

Standard terms and conditions (GTC) of XELOG AG

Version: January 2017

I. General provisions

1. Breakdown, area of validity

- (1) We have divided the following GTCs into six parts:
 - I. General provisions
 - II. Special conditions for standard software licence contracts
 - III. Special conditions for software maintenance services
 - IV. Special conditions for support services
 - V. Special conditions for professional services contracts
 - VI. Special conditions for the sale of hardware and system software
- (2) The "General provisions" of this main section are applicable to all contracts concluded with us and to all services. In addition to this, the "Special conditions" regulated in the following main Sections II. - VI. apply to each contractual item named there.
- (3) Our services are rendered based on our general terms and conditions (hereinafter called "GTC"). These GTC apply to all individual contracts, tenders or other agreements (hereinafter called "individual contracts"), that are concluded between XELOG AG, Birkenstrasse 49, CH-6343 Rotkreuz, Switzerland (hereinafter called "XELOG", "we", "us", "our") and the respective customer of XELOG (hereinafter called "customer").
- (4) These GTC are applied only if our customer acts in exercise of its commercial or independent self-employment or if it is a corporate body under public law or public separate estate.
- (5) For the individual contracts, our GTC apply exclusively. Deviating, opposing or amending general terms and conditions of our customers shall become respect integral part of the contract only and insofar as we have expressly consented to their validity in writing. This consent requirement applies in any case, for instance also if we accept the customer's payments without reservation with knowledge of the general terms and conditions of the customers.
- (6) Each individual contract represents a separate contract without legal consequences to further individual contracts possibly concluded between XELOG and the customers.
- (7) Within the scope of a regular business relationship, our GTC apply also to all future, similar contractual relationships, even if they are not expressly agreed again.

2. Tenders, tender documents

- (1) Our tenders are always subject to confirmation and non-binding insofar as an intention to create legal relations does not result expressly from our written explanations. We shall remain entitled to changes or amendments to the tender and interim orders via the offered services.
- (2) The prices stated by us are understood to be net prices in the currency specified in the individual contract, each plus the legal value added tax applicable at the time of billing.
- (3) We reserve the unrestricted property, exploitation and copyrights for images, plans, drawings, calculations, quotations, drafts and other documents – including those in electronic format. They as well as information and documents described as confidential by us may be made accessible to third parties only with our prior consent.

3. Scope of services, handling data, subcontractors

- (1) The scope of services we owe results from the respective individual contract. Insofar as the provisions of the individual contract contradict these GTCs, the provisions of the individual contract prevail.
- (2) Without a separate order, we are not obligated to check the performance requirements and specification of services of the customer or any other data, information or services provided by the customer for their completeness and correctness if there is no justified reason for this. It is within the range of responsibilities of the customer, to secure the data on customer computers in a suitable format before installing software or working on the computers. Moreover, it is also the responsibility of the customer to regularly make proper backup copies of its data.
- (3) If we make recommendations for the use of hardware components and peripheral devices, then the adjustment of peripheral devices that are provided by customers or used at its request, which are not covered by this recommendation, is not included in the scope of services.
- (4) We are entitled to use independent subcontractors for order execution whereby we are always obligated directly to the customer. We decide at our discretion, which agents to use or replace. The sole managerial authority with regard to the agents used rests with us.
- (5) If we are to transmit existing data of the customer to the software we provide at the customer's request, then we shall not assume any warranty or other liability for the content and the consistency of this data unless otherwise agreed in the individual case.

4. Cooperation of the customer

If and to the extent to which our performance is not covered in the delivery (and possibly licensing) of software or hardware, the following provisions apply to our customer's duty to cooperate:

- (1) The cooperation services of the customer are the prerequisite for our planned service provision. If it is in delay with a required and owed

participation service, then our project efforts will be increased and postpone the following deadlines. The customer acknowledges that this postponement then does not compellingly have to take place linear to the cause delay but can also be shorter or longer. The duration of the postponement is in this case determined by our equitable, judicially verifiable discretion. Resulting additional expenditures incurred for us are to be compensated by our customer (see Subparagraph 4. Section 5).

- (2) Moreover, we are entitled to terminate the respective individual contract for cause if the customer has, despite at least two requests in combination with a reasonable one-time deadline and a threat of notice, not repeated the action with which it is behind schedule.

- (3) The participation services of the customer required for project execution will be contractually regulated separately as a rule. Unless otherwise regulated in the individual case, the customer must in any case:

- a) To put in concrete terms its requirements for the contractual item at least in textual form;
- b) To provide the documents and information required service provision, in particular information about existing systems, devices, programs and program parts that are to work with the service to be performed;
- c) To ensure the timely provision of test data;
- d) To document malfunctions of performed services detected within the scope of test or live operation in comprehensible form and to notify us immediately;
- e) To provide systems, facilities and professional personnel suitable for cooperation insofar as necessary for service performance at its own expense;
- f) To decide on and arrange for investments required within the scope of the project in due time;
- g) Give us the right to use the systems of third parties insofar as this is necessary in order to perform the services due according to the respective individual contract.

- (4) To clarify all issues concerning the project during the entire period of the project, our customer will name a person competent to make a decision as authorized contact. This contact person will in particular bring about decisions of the customer in due time so that there is no project progress delay due to deferred or untimely decisions of the customer. With holiday or illness-related absence of this contact person, the customer must ensure an adequately respective authorized representative.

