

## ILC GmbH General Terms and Conditions for Projects

### § 1 Subject Matter of Project

1.  
The subject matter of the contract is the rendering of the Services described in detail in a quotation of ILC or an Exhibit *Services Provided* and the granting of the rights of use pursuant to § 4.

2.  
The performance of the project is exclusively subject to the provisions of the Project quotation or the Exhibit *Services Provided* and the following General Terms and Conditions for Projects. Deviating contract terms and conditions (e.g., terms of delivery, terms of payment) of Customer do not form part of the contract, including cases in which ILC does not expressly object to them.

3.  
Modifications and amendments of the following Terms and Conditions for Projects, the Project quotation or the Exhibit *Services Provided* must be in writing, unless otherwise provided in the following terms and conditions; the same applies to a waiver of the mandatory written requirement.

4.  
Representations in evaluation programs, functional specifications, product descriptions and the like do not constitute a guarantee. Such guarantees require the express written confirmation of ILC.

5.  
These terms and conditions additionally apply to all future projects in their recent version also not expressly indicated hereon.

### § 2 Functional Specifications

1.  
Unless otherwise provided, Customer is responsible for preparing the functional specifications. Customer shall be responsible for ensuring that the functional specifications are complete, error-free, and adequate for its business requirements. ILC can inspect the functional specification only with respect to the technical feasibility and the lack of conflicts.

2.  
If ILC should discover errors or inadequacies, ILC will advise Customer thereof. Customer shall immediately make the necessary corrections and/or amendments. ILC shall review these corrections and amendments, and notify Customer of any implications regarding the project schedule and remuneration.

3.  
If the parties agree that ILC shall assume the preparation of the functional specifications, ILC and Customer shall jointly prepare this document. After the completion and submission of the functional specifications, Customer has 10 working days to inspect the functional specifications. The objective of the inspection is to verify whether all business or other relevant requirements of Customer have been fully covered and are error-free and whether all information is correctly documented. Customer shall review the IT-specific contents of the functional specifications to

the extent that he possesses sufficient knowledge and expertise. Customer shall immediately notify ILC in writing of any inadequacies, errors, and omissions, and grant ILC an opportunity for remedy. When Customer is satisfied with the functional specifications, it shall immediately accept them with its signature. The acceptance is also deemed to have occurred if Customer fails to object to the contents of the functional specifications by providing reasons in writing within the above mentioned period of time.

4.  
If Customer submits modifications and extensions related to the functional specifications prepared due to par. 3, §3 applies accordingly, provided that either of the parties may terminate the agreement in writing and without prior notice if the parties are unable to reach an agreement on the adjustment of budget and schedule, and technical aspects. The same applies, if Customer does not make the necessary corrections and/or amendments which are required due to par 2, or if thereupon no agreement on the adjustment of budget and schedule, and technical aspects can be reached between the parties. In this case, ILC will invoice Customer for the preparation of the functional specifications. Upon termination, Customer may use the functional specifications in the realization of the intended software project for its own operations. Any transfer to third parties is impermissible, unless it is for the above mentioned purpose. Amendments and modifications are permissible only to the extent that they are required for the realization of the project for Customer's operations, although not, for example, for the purpose of distribution. Third parties shall be advised of these restrictions and the duty of confidentiality in favor of ILC as provided in § 14.

### § 3 Change Request Procedure

1.  
Customer may submit change requests (requests or proposals for modifications and extensions) during the implementation through the completion of the project. ILC shall advise Customer in writing within a reasonable period whether and to what extent this will affect the project schedule or budget, and whether the changes are technically feasible. Customer shall notify ILC within 5 working days, if he agrees with the budget and project schedule changes. The proposed changes shall be deemed accepted if Customer does not respond to the request within the given period of time and ILC will implement the modifications or extensions with the scope of the project. ILC indicates to Customer, that a fast response is required to avoid Project delays or possible additional costs through project down time.

2.  
To the extent that the examination of the change request by ILC exceeds a one-day time limit, Customer shall compensate ILC on a time and materials basis, upon request of ILC. If applicable, ILC shall submit a quotation for the work involved.

