in the foregoing paragraph are sufficient to completely cover contract-typical foreseeable damage. If Customer believes this liability limitation is insufficient to cover contract-typical foreseeable damage, Customer is to inform SCE so that protection can be obtained from any possibly higher liability risk.

- d) The liability for data loss and data destruction is limited to the typical recovery expense that would have been incurred with regular and risk-adequate (in case of doubt daily) back-ups made by Customer.

20.4 SCE is not liable for data and information transmitted by Customer and/or third parties using SCE Services, neither with respect to the completeness, correctness and up-to-dateness of such data nor for that the latter are free of third party rights nor for that the transmitting party acts lawfully when transmitting such data or information.

20.5 Liability for fraudulent conduct ("Arglist"), personal injury, as well as liability under the Produkthaftungsgesetz (German Product Liability Act) remain unaffected by the foregoing provisions.

20.6 The foregoing provisions also apply in favour of the SCE personnel.

20.7 Any claims arising from statutory liability for defects will become statute-barred twelve months after the statutory commencement of the period of liability for defects, except in cases of fraudulent intent.

## 21. EXPORT CONTROL REGULATIONS

21.1 The software products, goods or technologies distributed, transferred, delivered and/or made available for use by SCE – hereinafter collectively referred to as "**Software Products**" – as well as the services provided or rendered by SCE – hereinafter referred to as "**Software-Services**" – may be subject to export restrictions. Such restrictions arise in particular from the Foreign Trade Act (AWG), the Foreign Trade Ordinance (AWV), the Dual-Use Regulation (Regulation (EU) No. 2021/821), country-specific embargo regulations of the European Union and personal sanctions regulations of the European Union – hereinafter collectively referred to as "**Export Restrictions**".

21.2 The Customer is prohibited from using the Software Products and/or Software-Services described in section 21.1 to provide services that, according to Art. 5n (2) of Council Regulation (EU) No. 833/2014 of 31 July 2014 (Russia-Embargo-Regulation), are directly related to tourism activities in Russia (e.g. services for passenger and baggage transportation, ticket issuance services, as well as travel information, travel planning and travel advice services).

21.3 The Customer is obliged to check the compatibility of the services provided with Export Restrictions, in particular those pursuant to section 21.2, within their area of responsibility. The customer must notify SCE immediately in writing of any concerns.

21.4 In the event of a violation by the Customer of the prohibitions and/or obligations contained in this clause 21,

- a) the Customer is obliged to indemnify SCE against all claims asserted against SCE as a result of the violation;
- b) the Customer is obliged to compensate SCE for all damages incurred as a result;
- c) SCE is entitled to terminate the contractual relationship with the Customer without notice for good cause, in which case the Customer shall be obliged to compensate SCE for any damages incurred as a result.

21.5 The above liability for damages and the obligation to indemnify shall not apply if the Customer proves to SCE that he is not responsible for the breach. Further claims by SCE remain unaffected.

## 22. FORCE MAJEURE

Events for which SCE, its legal representatives, vicarious agents or other persons employed by SCE in the performance of its obligations ("Erfüllungsgehilfen") cannot be held responsible ("force majeure"), especially technical events beyond the influence of SCE for which they are not responsible, power outages, dysfunction of telephone lines and other comparable technical hindrances and their consequences cause exemption from the fulfilment of the contractual Service duties so hindered or obstructed by these events for the period of their duration.

## 23. CONFIDENTIALITY, DATA PROTECTION

23.1 The parties shall treat all information and knowledge obtained in the course of the performance of the contract - in particular business secrets pursuant to § 2 no. 1 of the German Trade Secrets Act (GeschGehG) - and other confidential infor-

mation - for example of a technical, commercial or organizational nature as well as all information made available for the purpose of the performance of the contract, in particular such information resulting from protected documents - and to protect it from unauthorized knowledge, disclosure, duplication, use and other misuse by third parties not involved in the performance of the contract ("duty to protect secrets").