- (5) We may charge absences during which we or our agents cannot work productively because the customer does not meet its cooperation duties duly, fully or timely, additionally at the respective applicable hourly rates. The customer is entitled to the right to furnish proof of lesser damage. We are obligated to keep a log of this during the project. Absences requiring remuneration can for instance be justified with:

- a) Unavailability of the contact person of the customer if this causes absences;
- b) Missing or incorrectly working hardware and/or software components from the range of responsibilities of the customer (e.g. database, network access, network, access permission);
- c) Unavailability or failure of communication networks from the range of responsibilities of the customer, insofar as these are required for technical reasons for development, testing or integration purposes;
- d) Unavailability or faultiness of interfaces or interface programs insofar as these are to be provided by the customer; and/or
- e) Delayed provision of test data of the customer or unauthorised delay of the acceptance.

We will inform the customer immediately in one of the above named or in comparable cases (e.g. with appropriate action/failure of third parties by order of the customer).

5. Delivery dates, impediments to performance, reservation of self-delivery

- (1) Delivery dates or dates for the performance of our services are binding only if they were expressly agreed as binding with the customer.
- (2) In the absence of a binding regulation of the delivery and/or performance deadline, we shall determine the delivery and/or performance deadline using equitable, judicially verifiable discretion.
- (3) Partial deliveries and partial acceptances are permissible.
- (4) Force majeure events unforeseeable at the time of contract conclusion that substantially hamper performance or make it impossible for a party, entitle the affected party to the postponement of the fulfilment of this obligation beyond a reasonable ramp-up time. Force majeure is equal to natural events, war, social unrest, epidemics, accidents, industrial disputes, and considerable breakdowns, delayed or faulty deliveries of third parties as well as regulatory measures without the affected contracting party being responsible for them.
- (5) If a delay based on one of the circumstances specified in Subparagraph 5 Section 4 leads to the performance of the contract becoming unreasonable for us without us being responsible for the circumstances which caused the delay, we shall be entitled to withdraw from the respective affected individual contract

(6) On legal holidays, XELOG will not perform services subject to a different regulation in the corresponding individual contract.

6. Remuneration, surcharges, expenses, delayed payment, safeguarding

(1) The remuneration to be paid by the customer for services we have performed result from the respective individual contract. Unless otherwise agreed upon, all agreed remunerations shall be paid in CHF plus VAT and any costs for transportation and packaging. With regard to the settlement of absences, the provisions in Subparagraph 4 Section 5.

(2) In the event of commissioning of works without a simultaneous remuneration agreement, remuneration shall be paid according to time and materials costs in accordance with our current cost rates.

(3) The following provisions for surcharges for night, weekend and holiday work, calculation of travel times and charges apply:

a) Surcharges for urgency: If circumstances of the highest urgency required us to become active at these times, which we will decide using equitable discretion, the following cumulative surcharges will be added to the current fee rates on a "time and material" basis. We do not have to wait for the consent of the customer to become active.

aa) For works from 6 – 8 a.m., 5 – 8 p.m.: plus 50%

bb) For night work from 8 p.m. – 6 a.m.: plus 100 %

cc) For work on Saturdays, Sundays and legal holidays from 8 a.m. – 5 p.m.: plus 100 %

b) Travel times: These are charged at the general man-hour rates.

c) Expenses: Unless otherwise contractually regulated, the following additional costs will be charged additionally:

aa) Travel costs for trips with a car.

bb) Parking fees, train journeys, air fares, taxis, rental cars, accommodation expenses and other travel costs at cost against submission of copies of the receipts.

cc) Compensation for telecommunication charges, insofar as incurred, in order to carry out work via telecommunication.

(4) Until payment has been made in full, the generated and/or delivered services (software, hardware, results from services and others) shall remain our property.

(5) All remunerations must be paid by the customer within 30 days from receipt of our respective invoice via bank transfer to the account specified in the invoice. We are entitled to default interest in the amount of nine (9) percentage points from the time of default without the need to give notice of default. After the start of the default, we are also entitled to charge reminder fees to the customer. Further compensation claims remain unaffected. Discount deductions will not be accepted and will in all cases be charged additionally for an administrative charge (amount of reminder fees).

(6) If a customer is in arrears with the payment of an invoice and does not, despite a reminder, remedy the situation within seven (7) days from the receipt of the reminder by making payment in full, all accounts payable to us already billed to the customer shall be due immediately.

(7) If it becomes apparent to us after the conclusion of an individual contract that our claim to remuneration will be threatened by the lack of performance capability of the customer, we can refuse any further activity on our part if no consideration is effected or no security is provided.

(8) If the customer decides to suspend or cancel the commissioned project, we shall be entitled, in addition to the performed services (services, software, hardware) whose payment is regulated in the individual contract, to compensation in the amount of 20% of the project volume, whereby the contractual total volume must not be exceeded.

7. Counterclaims, assignment

(1) Our customer can only set off counterclaims that are uncontested or determined without further legal recourse against our claims. The customer is only authorized to exercise a right of retention insofar as its counterclaim is based on the same contractual relationship.

(2) Our customer may assign claims it is entitled to as a result of the individual contracts to third parties, insofar as they are not outstanding debts, only with our previous written consent.

8. Acceptance

(1) Insofar as we have to perform works services in accordance with an individual contract in the sense of legislation, these shall require an acceptance. This does not apply to services to be performed in parallel, in particular consulting and other support services.

