

General Terms and Conditions of Purchase for IT Part J – IT Operation and Application Management Services (Version 03/21)

1. General, attachments, definitions

1.1 General

These special provisions of the AEB-IT (Part J) as applicable at the time of conclusion of the contract for IT Operation and *Application Management Services* shall always apply together with the general provisions of the AEB-IT (Part A) as a single part of the contract.

1.2 Definitions

For the interpretation of this AEB-IT (Part J), the definitions contained in **Annex 1.1 “Definitions”** shall apply.

2. Subject matter of the contract, business partner

2.1 Subject matter of the contract

The subject of this AEB-IT (Part J) is the provision of the contractual *services* by the *contractor* to the *client* for the *client* and the *business partners*.

2.2 Business partner

The *client* purchases the *services* not only to cover its own needs, but also to provide the *business partners* with the agreed *services*.

The *business partners* have no direct contractual relationship and no claims of their own against the *contractor*.

2.3 No acquisition and transfer of assets and employees

2.3.1

The takeover of assets (hardware, *software* and existing contractual obligations with third parties) by the *contractor* is not the subject of the *services*. The same applies to the takeover of *employees* of the *client*, *business partners* or a service provider previously working for the *client*.

2.3.2

The *contractor* is obliged to organize the provision of the *services* in such a way that its

employees or *employees of subcontractors* are not transferred to the *client* or the *business partners* by way of transfer of business (Section 613a German Civil Code [BGB]) at the end of the contract term. He shall, therefore, in particular, avoid a situation where the *services* are provided by dedicated departments of the *contractor*. He shall oblige his *subcontractors* accordingly.

3. Services

3.1 Locations

3.1.1

Is a specific location agreed upon from which or at which the *services* will be provided,

then the complete or partial relocation of the agreed location requires the prior written consent of the *client*.

3.2 Type and quality of service provision

3.2.1

The *contractor* shall provide the *services* in accordance with the respective state-of-the-art technological standards and in compliance with generally accepted quality standards.

3.2.2

The *contractor* shall be legally and economically responsible for procuring and providing the necessary and suitable material and human resources for the provision of the respective *services*.

3.2.3

The *contractor* shall ensure that the *systems* used by it to provide the *services* fit smoothly into the *client's* IT environment and that the *client's* internal or external *systems* are not impaired (in particular, with regard to their functionality, performance, reliability, availability, response times or similar parameters).

3.2.4

If the use of certain *systems* and processes for the provision of the *services* is agreed, a deviation by the *contractor* is only permissible if this is agreed in writing.

3.2.5

Setup and modification of *systems* and processes must be performed by the *contractor* in such a way that

- (i) the statutory audit rights and obligations of the *client* and the *business partners* and the audit rights and control options of the *supervisory authorities* are not restricted; and
- (ii) they do not (a) adversely affect the price, scope or quality of the provision of the *services* (b) adversely affect the costs and investments associated with the procurement of the *services* for *client* or the *business partners* and/or (c) affect the *systems* or business processes of *client* or the *business partners*.

Deviations from this require the prior express written consent of the *client*.

3.2.6 The *contractor* shall maintain the *systems* used by it to provide the *services* so that they are ready for operation and can be used properly at all times. The *contractor* shall plan the work for the maintenance of the *systems* in such a way that the use of the *systems* by the *client* and the *business partners* is not impaired. If work is unavoidable during regular or known operating hours, the *contractor* shall arrange such work in such a way that disruptions for the *client* and the *business partners* are kept to a minimum. As far as possible, maintenance work must be coordinated with the *client* in advance. For required regular work during operating hours, the *contractor* shall agree the time windows required for this with the *client* by means of maintenance schedules.

3.2.7 The *contractor* shall, at all times, ensure the multi-client capability of the *systems* provided by it and used for the provision of the

services. This requires logical separation and mutual shielding of the data files stored and processed for other clients of the *contractor*. The *contractor* must also be in a position, at all times, to perform the services for its respective clients independently and to follow instructions independently.

3.2.8 In providing the *services*, the *contractor* shall comply with the principles of proper accounting (GoB), the principles of proper IT-based accounting systems (GoBS).

