



General Terms and Conditions of KGS Software GmbH

Status June 01, 2021

PART A: General Provisions

§ 1 General, Definitions

- (1) These General Terms and Conditions of KGS Software GmbH, Dornhofstr. 38A, 63263 Neu-Isenburg, Germany (in short "KGS") apply exclusively to such contracts that KGS concludes with companies, merchants, legal entities under public law or public special funds.
- (2) General terms and conditions of the customer shall not become part of the contractual relationship unless KGS expressly consents to their inclusion. This requirement for consent applies in all cases, i.e. even if KGS performs the services without reservation in the knowledge of the customer's general terms and conditions.
- (3) The provisions in this Part A of these GTC apply to all contracts concluded by KGS and the customer. The provisions in the following parts B up to and including F of these GTC apply only to those contracts and services to which these parts expressly refer.
- (4) If and to the extent that provisions in Parts B up to and including F of these GTC conflict with provisions in this Part A, either in whole or in part, the provisions in Parts B up to and including F of these GTC shall take precedence.
- (5) The following definitions shall apply to these GTC:
 - a. "GTC" means these General Terms and Conditions of KGS.
 - b. "Work Results" are all works and services that KGS creates for the customer and/or provides to the customer on a temporary or permanent basis as part of the performance of the contractual relationship.
 - c. "Change Request" is a separate agreement between the contracting parties regarding a change in the content of the contract.
 - d. "Custom Software" is software that KGS creates specifically and exclusively for a particular customer.
 - e. "Employees" means all employees (with and without employee status), officers and agents of KGS.
 - f. "Person Day" is the use of an employee to the extent of 8 time hours between 08:00 and 18:00 per working day.
 - g. "Standard software" is software that KGS and/or a third party has not created or created for a specific customer.
 - h. "Daily Rate" means the compensation owed by Customer per person-day.
 - i. "Contracting party" means KGS or the customer.
 - j. "Contracting Parties" are KGS and the client.
 - k. "Working day" is any calendar day that is not Saturday, Sunday or a public holiday valid in the Federal Republic of Germany or the Federal State of Hesse.

§ 2 Subject matter of performance, performance of services

- (1) KGS shall provide the contractual services in accordance with the current state of proven technology.
- (2) KGS will provide the customer with user documentation (user guide) for standard software in digital form (PDF files) in English, which is addressed to an expert IT user. Further documentation is not owed.
- (3) KGS will use only qualified and reliable employees and will use proven procedures and tools of which KGS is aware.

- (4) KGS shall decide at its own dutiful discretion which employees shall be used or replaced for the provision of services in accordance with the contract.
- (5) The authority to issue instructions to the employees lies and remains exclusively with KGS.
- (6) KGS is not obligated to verify the compatibility of the content requirements of the services to be provided by KGS, as provided by the customer, with applicable legal provisions, in particular provisions of competition law, data protection law and consumer protection law, as well as infringements of trademark and patent law. Nevertheless, KGS will notify the customer of any breaches of law as soon as KGS becomes aware of such breaches and the notification itself does not constitute a breach of duty on the part of KGS.
- (7) KGS is not obligated to negotiate or enter into software maintenance contracts, maintenance contracts and/or support contracts, if the software is individual software or freemium products.
- (8) KGS hereby points out that the use of standard software and/or individual software in accordance with the contract may necessitate subsequent licensing of third-party software, in particular SAP software. Any additional costs incurred in this regard shall be borne by the customer.
- (9) KGS provides the customer with Individual Software on a permanent basis as a work performance.
- (10) KGS is only obligated to provide advice if this has been expressly agreed.
- (11) All time information refers to the time zone Berlin, Central European Time (CET/MEZ).
- (12) Services provided by KGS shall be deemed to be guaranteed only to the extent and insofar as the word "guarantee" or "guaranteed service" is expressly used in connection therewith. In particular, services agreed in service level agreements, support contracts, maintenance and service contracts do not constitute guarantees.
- (13) The place of performance and fulfillment is the registered office of KGS. Training and education will be provided at the customer's place of business.
- (14) Relative and/or absolute fixed dates are only those that are expressly designated as "fixed dates" or "fixed deadlines".
- (15) KGS reserves the right to remedy defects within the scope of warranty claims of the customer, i.e. the customer is only entitled to commission third parties to remedy defects of the Standard Software and/or Individual Software if and to the extent that KGS cannot remedy the defects or refuses to do so.
- (16) The proper usability of Standard Software is only possible if the customer maintains the current system requirements. The current system requirements will be communicated to the customer by KGS upon request and will be kept in the protected customer area of KGS, to which KGS grants the customer access within the framework of the conclusion of the contract.
- (17) The backup of the customer's data is generally the responsibility of the customer.