(2) The acceptance must be carried out in accordance with the following regulations:

a) The acceptance is completed if there has been a formal acceptance between customer and us; the specifics must be regulated in the respective individual contract, if necessary.

b) If there has not been a formal acceptance, the acceptance shall be deemed as completed if

i) We have installed the software at the customer's premises

ii) And the customer's employees assigned by the customer have been instructed in the use of the software with personal training,

iii) And if the customer has used the program subsequently for a period of six (6) weeks and has not notified us in writing of defects which would entitle it to reject the goods. The legal regulation based on which the acceptance is deemed as completed applies if the customer has not accepted the services

after a suitable deadline set by us, even though it would have been obligated to do so, remains unaffected.

(3) Insofar as partial acceptances are agreed and/or acceptances of partial performances are carried out, we shall be entitled to retain additional partial performances as long as the customer is default with the acceptance of partial performances or the payment of accepted partial performances.

(4) Acceptances must not be refused on account of insignificant defects. Defects are significant if the practical, i.e. economic use of the work is impossible or unreasonably limited or hindered.

9. Warranty, liability for defects

(1) If the customer is entitled to claims for defects in case of the conclusion of a purchase contract or a contract for work and services because of defects of the item or of the work, then the period of limitation for warranty claims in the case of a purchase contract for a new item shall be one (1) year from the date of delivery of the item, in case of the contract for work and services, one (1) year from the date of acceptance. However, the legal limitation periods remain unaffected in case of fraudulent concealing of a defect, with absorption of a guarantee of quality, with injury to life, limb or health as well as gross negligence.

(2) If we have to provide a guarantee for a material defect for a purchase contract, we shall be entitled to the right of choice defined by legislature, whether the defect is removed for subsequent improvement or an item free of defects is delivered.

(3) Unless expressly otherwise agreed upon in the respective individual contract, we shall not grant a guarantee of durability or quality for the items sold by us.

(4) It is expressly clarified that warranty claims of the customer from an individual contract (e.g. because of defects of the delivered hardware) do not extend to any other individual contracts concluded in connection (e.g. for the licensing of standard software or the rendering of professional services), unless something else is expressly agreed in the respective individual contract.

10. Limitations of liability

(1) Claims for damages of any kind against us and our legal representative and agents are precluded unless intent or gross negligence or the violation of an essential contractual obligation is present. If we have violated an essential contractual obligation (in accordance with the following Section 2) slightly negligently, there is a liability; however, its maximum is then limited to the amount of the performance agreed in the individual contract.

(2) An essential contractual obligation in this sense means any duty whose fulfillment enables the proper performance of the contract in the first place and whose adherence the customer can regularly trust in.

(3) The liability for gross negligence of our agents, insofar as these are not members of the executive staff, is however limited to the replacement for typically foreseeable damage. This liability restriction does not apply to the violation of essential contractual obligations in the sense of the previous Section 2.

(4) The above limitations of liability do not apply to cases of injury to life, limb or health.

11. Non-solicitation agreement

If and to the extent to which our performance is not covered in the delivery (and possibly licensing) of soft- or hardware, the customer is obligated during the term of the agreement and within one year after the expiry of the respective individual project contract, to not actively solicit any of our employees or to attempt to solicit them.

12. Non-disclosure

(1) The customer is obligated, up until the expiration of five (5) years after the expiry of the respective individual contract, to not make the confidential information imparted by us under the contract accessible to third parties neither indirectly nor directly and to not use them for purposes other than the performance of the respective individual contract, within whose scope the customer has gained knowledge of the confidential information from us. Confidential information from us shall be deemed all information (i) about the particulars of the appropriate individual contract (including the contents of the respective offer), (ii) all the technical information and know-how of us made accessible to the customer within the scope of the individual contract, (iii) other information that we have indicated to be confidential as well as (iv) trade and business secrets of us, if and insofar as these do not come under (i) to (iii).

(2) The secrecy obligations according in accordance with the previous section do not apply to confidential information of ours that (i) were demonstrably known to the customer before communication by us or before its gaining knowledge thereof and not disclosed through the breach of a secrecy obligation by a third party, (ii) that were known to the public or general accessible before their communication, (iii) that became known or were made generally accessible to the public after communication without the cooperation or fault of the customer and/or (iv) that are to be disclosed within the scope of regulatory, legal or arbitral proceedings.

13. Intellectual property / trademark rights

(1) Insofar as not expressly agreed in the respective individual contract or these GTCs, we and our suppliers reserve, in relation to the customer, all property rights for our registered brands, the standard software (as defined below in Part II), the corresponding documentation, all maintenance updates and functional updates (as defined below in Part III), all support services (as defined below in Part IV), all professional services (as defined below in Part V) and other work results, as well as all intellectual property rights contained in or associated with the above elements. All rights that not expressly licensed by us in accordance with an individual contract or these GTCs are reserved.

(2) In relation to us, the customer retains all property rights for all confidential information of the customer and all already existing intellectual property rights of the customer.

14. Code of practice

The employees of XELOG are instructed to adhere to all statutory provisions as well as the values and principles as they are set down in our quality system which is based on the international standard ISO 9001. In particular, the employees of XELOG must not demand or accept inappropriate favours or benefits or a promise thereof at any time.

15. Final provisions

(1) These GTCs and all individual contracts are subject to Swiss law with the exclusion of the UN Convention on Contracts for the International Sale of Goods dated April 11, 1980.