3.  
ILC is only obligated to comply with the change requests, if the parties are able to reach an agreement on the adjustment of budget and schedule, and technical aspects. If ILC itself proposes modifications, Customer shall notify ILC in writing within a reasonable period whether it wishes this change request to be implemented. However, ILC has

the right to implement the modifications without the explicit consent of Customer, provided that no adverse effects are incurred by Customer with regard to time, budget, or technical aspects, or if the modifications and extensions are required, because the information provided by Customer in accordance with § 2 par. 1 – 3 contained errors or were incomplete and this did not become apparent until after the project had started. Prior to the implementation of the modifications and extensions, ILC shall notify Customer pursuant to par. 1 sentence 2. If, in other cases, the parties are unable to reach an agreement on the requested modifications and extensions, the performance of the remainder of the agreement shall remain unaffected.

4. Furthermore, ILC may suspend the project implementation during the negotiations on modifications or extensions until the parties have reached an agreement, to the extent that it stands to expect that services provided will otherwise be unfit for use. ILC shall notify Customer thereof prior to suspending supplies and services.

5. If during the implementation of the project, it occurs that modifications or rework must be performed due to incorrect or incomplete specifications provided by Customer, Customer shall compensate ILC the resulting costs and other resulting additional expenses, which will be charged at the rates that are in effect at that time.

6. If the change requests submitted by Customer extend the scope of the project significantly, ILC may restrict the further implementation of the services on the conclusion of an additional project contract, which might be implemented after completion of the first/actual/running project.

7. All notices related to the above mentioned regulations/conditions, (change requests, budget or project schedule information, approvals etc. ) may be in writing or by e-mail.

#### **§ 4 Rights granted**

1. As between the parties, ILC reserves all rights in the Software and Customizing Solutions developed or customized in the course of a project. This shall also apply to Software or Customizing Solutions created in co-operation with or at the suggestion of Customer. ILC grants Customer the non-exclusive, perpetual rights pursuant to par. 2 through par. 7.

2. The Software may only be used for Customer's internal operations at the locations set forth in the Project Agreement. A change of location requires the prior written consent of ILC, which shall not be unreasonably withheld. Upon request, Customer shall confirm in writing that it has not retained any copies of the Software at its previous location.

3. Upon shipment and/or installation of the Software, Customer will receive an electronic key for the servers

indicated by Customer and usage rights granted. Within the usage rights granted, Customer may migrate to another server at any time; in this event, Customer shall notify ILC of the intended migration in writing or by e-mail and will receive a new server key from ILC. Customer agrees to permanently delete the old key upon receipt of the new electronic key. On request of ILC Customer shall assure in writing the deletion of the old keys and software.

4. All other usages of the Software which are relevant with respect to copyrights are not permissible. Any use by or on behalf of Customer's affiliates requires express written consent. Data centre services and other online services for third parties are prohibited. The sale and distribution of the customer specific solutions is not permitted.

5. Customer may decompile the Software only in instances in which Customer desires to achieve the interoperability of the Software with independent Software or hardware (that means with respect to interface information) and only if ILC fails upon written request to provide Customer within a reasonable period of time with the necessary information against adequate payment.

6. Additional restrictions or rights which amend the here defined rights may be defined In the quotation or the Exhibit *Services Provided*.

7. The Software shall not be turned over to third parties unless the prior written consent of ILC has been obtained. The consent will be granted when prior to the transfer to a third party, Customer submits a written statement from such third party in which the third party agrees to accept the ILC Terms and Conditions for Licensing of Software and Terms of Confidentiality, and provided that Customer relinquishes its own legal position. The third party is not entitled to any contractual or other legal claims against ILC. The rights of use granted under the License Certificate may not be split. After the transfer, Customer shall assure ILC in writing that Customer no longer possesses the Software or any copies thereof, and that Customer shall refrain from using any backup copies it may have.

8. Customer will receive the Software consisting of:

- a machine-readable program;
- documentation in accordance with functional specifications.

Customer may not claim the surrender of the source codes.