The parties are obliged to take all reasonable measures to comply with the above duty to protect secrets.

In any case, the parties are strictly prohibited from reverse engineering within the meaning of Section 3 (1) No. 2 German Trade Secrets Act (GeschGehG).

- 23.2 Information about technical procedures, products and/or Services generally published by the party concerned or constituting generally available knowledge (e.g., software and/or communications technology) do not constitute confidential information.

Unless otherwise stated in writing by Customer, information provided to SCE by Customer is deemed non-confidential.

- 23.3 Within Customer's area of responsibility, Customer bears sole responsibility for compliance with the data protection regulations applicable to Customer.
- 23.4 Where SCE performs order processing ("Auftragsverarbeitung") for Customer within the meaning of Article 28 of the European General Data Protection Regulation (GDPR), the parties will enter into a separate agreement on the processing of data on behalf of Customer.
- 23.5 To the extent SCE engages third parties to deliver the Services to be rendered under the contract, SCE is authorised to disclose confidential information and data of Customer to the extent absolutely necessary for rendering the contractual Services and permitted by law.
- 23.6 SCE is also authorised to disclose confidential information and data of Customer to the extent SCE is obliged by law or by order of a public authority, and further with regard to third parties who are obliged to maintain confidentiality by virtue of their profession.

#### 24. REFERENCES

Both Customer and SCE are entitled to publication about agreed Services in the context of sec. 22, provided that the company and the share of the performance rendered by each of the contract partners are mentioned.

#### 25. FINAL PROVISIONS

- 25.1 Amendments and additions must be in writing. This also applies to the cancellation of this clause.
- 25.2 Declarations made by the personnel of SCE or other persons engaged by SCE ("Gehilfen") are only binding if such persons have been explicitly authorised by SCE to make such declarations or if SCE gives its written consent.
- 25.3 The place of performance ("Erfüllungsort") for the contractual Services is the place of the respective data processing centre of SCE in the case of provision of Software-as-a-Service, otherwise the place of business of SCE.
- 25.4 The place of exclusive jurisdiction for all disputes arising from or in connection with the contract is the place of business of SCE.
- 25.5 The parties agree regarding all legal relationships arising from this contractual relationship the application of the law of the Federal Republic of Germany to the exclusion of UN sales law.

## PART B – SPECIAL CONDITIONS FOR WORK PERFORMANCE

### 26. APPLICABILITY OF FOLLOWING REGULATIONS

The regulations of Part B apply only to work performance ("Werkleistungen"), for this with precedence over the other regulations of these GTC.

### 27. ACCEPTANCE OF WORK RESULTS

- 27.1 SCE will notify Customer in writing (e-mail suffices) that a work performance work result is ready for acceptance. Customer is obliged to begin acceptance inspection without undue delay ("unverzüglich") and to accept any work result within a reasonable time period, however no later than twenty calendar days after the respective work result has been delivered, to the extent not agreed otherwise hereinafter or in any other agreement between the parties.

For acceptance of software components, SCE will deliver to Customer in writing the acceptance specifications and/or the description of the test cases with which the contractual compliance of the work performance is to be tested usually seven calendar days before the respective software component is delivered for acceptance, stating the purpose, entries, and expected system reactions. Customer will deliver to SCE the required test data for the respective acceptance inspection on a suitable data medium in the agreed format no later than this date.

Unless otherwise agreed, the content and scope of the acceptance test is determined in accordance with the acceptance specification(s) and test cases made available to Customer by SCE.

- 27.2 SCE is entitled to participate in the acceptance inspection. Customer can be supported by SCE when performing the acceptance inspection in return for separate remuneration pursuant to the respectively valid SCE price list.
- 27.3 The acceptance deadline for agreed documentation (subs. 26.1) is fourteen calendar days. The acceptance of the documentation is essentially separate from the acceptance of other work results.
- 27.4 The acceptance inspection of software components is to be performed on the basis of jointly defined test procedures and test cases. At every step it will be checked if the system reacted according to specifications. After all test steps have been conducted, Customer and SCE decide whether defects that prevent acceptance have occurred. The result is documented in a protocol (acceptance confirmation).