(2) Should individual provisions of these GTCs and/or an individual contract prove to be invalid or unenforceable, the other provisions shall remain thereof. The invalid provisions are to be replaced with legal provisions that are preferably equal in an economic sense so that the so that the intended purpose of the invalid or unenforceable part is nevertheless achieved to the greatest extent possible.

(3) Place of fulfillment for all duties arising from the contractual relationship with the customer and the exclusive place of jurisdiction shall be Risch-Rotkreuz (Switzerland). In the event of deviations between the German version of the Standard Terms and Conditions and this translation, the German language version shall prevail.

II. Special conditions for standard software licence contracts

1. Area of validity

These special conditions for standard software licence contracts apply in addition to the provisions in the Part I of the general conditions, insofar as the delivery and licensing of standard software developed by us or by a third party is (also) an item of an individual contract.

2. Scope of services, contents and extent of usage rights

(1) The scope of services can include the delivery and licensing of standard software that was either developed by us as standard software or developed and sold by third parties as standard software (hereinafter called "standard software").

(2) Components of the standard software are, unless otherwise agreed upon, a) the machine-readable object code and b) the documentation in the form of function descriptions and/or training documents.

(3) Not part of the standard software is system software that is either already firmly installed in connection with the delivery of hardware or has to be installed after the set-up and/or installation of hardware. In addition, the provisions contained in Part VI apply to system software.

The customer takes note of the fact that the standard software is copyrighted and that the copyright rights of use and exploitation are due to either us or the respective manufacturer.

(4) We grant to the customer the non-exclusive (simple), non-sub licensable right to use the standard software produced by us for the purposes described in more detail in the individual contract and cases of application at the installation sites specified there without time limits.

(5) The right of use granted to the customer in accordance with the previous Section 4 is limited to the number of users agreed in the individual contract as well as locally restricted to the use on the computer systems in its immediate property serving the intended usage.

(6) It is clarified that a licence – insofar as nothing else was expressly agreed in the underlying individual contract – is in each case limited to one (1) customer computer. The customer is not entitled to transfer the standard software installed on one of its computers to other computers without purchasing additional licenses. Not covered here are cases where computers have to be replaced for technical reasons. In this case though, the customer is obligated to notify us before the replacement and to delete the installed standard software from the former computer completely as soon as it has been transferred to the new computer.

(7) The customer may copy the standard software only insofar as the respective copying is necessary for using the standard software. Necessary copies are especially the installation of the standard software from original data media to the mass storage of the hardware used as well as the loading of the standard software into the internal memory. Upon enquiry, the customer is obligated to provide information to us about the number of

copies of the standard software made. We have the same rights to the copies that we have to the original.

(8) The prerequisite for the use of the standard software is an IT infrastructure (hardware, software, network) as it is specified in the individual contract.

(9) The customer is not entitled to reconstruct the software (reverse engineering), to expand it or put parts of it to further use. Our property rights remain unaffected by modifications to the software.

(10) The customer has to inform us in writing prior to any and each intended passing on of copies left to him to third parties.

(11) The forwarding of standard software to third parties is generally not permissible for purposes of the assignment to third parties, neither in part nor for a limited time against remuneration (rental).

(12) Apart from that, each further use of the standard software requires our previous express and written consent.

(13) Insofar as the subject matter of the contract includes the delivery of standard software that was produced by a third party, the customer is obligated to adhere to the licence terms for this standard software issued by the respective manufacturer in addition to the obligations of this regulation. Hereby, it is especially applicable that this standard software is not copied contrary to the regulations of the respective third party manufacturer and that a sufficient number of licences is always available for the intended use – also in the event of a retroactive expansion of the use by the customer.

(14) The right of the customer to use the standard software expires if it violates a term of use or blocks the remote maintenance facility, regardless of the status of the maintenance and support agreement. This also includes any form of excessive use of the licenses outside of the number of users agreed in the individual contract, even if the software permits this.

(15) In case we or our legal successor should no longer be capable to meet the contractually agreed obligations due to an effective finding, the customer has a right to the source code the standard software it is entitled to.

3. Delivery

(1) The customer receives the number of copies of the standard software required for the exercise of the respective granted licence in machine-readable shape, at our option either saved on data media or provided for retrieval via long-distance data transmission.

(2) The customer has to inform us in writing of the respective installation sites of the licenced product. The same applies to changes to the installation site as well as any sale of the licenced product.

4. Performance parameters

Our performance comprises the delivery of the licenced standard software. Not item of the licensing according to these amending terms Part II and thus not covered by the remuneration agreed in the individual contract are the services according to the following, not exhaustive list:

- a) Installation of the standard software at the customer's premises;
- b) Individual setup of the standard software according to the requirements of the customer (parameterisation, customizing);
- c) Individual expansion or adjustment of the standard software for the customer (individual modifications);
- d) Adjustments of interfaces of the standard software to the needs of the customer;
- e) Instruction and training of the program users of the customer;
- f) Maintenance of and support for the standard software, in particular the delivery of new program versions.

5. Due date of the remuneration

(1) Remuneration is due as follows:

- a) 30 % of the agreed remuneration after conclusion of the respective individual contract
- b) 60 % after delivery and installation on the target system
- c) 10 % at acceptance of the standard software through the customer in accordance with Part I Subparagraph 8

(2) Additional incurred remunerations are due after the performance of the underlying service.