9. ILC reserves all rights in all work results which ILC delivers to Customer with respect to the implementation of the project, the same applies when the work results were produced in collaboration with Customer or due to the Customer's suggestion. Customer is granted the perpetual and non- exclusive rights to use and change the results for its internal operations in conjunction with the contractual granted usage rights for the Software. In Case the work results are independent of the Software, Customer shall

only use and change them for its internal operations on a perpetual basis. The sale and distribution is not permitted.

10.

With respect to copy right of work results (software, alteration of Software; customized solutions etc.), which are related to software provided to Customer due to an agreement for the licensing or usage of software, the rules defined in §2 (licensing of software) or §6 (use of software) apply instead of the par. 1 through 9 defined here.

11.

The rights to the standard software of ILC and any other standard software underlying the software solutions developed in the course of this project or used by ILC in rendering the Services remain unaffected by the above terms and conditions. The rights in the standard software of ILC are solely governed by the Licensing Agreement or the Agreement for the Usage of Software concluded between ILC and Customer and the related Terms and Conditions (ref. to par 10); in the absence of a separate License Agreement or Agreement for the Usage of Software, the rights in the standard software are subject to the provisions of the license terms and conditions contained in the Project Agreement or quotation. The grant of the rights of use pursuant to the above terms and conditions does not imply any extension of the right of use to and in the underlying standard software.

12.

The software referred to in Exhibit *Third Party Software* is subject to the terms and conditions of the *Third Party Software* manufacturers or suppliers, respectively, which shall be made available for inspection by Customer at any time; alternatively, ILC may also provide Customer the web address from which the terms and conditions may be obtained.

## § 5 Remuneration and Payment

1.

Unless the parties explicitly agree otherwise in writing, ILC will invoice its services on a time and materials basis. If a total amount is indicated for the project remuneration, this shall only be an estimated price, unless the parties agree otherwise in writing. Unless explicitly agreed upon otherwise ILC will invoice the services on a monthly basis.

2.

The calculation of the estimated price – or if individually agreed upon the fixed price - is based on the assumption that ILC will be able to perform any work to be done at Customer's site during the regular working hours (i.e., Monday through Friday 8.30 a.m. – 5.30 p.m., excluding public holidays). Therefore, supplements for work to be done outside the regular working hours, in particular, on weekends, are not included in this price.

3.

If, due to special circumstances and at Customer's express request, additional work on site should have to be done on weekends or outside the regular working hours, the parties shall mutually agree on the dates. ILC shall invoice Customer accordingly for the supplements that become due in this instance.

4.

The compensation is subject to the statutory value added tax that is valid at that time and. Travel and allowable

expenses shall be added. Travel times are considered as working hours. Invoices shall be due for payment within fourteen (14) days after their receipt with no deduction.

5.

If Customer is in default with its payments, ILC may claim interest on payments in the amount provided in statutory provisions. ILC may also stop the further accomplishment of the contractual services, until Customer complies with his payment obligations. ILC shall advise Customer thereof prior to suspending supplies and services. Customer shall not offset claims, unless its counter-claims are undisputed or have become res judicata. Customer shall assign claims against ILC only with the prior agreement of ILC.

6.

In case Customer is entitled to use the delivered Software according to §4 prior to receipt of full payment, ILC reserves the right to revoke the rights granted, in case of a default in payment of more than 6 weeks or if Customer finally refuses to make payments or becomes insolvent. If the rights are revoked, Customer shall promptly delete or return the Software and any copies thereof and upon request of ILC, confirm the deletion and return in writing.

## § 6 Technical Pre-Requisites; System Requirements

1.

Error analysis and remediation as well as other contractual services shall be effected via telephone, E-mail and – if between ILC and Customer agreed upon - via remote data transmission. Customer shall be responsible at its expense, for setting up and maintaining a remote data transmission facility in accordance with Exhibit *remote data transmission* for the entire agreement period including the limitation period for material defects and defects of title. Customer shall assume the telecommunication charges. ILC will only use this remote data transmission after prior agreement with Customer; furthermore the regulations of §14 with respect to data protection shall apply. Customer may terminate the remote data transmission at any time; risk and responsibility for the termination and emerging additional costs bears Customer. In case the access via remote data transmission is not available ILC will perform error analysis and removal if required at the Customer site. These on-site services will be invoiced separately at the ILC rates that are valid at that time.

