

I. General

1. Scope

- 1.1 In all contractual relationships, in which Smart Enterprise Solutions GmbH (hereinafter referred to as "SMENSO") provides services for other companies, legal entities under public law or special funds under public law (hereinafter referred to as "customer"), the present terms and conditions apply exclusively. In all other respects the statutory provisions apply.
- 1.2 These terms and conditions cover the services offered by SMENSO, such as the provision of standard software, the creation of individual software solutions, software maintenance and servicing, technical support and installation work, sale of hardware with or without individual consultation or adaptation, general consultation or other IT services and the training of the customer's employees.
- 1.3 Conflicting or supplementary terms and conditions of the customer shall not become part of the contract, except with the prior written consent of SMENSO, even if SMENSO should execute a contract or provide a service without expressly contradicting such terms and conditions.
- 1.4 These terms and conditions also apply to the pre-contractual obligation, in particular with regard to the limitation of liability and confidentiality obligations.
- 1.5 For the provision of other third-party software, the terms of use, warranty and liability of the respective manufacturer shall have priority, insofar as SMENSO refers to these terms.

2. Conclusion of contract

- 2.1 Offers made by SMENSO are subject to change and non-binding unless they have been expressly designated as a binding offer. SMENSO may accept orders from the customer within 4 weeks. In case of doubt, the content of SMENSO's order confirmation shall be decisive for the content of the contract, unless the customer has immediately objected to the content of the order confirmation.
- 2.2 Contractual guarantees and promises, in particular if they go beyond the scope of these Terms and Conditions, require express written confirmation by SMENSO.

3. Pre-contractual information

- 3.1 Objects and documents (e.g. software, physical and non-physical presentations and proposals) provided under a pre-contract are the intellectual property of SMENSO. They may not be reproduced or passed on to third parties.
- 3.2 If software is provided to the customer for test purposes, the right of use of this software expires after the agreed test period. If no test period has been agreed upon in terms of date, 4 weeks shall apply. In particular if no contract is concluded, all objects and documents provided must be returned or proof of their deletion must be provided to SMENSO. In all other respects, the confidentiality obligations according to clause I.12 apply.

4. Performance period

- 4.1 Dates and fulfilment dates are not fixed dates, unless they are expressly conceded as such in writing by SMENSO.
- 4.2 Insofar as the customer sets deadlines or periods of grace for performance or subsequent performance or elimination of a circumstance, these deadlines shall be reasonable, but at least 5 working days.
- 4.3 If the unsuccessful expiry of a deadline or period of grace is to result in the release from the contractual obligation or a reduction in remuneration, the customer must expressly threaten to do so when setting the deadline. The aforementioned declarations must be in writing to be effective.

5. Remuneration and terms of payment

- 5.1 The remuneration or the purchase price for the licensing of the contract software is determined by the contract documents, the order confirmation or the license calculation. The license price depends largely on the number of users and - depending on the type of contract agreed - is owed as a one-time payment with permanent license rights (software purchase) or as recurring payments with rights of use limited to the term of the contract (software subscription or subscription model).
- 5.2 If the customer wishes to make use of care and maintenance services, an additional maintenance contract must be concluded for the contract type software purchase. With the software subscription, care and maintenance services are already included.
- 5.3 If, in addition to maintenance and support, other services are performed in addition to the licensing of the software, these are either provided for a flat fee (fixed price) or for remuneration according to time spent. In the absence of any other written agreement, the prices in accordance with SMENSO's current price list shall apply, according to which billing shall be based on man-days and hours plus expenses incurred on a monthly basis.
- 5.4 In the case of remuneration based on time spent (e.g. in the case of IT projects), the details given in an offer or in SMENSO's order confirmation are only a calculation or an estimate, unless a lump-sum remuneration is expressly agreed. If the parties agree on a time and material basis, SMENSO may require the customer to sign a certificate of employment presented by SMENSO or its employee to SMENSO. The expenses incurred will be listed in the invoice or in a separate annex to the invoice. If the customer does not object to the installation in writing within 2 weeks, the customer shall bear the burden of proof for its incorrectness.
- 5.5 All prices are exclusive of the statutory turnover tax applicable at the time, unless the turnover would be exempt from turnover tax, and exclusive of any customs duties and charges.
- 5.6 SMENSO will invoice travel time and costs to the customer as a lump sum, which, in the absence of a separate agreement, will be calculated on a time and material basis, depending on the location of SMENSO's registered office.
 - 0.65 €/km for journeys by car
 - other means of transport and hotel accommodation costs according to expenditure
 - statutory per diem expenses
 - Travel times are charged at 50% of the hourly rate plus any night, holiday or weekend surcharges
 - Rail travel can be booked in 1st class if the journey lasts 3 hours or more, otherwise in 2nd class, flights of 5 hours or more in business class, otherwise in eco-nomy class.
- 5.7 All business trips require the assignment of the customer. SMENSO will not charge the customer for travel required for the fulfilment of warranty obligations. A calculation of travel costs in a project offer from SMENSO is merely a non-binding estimate, the basis of which will be disclosed to the customer on request. In order to reduce travel expenses, the customer may agree to the installation of remote access to his IT infrastructure.
- 5.8 Invoices are due immediately and are payable within 14 days of the invoice date without deduction. In case of a discount agreement, this does not refer to external costs. In the case of software purchase - unless a different payment plan has been agreed upon in individual contracts - the purchase price shall become due upon delivery of the contractual software; in the case of software subscription, the monthly fee shall be paid in advance by the 3rd working day. The annual maintenance fee will be invoiced in advance for each contractual year.
- 5.9 SMENSO may invoice partial services before completion of the overall project on a monthly basis or after approval of the