3.3 Collaboration with third parties

In order to ensure proper business operations on the part of the *client* and the *business partners*, the *contractor* shall cooperate to a reasonable extent with third parties who perform services in connection with the *services* for the *client* or the *business partners* concerned. This includes, to the extent necessary, attending joint meetings and providing information. The *client* shall name these third parties to the *contractor* if possible upon conclusion of the contract, otherwise, in good time beforehand, stating their services.

4. Service level and key figures

4.1 Compliance with service qualities, service levels and key figures

4.1.1

The *contractor* shall comply with any agreed *service levels* and *key performance indicators* when providing the *services*.

4.1.2

To the extent that no *service levels* or *key figures* are agreed for the respective *services*, the *contractor* shall provide these *services* at least in a quality that can be expected from a professional IT service provider in production-critical industries – such as the automotive industry – in connection with the relevant services.

4.1.3

The *service levels* and *key figures* are a purely qualitative determination of the *services* and do not limit the *contractor's* obligation to

provide services on an ongoing basis. The *contractor* shall be liable for culpable breaches of duty within the scope of the provision of services, irrespective of the achievement of the *service levels* and *key figures*.

4.1.4

If specific legal consequences are agreed for the failure to meet *service levels* or *key figures*, this shall not affect the assertion of further claims, in particular for damages, unless expressly agreed otherwise in writing. In all other respects, clause 14.1.5 shall apply. The *client* may only terminate the contract under the conditions set forth in clause 15.

5. Obligations to cooperate and provide assistance

5.1 General provisions

5.1.1

The *client* shall fulfill the cooperation and provision obligations incumbent upon it under this clause 5.1 or under an express written agreement. The *client* shall, in particular, provide the *contractor* with

- (i) the documents and information necessary for the provision of the respective *services*;
- (ii) access to the *systems* and premises of *client* and the *business partners* to the extent necessary for the provision of the respective *services* and, in doing so, ensure a clear demarcation of the tasks and premises of client and contractor; the *contractor* shall comply with the provisions generally applicable to external users and accessible to it, in particular, the relevant security regulations and house rules.

5.1.2

The *contractor* shall, irrespective of any failure by the *client* to fulfill its obligations to cooperate and provide the *services*, make all reasonable efforts to provide the *services* in question.

5.1.3

The *client* shall provide the *contractor* with all *provisions* exclusively for the purpose of providing the *services*.

5.1.4

The *client* shall be entitled to check the use of provided *software* by the *contractor* by means of audits to a reasonable extent. In this context, the *contractor* shall provide the *client* with an insight into all relevant documents and grant the *client* access to its locations where the provided *software* is stored, hosted and/or used.

5.2 Special provisions

Special provisions on obligations to cooperate and to provide materials are set out in **Annex 1.5 “Provisions”**.

6. Remuneration, taxes

In addition to clause 6 of the AEB-IT (Part A) – General Section, the following shall apply:

6.1 Remuneration

6.1.1

For the provision of the *services*, the *client* shall pay the *contractor* the remuneration agreed in the *contract*.

6.1.2

Unless otherwise agreed, payment shall not be made until the service has been rendered in full. If the *parties* have agreed on partial payments, these shall only be due after complete performance of the respective partial service. Agreed payment deadlines remain unaffected by this.

6.1.3

If the remuneration is determined according to time periods, the *contractor* shall invoice its *services* in each case after the *services* have been rendered in accordance with the agreed invoicing periods.

6.2 Retentions

The *client* may withhold forfeited contractual penalties, damages caused by delay, additional expenses or any agreed securities from the *contractor* 's remuneration to a reasonable extent. The reservation of the assertion of a contractual penalty may be asserted by the *client* within three (3) months after knowledge of the reason and amount of the contractual penalty, in the case of services requiring a final invoice, however, until payment of the final invoice.

7. Personnel and subcontractors

7.1 General requirements

7.1.1

The *contractor* shall perform the *services* and the work assigned to it under its own direction and responsibility with its own employees. Temporary workers may only be deployed if the provisions of the Temporary Employment Act (Arbeitnehmerüberlassungsgesetz) are complied with. The *client* is not entitled to issue direct instructions to the *contractor*'s employees.