§ 3 Remuneration Claims

- (1) Services provided by KGS are to be remunerated by the customer.
- (2) All daily rates, hourly rates, prices and remunerations stated by KGS are exclusive of any applicable value added tax and any applicable customs duties.
- (3) Services will be remunerated by the customer on a time and material basis, based on the agreed individual prices (daily rates) and on a monthly basis.
- (4) KGS shall invoice the contractual remuneration claims in an orderly manner. KGS is entitled to issue invoices electronically.

- (5) KGS's remuneration claims that are due must be settled within 14 (fourteen) calendar days, beginning with receipt of the invoice.
- (6) If KGS provides services within the scope of legal and/or contractual warranty claims of the customer, these are free of remuneration, in particular also in the case that a contractual relationship (e.g. software maintenance contract) exists between KGS and the customer, according to which the same services would have to be remunerated by the customer.

§ 4 General Ancillary Obligations of the Customer

- (1) The customer is obligated to cooperate to the extent necessary.
- (2) The customer shall ensure that the data and information provided by it are correct, complete and appropriate; KGS shall not be subject to any active verification obligations in this respect.
- (3) The customer is obligated to notify KGS without undue delay of any deficiencies or gaps in the performance of the service, if and as soon as it becomes aware thereof.
- (4) The customer shall nominate an employee of its house who shall be available to KGS as a contact person authorized to make decisions. Furthermore, the customer shall name a deputy for cases of non-availability of the primary contact person.
- (5) If the customer is in default with the performance or provision of an act of cooperation or if the contractual provision of services by KGS is delayed due to another circumstance for which the customer is responsible (hereinafter referred to as "delay"), all agreed deadlines which cannot be met due to the delay by KGS for operational reasons shall be postponed to a reasonable later date which KGS shall determine at its reasonable discretion. Furthermore, KGS is entitled to demand compensation from the customer for any damages resulting from the delay, including any necessary additional expenses, if and to the extent that such expenses are incurred.
- (6) The customer shall support KGS in determining the amount of variable, in particular use-dependent, remuneration claims to the extent necessary and reasonable and free of charge for KGS.
- (7) The customer shall support KGS in verifying whether Standard Software is used exclusively to the extent that KGS has granted the customer rights to such Standard Software. At the request of KGS, the customer shall, within a reasonable period of time, provide appropriate self-disclosure with comprehensible evidence of the extent of use.

§ 5 Change Request

- (1) Each party is entitled at any time to propose to the other party the conclusion of a Change Request.
- (2) During the negotiation of a Change Request, KGS shall continue to perform in accordance with the applicable agreements. If the customer wishes the temporary cessation of the contractual performance of services until the conclusion of the negotiations, the provision in § 4 (5) above shall apply accordingly in terms of legal consequences.
- (3) Additional expenses incurred by KGS as a result of the implementation of a Change Request shall be remunerated by the customer additionally and on a time and material basis.

§ 6 Third Party Works, Open Source Software

- (1) The integration, connection or combination of third-party works (e.g. third-party software, open source software, freeware, third-party graphics, third-party images) in, on or with standard software and/or work results of KGS does not require the consent of the customer.
- (2) In the event that works of third parties within the meaning of the above paragraph (1) of this § 6 are integrated, added or combined with other works of third parties, and if such works of third parties

are subject to copyrights, ancillary copyrights or sui generis copyrights in favor of third parties, KGS shall grant the customer rights to the Software and/or the work results of KGS as well as to the relevant works of third parties only to the extent that KGS itself obtains rights from the respective rights holders and the legal relationship existing between KGS and the respective rights holders permits this.