- partial service by the customer. In the case of releases subject to restrictions, the customer may only make a reasonable retention
- 5.10 SMENSO may claim full advance payments if the service is to be provided abroad or if the customer is based abroad.
 - 5.11 SMENSO may increase recurring payments for maintenance and service or software subscription with a notice period of 2 months with effect from the beginning of the month following this notice period by written declaration to the customer at the discretion of SMENSO in compliance with the following regulations: SMENSO may increase the remuneration at most to the extent that the index of the average gross monthly earnings of full-time employees in Germany for the economic sector of provision of information technology services (currently published in quarterly figures by the Federal Statistical Office in Fachserie 16, Reihe 2.4, Gruppe J 62) has increased. If this is the first increase in remuneration, the index development between the index level published at the time of the conclusion of the contract and the index level last published at the time of the declaration of increase is decisive. If a remuneration increase has already taken place earlier, an increase may be made on the basis of the further index development since the last adjustment. The first increase can take place at the earliest at the end of 24 months. If the aforementioned index is no longer published, the index published by the Federal Statistical Office which most closely reflects the development of average gross monthly earnings in the aforementioned economic sector shall be decisive for the determination of the increase framework. If the customer does not terminate the contract, in respect of which SMENSO intends to increase the remuneration, within two weeks of receipt of the declaration of increase with a period of notice of 6 months to the end of the month (special right of termination), the new remuneration shall be deemed agreed, provided that SMENSO refers to the special right of termination in the declaration of increase.
6. Fixed price agreements for IT projects
 - 6.1 As a general rule, SMENSO only carries out IT projects in return for an expense-based remuneration. If the customer does not wish to pay for an IT project on the basis of time spent, but as a fixed price, this can be done by mutual agreement in accordance with the following conditions:
 - 6.2 SMENSO will estimate the expenditure prior to the conclusion of the contract on the basis of the customer's terms of reference (specifications) and will charge a fixed price supplement of 20% on the initial estimate in the course of the assumption of risk in respect of the actual expenditure. If, after completion of the subsequent joint planning/conceptual design phase, due to the detailed knowledge of the requirements and the scope of the task gained by SMENSO in this phase, the corresponding effort planning for the implementation/realization is more than 40% higher than the initial estimate, SMENSO may request renegotiation of the fixed price compensation for the implementation/realization phase. Changes to the task are to be treated as change requests and are recorded separately in the effort planning.
 - 6.3 If the parties do not agree on an adjustment in the event of an excess of more than 40%, there is a mutual right of termination. In the event of termination, the customer shall only pay for the parts of the project that have already been completed in return for the provision of the corresponding work results (e.g. detailed concept). Any software licenses which the customer has already purchased from SMENSO for the IT project will be reversed.
 - 6.4 Unless otherwise agreed, the agreed fixed price does not extend to the travel costs, which are to be reimbursed in accordance with the principles of these terms and conditions.
 7. Retention of title, offsetting, right of retention
 - 7.1 SMENSO retains the ownership and rights to the service which is the subject of the contract until full settlement of its claims under the contract.
 - 7.2 The customer may only offset against claims that are undisputed by SMENSO, due or legally established, whereby the right of the customer to assert warranty rights remains unaffected. The customer is only entitled to a right of retention or the defense of non-performance of the contract within the respective contractual relationship.
 8. General obligations of the customer to cooperate/provide
 - 8.1 The customer shall be responsible for regular data back-up and IT protection measures (including virus protection) in accordance with the current state of the art. SMENSO may assume that all customer data with which SMENSO's employees come into contact has previously been backed up by the customer in some other way.
 - 8.2 The customer is obliged to secure the Contract Software licensed by SMENSO against access by unauthorised third parties by taking appropriate measures (virus protection, firewall, etc.), in particular to store all data carriers with the software in a protected location.
 - 8.3 The customer shall provide the documents and information necessary for the performance of the services ordered as well as the IT infrastructure required for the contractual software (sufficient computer and storage capacities, Internet connection, operating systems, software and trained employees) and shall be exclusively responsible for their operation and maintenance. Appropriate instructions from SMENSO must be followed.
 - 8.4 The warranty for material defects and liability shall not extend to defects or damage caused by the fact that the contract software is used in a hardware and software environment that does not meet the requirements formulated in the offer/contract documents.
 - 8.5 The customer assures that he has created all necessary conditions in his sphere of responsibility to ensure that SMENSO can provide the agreed services without breaching data protection regulations.
 - 8.6 Further obligations of the customer to cooperate result from the individual contract as well as the general traffic and due diligence obligations.
 - 8.7 In the event of a breach of the obligation to cooperate, the customer shall bear the risk of damage. SMENSO is not obliged to check whether the customer complies with his obligations to cooperate.
 - 8.8 The entire cooperation of the customer is free of charge.
 9. Material defects and defects of title
 - 9.1 Insofar as the parties do not agree on a specific quality of services or partial services, the liability for defects is limited to the fact that the service or partial service is suitable for the contractually stipulated, otherwise customary, use and is customary for services of this type.
 - 9.2 In the event of proven material defects, SMENSO may initially, at its discretion, provide the customer with a new, defect-free service or remedy the defect by repair. Should the subsequent performance finally fail after the expiry of a reasonable period to be set by the customer, which allows at least two attempts at subsequent performance, the customer may reduce the remuneration, declare withdrawal from the contract or (in the case of a continuous obligation) termination. Compensation for damages or compensation for futile expenditure shall be owed by SMENSO in accordance with Clause I.10.
 - 9.3 In the case of defects of title, subsequent performance shall take place by granting a legally unobjectionable possibility of use, at SMENSO's discretion, either with regard to the delivered service or with regard to a modified but equivalent service, provided that this is not unreasonable for the customer.