7.2 Involvement of subcontractors

7.2.1

Section 12 of AEB-IT Part A – General section shall apply to the engagement of *subcontractors* . *Subcontractors* not approved at the time of conclusion of the contract shall require the approval of the client by way of the amendment procedure pursuant to clause 8.2.

7.2.2

The *contractor* shall ensure that the obligations of the *subcontractor* vis-a-vis the *contractor* with regard to the performance of the services are in accordance with the obligations of the main contract between the *contractor* and the *client*. The contract with the *subcontractor* must also allow for the direct enforcement against the *subcontractor* of the rights to information and audit regulated in this *contract* for the benefit of the *client* and the *business partners*. Upon request, the *contractor* shall

prove compliance with these requirements to the *client* by submitting the contract concluded with the *subcontractor*.

7.2.3

The *contractor* shall be liable for the performance and omissions of the *subcontractors* as for its own performance and omissions.

8. Operating manual, change procedure

8.1 Operating manual

8.1.1

When providing the respective *services*, the *contractor* shall observe the specifications of the *client*'s *operating manual* provided to it, and update and maintain them regularly as part of the *services*. The *operating manual* must be readily comprehensible to the intended user.

8.1.2

The content and scope of the *services* shall not be changed by the *operating manual*; in this respect, only the provisions of this *contract* shall apply.

8.2 Change procedure

8.2.1

The amendment procedure shall apply to any amendment, adjustment or extension of the *agreement* and, in particular, the *services*.

8.2.2

The *client* may at any time request an amendment, adjustment or extension of the *agreement* and the *services*. As soon as possible in response to a corresponding request, the *contractor* shall explain to the *client* in detail in writing the consequences of the change, adaptation or extension requested by the *client*, in particular, for deadlines, effort and remuneration, and submit a complete offer for the requested change, adaptation or extension on competitive terms. If it is not possible (or otherwise unreasonable) for the *contractor* to implement the change request, the *contractor* shall justify this in writing.

8.2.3

The *contractor* shall be obligated to conclude a change agreement upon the *client's* request if the *client* agrees to a reasonable adjustment of the remuneration including the necessary additional effort for the implementation of the change request, unless the implementation of the change request is impossible or unreasonable for the *contractor*.

8.2.4

Each *party* shall bear its own costs incurred in connection with the implementation of the amendment procedure. Excluded herefrom are *operating* changes which are to be provided within the scope of the defined *services*, and which are not to be remunerated separately.

9. Legal requirements and policies

9.1 Compliance and modification of *legal requirements* and *policies*.

9.1.1

The *contractor* shall perform its obligations under this *contract* in accordance with the applicable *legal requirements* and *policies* of the *client*.

9.1.2

The *client* shall make the *legal requirements* and *policies* (including site- or department-specific *policies*) available to the *contractor* in an appropriate form prior to the conclusion of the contract and after each change to be taken into account by the *contractor*.

9.1.3

If, as a result of an amendment or supplement to the *legal requirements* or *policies* that comes into force after the conclusion of the *contract*, it becomes necessary to amend the *contract*, the amendment procedure shall apply in this respect.

10. Reporting, audit rights

10.1 Audit rights

The *contractor* hereby *grants* the *client* and the *business partners* the audit rights described in

Annex 1.2 "Audit rights" with regard to the assigned scope of duties.

11. Confidentiality and data protection

Notwithstanding the applicable regulations on confidentiality (clause 7 of AEB-IT Part A), the *contractor* shall ensure data protection within the meaning of the provisions of data protection law, including the technical and organizational measures for the protection of personal data, taking into account confidentiality, availability and integrity. For data protection and information security, the **Annex "Agreement on commissioned processing"** shall additionally apply. In it, the required information is to be filled in by the *contractor* and the *client*. If no personal data is processed by the *contractor* in the course of the provision of services, the inclusion of this Annex is not required. The *client* shall document this.

The *contractor* is – if the *client* or a *business partner* is a financial institution – obliged to maintain banking secrecy. In this case, **Annex 1.4 "Special requirements for services for banking and financial institutions"** shall also apply.

12. Security and emergency measures

12.1 Security

The *contractor* shall, at all times, take reasonable and effective security measures to ensure proper performance of the *services*. The *contractor's* security measures shall comply with the relevant *policies* of the *client*.