6. Warranty, liability for defects, limitations of liability – amend provisions for Part I, Subparagraph 9 & 10

(1) If the standard software proves to be defective, then the customer can demand from us removal of defects within a reasonable period of time. The content of the notice of defects must be definitive and comprehensible to the extent that we can measure the extent of the reclamation. The mere notice that the work is defective is not sufficient. If the defect does not or only inconsiderably impairs the functions of the standard software, then we are entitled to the exclusion of further warranty rights to remove the defect through the delivery of a new version or with a maintenance update within the scope of the general version and update planning.

(2) Through the delivery of a new version, a maintenance update or functional update, the warranty fundamentally comprises only new defects – however, not those which are already contained in the previous version. There will be neither an expansion of the warranty claims of the previous version nor an extension, suspension or interruption of the warranty period of the previous version.

3) With regard to changes to the parameterisation and expansion of the standard software (e.g. through queries, reports, new interfaces and the like), the provisions according to Subparagraph 2 apply.

(4) Insofar as the copies of the standard software left to the customer by us and the corresponding documentation in comparison to other copies and documentation of the standard software do not have an average manner and quality, the customer can demand only the subsequent delivery of items of an average manner and quality.

(5) Costs incurred to us by an unauthorised notice of defects of the customer are to be reimbursed by the customer if the customer would have been able to detect that the notice of defects is unjustified applying due diligence.

(6) If a claim is asserted toward the customer by a third party because of a defect of title, it must notify us immediately of the claim. Insofar as we are of the opinion, after examination of the legal situation, that there are no defects of title, the customer shall authorise us against exemption from costs, to do everything left to our discretion to defend the customer against the rights asserted by third parties at our expense. It will grant to us all powers of attorney and powers that are necessary to defend it against the rights asserted by third parties.

(7) In the event that there are defects of title, we are at our option entitled to
a) Remove the rights of third parties of their assortment that impair the contractual use of the standard software with suitable measures or

b) Change or replace the standard software in a manner so that it no longer violates the rights of third parties, if and insofar as this does not impair the warranty of the functions of the standard software.

(8) We preclude any liability for indirect consequential damage like lost profits or claims of third parties against the customer, as well as for damages from any possible test operation and/or the recovery of data.

7. Diligence and cooperation of the customer

(1) The customer is aware that it is responsible for its employees, organisation and infrastructure that directly or indirectly affect the licenced product. It is aware that the warranty of the reliability (system availability) of its IT infrastructure, daily backups in long-term cycles, precaution measures against computer viruses and network intruders (via LAN, WLAN or internal) as well as the functional and non-functional testing in case of changes to the IT infrastructure (including the processes, software functions, work results) including the standard software covered by the contract are of great importance for the trouble-free and uninterrupted operation of its business.

(2) Changes that affect the licenced product will be communicated to us by the customer in due time. These also include changes to the IT infrastructure (software, hardware, network, etc.), during operational use (e.g. new application case with different framework conditions) and in the license use.

III. Special conditions for software maintenance services

1. Area of validity

(1) These special conditions for software maintenance services (hereinafter called "maintenance terms") additionally apply to the provisions in the general conditions, Part I, insofar as maintenance services (as defined hereinafter) are (also) an item of an individual contract.

(2) With the goal of a uniform use of language, the following terms are defined:

a) Licence:

Software spanning one or several workstations within a firmly defined area of application. The licence server identifies and monitors, among others, the number of users and the scope of services (functions) of the software.

b) Version:

Software of a specific generation.

c) Release:

Technically improved version, as a rule without extensive functional extensions.

d) Maintenance update:

Delivery of a new/current release. A maintenance update above all serves to remove faults and is part of the software maintenance contract.

e) Functional update:

Delivery of a version with expanded functions. A functional update serves to load adjustments/extensions commissioned by the customer to the customer system and is not part of the software maintenance contract.

f) Patch:

Smaller adjustments within a release can also be delivered in the form of a patch.

g) Upgrade:

New version or software generation with in part extensive technical and functional changes. Upgrades are not part of the standard software licence purchased by the customer and the associated software maintenance and support services.

2. Contractual item / exclusion of benefits

(1) The services to be performed by us in accordance with these maintenance terms (hereinafter called "maintenance services") always refer to the standard software produced by us specified as item of the maintenance services in the individual contract (including any necessary add-ons / expansion modules) at installation site specified in the individual

contract (hereinafter called "maintenance item"). The maintenance services include:

a) The provision of updated program versions which remedy errors of the maintenance item ("corrective maintenance") and/or change and/or expand functions of the maintenance item (hereinafter called "maintenance updates") as well as any necessary provision of description of changes to the maintenance item. The installation of these maintenance updates is absolutely necessary to be able to warrant the software maintenance and the support services.

b) The clarification of questions regarding new or changed functions of the maintenance item during the standby times agreed in the individual contract insofar as the answers are not apparent from the descriptions of the changes for the respective maintenance update.

(2) Unless otherwise specified in the individual contract, the maintenance services will be provided by us electronically (such as e.g. via e-mail, long-distance data transmission and/or data medium exchange).

(3) The customer is entitled to usage rights for all work results that were made accessible or otherwise provided to the customer by use for the provision of maintenance updates to the same extent as for the respective maintenance item to which these maintenance services refer.

(4) Additional services are not an item of the maintenance services; these include especially the operational support, the adjustment of standard software to the requirements of the customer and the associated installation of functional updates.

3. Requirements and cooperation of the customer

(1) The customer is responsible for completing the measures recommended by us within the scope of the maintenance services for the maintenance item installed at its premises. This also includes the testing of new software versions while verifying the functions, procedures (processes) and work results of the standard software in interaction with its target environment and reporting any defects to us immediately.