- 9.4 Should a third party assert claims against the customer due to an infringement of rights with regard to the contractual performance, the customer shall immediately notify SMENSO in detail in writing. The customer hereby authorizes SMENSO to conduct the dispute with the third party alone in and out of court. If SMENSO makes use of this authorization, which is at its discretion, SMENSO shall undertake the legal defense at its own expense. In doing so, SMENSO shall indemnify the customer against the claims of the third party. If SMENSO assumes the legal defense, the customer may not acknowledge the claims of the third party without the consent of SMENSO. The further statutory claims of the customer for liability for defects, such as e.g. the damage The indemnification due to the defect of title as well as the limitation of these claims shall remain unaffected by the indemnification.
- 9.5 If SMENSO provides the customer with a new software version (e.g. update) after performance of the service in order to eliminate material defects or defects of title, the customer must take over this new software version in order to maintain the warranty rights, provided that the takeover is not unreasonable.
- 9.6 Further claims for material defects and defects of title are excluded.
- 9.7 In the event of an unfounded notification of defects, SMENSO may claim reasonable compensation for the effort involved in finding and responding to the error message. The same applies in particular if a material defect reported by the customer cannot be proven or reproduced or cannot be attributed to SMENSO.
10. Liability
- 10.1 SMENSO's liability is unlimited
- in case of intent or gross negligence,
 - in the case of fraudulent concealment of defects,
 - for injury to life, body or health,
 - accordance to the regulations of the product liability law and/or
 - to the extent of a guarantee given by SMENSO.
- 10.2 In the event of a breach of an obligation which is essential for achieving the purpose of the contract, SMENSO shall be liable in the event of slight negligence, insofar as the damage is foreseeable and typical according to the type of business in question, whereby liability is limited to a maximum of € 50,000 for each individual case of damage, additionally to € 100,000 per calendar year and additionally to € 250,000 for the entire contractual relationship.
- 10.3 Insofar as SMENSO grants the customer rights to use the software free of charge, SMENSO shall only be liable for damages which have arisen from fraudulently concealed defects of the software or which have been caused by SMENSO with at least gross negligence.
- 10.4 Any further liability of SMENSO does not exist.
- 10.5 The above limitation of liability shall apply accordingly to claims for reimbursement of expenses and - with regard to personnel - also to the personal liability of employees, vicarious agents, representatives and organs of SMENSO.
11. Verjährung
- 11.1 For claims for damages and reimbursement of expenses arising from intent, gross negligence, warranty, fraudulent concealment, defects of title within the meaning of § 438 (1) No. 1 a) BGB as well as in the case of personal injury and claims arising from the Product Liability Act, the statutory limitation periods shall always apply. Otherwise the periods of limitation are
- for claims for repayment of the purchase price from withdrawal or reduction 1 year from delivery of the Contract Software, but for properly notified defects not less than 3 months from submission of the effective declaration of withdrawal or reduction;

- 1 year for other claims arising from material defects;
 - 2 years in the case of claims arising from defects of title, if the defect of title does not lie in a right in rem of a third party, on the basis of which he can demand the return of the objects provided within the scope of the contract (contractual software, documentation);
 - in the case of other claims for damages or compensation for futile expenditure, 2 years, starting from the time at which the customer became aware of the circumstances giving rise to the claim or had to become aware of them without gross negligence 11.2 Die Verjährung tritt spätestens mit Ablauf der in § 199 BGB bestimmten Höchstfristen ein.
- 11.2 The statute of limitations shall commence at the latest upon expiry of the maximum periods specified in § 199 BGB.
- 11.3 However, the period of limitation is suspended if SMENSO, in agreement with the customer, examines the existence of a material or legal defect or provides subsequent performance, until SMENSO notifies the customer of the result of the examination, concludes, declares to be concluded or finally refuses or finally fails to provide subsequent performance. The period of limitation then commences at the earliest 3 months after the end of the suspension.
12. Non-disclosure
- 12.1 The customer undertakes to treat as confidential all information (e.g. software, documents, information) which SMENSO receives or becomes aware of before or during the execution of the contract and which contains business or trade secrets or is designated as confidential - even beyond the end of the contract - unless
- they are or become publicly known or are demonstrably known to the customer when the business relationship is established or become known to him thereafter by a third party without breaching a confidentiality agreement, statutory provisions or official orders
 - they must be disclosed due to legal obligations or by order of a court or an authority.
 - SMENSO allows to share the information.
- 12.2 The customer shall keep and secure information to be treated confidentially in such a way that access by third parties is excluded. The customer shall make the information to be treated confidentially accessible only to employees and other third parties who require access in order to perform their official duties. He shall instruct these persons about the need for secrecy and obligate these persons in writing to observe the obligation of secrecy.
- 12.3 Any not only insignificant, culpable violation of the secrecy obligations shall result in a contractual penalty of between € 10,000.00 and € 25,000.00. The amount may be determined by SMENSO and, in the event of a dispute, may be reviewed by a court of law to determine its appropriateness. Further claims remain unaffected by this, whereby the contractual penalty will be credited against the actual damage.