12.2 Emergency measures

The *contractor* shall take reasonable and effective measures for emergencies to ensure timely availability of substitute solutions for the purpose of business continuation and return to normal operations within a reasonable period of time.

The *contractor's* emergency measures shall be coordinated with the relevant *policies* and the internal emergency plans of the *client*, which the *client* shall make available upon request.

13. Intellectual property and infringements

13.1 Intellectual property

13.1.1

Unless expressly stated otherwise in this *contract*, in particular, in the following provisions, all intellectual property rights, e.g. copyrights, industrial property rights or know-how, which existed prior to the conclusion of the respective *contract* shall remain with the *party* which held them at that time.

13.1.2

Insofar as the *contractor* uses protected *works*, such as, in particular, *software* and databases, for the provision of the *services*, the *contractor* shall ensure that the *client* and the *business partners* are entitled to use these *works*, insofar as this is necessary for the provision or receipt and use of the *services*. This shall also apply with regard to third parties, insofar as this is necessary for the appropriate use of the *services* by the *client* or the *business partners* or these third parties make a contribution to the appropriate use of the *services* by the *client* or the *business partners* that requires such a right of use.

13.1.3

The *client* may, at any time, request the *contractor* to deposit the source code of the *contractor's proprietary software* to which the *contractor* or the companies affiliated with the *contractor* pursuant to Section 15 German Stock Corporation Act (AktG) and which are directly or indirectly controlled by the *contractor*, hold the copyrights (ancillary copyrights). The costs of the deposit shall be borne by the *client*.

13.1.4

The rights of use of intellectual property of all work results developed for the purposes of the *contract* and, in particular, for the *services* shall belong to the *client* exclusively and for an unlimited period of time and with the right to sub-license. The *client* shall grant the *contractor* a free, non-exclusive right of use to such work results insofar as this is necessary for

the provision of the *services*. If the transfer of the rights of use is not possible by way of exception to the aforementioned extent for legal reasons, the *contractor* shall inform the *client* of this in writing in advance.

13.1.5

In deviation from clause 13.1.4, the *contractor* shall be entitled to the rights of use to further developments of *contractor's proprietary software* and *contractor's third-party software*; however, the *client* (and, to the extent necessary, the *business partners*) shall, in any case, be entitled to the rights of use to *contractor's* further developments for the continuation of the *services* for an unlimited period of time, even after the end of the term of the contract. In particular, the *client* is also permitted to allow third parties to use the results of the *contractor's* performance after the end of the contract term for the continuation of the *services* (including in a modified form).

13.1.6

To the extent necessary to realize the rights described above and unless otherwise provided in the *contract*, the *software* and other *works* may each be used in all ways relevant now or in the future. This includes the right of reproduction, adaptation, distribution and public communication (including the right of public access).

13.1.7

If *Application Management Services* are the subject of the *services*, clause 13.1.4 f. shall apply accordingly. In any case, the *client* shall be entitled to the results of the *contractor's* performance in connection with the management of the Applications for an unlimited period of time, even after the end of the contract term. In particular, the *client* shall be permitted to have the *Application Management Services* performed by third parties using the *contractor's* performance results after the end of the contract term.

13.1.8

The right of the *parties* to continue to use ideas, concepts or procedures which relate to the *services* and which become the general know-how of their respective employees in the course of the cooperation shall remain unaffected, provided that this does not infringe any industrial property rights of the other *party* or a third party.

13.2 Violation of third party rights

13.2.1

The *contractor* warrants that the *services* and their appropriate use by the *client* and *business partners* do not infringe any third-party rights. This also applies to the *systems* that the *contractor* provides and uses to provide the respective *services*.

13.2.2

If claims are asserted against one of the *parties* in connection with the *services* due to the actual or alleged infringement of third party rights, the *parties* shall inform each other thereof without undue delay. The *parties* shall coordinate the defense of such claims in close consultation, with the *contractor* taking the lead.

13.2.3

If the *client* or *business partners* incur costs and/or damages (including the costs of reasonable legal prosecution or legal defense) in connection with the defense or other handling of claims based on an infringement of third party rights for which the *contractor* is responsible, the *contractor* shall indemnify the *client* and the *business partners* concerned against such costs and damages.