All deviations in the operation of the tested software components compared to the performance description and the defined description of the test cases found during an acceptance inspection are to be entered in a defect list and classified as either defects preventing acceptance or defects that do not (residual items).

A defect is only to be classified as preventing acceptance if it

- heavily impairs the operating use of the software since a function fails or is performed so defectively that the intended effect is not even attainable by a means other than that intended and
- the function to be demonstrated in this acceptance test pertains to the software.

All other defects are to be classified as not hindering acceptance. Such defects do not entitle Customer to reject acceptance.

- 27.5 Defects timeously reported by Customer during the acceptance inspection and/or classified as preventing ac-

ceptance during the acceptance inspection of software deliveries are to be checked by SCE without undue delay ("unverzüglich") and remedied within a reasonable time period.

Acceptance by Customer is deemed given as soon as all defects reported on time and classified as preventing acceptance have been remedied or that SCE has proven, that these are not defects preventing acceptance.

- 27.6 If Customer fails to notify SCE in writing of (or confirm to SCE) the acceptance or notify SCE in writing of existing defects by the expiry of the acceptance deadline (see subs. 26.1), the work results are deemed accepted.

The same applies accordingly to the acceptance inspection of software components as of the expiry of the acceptance deadline, if by joint decision of the parties no defects preventing acceptance occurred after performance of the test procedures.

Notwithstanding the foregoing provisions, the work results are deemed accepted once Customer uses them for productive purposes.

- 27.7 SCE may demand the acceptance of partial results (e.g., complete performance elements, complete parts of the contracted work or individual documents). The foregoing provisions of this sec. 26 also apply for such acceptance.

In the case of acceptance for partial results, defects occurring in later partial acceptances, caused by partial results already accepted may only be claimed to prevent acceptance of the later partial results if the defect causes not only minor impairment to the interaction with the later partial results or the functionality is not only subject to minor impairment and the defect was not recognisable for Customer in isolation through any previous partial acceptance.

## 28. RIGHT TO USE WORK RESULTS

- 28.1 Except where otherwise explicitly agreed, Customer receives a remunerative, non-exclusive, spatially unrestricted right of unlimited duration to use the work results created for Customer in accordance with the contractual agreements for the intended contractual purpose and for the agreed contractual use and in each case solely for internal operational purposes.

If Customer intends to distribute the work results commercially or exploit it in another manner with respect to third parties, the parties may agree an appropriate exploitation right for Customer in return for reasonable remuneration of SCE.

The rights of use granted under the foregoing provision are restricted to the software's object code to the extent the work results are software and not otherwise explicitly agreed. No claims to the source code are granted.

- 28.2 The rights of use granted to Customer in accordance with subs. 27.1 are subject to the prerequisite that the respective remuneration has been paid in full.
- 28.3 Customer is not entitled to change and/or remove notice of SCE's copyright without the explicit and written consent of SCE.
- 28.4 All use and exploitation rights to the contractual work results not explicitly granted to Customer are retained by SCE. In particular SCE has the right to use, distribute and exploit without restriction all knowledge, concepts, processes, methods, know-how, procedures, etc. on which the work results were based.

## PART C – SPECIAL CONDITIONS FOR THE PROVISION OF SOFTWARE-AS-A-SERVICE

### 29. APPLICABILITY OF FOLLOWING REGULATIONS

- 29.1 The regulations of Part C only apply for the provision
- of browser-based applications (hereinafter referred to as "**Applications**") and/or
  - of the software products "SoftConEx Travice API Web Services" and/or IBE REST API – hereinafter referred to as "**Web Services**" –

by SCE and for their use by Customer via the Internet (Software-as-a-Service), for this in each case with precedence over the other regulations of these GTC.