§ 7 Claims of the Customer in the Event of Defects in Title

- (1) If services provided by KGS are defective in title and if, against this background, a third party asserts justified and enforceable claims against the customer on account of this defect in title, then
 - a. KGS may, at its option and at its expense, either modify or replace the relevant services in such a way that the defect of title is eliminated, but still essentially comply with the agreed functional and performance characteristics in a manner that is reasonable for the customer, or
 - b. indemnify the customer against claims against the owner of the property rights or acquire rights from third parties which are necessary to enable the customer to use the contractual services free of defects in title and in accordance with the contract and the intended use and grant these rights to the customer or
 - c. KGS is entitled to take back the affected services in return for reimbursement of the remuneration paid, whereby KGS is obligated to grant the customer a reasonable period of grace in doing so, unless this is only possible under unreasonable legal or other conditions.
- (2) The customer shall inform KGS without undue delay of any claim by a third party based on an asserted infringement of property rights due to services provided by KGS. The customer is obliged to refrain from declaring or concluding acknowledgements and/or settlements of such claims asserted by third parties without the consent or approval of KGS. Furthermore, the customer leaves the legal defense against such claims and the choice and assertion of defense measures to KGS, unless the defense measures and legal defense must be reserved to the customer for legal reasons. In the event of legal defense by KGS, the customer shall support KGS in this, insofar as this is reasonable for the customer and the expenses involved are not disproportionate. If the customer breaches an obligation in accordance with the provision in this § 7 Para. (2), claims for indemnification in accordance with the above Para. (1) of this § 7 expire with immediate effect and retroactively.

§ 8 Statute of Limitations for Contracts for Work and Services, Contracts for Work and Services and Purchase Agreements

The limitation period for claims arising from material defects and/or defects of title shall be 12 (twelve) months, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in individual cases. This shall be without prejudice to the statutes of limitation pursuant to § 438 para. 1 no. 2 BGB and § 438 para. 1 no. 1 BGB, pursuant to the Product Liability Act and pursuant to the statutory provisions on the statute of limitations for claims for damages of the customer against KGS in the event of grossly negligent or intentional breach of duty. Commercial obligations of the customer to give notice of defects remain unaffected.

§ 9 Liability, Compensation

- (1) KGS is liable without limitation for intent, gross negligence, for injury to life, limb or health, in accordance with the provisions of the Product Liability Act and to the extent of a guarantee assumed by KGS.
- (2) If KGS violates an essential obligation negligently, the liability of KGS is limited to the amount of compensation for damages typical for the contract and foreseeable for KGS at the time of conclusion



of the contract. Essential obligations are those whose fulfillment makes the proper execution of the contract possible in the first place, whose violation endangers the achievement of the purpose of the contract and on whose compliance the customer regularly relies.

- (3) The strict liability of KGS for defects already existing at the time of conclusion of the contract (§ 536 a BGB) is excluded.
- (4) If the preparation of data backups is not a service which KGS has expressly assumed, KGS is liable for the loss or damage of data and programs and their restoration only to the extent that this loss could not have been avoided by reasonable precautionary measures, in particular the daily preparation of backup copies of all data and programs.
- (5) In all other respects, any liability for damages on the part of KGS, regardless of the legal basis, is excluded.
- (6) The aforementioned limitation of liability also applies to the personal liability of the employees, organs and representatives of KGS.
- (7) The regulation according to paragraph (1) of this § 9 remains unaffected by the regulations according to the above paragraphs (2), (3) and (4) of this § 9.

§ 10 Public liability insurance

- (1) KGS shall maintain a business liability insurance policy that provides for at least the following coverage amounts: For personal injury and property damage EUR 2,000,000 (in words: two million euros) per claim and for financial loss EUR 1,000,000 (in words: one million euros) per claim.
- (2) Upon request, KGS will provide the customer with a corresponding and current insurance certificate.

§ 11 Minimum Wage Act

- (1) KGS commits itself and its subcontractors to comply with the provisions of the Minimum Wage Act.
- (2) KGS shall indemnify the customer against all claims of third parties to which such third parties are entitled against the customer due to a violation by KGS of the provisions of the Minimum Wage Act. The provisions in § 7 paragraph (2) of these GTC apply accordingly to this indemnity claim.

§ 12 Non-solicitation

Employees of KGS who have worked for the customer within the scope of the contract may only be enticed away by the customer for its own purposes or the purposes of third parties up to 6 (six) months after completion of this activity with the consent of KGS. Decisive for the beginning of the six-month period is the actual completion of the activity (i.e. after full completion) or the termination of the contract, whichever is later.