13.2.4

The obligation of the *contractor* to provide the *services* shall remain unaffected.

13.2.5

If *services* are the subject of a claim by a third party or may become so in the reasonable opinion of the *contractor*, the *contractor* shall

inform the *client* thereof without undue delay. The *contractor* shall also undertake the following: (i) Securing the right to continue using the affected portion of the *services*; (ii) Replacing or modifying the affected portion of the *services* to remedy the (potential) breach, but not resulting in a material degradation of the *services*; or (iii) if neither (i) nor (ii) is possible, removing the affected portion of the *services* and adjusting *contractor's* compensation so as to reasonably compensate the *client* and *business partners* for the resulting impairment. The costs for such measures shall be borne by the *contractor*, unless he is not responsible for the infringement of the rights of third parties.

13.2.6

The provisions in this clause 13.2 shall apply accordingly in favor of *contractor* with regard to such *systems* which are provided by *client* and used by *contractor* for the provision of the respective *services*. In this case, the *client* shall be responsible for the defense against any claims.

14. Warranty and liability

14.1 Warranty

14.1.1

The *contractor* shall provide the *services* in accordance with the respective state-of-the-art technological standards, and with the diligence of a prudent businessman, and in a defect-free state. The *services* must be provided at least in a quality that can be expected from a professional IT service provider in production-critical industries such as the automotive industry in connection with the services in question.

14.1.2

A defect shall be deemed to exist if the *services* do not meet the requirements specified in the contract or, if no specific requirements have been specified, if they are not suitable for the purpose assumed under the *contract* or are not suitable for ordinary use.

14.1.3

The *parties* shall inform each other immediately in text form if they discover an actual or suspected defect with regard to the *services*.

14.1.4

The *contractor* shall, within its area of responsibility and at its own expense, investigate the cause of

the defect and, if necessary, take all further measures required to prevent the occurrence of the defect in the future. The *contractor* shall regularly report to the *client* on the respective status and success of these efforts.

14.1.5

The assertion of other claims to which the *client* is entitled in the event of the occurrence of defects shall remain unaffected. However, this contract may only be terminated under the conditions set forth in clause 15. Any reduction of the remuneration shall be excluded if the cause of the defect simultaneously leads to a failure to meet *service levels* or *key figures* and thus to a *penalty* becoming due.

14.2 Liability

14.2.1

The *parties* shall be liable to each other in accordance with the general statutory provisions.

14.2.2

In addition to compensation for its own damages, the *client* may claim compensation for damages of the *business partners* caused by the *contractor* and for which the *contractor* is responsible, by performance itself as if they were the *client's* own damages.

15. Term and termination

15.1 Term

The *contract* shall commence at the earliest upon conclusion of the *contract*, unless another date is agreed in the *contract* for this purpose, and shall end on the date agreed in

the *contract* without the need for a separate notice of termination.

15.2 Termination for cause

15.2.1

Either *party* is entitled to terminate the *contract* prematurely and without notice for good cause.

15.2.2

If good cause consists of a breach of a contractual obligation, termination shall only be permissible after an unsuccessful warning, unless the basis of trust for the further performance of the contractual relationship has already been impeded by the first breach of contractual obligation to such an extent that it cannot be restored even by setting a deadline for remedial action or a warning.

15.2.3

Good cause for termination may also include repeated violation of *service levels* or *key figures*.

15.3 Written form requirement

Any termination must be in writing to be effective.

16. Contract processing

The *contractor* shall, at all times, ensure that the *services* can be taken over by a successor provider in the event of a full or partial termination of the respective *contract*. The provisions of **Annex 1.3 "Exit Management"** shall apply if the *contract* is terminated in whole or in part – for whatever reason.

17. Prohibition of set-off, right of retention, right to refuse performance

Offsetting by the *contractor* against claims due to the *client* shall be excluded unless the *client* does not dispute the underlying counterclaims, or these have been legally established or affirmed in court proceedings. The assertion of rights of retention and rights to refuse performance by the *contractor* shall also require that the *contractor's* counterclaims are based on the same contractual relationship.

The contract ends automatically at the end of the contractually agreed fixed term.