- 29.2 The Applications and/or Web Services provided to Customer for use via the Internet according to the following regulations are specified in the licence certificate. Only these Applications and/or Web Services are comprised by the use described in this part C. They are hereinafter jointly referred to as "**Applications/Web Services**".

### 30. INSTALLATION OF ACCESS TO THE APPLICATIONS/WEB SERVICES

- 30.1 SCE usually installs access to the Applications/Web Services operated on SCE servers within five working days from contract conclusion and provides Customer with the access data.

- 30.2 If Customer requests other or further installation work to be done, SCE will submit, at Customer's request, a quote for such additional work. Such quote will also be governed by these GTC.

### 31. PROVISION OF APPLICATIONS/WEB SERVICES

- 31.1 Customer access to the Applications/Web Services specified in the licence certificate is enabled by provision of a URL that is usable with a standard and current web browser.

- 31.2 Customer access to the Web Services specified in the licence certificate is in each case enabled via an interface (based on the Web Service, e.g., according to SOAP or REST specification).

- 31.3 Customer is given the opportunity to test the Applications/Web Services before starting to use them for productive purposes. It is thus the responsibility of Customer to only use the Applications/Web Services for productive purposes after he has conducted the test procedures to ensure that all Products specified in the licence certificate work properly. Customer must confirm to SCE in writing that he has successfully tested the Applications/Web Services before initiating their use for productive purposes.

- 31.4 Within the framework of the test procedures, SCE conducts tests itself and informs Customer of the result.

Where necessary to ensure the operational reliability of the Applications and/or Web Services from SCE's expert's point of view and where not unreasonable for Customer, SCE may also reasonably specify a certification procedure on the basis of test cases within the scope of the test runs, which Customer will then go through. The parties will agree on the details as far as possible in advance.

- 31.5 The selection of the components required for operating the Applications/Web Services within the area under the control of SCE such as hardware, operating systems and other internal software, middleware, databases, operating procedures, other internal know-how (e.g., administration, user management, hardware management, licence management) as well as the selection of the necessary hardware and software tools for data storage/backup, data safety, monitoring and management is the responsibility of SCE. Customer may not claim the selection of specific components.

### 32. CUSTOMER ACCESS TO APPLICATIONS/WEB SERVICES, HANDLING OF ACCESS DATA

32.1 Access to the Applications specified in the licence certificate is enabled via the Internet using the provided URL and a standard and current web browser.

Access to the Web Services specified in the licence certificate is also enabled via the Internet but using the respective Interface (cf. subs. 30.3). After log-in by entering the access data Customer may access the respective Applications/Web Services.

It may also be necessary for Customer to activate the IP address.

32.2 It is the responsibility of Customer to keep his access data secret and not disclose them to third parties and make sure that access to the Applications/Web Services via the Customer access is solely undertaken by Customer himself and his authorised employees and that such access keeps within the limits of the contractual agreement.

**Customer is liable for any use and/or other activities undertaken or enabled owing to the use of Customer's access data.**

32.3 If there is reason to believe that third parties have or will become aware of the access data, SCE is to be informed of this without undue delay ("unverzöglich").

### 33. ACCESS BLOCKING DURING THE TERM OF CONTRACT

33.1 SCE has the right to temporarily or permanently block Customer's access to the Applications/Web Services if there is legitimate reason to believe that Customer is in breach of the regulations of this contract or the applicable law. SCE will adequately consider the legitimate interests of Customer when deciding about the blocking.

33.2 SCE will inform Customer by phone or e-mail in the case of temporary or permanent blocking. Customer is responsible for that neither he himself nor his employees will use the access and the Applications/Web Services for the duration of the blocking.

33.3 In the case of temporary blocking, SCE will unblock access after expiry of the blocking period and will inform Customer accordingly by phone or e-mail.