II. License terms for software

1. Service content and license scope

- 1.1 The contractually owed software (hereinafter referred to as "Contract Software") is - unless otherwise agreed - exclusively delivered by SMENSO directly to the customer by electronic means. In addition to the contract software, SMENSO also provides the customer with documentation and accompanying material for the standard software contained in the contract software, namely in the form of the license calculation and performance description in electronic form. The service description also contains user instructions, which, however, in the case of individual changes to the standard software, are only adapted to the software changes if this is ex-

- pressly agreed and against separate remuneration. Upon request, the customer will be provided with installation assistance. No further documentation material is owed.
- 1.2 For the quality, the currently valid service description is finally decisive, which is available to the customer before the conclusion of the contract. SMENSO does not owe any further quality; in particular, the customer cannot derive such an obligation from other representations of the software in public statements or in the advertising of SMENSO and/or - in the case of third-party software - of the respective software manufacturer, as well as its employees or sales partners, unless SMENSO has expressly confirmed the further quality in writing.
 - 1.3 The scope of the license results from the license calculation in connection with these contract and license terms.
 - 1.4 If SMENSO uses or provides the customer with third party software within the framework of the contractual performance, SMENSO shall notify the customer of this, in particular stating the scope of the licence contained in the agreement. The customer undertakes to comply with the license terms of the third party software and to use it only in accordance with the purpose of the agreement, whereby SMENSO will provide the customer with copies of the license terms on request. Insofar as the use of the contractual software requires additional special third party software, the transfer and licensing of which, however, is not part of the scope of services contractually owed by SMENSO, SMENSO shall refer to this in the offer documents.
 - 1.5 SMENSO may protect the Contract Software from unauthorised use by means of a coding system. In this case, SMENSO will consign the customer a license key for the licensed scope of the Contract Software. The customer is not entitled to decrypt or circumvent the coding system. If the contractual software is provided, SMENSO may limit the license key to the payment term.
 - 1.6 SMENSO initially grants the rights of use of the contractual software only revocably under the suspensive condition of full remuneration or payment and, in the event of default in payment, can revoke the granting of the rights of use to the extent that no remuneration or payment has been made after the fruitless expiry of a reasonable period of grace set. Upon full payment, the customer will be provided a unlimited time license key.
2. Rights of use and rights of work results
 - 2.1 All intellectual property rights to the Contract Software and the work results including the documentation (e.g. copyright, trademark rights, technical protection rights) shall be vested in SMENSO in relation to the customer. Work results within the meaning of these Terms and Conditions are all intermediate and final results which are created with the cooperation of SMENSO, in particular software, software parts and concepts (e.g. specifications) which are subject to protection as business / trade secrets and/or copyright protection.
 - 2.2 SMENSO grants the customer a simple, non-exclusive right to use the contract software and - limited to the extent necessary for the purpose of the contract - the work results. The customer is only entitled to use the Contract Software to process his own data in his own company for his own purposes. The license only entitles the Customer to use the Contract Software on the productive IT system on which the license calculation is based as well as an internal company test system. A separate licence must be acquired for each additional, self-contained IT system on which the contract software is to be installed. The right of use shall otherwise be unrestricted in terms of location. The scope of services and use is also determined by the license calculation.
 - 2.3 SMENSO may license the Contract Software to the customer either in the form of a user-independent company license or as Named-User licenses, this being specified in the license calculation. The subscription model also provides for a monthly payment per user, if necessary in different user categories (user roles), whereby the user roles, the monthly subscription fee per user (depending on the user role) and, if necessary, a monthly minimum license fee are defined in the license calculation.
 - 2.4 Company license: The right of use is limited in content to the contractual use by the customer and all companies affiliated with the customer according to § 16 AktG.
 - 2.5 Named User License: In the case of a Named User License, the Customer's right of use is limited to one personal person in each case, whose name is stored in the system administration with user name and password. Only this person may use this license. If the person leaves the customer or no longer works with the contractual software, the customer may transfer a Named User Licence to another person to be deposited by name by notifying SMENSO. Clause II.5 applies to a transfer of a Named User Licence to a third party.
 - 2.6 The right of use is granted to the customer either against a one-time payment for an unlimited period of time (software purchase for standard software or contract for work for individual software) or against recurring payments for a limited period of time (software subscription or subscription model). Insofar as SMENSO grants the customer rights of use of software free of charge, the regulations of gifting apply in the case of rights of use for an unlimited period of time, and those of lending for a limited period of time.
 3. License overrun
 - 3.1 As soon as the actual use of the contractual software should exceed this scope, the customer must notify SMENSO of this in writing and acquire the necessary licenses for this in a separate agreement. The respective current price list of SMENSO shall be authoritative.
 - 3.2 The respective user of the Contract Software shall enable SMENSO, at their request, to verify the proper use of the Contract Software or to have it verified by a third party, in particular with regard to whether the Contract Software is being used qualitatively and quantitatively within the scope of the acquired licenses. For this purpose, the respective customer shall provide SMENSO with information at its request and, at the discretion of the customer, either (i) enable SMENSO to check the hardware and software environment used with the aid of a remote measurement software or (ii) substantiate the correctness of the information by means of a self audit. If the self-disclosure has been refused or if there are objective indications of its incompleteness or incorrectness, SMENSO may measure the scope of use on site, whereby the customer must be informed of a date with reasonable advance notice. The customer must cooperate to a reasonable extent in the measurement, in particular, the customer must grant access to his systems (e.g. user administration) for the measurement.
 - 3.3 Furthermore, SMENSO is authorised to provide the contractual software (even subsequently) with surveying software which records the scope of use by the customer. The surveying software serves the purpose of checking the licensed scope of the licence in relation to the scope actually used. SMENSO undertakes not to collect any further information or data with this surveying software, in particular not information or data which is not relevant for checking the scope of use.
 - 3.4 If, in the context of self-disclosure or surveying, an overrun of the license scope is found, point in the day shall apply. II. 3.1 accordingly. Further claims of SMENSO remain unaffected.
 4. Software modification, backups, interoperability
 - 4.1 The customer may make backup copies of the contract software to the extent necessary, but all of them must be provided with the copyright notice in favor of SMENSO and subsequently kept securely.