§ 13 Final Provisions

- (1) The contractual relationship shall be governed exclusively by the laws of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980.
- (2) The exclusive place of jurisdiction for all disputes arising from or in connection with the contractual relationship is Offenbach (Germany). KGS also has the right to sue the customer at his place of business.
- (3) Contract language is German. In the event of parallel use of other languages and inconsistencies between different language versions, the German wording of the relevant provisions shall be decisive.
- (4) Should any provision of these GTC be or become invalid, all other provisions shall remain unaffected.

Part B: Contracts for work and services

§ 14 General

The provisions of this Part B shall apply in addition to contracts for work and services and/or work and services in mixed-type contracts.

§ 15 Remuneration Claims

- (1) KGS's claims for remuneration for work and services shall be invoiced monthly and are due for payment to the customer upon receipt of the invoice.
- (2) If the remuneration for work has been agreed as a fixed price, this shall be due for payment at the latest upon acceptance of the work.

§ 16 General cooperation and ancillary obligations of the customer

- (1) The Customer shall be obliged to cooperate to the extent necessary. The necessary cooperation includes in particular the following obligations:
 - a. Provision of information for the technical implementation of remote access to the Customer's system
 - b. Provision of sufficient authorizations for system access and
 - c. Definition, execution and documentation of the technical tests (business cases).
- (2) As soon as it is foreseeable that the customer will be in default with an act of cooperation, the customer shall notify KGS thereof without undue delay. Such notification does not release the customer from its obligation to cooperate.
- (3) Sections 642, 643 BGB remain unaffected by the above provisions of this § 17.

§ 17 Rights of Use

- (1) KGS grants the customer the non-exclusive right to use the work results for an unlimited period of time and in accordance with the contract and the intended use.
- (2) If and to the extent that the customer resells works created by KGS and/or other work results of KGS in the form of software, the customer is
 - a. not entitled to retain copies thereof in any manner or form and/or to distribute or sell them separately,
 - b. entitled to grant rights to the purchaser only to the extent that he has been or will be granted rights of use by KGS, and
 - c. is obligated to inform KGS of the sale in text form and by naming the purchaser prior to the sale.
- (3) In the case of the creation of Individual Software, the granting of the right of use is conditional upon the point in time at which the customer has satisfied all remuneration claims of KGS arising from the creation of the Individual Software in question. Prior to this time, the customer only has the right to use the Individual Software for the purpose of acceptance testing.
- (4) The granting of a factual and/or technical possibility of use by KGS does not constitute a granting of the right of use by KGS.
- (5) With the consent of KGS, the customer is entitled to sublicense the work results. In the event of such consent, the following shall apply:
 - (6) The customer is not entitled to grant its sublicensee more rights to the Work Results than the rights it has received or will receive from KGS itself.
 - (7) The use of the work results by sublicensees of the customer is deemed to be use by the customer vis-à-vis KGS. Any fault of a sublicensee shall be attributed to the customer as its own fault.
 - (8) Upon termination of the customer's right to use the work results, irrespective of the factual or legal grounds, all rights of use of the

customer's sublicensees to the work results, which they derive from the customer, shall expire simultaneously.

§ 18 Termination

- (1) With respect to § 648 S. 2 BGB, KGS shall be entitled to fifteen (15) percent of the agreed remuneration for the part of the work performance not yet performed. KGS is not entitled to this lump sum claim if and to the extent that the customer proves that the remuneration to which KGS is entitled pursuant to § 648 S. 2 BGB is significantly lower or KGS is not entitled to any remuneration.
- (2) If the customer terminates work services under a mixed-type contract in accordance with § 648 BGB, the remainder of the contract shall remain unaffected by this termination.
- (3) If KGS terminates a mixed-type contract for work and services in accordance with § 643 BGB, the remainder of the contract shall remain unaffected by this termination.