(2) The customer must ensure that the employee assigned with the utilization and/or implementation of the maintenance services has the technical qualifications to implement instructions on the maintenance item that are provided over the phone or electronically.

(3) The prerequisite for software maintenance is a remote maintenance facility via Internet recommended by us. Without this facility, maintenance of the maintenance item is not possible.

(4) The customer ensures that a full data backup will be made prior to any maintenance services and that the required precautionary measures were taken (including according to Part II, Subparagraph 7). We will assume no liability for any possible loss of data.

(5) Maintenance is provided solely for the current release of a software generation.

(6) Changes that affect the maintenance item and the maintenance services will be communicated to us by the customer in due time. These also include changes to the IT infrastructure (software, hardware, network, etc.), to the operational use (e.g. new application case with different framework conditions), the license use, the organisation (e.g. a new contact person for first level support) and the like.

4. Contractual period, termination

(1) The respective software maintenance contract is on principle concluded upon the conclusion of the underlying standard software licence contract.

(2) The contract starts with the installation of the software on the target system of the customer and has a minimum term until the end of the following calendar year ("Initial term").

(3) Upon the expiry of Initial term, the individual contract can be terminated by both parties at a term of three months to the end of the calendar year (December 31st). If the individual contract is not terminated, it is always extended tacitly by one (1) additional year in each case. Each party shall be entitled to terminate the thus extended individual contract with observance of a cancellation period of three months to the end of each term of extension.

(4) The right to termination of an individual contract for important reasons remains unaffected by this. An important reason for us is given especially under the following conditions:

a) If legal insolvency proceedings are opened on the assets of the customer or its opening is refused due to lack of mass;

b) The customer has discontinued its business;

c) Judicial measures to recover receivables from the respective individual contract or earlier individual contracts from the customer were unsuccessful.

(5) Terminations require the written form to be valid. A cancellation or termination of the individual contract leaves the effectiveness of the remaining individual contracts and other agreements existing between the customer and us untouched.

(6) Inasmuch as the customer violates the copyrights or other trademark rights of the software, in particular by changing, copying the software or through multiple or unlicensed use thereof, or by enabling third parties to copy the software or use it without licence negligently or intentionally, we are entitled to terminate the contract without notice and without substitution. Our claims for damages remain unaffected thereof.

5. Remuneration

(1) The customer pays annual remuneration ("maintenance fee") for software maintenance. The maintenance fee complies with the list price percentage of the respective maintenance item at the time of its purchase defined in the individual contract. We will define the maintenance item in the form of a licence certificate and update it annually.

(2) The maintenance fee is due in advance each year.

(3) Insofar as the scope of services for the respective maintenance item is expanded by arrangement with the customer, the maintenance fee will be increased in accordance with Subparagraph 5 Section 1 from the time that the maintenance item was provided to the customer with the expanded scope of services for the first time.

(4) If we change and/or expand the standard software by order of the customer, the maintenance fee will be increased in accordance with Subparagraph 5 Section 1 from the time that the maintenance item was provided to the customer with the changed scope of services for the first time. The proportion relevant for the maintenance fee is calculated from the sum of the customer-specific services which enter into the software. Any cost of sales is likewise excluded.

(5) We can increase the maintenance fee for the first time after expiry of the initial term with a term of notice of three (3) months. The customer remains entitled to the right of termination in accordance with Subparagraph 4 Section 3.

IV. Special conditions for support services

1. Area of validity

These special conditions for support services (hereinafter called "support services") additionally apply to the provisions in the general conditions, Part I, insofar as support services (as defined hereinafter) are (also) an item of an individual contract.

2. Contractual item

(1) The item of the services we have to perform according to these support conditions (hereinafter called "support services") is the securing of failure-free operation of the system used at the customer's premises which we are supposed to provide support for and/or system components included in the scope specified in the respective individual contract (hereinafter called "support item").

(2) We will perform the following support services in accordance with the agreement in the respective individual contract:

a) Basic services ("Basic support")

- Central receipt of support request within the scope of the agreed support times, having a support team ready,
- Creation / expansion / documentation of the support requests as tickets, controlling the ticket status, feedback to the customer after completion of a ticket,
- Malfunction identification and processing, notification of the customer whether it is a basic service or an individual service,
- Self-check to determine whether the agreed response times were adhered to.

b) Individual services upon the customer's request, such as for instance

- Support for the use of the standard software and increase of the efficiency in daily use,
- Regular system monitoring and maintenance,
- Extended support for services outside regular working hours.

(3) The basic support is an integral part of the support services while individual services are performed upon request and/or according to the individual contract of the customer and are billed on a "time and material" basis according to our current cost rates.

(4) The support services are always performed only during on the agreed operation times. Unless otherwise regulated in the individual contract, these operation times are Monday through Friday (excluding holidays in accordance with Part I Subparagraph 5 Section 6) from 8 a.m. until noon and 1:30 until 5 p.m. The customer can send error messages 24/7 via e-mail to support@xelog.com.

(5) Insofar as it is software which is created by us within the scope of the support services and ceded to the customer, the customer is entitled to usage rights to the same extent as for the respective support item to which these support services refer.

3. Organisation of support services

(1) The support services are performed by our employees. We are free to assign the support services in part or in full to third parties. However, this does not release us from the responsibility to perform the contractually agreed services.

(2) For the coordination of all support services, disposition of employees on call and coordination with the customer (and/or its agent), we will on our part name a person as primarily responsible contact person.