Stand 09/2021

- 4.2 The service description and other documentation provided may only be duplicated for internal purposes.
 - 4.3 The customer may decompile the contract software as well as parts of this (such as interface information) only within the limits of Section 69e UrhG and only if this intention is communicated to SMENSO in writing with a reasonable period of time for the provision of the required information. Information about the source code is subject to confidentiality in accordance with Point. I.12, whether they were abandoned by SMENSO or a third party or became known by decompilation.
 - 4.4 In addition, changes and adaptations to the contractual software (modification, reworking, decoding, decoding, translation, etc.) require the prior written consent of SMENSO.
 5. Transfer to third parties
 - 5.1 Insofar as the contractual software has been provided to the customer electronically, any transfer of the contractual software by the customer to third parties, whether against payment or free of charge, in particular exploitation actions such as resale, sublicensing, renting, lending, wired or wireless public reproduction or making available, the use of the contractual software by and for third parties (e.g. outsourcing, computer center activities, application service providing) is not permitted without prior written consent from SMENSO.
 - 5.2 In other cases, the transfer of the contractual software requires at least prior written notification to SMENSO and written confirmation from the purchaser that he accepts SMENSO's license terms. In the case of software solutions created individually for a customer, SMENSO may object to the transfer of the individual part of the software.
 - 5.3 Company licenses and unitary purchased license packages of named user licenses may only be passed on unitary by the customer.
 - 5.4 If the customer is granted rights of use for a limited period of time (e.g. software subscription), the customer may not transfer these to third parties.
 6. Testing of the contract software
 - 6.1 In the case of the assignment of standard software, the customer shall examine the contractual software and the provided documentation immediately after delivery and shall give detailed written notice of any defects identified in this connection. § 377 HGB (German Commercial Code) shall apply. If such immediate notification is not given, the performance shall be deemed to have been approved, except in cases of undetectable defects. Should such a defect become apparent at a later date, the notification must be made immediately after the discovery of such a defect, otherwise the performance shall be deemed to be approved even in view of this defect. If SMENSO has fraudulently concealed the defect, it may not invoke a failure to notify the defect or late notification of the defect by the customer.
 - 6.2 In the case of software individually created for the customer, the customer may only use the contractual software in the productive system for the operative business, after the contractual software has been tested to a reasonable extent by SMENSO with the cooperation of the customer and released for operative business. During such a test, all important or company critical business processes and procedures must be run through by the customer. These are to be named by the customer to SMENSO.
- ### III. Software adaptation, customizing and creation of individual software
1. Services
 - 1.1 The customer determines the task (e.g. in the form of a specification sheet), whereby the solution and the detailed content