§ 19 Acceptance of Work Performed

- (1) KGS shall notify the customer in writing of the readiness for acceptance of work performances.
- (2) The customer shall commence the acceptance test immediately upon receipt of the notification of readiness for acceptance.
- (3) The customer shall provide the data and equipment required for the acceptance test free of charge and to the extent required.
- (4) Defects of the work performance to be accepted which are detected during the acceptance test shall be differentiated according to the following defect classes:
- (5) Defect class 1:
One or more main functions do not function at all or one or more defects occur which make a complete acceptance test impossible or hinder it in such a way that a complete acceptance test is impossible or does not make sense.
- (6) Defect Class 2:
Most major and minor functions function and can be reasonably tested. One or more main functions work only with significant limitations or workarounds. Individual peripheral functions do not work at all.
- (7) Failure Class 3:
The defect is more cosmetic in nature and does not result in impairment of the function, or there are defects in the layout that do not significantly hinder or prevent the use of the system/software/portal by users, or other defects.
- (8) The Customer may only refuse acceptance due to defects of error classes 1 and 2. KGS shall remedy defects of defect class 3 within the scope of subsequent performance.
- (9) If an employee participates in the acceptance test, KGS shall prepare a written acceptance protocol, which, in case of correctness and completeness of this protocol, shall be countersigned by the customer on site. If no employee participates in the acceptance test, the customer shall prepare a written record of the acceptance test and submit it to KGS immediately afterwards. The report must describe all defects found, subdivided according to defect classes, and finally list the reasons for any refusal of acceptance. If the report shows defects which prevent acceptance and the customer therefore refuses acceptance, the acceptance test shall be repeated with regard to the parts of the performance which have defects which prevent acceptance as soon as KGS makes the performance available for acceptance again after the defects have been rectified accordingly.
- (10) The service to be accepted shall be deemed to have been accepted if
 - a. the customer refuses to carry out the acceptance test or to sign or prepare the report without providing a comprehensible reason, in particular without describing any defects preventing acceptance, or

- b. KGS sets the customer a reasonable deadline for the submission of the acceptance declaration and the customer does not notify KGS of any defects preventing acceptance within this period, or
 - c. the customer, after receipt of the notice of readiness for acceptance of the work performance to be accepted, uses it productively for a total period of more than 12 (twelve) weeks.
- (11) If acceptance is excluded due to the nature of the work performance, the completion of the performance shall take the place of acceptance.
 - (12) In the event of partial acceptance, KGS is entitled to withhold further partial services if the customer is in default with the acceptance of partial services or with the payment for accepted partial services.
 - (13) KGS is entitled to demand partial acceptance from the customer for partial services provided in accordance with the contract. The above provisions of this § 19 shall apply accordingly to these partial acceptances. Partial acceptance is subject to overall acceptance. Nevertheless, the Customer may not refuse the overall acceptance on the basis of defects which were obvious in the course of a partial acceptance inspection or which should have been recognized by the Customer but which the latter nevertheless declared to be accepted.

§ 20 Claims of the Customer in the Event of Material Defects

- (1) The customer shall grant reasonable periods of time for the rectification of defects.
- (2) Within the scope of subsequent performance, KGS shall choose between rectification of the defect or new delivery.
- (3) After an unsuccessful attempt at subsequent performance, KGS shall be allowed at least one further attempt at subsequent performance.
- (4) All notices of defect and requests for subsequent performance should, if possible, be made in writing with comprehensible descriptions of the symptoms of the defect and with the handing over of written records, hard copies or other documents illustrating the defects.
- (5) The right to self-execution according to §§ 634 No. 2, 637 BGB is excluded.
- (6) Reduction of the remuneration by a total of more than 50 percentage points (fifty percentage points) is not permissible.
- (7) If the services owed by KGS are divisible, partially defective and the customer is entitled to withdraw, the right of withdrawal is limited to the affected, defective partial services.

Part C: Contracts of sale

§ 21 General

The provisions of this Part C shall apply in addition to contracts of sale and/or sales in mixed-type contracts and contracts for work and materials.

§ 22 Remuneration Claims

The purchase price shall be due for payment upon transfer of title and delivery (transfer of possession) of the object of sale to the customer. The handover is equivalent to KGS making the purchased item available for download and providing the customer with the download link.

§ 23 Rights of Use

- (1) KGS grants the customer the non-exclusive right to use Standard Software for an unlimited period of time and in accordance with the contract and the intended use.
- (2) If and to the extent that the customer resells software purchased from KGS, the customer is

- a. not entitled to retain copies thereof in any form and/or to distribute or sell them separately,
 - b. is entitled to grant rights to the purchaser only to the extent that he has been or will be granted rights of use to the relevant Software by KGS, and
 - c. is obligated to inform KGS of the sale by naming the purchaser prior to the sale and in text form.
- (3) The granting of a factual and/or technical possibility of use does not constitute a granting of rights of use by KGS.
- (4) With the consent of KGS, the customer is entitled to sublicense the Standard Software. In the event of such consent, the following shall apply:
- a. The customer is not entitled to grant its sublicensee more rights to the Standard Software than the rights it has received or will receive from KGS itself.
 - b. Use of the Standard Software by sublicensees of the customer is deemed to be use by the customer vis-à-vis KGS. Any fault of a sublicensee is attributed to the customer as its own fault.
 - c. Upon termination of the customer's right to use the Standard Software, irrespective of the factual or legal grounds, all rights of use of the customer's sublicensees to the Standard Software, which they derive from the customer, shall expire simultaneously.