33.4 If the temporary or permanent blocking is legitimate, Customer has no right to claim reimbursement of the remuneration already paid by him.

### 34. USE OF APPLICATIONS/WEB SERVICES BY CUSTOMER

34.1 Customer's right to use the Applications/Web Services is restricted to access to the Applications/Web Services specified in the licence certificate and is subject to use within the limits of the provisions of these GTC during the agreed contractual term.

34.2 Customer is not permitted to allow resellers access to the Applications/Web Services and/or otherwise make the Applications/Web Services or individual functions thereof available to resellers, unless explicitly stipulated otherwise in the licence certificate.

34.3 The use of the Applications/Web Services by Customer is subject to the prerequisite that the agreed remuneration has been paid timeously and in full.

34.4 If and to the extent that the use of the Applications/Web Services by Customer in the area under his control should require connection to third party systems (e.g., application for access to third party systems), it is the sole responsibility of Customer to enable access to such third party systems by SCE.

34.5 SCE is not liable for the correct implementation of the tariff

data in the corresponding entries nor for the correct determination of third party prices in relation to the Applications/Web Services. It is the responsibility of Customer to verify the correctness of such price determination and finally confirm the entry to the end customer after Customer has verified the correctness of such entry.

34.6 Customer's right to use the Applications/Web Services ceases upon the taking effect of the termination of the respective Applications/Web Services.

### 35. CHANGES TO APPLICATIONS/WEB SERVICES

35.1 SCE endeavours to continuously improve its Applications/Web Services. The specifications, contents and scope of the individual Applications/Web Services and their functions may thus change in the course of contract execution. Likewise new Applications/Web Services and new functions of such Applications/Web Services may be added and existing Applications/Web Services and/or functions may be discontinued.

35.2 SCE will inform Customer of changes to the Applications/Web Services as soon as possible and preferably before the intended effective date of the changes, provided that such changes are considered by SCE to have a substantial impact on Customer's use of the Applications/Web Services as agreed in the contract or on Customer's systems.

35.3 Customer will accept and adopt the changes to the Applications/Web Services if and to the extent that this is not reasonably unacceptable to him. In the latter case, Customer may refuse acceptance of the changes in writing within thirty days from receipt of the corresponding notification. If Customer fails to refuse acceptance and continues to use the changed Applications/Web Services after expiry of the refusal period, the changes are deemed validly agreed between the parties.

35.4 If Customer refuses acceptance of the changes and it is impossible or reasonably unacceptable to SCE to provide Customer with the Applications/Web Services in unchanged form (e.g., because a third-party software product was taken off the market and no equivalent substitute is available or because a change was absolutely necessary for safety reasons), SCE has the right to terminate the use of the Applications/Web Services concerned with immediate effect.

### 36. AVAILABILITY OF APPLICATIONS/WEB SERVICES

36.1 Where Customer receives from SCE the opportunity to use Applications and/or Web Services free of charge (e.g., for test or demonstration purposes), Customer is not entitled to continuous availability of such Applications and/or Web Services. In particular, SCE may at any time temporarily restrict access to Applications and/or Web services that may be used free of charge due to

- an acute threat to its data, hardware and/or software infrastructure or that of its customers due to external threats (e.g., viruses, port hacking, attacks by Trojans), or due to
- a considerable hazard to the safety of network operation or network integrity.

36.2 Otherwise, i.e., in relation to the provision of Applications and/or Web Services against remuneration, SCE warrants 98.0% monthly availability of the Applications/Web Services within the operating times.

The **operating times** of the Applications/Web Services are Monday to Friday 7:00 a.m. to 11 p.m., Saturdays, Sundays and public holidays 7:00 a.m. to 10 p.m.