2.

The technical conditions for the proper functioning of the Software e.g. the system environment etc. are governed by the Exhibits *Technical conditions* and *Third-Party Software*. It is Customer's duty to set up and maintain these technical conditions on its own expense.

3.

ILC expressly advises Customer that changes in the system environment (also with respect to changes in the *Third-Party Software*) may adversely affect or impede the functionality of the Software. ILC is willing to restore the functionality under a separate agreement for compensation on a time and materials basis, provided that the technical conditions are met. The same applies to the ongoing development of the system environment (e.g., in connection with the maintenance of third party software).

4.  
In addition, ILC warns Customer that remote access may create a gap within the data security of the Customer's system. ILC will take reasonable state of the art safety precautions when accessing Customer environment.

#### **§ 7 Customer's Duty to Co-Operate**

1.  
The complexity and individuality of the Software requires extensive co-operation between Customer and ILC. Customer shall contribute to the implementation of the project services free of charge by rendering, in particular, the services set forth in par. 2 through par. 8.

2.  
Customer shall make available to ILC any information required for the implementation of the project (e.g., business processes, existing hardware and software environment, data structures) in a timely manner and without being requested. This duty also covers the provision of data by Customer, i.e., test data, but also productive data of an appropriate quality and quantity that ILC may need for the implementation of the project. The parties shall agree on the data carriers and data formats.

3.  
Customer shall ensure that ILC is always granted access to all facilities during regular business hours, and upon agreement as well access to the hardware and software existing at the Customer's site, to the system administration and to the Customer's data (also upon agreement via remote access), to the extent required for the execution of the Services. ILC shall comply with the house regulations of Customer. To the extent the rendering of the Services is impaired or delayed due to this compliance (e.g., due to security regulations or company-wide holidays) the Customer is responsible for the impairment or delay.

4.  
To the extent required in the implementation of the project, Customer shall make documentation, software, and licenses, or any other records pertaining to third-party products utilized for the services to be rendered, that are required in the performance of the agreement, available to ILC. To the extent that the functional specifications or any contract document stipulates requirements for systems that are operated or are to be provided by Customer or any third party, Customer shall ensure that these requirements are met.

5.  
With regard to copyrightable records, programs, and any other material made available by third-party manufacturers, Customer shall ensure that Customer is authorized to provide these items to ILC for use, to the extent required, in the project implementation and the creation of the work results. Customer shall indemnify and hold ILC harmless from and against any claims that any third-party may assert against ILC due to the absence of such authorization.

6.  
Customer shall ensure that during the performance of the overall project, the necessary number of competent employees of Customer who are familiar with the project is

continuously available to ILC at all times for technical information and questions.

7.  
If the project services are performed by ILC at Customer's site, Customer shall provide appropriate facilities equipped with sufficient office communication equipment and the IT systems required for the implementation of the project.

8.  
Customer shall perform a data backup at regular intervals – no less than once a day – and prior to any interference by ILC with existing IT systems. ILC shall notify Customer prior to any such interference.

9.  
Error analysis, processing and removal are only possible, if the appointed project managers and their deputies and appointed system administrators (ref. to §8 par. 2) deliver qualified error messages, which shall always contain the following information:

- information about the software and hardware environment on the Customer site; status of the installation and respectively changes of the installation/configuration (if they are not known by ILC). This may involve changes of systems which are integrated with the Software or might be called by the Software
- detailed error descriptions with the relevant error codes, and where required the problem files, configuration files, extracts of the job data base and others.

10.  
If Customer does not comply with its duty to co-operate in an orderly, proper form and in a timely manner, ILC may invoice the resulting costs or the additional required effort at the rates that are valid at that time.

#### **§ 8 Project Manager and Project Management Team**

1.  
The designated project managers and if applicable their deputies form the project management team. They are the respective contact persons for the parties and are either authorized to make all decisions regarding the implementation of the project, or shall arrange for the necessary decisions to be made without delay. The parties shall inform each other in writing in case of a change of the designated contact persons. The project manager and his deputy are authorized to accept and issue project relevant statements on behalf of the Customer.