§ 24 Claims of the Customer in the Event of Material Defects

- (1) The Customer shall grant reasonable periods of time for the rectification of defects.
- (2) Within the scope of subsequent performance, KGS shall choose between rectification of the defect or new delivery.
- (3) After an unsuccessful attempt at subsequent performance, KGS shall be allowed at least one further attempt at subsequent performance.
- (4) All notices of defect and requests for subsequent performance should, if possible, be made in writing with comprehensible descriptions of the symptoms of the defect and with the handing over of written records, hard copies or other documents illustrating the defects.
- (5) Reduction of the remuneration by a total of more than 30 percentage points (thirty percentage points) is not permissible.
- (6) If the services owed by KGS are divisible, partially defective and the customer is entitled to withdraw, the right of withdrawal is limited to the affected, defective partial services.

Part D: Rental Agreements

§ 25 General

The provisions of this Part D shall apply in addition to rental agreements and/or rentals, in particular of software, in mixed-type agreements.

§ 26 Commencement of Lease, Term

- (1) The rental period shall commence upon transfer of the rental software to the customer.
- (2) At the option of KGS, the leased software shall be provided by handing over a physical data carrier, by sending the leased software electronically or by making the leased software available for download upon notification of the download link to the customer.
- (3) The rental agreement shall run for an indefinite period.

§ 27 Remuneration claims

- (1) One-time claims for remuneration shall be due for payment upon provision of the leased property.
- (2) The current rent is due for payment monthly and in advance.

- (3) KGS is entitled to adjust the amount of the monthly rent to the general price development and/or internal cost development at KGS (in short "adjustment"). An increase in the remuneration may be announced for the first time 12 months after conclusion of the contract, further increases at the earliest in each case 12 months after the previous increase takes effect. An increase shall become effective three months after its announcement. The increase must be reasonable and in line with the market and may not exceed 5% of the remuneration applicable at the time the increase is announced. Increases shall be permissible at the earliest at the end of the twenty-fourth month after conclusion of the contract.

§ 28 Rights of Use

- (1) KGS grants the customer the simple right to use the leased property in accordance with the contract and for the intended purpose, without any spatial restrictions and limited in time to the term of the lease agreement.
- (2) The customer is not entitled to sublease and/or sublet, in particular not by way of cloud computing, ASP or SaaS.
- (3) Ownership of the leased property is and remains with KGS.
- (4) The granting of a factual and/or technical possibility of use does not constitute a granting of the right of use by KGS.
- (5) With the consent of KGS, the customer is entitled to sublicense the leased property. In the event of such consent, the following shall apply:
 - a. The customer is not entitled to grant its sublicensee more rights to the leased property than the rights it has received or will receive from KGS itself.
 - b. Use of the leased property by sublicensees of the customer is deemed to be use by the customer vis-à-vis KGS. Any fault of a sublicensee shall be attributed to the customer as its own fault.
 - c. Upon termination of the customer's right to use the leased property, irrespective of the factual or legal grounds, all rights of use of the customer's sublicensees to the leased property, which they derive from the customer, shall expire simultaneously.

§ 29 Termination

- (1) Each Contracting Party shall be entitled to terminate the Lease Agreement at any time by giving 12 (twelve) months' notice to the end of a calendar month, but no earlier than the end of the 36th month of the term of the Agreement (minimum term of the Agreement). The right of each contracting party to extraordinary termination for good cause shall remain unaffected.
- (2) The customer is obligated to discontinue the use of the Leased Property in its entirety no later than the termination date of the lease and to delete the Leased Property (in the form of software or databases) in its entirety and without replacement from its systems and from its systems. Upon request by KGS, the customer must confirm the deletion in writing.
- (3) The customer is not entitled to partial terminations.
- (4) If the customer violates its obligation under § 4 Paragraph (6) and/or § 4 Paragraph (7), KGS is entitled to terminate the agreement extraordinarily and without observing a notice period (special right of termination).
- (5) The customer is only entitled to reduce the rent on account of defects if he first notifies KGS in writing of the rental defect(s), sets KGS a reasonable period of time to remedy the defect(s) and this period expires without result.