- and technical implementation are worked out jointly by the parties in a planning/conception phase. This phase ends with a detailed concept/specification, which SMENSO can request from the customer for approval before implementation.
- 1.2 The customer bears the risk that the task formulated by him or specifically commissioned services correspond to his actual ideas and requirements.
 - 1.3 The subsequent implementation/realization ends with the completion of the software on a test system of the customer and the execution of the test measures prior to the start-up in the operative business (Go Live) of the customer. The installation and commissioning (Go Live) is carried out by the customer, unless expressly agreed otherwise. SMENSO can support the customer at his request in the commissioning and installation against appropriate remuneration, but without assuming responsibility for the success of the system.
 - 1.4 The details of the service content (e.g. timetable) shall be defined by the contracting parties in an individual contract or in the individual contract documents or, in the absence of a written individual contract, shall result from the order correspondence.
 2. Change request procedures and changes
 - 2.1 If the customer has a change request compared to his original task, he can ask SMENSO to check the technical feasibility of the change request within a reasonable period of time and to inform him how this will affect the content of the contract, the schedule and the agreed remuneration.
 - 2.2 SMENSO always begins with the implementation of the change request only after the release or order of the customer.
 - 2.3 Insofar as SMENSO, for its part, proposes a necessary or appropriate change to the specifications, the customer can only object to the change if there is a justified interest. The objection must be made immediately.
 - 2.4 Insofar as the customer does not observe the change request procedure in his change request, SMENSO can invoice the change requested by the customer separately as a subsequent extension of the order according to the time required and in accordance with the agreed daily rates or - if no such rates have been agreed - according to the usual daily rates.
 3. Instruction authority
 - 3.1 SMENSO may decide how many and which employees - including, at its discretion, freelancers and subcontractors - are to be used or which services are to be subcontracted.
 - 3.2 The contact person for the customer is always the project manager or the management on the SMENSO side. For its part, the customer nominates a responsible contact person and a deputy who coordinates the customer's participation and makes the necessary decisions or can bring about such decisions without delay.
 4. Acceptance and testing
 - 4.1 Insofar as the services or partial services of SMENSO are subject to the law on contracts for work and services, SMENSO may request a written declaration of acceptance from the customer and/or the preparation of a joint acceptance protocol. In particular, SMENSO may make the continuation of a project dependent on the (interim) acceptance of a self-contained part of the project. If acceptance is excluded or not required due to the nature or content of the service, delivery of the service shall take the place of acceptance.
 - 4.2 The acceptance test is to be carried out on the customer's test system before commissioning (Go Live). SMENSO will notify the customer of the readiness for acceptance at least 6 weeks before the planned Go Live date. The parties will

Stand 09/2021

- jointly perform the acceptance test within 2 weeks after this notification.
- 4.3 Acceptability shall be deemed to exist if the Contract Software runs essentially error-free on the Customer's test system and all requirements specified in the detailed design approved by the Customer (or alternatively, if there is no approved detailed design, in the terms of reference) are met. For this purpose, SMENSO will prepare a test plan - possibly already together with the contract or with the detailed design - which lists all essential functions and business processes and which forms the basis for the acceptance test. If the test plan is not already part of the contract documents, SMENSO will send the test plan to the customer at the latest upon notification of readiness for acceptance. The customer must release the test plan or notify additions within 2 weeks after receipt of the test plan. After the expiry of 2 weeks, the test plan shall be deemed to be approved, provided that the customer was informed of this deadline when the test plan was sent and of the legal consequences of allowing this deadline to expire. In case of change requests, the contracting parties will jointly discuss whether these are justified. If no agreement can be reached, the changes will be included in the test plan with a note of reservation and the acceptance test will be extended by these changes - but without legal prejudice.
- 4.4 The customer may refuse acceptance due to material defects and may declare acceptance with reservation in the case of minor defects. Should the parties fail to agree within the framework of the acceptance test whether a defect is present or whether a defect is material, the parties will note their respective assessments as disputed in the acceptance protocol. The protocol must nevertheless be countersigned by both parties for the purpose of documentation, even if the customer does not declare acceptance, if necessary due to differing assessments. Both parties shall receive a copy of the acceptance protocol.
- 4.5 Significant defects are errors if they have a preventative or hindering operation. Preventing operation means that it is impossible to use the entire system or an essential function from the test plan. An impediment to the operation occurs if the use of the entire system or an essential function from the test plan is significantly restricted and the defect cannot be circumvented in a reasonable temporary manner. Other defects are insignificant defects.
- 4.6 Errors or functions not yet implemented, which are in each case insignificant but still require rectification before Go Live, will be recorded in the acceptance protocol or in a list of open points ("OP list"). A Go Live by the customer may only take place once the OP list has been processed or SMENSO has given its express approval for Go Live.
- 4.7 If the customer does not declare acceptance due to the non-existing acceptance capability, SMENSO is entitled to two further acceptance tests within reasonable periods of time. Only after these tests the acceptance capacity is not achieved due to Reasons for SMENSO for the sake of SMENSO, the creation of the contract software is considered to have failed.
- 4.8 The acceptance is implied - regardless of an acceptance test - if the customer uses the contract software in operational operation for a period of 4 weeks, without complaining about defects - as far as these are recognizable - recorded improved.
- 4.9 Irrespective of the acceptance under the contract for work and services, the customer shall check the work results and interim results (including the specification sheet) provided for completeness and accuracy, in particular before the work results are used in his operational business, based on his level of knowledge as a software user.
5. Project process and documentation
- 5.1 SMENSO only owes user documentation and user assistance for individually created or adapted software if this has

- been expressly agreed. The same applies to process descriptions and interface documentation.
- 5.2 Insofar as documentation is agreed, this is owed with the contents and formats normally produced by SMENSO, of which the customer can obtain sample documentation in advance.
- 5.3 Requirements specifications/fine concepts for software adaptations only contain details of what is to be adapted, but not how the adaptation is to take place.
- 5.4 The electronic transfer of the documentation is sufficient.