36.3 Outage times and times of restricted usability of the Applications/Web Services during regular maintenance windows and/or during maintenance, installation or restructuring work

specifically agreed with Customer as well as scheduled downtimes, cut-offs or stoppages specifically agreed with Customer to take place during the operating times are not deemed times of non-availability.

36.4 Regular maintenance windows are between 6:30 a.m. and 8 a.m. daily.

36.5 Also times during which the Applications/Web Services are not or only restrictedly usable owing to technical or other reasons beyond the control of SCE (e.g., force majeure, dysfunction of telecommunication lines or third party systems, other third party fault) are not deemed times of non-availability.

36.6 Also times during which SCE restricts or blocks access to the Applications/Web Services or certain Applications/Web Services or functions due to

- an acute threat to its data, hardware and/or software infrastructure or that of its customers due to external threats (e.g., viruses, port hacking, attacks by Trojans), or due to
- a considerable hazard to the safety of network operation or network integrity

are not deemed times of non-availability. When making such a decision, SCE will, to the extent possible, be considerate of the legitimate interests of Customer and will inform Customer preferably without delay ("unverzöglich") of the measures taken and will undertake all efforts reasonably acceptable to SCE to cancel the restrictions or blocking as quickly as possible.

36.7 The responsibility of SCE for the components used for the provision of Services ceases at the data interfaces connecting the SCE data processing centres with public data networks or and/or with the data network of Customer, if and to the extent that SCE is contractually obliged to ensure direct connection to Customer's data network.

### 37. SUPPORT AND TRAINING

Upon separate order, SCE provides support, adjustment, customizing and training Services at the hourly rates stated in the respectively valid SCE price list.

### 38. INFORMATION REQUEST BY SCE

38.1 Upon request of SCE, Customer will provide information in writing and without undue delay to a reasonable extent as to whether the Applications and Web Services are used in accordance with the contractual provisions. Such written notice of Customer must contain all information required for verification (e.g., applications where the Web Services are used, scope of use).

38.2 Customer will further grant SCE access to the relevant records and systems to a reasonable extent for the purpose of verifying whether or not the Products are used in accordance with the contractual provisions. SCE will treat all information obtained on this occasion confidentially and only disclose such information to third parties to the extent absolutely necessary to safeguard the rights of SCE.

### 39. RIGHTS OF SCE IN THE CASE OF PAYMENT DEFAULT

39.1 If Customer has been in payment default for a period of at least thirty calendar days, SCE has the right to block access to the relevant Applications and Web Services until full payment. SCE usually sends the first reminder after Customer has been in default for ten calendar days and the second - and last - reminder after expiry of another ten calendar days. However, SCE is by no means obliged to do so.

39.2 After receipt of full payment, SCE will unblock Customer access. This is usually done within 48 hours.

39.3 If Customer has been in default for a period of another thirty calendar days from the time of blocking of his access according to subs. 38.1, SCE is entitled to permanently block access to the relevant Applications and Web Services and irretrievably delete all Customer data created in connection with the use of the Applications/Web Services affected by the blocking (databases, files etc.).

39.4 Other claims of SCE arising from payment default remain unaffected.

### 40. LIMITATION OF LIABILITY FOR THE USE OF APPLICATIONS/WEB SERVICES

Notwithstanding the provisions in subs. 20.3 (c) para. 3, the liability of SCE is, in the cases stated in subs. 20.3 (c) para. 2, limited to the following amounts per calendar year:

- to the total of the regular/recurring remuneration payable by Customer in the current calendar year per case of damage, but to no less than EUR 50,000.00 and
- to a total, i.e., for all damage events during the respective calendar year of the contractual term, of twice the regular/recurring remuneration payable by Customer in the current calendar year, but to no less than EUR 100,000.00.

Apart from that, subs. 20.3 applies without change.

### 41. TERMINATION OF APPLICATIONS/WEB SERVICES

41.1 Unless otherwise stipulated in the licence certificate, the Applications and/or Web Services specified therein may also be terminated separately from each other but with the proviso that the Web Services may only be terminated as a whole.