Part E: Service Contracts

§ 30 General

The provisions in this Part E of these General Terms and Conditions shall apply in addition to service agreements or services in mixed-type agreements.

§ 31 Rights of Use

- (1) KGS grants the customer the non-exclusive right to use the results of the work without restriction in terms of time and space and in accordance with the contract and the intended use.
- (2) If and to the extent that the customer resells work results created by KGS in the form of software, the customer is
 - a. not entitled to retain copies thereof in any manner or form and/or to distribute or sell them separately,
 - b. entitled to grant rights to the purchaser only to the extent that he has been or will be granted rights of use by KGS, and
 - c. undertakes to inform KGS of the sale by naming the purchaser prior to the sale and in text form.
- (3) The granting of the right of use is subject to a condition precedent at the point in time at which the customer has satisfied all remuneration claims of KGS for the service within the scope of which KGS has created the relevant work results.
- (4) The granting of a factual and/or technical possibility of use by KGS does not constitute the granting of a right of use by KGS.
- (5) With the consent of KGS, the customer is entitled to sublicense the work results. In the event of such consent, the following shall apply:
 - a. The customer is not entitled to grant its sublicensee more rights to the work results than the rights it has received or will receive from KGS itself.
 - b. The use of the work results by sublicensees of the customer is deemed to be use by the customer vis-à-vis KGS. Any fault of a sublicensee shall be attributed to the customer as its own fault.
 - c. Upon termination of the customer's right to use the work results, regardless of the factual or legal grounds, all rights of use of the customer's sublicensees to the work results derived by them from the customer shall expire simultaneously.

Part F: Software maintenance contracts

§ 32 General

The provisions in Parts B and F of these GTC shall apply in addition to software maintenance contracts and/or software maintenance services in mixed-type contracts.

§ 33 Provision of Services, Subject Matter of Services

- (1) KGS shall provide all services remotely, i.e. via an Internet connection to the customer's system, by telephone or in any other manner that makes the presence of employees at the customer's site unnecessary.
- (2) Maintenance and support, related to standard software, refer to the respective current, last and penultimate version/release of the standard software, which is available on the KGS website.
- (3) KGS is entitled to modify and/or adapt Standard Software within the scope of maintenance and support by means of patches, updates, upgrades and new releases, provided that such modifications or adaptations are technically necessary or close security gaps in the Standard Software or improve the Standard Software functionally or technically or do not restrict the existing functionalities. Such changes and adaptations shall in any case only be permissible if they are reasonable for the Customer, taking into account its interests.

- (4) Agreed response periods shall only run within the agreed service times. Outside the service times, the expiry of the deadline is inhibited.
- (5) KGS is not obligated to document support services, to adapt, update or create existing documentation.

§ 34 Remuneration Claims

- (1) Maintenance services are due for payment and invoiced annually and in advance.
- (2) KGS is entitled to adjust the amount of the remuneration claims for maintenance services for Individual Software and/or for Standard Software to the general price development and/or internal cost development at KGS (in short "adjustment"). An increase in the remuneration can be announced for the first time 12 months after conclusion of the contract, further increases at the earliest in each case 12 months after the previous increase takes effect. An increase shall become effective three months after its announcement. The increase must be reasonable and in line with the market and may not exceed 5% of the remuneration applicable at the time the increase is announced. Increases shall be permissible at the earliest at the end of the twenty-fourth month after conclusion of the contract.

§ 35 Rights of Use

KGS grants the customer the same rights to updates, upgrades, patches and releases as KGS has granted or grants the customer to the standard software or individual software to which the relevant update, upgrade, patch or release relates.

§ 36 Term of Contract, Termination

- (1) The contractual relationship is concluded for an indefinite period.
- (2) Each contracting party shall be entitled to terminate the contractual relationship at any time by giving 12 (twelve) months' notice to the end of a calendar month. The right to extraordinary termination for good cause shall remain unaffected.
- (3) If the customer violates its obligation pursuant to § 4 paragraph (6) and/or § 4 paragraph (7), KGS is entitled to terminate the contract extraordinarily and without observing a notice period (special right of termination).