IV. Software subscription

1. Services
- 1.1 As an alternative to the purchase of a licence for a one-off payment (software purchase), SMENSO offers the customer - if agreed accordingly - licensing against recurring payments on a subscription basis (software subscription). The regulations on software leasing also apply to the subscription model.
- 1.2 Insofar as the parties to the contract agree on software subscription, the agreed version of the contractual software to be provided, which is otherwise current at the time of conclusion of the contract, shall be owed. Updates shall be made within the scope of maintenance. After prior notification, SMENSO may use a new software version, as long as the scope of functions owed under the contract is maintained and the new software version is not unreasonable for the customer.
2. Rights of use
- 2.1 The customer receives a right of use limited to the contract period.
- 2.2 In all other respects, the provisions in Clauses II.1-4 shall apply accordingly. Passing on and/or sublicensing the contract software to third parties is not permitted.
3. Liability and warranty
- 3.1 In addition to Section I., the following regulations apply to software leasing:
- 3.2 The customer must inform SMENSO immediately of any defects in the contractual performance. The regulations on error messages according to Clause VI.4 apply accordingly. Insofar as SMENSO is unable to provide a remedy as a result of the omitted or delayed notification of defects, the customer has no claims or liability for defects. If the notification of defects is not made just in time, the customer is responsible for the defect or is partly responsible for it. In this respect, the customer must demonstrate that he is not responsible for the omitted or delayed notification of defects.
- 3.3 The strict liability according to § 536a Abs.1, 1. alt. BGB due to defects that already exist at the time of the conclusion of the contract is excluded.
- 3.4 An only insignificant reduction of the suitability for contractual use does not entitle the customer to claims for defects.
4. Term of contract
- 4.1 The software subscription contract can be terminated by either party with a notice period of 3 months to the end of the month. A minimum contract period of 24 months applies unless another minimum contract period has been expressly agreed upon.
- 4.2 A partial termination of uniformly agreed licenses, especially Named User licenses, is excluded. An exception applies if a minimum number of licenses has been expressly agreed upon, which will not be undercut by the partial termination. For such a partial termination, the period and minimum contract term according to section 4.1 shall apply accordingly.

Stand 09/2021

- 4.3 The right to extraordinary termination for good cause remains unaffected.
- 4.4 After termination of the contract, the customer will no longer use the contractual software and will delete it, which must be proven by the customer upon request by SMENSO.

V. Other services

1. Services

- 1.1 SMENSO offers consulting, support services and training for the conception, adaptation and operation of software, hardware (especially sizing) and the customer's own IT infrastructure as well as customizing, installation and programming services and system support
- 1.2 The exact content and scope is determined by the service ordered by the customer and confirmed by SMENSO.

2. Cooperation

- 2.1 The customer determines the task and gives SMENSO all reasonable, necessary and appropriate instructions for the provision of the services owed. The customer will provide SMENSO with the necessary information and devices (hardware and software, network capacity and lines, telecommunications equipment) in accordance with the information provided by SMENSO.
- 2.2 In the case of training courses, the customer shall provide premises and technical equipment in consultation with SMENSO. The customer may only cancel an agreed training date for good cause. In the event of justified dissatisfaction on the part of the customer, SMENSO has the possibility of remedying this by repeating the training.

VI. Software maintenance and support

1. Services

- 1.1 Software maintenance and servicing only relates to the contractual software provided by SMENSO in accordance with the licence calculation and requires - except in the case of software subscription - the separate commissioning of the customer against additional remuneration. The annual remuneration is determined in an individual contract and is calculated in principle as a percentage of the licence purchase price agreed in the licence calculation as well as - if individual software is to be maintained - the development costs invoiced for its creation (without consultancy costs).
- 1.2 The services include the periodic provision of the respective new versions of the standard software modules contained in the contract software (hereinafter referred to as "Updates"), the telephone customer hotline and the helpdesk system. Any maintenance and support services going beyond this will only be carried out according to a separate order and will be invoiced according to the time spent on the basis of the SMENSO price list valid at the time of the order.
- 1.3 The maintenance readiness is limited to working days (Monday to Friday except public holidays in Baden-Württemberg and 24 and 31 December) between 8:00 and 17:00 (CET). Any readiness for maintenance beyond this time requires a special agreement. If SMENSO enters into a service level agreement with the customer or concludes a separate maintenance contract, the maintenance readiness times and any agreed response times shall be determined with priority.
- 1.4 The object of the maintenance and care is only the support in troubleshooting and error correction, and this only with regard to software errors, but not to application errors. The maintenance and service does not extend to problems caused by third-party software or by errors or disadvantageous settings in the hardware.