2.  
In order to ensure trouble-free and due performance of this Agreement, the project managers are required to attend the relevant training courses (related to the standard software of ILC which is incorporated in the project) as offered by ILC; non-attendance may result in significant additional expenses in connection with operator errors or the processing of error messages, respectively, which are actually attributable to operator errors or insufficient knowledge of the Software or its applications. The project managers co-ordinate all measures which are necessary on Customer site for error analysis and error removal. They

are available to ILC for questions and provide relevant information not only with respect to ILC software but also regarding relevant operating systems, networks, EDI-components, integrated CAD- and PDM-Systems and other soft- and hardware or system environments. They are the only individuals authorized to issue error messages to ILC. If applicable Customer may appoint at the end of the project separate system administrators who comply with these rules.

3.

To the extent that services are performed at Customer's site, ILC has the exclusive right to issue directions to its employees. The employees do not become a part of Customer's business operations. Customer is not authorized to issue directions directly to individual project workers.

### **§ 9 Project Meetings and Minutes**

1.

The project management team shall jointly ensure the progress of the project. To this end, project meetings shall be held at regular intervals (in the absence of other provisions, no less than at a minimum of every four weeks) and the team members shall inform each other on a regular basis in accordance with established criteria (such as project status, agreed milestones, quality, perceivable trends, risks, and problems). The project managers or their deputies shall attend the project meetings and request other project workers to attend the meetings, to the extent that is expedient for the items discussed in the project meetings. In addition, either party may request a project meeting to be held at any time, if this appears to be beneficial to the implementation of the project.

2.

ILC shall prepare minutes of any project meeting which it submits (in writing or by e-mail) to Customer. The minutes of the meeting shall become binding, unless Customer objects to them in writing, stating a reason, within five working days. The same applies to other minutes which were submitted (in writing or by e-mail) to Customer by ILC

### **§ 10 Acceptance**

1.

The acceptance of the documented work results and any other documentation to be supplied shall be granted at the time of transfer and is recorded in the acceptance report. The acceptance is deemed to have been granted if Customer does not object to the documentation of the work results or other documents within a period of five working days starting from the date of transfer. For functional specifications the rules set forth in §2 apply.

2.

If, in the course of the project, Software is created or adapted (including under a Customizing Agreement), ILC shall perform an operability test immediately upon completion of the Services, after the readiness for service has been announced. During this operability test, ILC shall demonstrate the proper functioning. ILC shall prepare an acceptance report on the operability test. If, during the

operability test, no errors of error category 1 and 2 occur, Customer shall declare its acceptance of the supplies and services with its signature.

3.

Errors belonging to category 1 and 2 shall immediately be removed by ILC, and upon completion, a new operability test shall be conducted. Category 3 errors shall be documented in the acceptance report and shall be removed in accordance with § 12. The claim for the removal of insignificant errors (that are category 4 errors which constrain the usability of the overall System only minor) does not exist.

4.

Errors will be categorized as follows:

Category 1: Errors preventing operation:

Errors leading to repeated system crashes or not only momentary system downtime, data losses, data inconsistencies and thus prevent an economical usage of the overall System by Customer.

Category 2: Errors that substantially impair operations

Severe errors or severe discrepancies of the agreed functionality, which prevent the usage of the overall system or single system modules over a longer period significantly and thus result in a relevant not just short term limitation of the overall System's economical usage by the Customer and for which a reasonable workaround does not exist.

Category 3: Errors impairing operation with temporary workaround

Errors according to priority 2, with a temporary circumvention of the error by reasonable manual intervention or provisioning of a temporary software solution.

Category 4: Other errors

Errors which constrain the usability of the overall System not or just minor.

Different error categories may be defined in connection with the preparation of the functional requirements.

5.

If, for reasons attributable to Customer, it is impossible to perform the operability test on the established date, Customer shall, within ten working days, mutually agree with ILC on a new date. If, for reasons attributable to Customer, this does not happen, within the ten working days period, the software is deemed to be accepted (implied acceptance).

6.

Customer shall be responsible for providing the appropriate data for the operability test. If Customer fails to comply with this duty, ILC shall conduct the operability test with its own test data.