41.2 In the case of legitimate termination by SCE with immediate effect for cause, SCE is entitled to claim payment of a flat rate compensation for damages ("pauschalierter Schadensersatz") in the amount of 75% of the total of all payable remuneration on a recurring (e.g., monthly) basis that is affected by the termination with immediate effect and which Customer would still have had to pay during the remaining term of the contract in the case notice of ordinary termination would have been given at that time unless Customer proves that SCE actually incurred less damage than the agreed flat rate compensation or SCE proves that it actually incurred higher damage.

As to Service-related remuneration, the flat rate compensation for damages is calculated on the basis of a projection taking into account the Service-related remuneration already accrued by the time of termination.

41.3 Customer's right to access the relevant Applications/Web Services expires upon the termination taking effect and SCE deactivates Customer's access to the Products and Customer must

- immediately stop use of the relevant Applications/Web Services and
- completely remove client software, if any, provided to him from his PCs and/or servers in such manner that retrieval is impossible and moreover, at the choice of SCE, either destroy or return to SCE all accompanying documents and material relating to such client software.

## PART D – SPECIAL CONDITIONS FOR THE PROVISION OF SOFTWARE PRODUCTS

### 42. APPLICABILITY OF THE FOLLOWING PROVISIONS

The provisions of Part D only apply where SCE provides Customer with computer programmes and any associated accompanying material – hereinafter jointly referred to as "Soft-

ware" – for use on Customer's systems or on third-party systems (e.g., certain Applications and/or Web Services for Customer's own operations), and for such cases shall take precedence over the other provisions of these GTC.

**43. SCOPE AND LIMITS OF THE RIGHT OF USE; TERMINATION OF USE**

43.1 Unless otherwise specified in sec. 44 and unless otherwise agreed, Customer is granted a non-exclusive, non-transferable right to use the Software for the intended purpose, limited in time to the term of the contract.

43.2 Unless expressly permitted by the aforementioned granting of rights or by mandatory statutory provisions, Customer is prohibited from distributing, renting, sublicensing, reproducing, translating, decompiling, disassembling, descrambling or otherwise processing the Software in any way.

43.3 All trademark and copyright notices on or in the Software are to remain unaltered.

43.4 The rights of use granted by these GTC are limited to the object code of the Software. There is no claim to the source code.

43.5 Upon expiry of the right of use (e.g., due to termination of the contract), Customer is to cease using the Software without undue delay and completely delete all copies of the Software existing on Customer's systems. Any accompanying material available to Customer is to be returned to SCE.

**44. PROOF OF USE; REQUEST FOR INFORMATION, CONTROL OF USE**

44.1 Upon SCE's request, Customer is to notify SCE in writing and without undue delay to a reasonable extent whether the Software is being used in accordance with the contract. Such notification is to contain all information necessary for verification.

44.2 Customer will grant SCE reasonable access to its records and systems for the purpose of verifying that the Software is being used in accordance with the contract. SCE will treat all information received in this connection as confidential and will only make it available to third parties to the extent absolutely necessary to safeguard SCE's rights.

44.3 SCE is entitled to integrate appropriate technical measures for checking the contractual use of the Software into the Software.

**45. THIRD-PARTY SOFTWARE PRODUCTS**

45.1 Where the Software is a software product of a third-party provider, deviating provisions may apply to such software products, in particular with respect to the scope and limits of the right of use.

45.2 Customer is responsible for obtaining information about and complying with the terms of use applicable to such software products. In case of doubt, Customer is to contact the third-party provider.

45.3 Where SCE supplies Customer with software products of a third-party provider which are not covered by the rights of use granted to Customer (e.g., separate open source components), Customer may only use such software products on the basis of a separate licence, the procurement of which is Customer's responsibility.

45.4 Third-party software may contain technical means to prevent its unauthorised use.