- 1.5 SMENSO support does not include services on site at the customer's premises. The customer agrees to the installation of remote access to his IT infrastructure and in particular creates the technical prerequisites required by the customer according to instructions from SMENSO, so that SMENSO can access the system subject to the support for error diagnosis and correction via RDP (with or without VPN), VNC, SSH or TeamViewer. Furthermore, the customer must cooperate to a reasonable extent in the remote diagnosis.
- 1.6 SMENSO may engage third parties as vicarious agents for the provision of maintenance and care services.

2. Updates

- 2.1 SMENSO shall inform the customer as soon as SMENSO has published an update with regard to the contractual software. SMENSO will send updates to the customer electronically. A physical data carrier and the installation at the customer's premises are not owed.
- 2.2 The updates may contain additional functionalities, but the customer is not entitled to the realization of certain functionalities within the updates. In this respect, SMENSO alone decides on the type, scope and frequency of updates to the SMENSO software.
- 2.3 If the customer (if applicable by a third party) does not install a provided update within 1 month or commissions SMENSO with the installation, the customer shall immediately inform SMENSO in writing. SMENSO may refuse future maintenance services which relate to an outdated software version.

3. First Level Support

- 3.1 In the absence of an agreement to the contrary, first level support is provided by the customer himself, so that only technically more complex questions from the 2nd and 3rd level are reported to SMENSO Support.
- 3.2 The forwarding may only be carried out by first level support. The relevant employees of the customer must have IT knowledge and training and must be named to SMENSO in advance. SMENSO is not obliged to communicate with other employees of the customer regarding support cases.

4. Issue handling

- 4.1 SMENSO supports the customer by providing telephone advice on troubleshooting, removal and circumvention of the contractual software. The customer can report malfunctions, errors and damage by e-mail, telephone or via the helpdesk system. The error message and description must be made in such a way that the error is comprehensible and reproducible for SMENSO. In addition, the report must describe the error symptoms in sufficient detail to enable SMENSO to support the customer in the targeted elimination of the error. Ideally, the message should provide SMENSO with demo data on the error that has occurred, from which the error can be traced.
- 4.2 Serious errors must be reported by the customer not (only) by telephone, but in writing on the helpdesk system provided by SMENSO. If the error also affects access to the helpdesk system, the notification can initially be made in another way, but must be made in writing at the latest when access to the helpdesk system is restored.
- 4.3 Unless otherwise agreed, SMENSO will provide the customer with a customer hotline on working days (see VI.1.3) between 8:00 and 17:00 (CET). SMENSO does not guarantee immediate handling of the call, but may call back within a reasonable time.
- 4.4 The customer has to report errors online via the helpdesk system. SMENSO will process the error reports within a reasonable time and inform the customer of the processing. SMENSO may classify error messages according to importance and urgency and give them priority.

Stand 09/2021

- 4.5 In addition to the maintenance fee, SMENSO is entitled to charge for additional services on a time and material basis if
- the reported error is due to an incorrect operation by the customer, but not to a software error covered by the scope of maintenance, or
 - the reported error was due to a faulty or inadequate IT infrastructure at the customer's premises and SMENSO thereby incurs additional expenditure in providing the contractual maintenance and servicing services.

5. Contract period

- 5.1 In the case of maintenance of standard software, the term of the contract begins with the handover to the customer. In the case of individual software with the acceptance of the contract software by the customer, otherwise with the placing of the order and readiness for maintenance.
- 5.2 Unless the parties have agreed on a separate term or notice period, the maintenance and service contract can be terminated for the first time at the end of 2 years with a notice period of three months. If the contract is not terminated - or not terminated in due time - the contractual relationship shall be automatically extended by one year in each case without the parties having to make a separate declaration to this effect. The contractual relationship can also be terminated in this subsequent term with a notice period of three months to the end of the term.
- 5.3 The right to extraordinary termination for good cause remains unaffected.

VII. Final provisions

1. After conclusion of the contract, SMENSO may publicly name the customer as a reference.
2. The entire business relationship between SMENSO and the customer shall be governed by the law of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods and the provisions of international private law.
3. If the customer is a merchant, a legal entity under public law or a special fund under public law, the registered office of SMENSO shall be the exclusive place of jurisdiction for all disputes arising from and in connection with the contractual services. In the event of legal disputes, SMENSO may optionally choose the general place of jurisdiction of the customer.
4. The conclusion of the contract as well as amendments and supplements to the contract between SMENSO and the customer as well as all declarations of intent relevant to the contract and declarations concerning the exercise of rights to structure the contract, in particular terminations, reminders or setting of deadlines must be in writing in order to be valid. An exchange of letters and transmission by fax shall also be sufficient to comply with the written form. However, § 127 (2) and (3) of the German Civil Code (BGB) shall not apply in all other respects.
5. If SMENSO intends to amend these terms and conditions within the framework of continuing obligations, the customer will be notified in writing of the amendments at least four weeks before they take effect. If and insofar as the customer objects to the changes, the previous provisions shall continue to apply. If no objection is made within four weeks of receipt of the notification of change, the changes shall become valid, provided that SMENSO has expressly pointed out the right of objection, the deadline and the legal consequences in the event of no objection in the notification of change.
6. Should any of these provisions be ineffective, this shall not affect the validity of the remaining provisions.

- End of the Terms and Conditions -