7.

An economically reasonable use of the software by Customer is deemed an acceptance (implied acceptance), provided, however, that no category 1 and 2 errors are reported within 15 working days after commissioning.

8.

ILC may claim acceptance for individual project deliveries as listed in the functional specification, or if not explicitly listed in the specification for individual complete project deliveries. The limitation period for material defects and defects of title, which are identifiable during the acceptance process, shall begin to run upon acceptance of the individual project deliveries. For defects which are identifiable only by the collaboration of all project deliverable the limitation period shall run upon the final acceptance.

#### **§ 11 Project Schedule; Default in Supplies and Services**

1.

The parties shall agree on a project schedule for the project.

2.

ILC is unable to meet the agreed dates, unless Customer complies with any and all of its duty to co-operate. In the event of modifications and extensions and in the event of not sufficient co-operation, the mutually agreed dates may be delayed. In these cases and in other events for which ILC is not responsible (e.g., force majeure, labor unrest, etc.) the dates for supplies and/or services shall be extended by the time of the disruption and by a reasonable period for resumption of the service.

3.

If ILC is in default, Customer shall initially grant a reasonable grace period in written form for the provisioning of supplies and services. Further claims may not be asserted unless this grace period has expired without the default being remedied. If Customer wishes to rescind the agreement upon ineffective expiration of the grace period set forth in writing or claim damages in lieu of the Services or a reimbursement of expenses, Customer shall announce this intention in the letter stipulating the grace period.

#### **§ 12 Material Defects and Defects of Title**

1.

ILC shall initially perform its warranty obligations for material defects and defects of title by remediation. In the case of material defects, remediation shall mean, at the option of ILC, the removal of the defect or the supply of an error-free program version or other error free work results. If the use of the Software, as contemplated in this Agreement, is restricted due to defects of title (e.g., because third parties claim rights in or to the Software), ILC shall discharge its re-performance obligation by securing the use of the Software as contemplated in this Agreement, at the option of ILC, by defending against or settling these rights or by the respective modification of the Software. ILC may, in its discretion, directly handle the dispute against the third party in court or extra-judicially on behalf of Customer. In connection herewith, Customer shall assist ILC free of charge to a reasonable extent.

2.

Customer may terminate the contract upon the expiration of a reasonable time limit set by Customer in written form, which allows several attempts of remediation. Claims for damages and the reimbursement of expenses are governed by § 13. These are the exclusive remedies in case of material defects and defects of title.

3.

Due performance of warranty obligations by ILC is, in case of material defects, subject to an immediate notice of defect by Customer in writing or by e-mail containing a detailed description of the defect according to §7 par. 9. The report shall be made by the project manager or system administrator or his/her deputy. Customer shall co-operate with ILC in the removal of the defect in accordance with § 7. In case of a defect of title, Customer shall immediately notify ILC in writing about the claims to proprietary rights asserted by third parties against Customer and provide ILC all relevant information and data.

4.

ILC shall assist Customer with trouble-shooting, including in such cases in which it has not been determined that the error exists in the supplies and services provided by ILC. If, during the trouble-shooting, it can not be demonstrated that the errors that have occurred are due to the supplies and services provided by ILC, ILC shall invoice Customer for the expenses incurred on a time and materials basis. In connection herewith, ILC draws Customer's attention to the fact that the system administrator must receive the relevant training.

5.

ILC is not obligated to remove material defects and defects of title if the Software has been modified without the consent of ILC, and Customer is unable to show that the material defect or defect of title is unrelated to this modification. The same applies if Customer itself makes customizing settings after obtaining the prior consent of ILC. In addition, ILC will not discharge any warranty obligations as long as Customer uses the Software in violation of the restrictions of use contained in the quotation or the Exhibit *Services Provided* and in § 4 hereof.

6.

The limitation period for material defects and defects of title is - except in case of intentional wrongdoing - one (1) year and shall begin to run upon shipment, unless otherwise provided in the Installation Certificate.

7.

In case of defects of third party software or hardware which was provided by ILC in the scope of this agreement, ILC may on its option assign to Customer its claims against the supplier concerning this matter. In this case Customer shall only submit its claims against ILC after the ineffective - if needed in court - handling of the dispute against the third party.