(3) Support requests are received via a ticket system or via e-mail. In cases of great urgency, the customer can request support over the phone. We point out that in peak times, customers may be put on hold.

(4) As a rule, the support service is performed via remote diagnostics or troubleshooting. The employee processing the support request will, in consultation with the customer, arrange for the appropriate procedure of the

support service that interrupts the current operation of the customer as little as possible and remedies the error as quickly as possible, if necessary with incurred costs in particular for services performed on site.

(5) The customer must indicate occurring errors with a comprehensible description of the error symptoms in advance via our ticket system and supply written records, paper copies or other documents in German or English illustrating the error immediately after it has been detected. In exceptional case, the customer can report errors via e-mail or over the telephone. Insofar as possible, the customer must also provide data together with the notification of an error which enable the reproduction of the error. The customer will also communicate to us the personal classification of the support request in the malfunction class in accordance with Subparagraph 4.

(6) The performance of support services is oriented by a three-level, hierarchical competency model:

a) First level:

The first-level support is the responsibility of the customer and is first contact point for all incoming support requests. The first-level support follows the defaults of our support process and is the technically qualified internal point of contact for system users in accordance with the following Subparagraph 5 Section 2. It is responsible for recording the support request including all required additional information and solves or processes the support according to its level of knowledge. If necessary, it will escalate the documented support case to the second-level support.

b) Second level:

Our second-level support supports the first-level support of the customer by accepting more complex support requests. It controls the escalation management of critical problems to the third-level support in case the clarification or solution of the support request cannot be performed with the possibilities of the second-level support.

c) Third level:

Our third-level support is made up of experts for the individual support items to be supported and thus ensures the highest support level for the customer.

4. Priorities of support requests, urgency

(1) We will sort and process incoming support requests on priority. The priority of support request depends on the damage that results or could result for the customer because of a malfunction of the support item. The appropriate response and repair times will be controlled depending on this priority. The priorities of support requests are classified as follows:

a) Class 1: Critical situation

A critical situation is a problem situation that permanently impairs or threatens the on-going operation at the customer's site. A permanent threat in this sense is present if the malfunction of the support item severely impairs or stops the customer's business operation. For critical situations, the defined response time of two (2) hours at most applies and analysis and removal measures are started immediately. Deviating response times will be indicated separately in the individual contract, if necessary.

b) Class 2: Obstructing situations

Users can work with the system, not all functions can be used which considerably limits application. There is a response time of at most eight (8) hours for obstructing situations, with feedback regarding the estimated duration until error removal or possible workarounds preferably within three (3) working days from the receipt of the message. Deviating response times will be indicated separately in the individual contract, if necessary.

c) Class 3: Noncritical situations

A noncritical situation is a problem situation that does not permanently impair or threaten the on-going operation at the customer's site. A non-permanent obstruction in this sense is present e.g. if the respective affected procedure during the work process at the customer's site is not stopped and/or alternative possibilities for further processing of an order with the respective support item are given. For noncritical situations, problem clarification generally starts during the course of the next working day.

d) Class 4: Operational support

This includes, among others, the clarification of questions regarding the use of the support item in the current context, training measures, the implementation of smaller changes. The planning and termination of the operation support takes place in consultation with our competent department.

(2) If the specified prioritization of a support case affects the economic benefit for the customer, then it can put in an application with our support representative to give the support case a higher urgency. We will check the feasibility and will inform the customer about the costs to expect which we will bill subsequently on a "time and material" basis according to current valid cost rates.

5. Cooperation of the customer

(1) Insofar as not regulated differently in the individual contract, the customer is responsible for completing the measures recommended by us within the scope of the support services for the maintenance item installed at its premises. This also includes the testing of new software versions while verifying the functions, procedures (processes) and work results of the standard software in interaction with its target environment and reporting any defects to us immediately.

(2) The customer must ensure that the employee assigned with the claim and/or implementation of the support services has undergone our user training and has the technical qualifications to implement instructions on the support item that are provided over the phone or electronically. The first-level support employees will be certified periodically by us by checking the required knowledge about the support item that is conveyed in our training courses.

(3) The customer ensures that its first-level contact is available during the agreed support operating times; otherwise we will bill any possibly resulting additional expenses on a "time and material" basis according to our cost rates valid at that time.

(4) For the purposes of performing support services, the customer enables the uninterrupted remote access to the respective support item, i.e. a VPN connection or similar Internet access, connections and user authorisation on the customer system on which the respective support item is installed are available and set up.

(5) The customer may access the saved data, especially those in the database, exclusively via the user interface (GUI) of the standard software. Any other access, including read only access, is prohibited because they can threaten the performance and operating safety of the standard software.

(6) The customer will conclude support contracts for the hardware and software that is not item of our support services, but is connected with the functionality of the support item though, with us or on the respective suppliers or other competent service providing companies.

(7) The customer will provide sufficient capacity for the set-up and operation of a separate test system on which the support item is installed or on a separate server. This test system can be used by the customer and us equally.

(8) The customer is responsible for adequate licencing for the system software used and for the conclusion of a maintenance contract for the products used.

(9) The customer will name a central contact person for the coordination of all processes resulting from the respective individual contract. This contact person and our support representative will coordinate the respective support and standby schedule.

(10) The customer will name a contact person ("single point of contact") and a representative, or for larger installations (according to the definition in the individual contract), a category of persons authorised to send us support requests. The category of persons will be documented in an authorisation list which will be provided to our support representative. The customer must keep the authorisation list updated and must notify of any changes immediately.