#### **§ 13 Liability**

1.

ILC shall be liable for any violation of contractual duties, regardless of the legal cause (e.g., fault in the execution of

the contract, default, material defect and defect of title, violation of any other duty, or tort) provided, however:

- in case of intentional wrongdoing and in the absence of a guaranteed quality for the full amount.
- in all other cases of gross negligence, for the foreseeable and typical damages limited to the individually agreed upon maximum amount per year for any and all incidents involving damages in connection with the performance of the project; unless otherwise agreed the liability for any and all incidents involving damages in connection with the performance of the agreement is limited to the single project fee;
- in case of ordinary negligence or in case of a breach of a contract duty in a manner endangering the purpose of this Agreement (so called cardinal obligation), for the foreseeable and typical damages limited to the individually agreed upon maximum amount per year for any and all incidents involving damages in connection with the performance of the project; unless otherwise agreed the liability for any and all incidents involving damages in connection with the performance of the agreement is limited to the single project fee. Liability for loss of production, interruption of business operations and lost profits, or the loss of interests are excluded.
- No other claims are permissible.

2.  
Further claims will be compensated by ILC, as far as ILC has an insurance coverage and receives payments.

3.  
The statutory liability for personal injury or product liability remains unaffected.

4.  
Except in case of intentional wrongdoing, ILC shall only be liable for the loss of data if Customer has performed system checks and data backups at regular intervals (at least once a day and prior to any interference e.g. installation of new programs or versions) and only if the data may be reproduced from machine-readable data stores within a reasonable time and at a reasonable expense.

#### **§ 14 Confidentiality and Data Protection**

1.  
The parties agree to treat any information, records, and data that are disclosed to them in the course of the performance of this agreement as confidential and to deny any third party access, except for the purpose of this Agreement. Customer shall take the appropriate measures to ensure that unauthorized third parties have no access to the Software subject to this Agreement, or to any other ILC materials. The parties shall notify their employees of their duty of confidentiality. ILC may use know-how acquired during the performance of this Agreement for its business activities in particular for the Software development and may further develop gained common technologies and concepts.

2.  
ILC will process Customer's data electronically and comply with data protection rules and regulations. However, Customer is responsible for securing personal data prior to the commencement of the contractual services in such a manner that no unintended (not required for the performance of this Agreement) access of ILC is possible. In general, Customer shall be responsible for obtaining the authorizations from its employees, customers, and business associates of Customer and any other affected individuals that may be required under data protection law. Customer shall indemnify and hold ILC harmless from and against any claims that the aforementioned persons may assert against ILC for non-compliance with these duties. This includes also the on site data access or via remote data transmission when a remote data transmission was agreed upon.

3.  
The duty of confidentiality shall survive for five (5) years after the termination of this Agreement.

#### **§ 15 Termination**

Each termination must be in writing to be effective. A termination for cause shall be threatened in writing, granting a reasonable period in which the reason for termination is to be removed, unless this may not be reasonably expected of the non-defaulting party in this instance. Cause for termination shall exist, but is not limited to the following events:

- violation of Customer's duties to co-operate
- Customer is in default with its payments for more than 6 weeks;
- the institution of insolvency proceedings against the assets of either party, or if their institution is declined for lack of assets.

#### **§ 16 Venue and Governing Law**

1.  
The exclusive venue for all disputes arising from or in connection with this Agreement shall be at the city of the principal office of ILC, if Customer is a merchant of trade or a legal entity, or a special fund under German public law or holds no inland place of venue. This agreement shall be governed by German law, and the UN Convention on the Sale of Goods shall be excluded.

2.  
If individual provisions of this Agreement are or become ineffective or in case the agreement is incomplete, the effectiveness of the remaining provisions shall not be affected. If one of the cases stated above appears, the contractual partners shall attempt to resolve or amend these topics in a mutual consent, which will accomplish the intended commercial intention as close as possible in a legally allowed manner. The same paragraph shall apply to any omissions.

3.  
In case of discrepancies or interpretation difficulties the German language version of the Agreement shall prevail.