(11) The customer will not make changes or rather will make only changes approved by us to the respective support item. Direct (e.g. changes of configuration files of components we delivered) or indirect (e.g. changes to system setting on the hardware used) interventions in the system must be coordinated with us in advance. These also include modifications to third-party software components with interfaces to the support item. If there are errors in the third-party software components which can be classified as "critical situations" in accordance with Subparagraph 4 a) of these support terms, the customer can in these exceptional cases make the essential changes to the third-party software components or have them made without informing us in advance. The customer is obligated to inform us accordingly immediately afterwards.

(12) Changes that affect the support item and the support services will be communicated to us by the customer in due time. These also include changes to the IT infrastructure (software, hardware, network, etc.), to the operational use (e.g. new application case with different framework conditions), the license use, the organisation (e.g. a new contact person for first level support).

6. Exclusion of benefits

(1) Activities that are not agreed in these support terms and are possibly agreed in the respective individual contract are not part of the support services and can be billed by us separately. These include in particular the diagnosis and removal of malfunctions insofar as they are caused by the inappropriate treatment of the support item by the customer or third parties not commissioned by us. This comprises e.g. the operation of the respective system outside the defined application conditions, external force or other impacts from the outside such as e.g. force majeure and/or modifications to third-party software components with interfaces to the support item which we did not approve.

(2) Activities that are not included in the support services case in accordance with Subparagraph 6 Section 1 will be carried out by us only if this is expressly commissioned or agreed. If it turns out during the performance of service works that these are not support services that we owe within the scope of a respective individual contract with the customer or if employees of the first-level support to meet our technical requirements in accordance with Subparagraph 5 Section 2, the customer will bear the costs for the service works performed up to this moment.

7. Contractual period, termination

(1) The respective support contract is on principle concluded upon the conclusion of the underlying standard software license contract.

(2) The period of the individual contract starts with the installation of the software on the target system of the customer and has a minimum term until the end of the following calendar year ("Initial term").

(3) Upon the expiry of Initial term, the individual contract can be terminated by both parties at a term of three (3) months to the end of the calendar year (December 31st). If the individual contract is not terminated, it is always extended tacitly by one (1) additional year in each case. Each party shall be entitled to terminate the thus extended individual contract with observance of a cancellation period of three (3) months to the end of each term of extension.

(4) The right to termination of an individual contract for important reasons remains unaffected by this. An important reason for us is given especially under the following conditions:

- a) If legal insolvency proceedings are opened on the assets of the customer or its opening is refused due to lack of mass;
- b) The customer has discontinued its business;
- c) Judicial measures to recover receivables from the respective individual contract or earlier individual contracts from the customer were unsuccessful.

(5) Terminations require the written form to be valid. A cancellation or termination of the individual contract leaves the effectiveness of the remaining individual contracts and other agreements existing between the customer and us untouched.

8. Remuneration

(1) The customer pays to us annual remuneration ("support fee") for the basic support (in accordance with Subparagraph 2 Section 2a) and for the individual services defined in the individual contract (in accordance with Subparagraph 2 Section 2b). The support fee complies with the list price percentage of the respective support item at the time of its purchase defined in the individual contract. We will define the support item in the form of a license certificate and update it annually.

(2) The support fee is due in advance each year.

(3) Additionally commissioned and/or performed individual services that are not included in the individual contract as points will be billed by us in arrears for each month.

(4) Insofar as software is the support item and we change and/or expand it by order of the customer, the support fee will be increased in accordance with Subparagraph 8 Section 1 from the time that the support item was provided to the customer with the changed scope of services for the first time. The proportion relevant for the support fee is calculated from the sum of the customer-specific services which enter into the software. Any cost of sales is likewise excluded.

(5) We will bear the costs or essential technical equipment (PCs, communication software) required for performing the support services via remote access; the customer will bear the costs for customer equipment and other costs.

(6) We can increase the support fee for the first time after expiry of the initial term with a term of notice of three (3) months. The customer remains entitled to the right of termination in accordance with Subparagraph 7 Section 4.

V. Special conditions for professional services contracts

1. Area of validity

These special conditions for contracts for the performance of professional services applies in addition to the provisions in on the general conditions Part I, insofar as the performance of professional services is (also) an item of an individual contract, i.e. in particular (i) the installation, individual setup/parameterisation and the commissioning of standard software and/or hardware sold by us, (ii) the individual configuration for the customer and/or expansion of standard software and/or the creation of separate software created individually for the customer (hereinafter called "creation of individual software"), (iii) the training of or other support for employees of the customer, (iv) the migration of data or other software components and (v) the performance of other consulting services. These special conditions do not apply to services that are performed within the scope of a software maintenance contract or a support contract.

2. Scope of services / usage rights

(1) The type and scope of the professional services to be performed, in particular the scheduled time frame, the individual services to be performed by use (hereinafter called "work results") as well as any terms of payment / milestones will be defined in the respective individual contract.

(2) For the work results that we create within the scope of the professional services and that we cede to the customer, the customer is entitled to usage rights to the same extent as for the respective standard software to which these work results refer.

(3) Insofar as the customer has an exclusive right of use to the work results performed by us in accordance with this contract based on deviating individual agreements, we remain entitled to use individual knowledge used for the creation of the work results or individual knowledge of our employees as well as tools and procedures that are intended or suitable for reuse in other performance relationships for the purposes of our business operation.

This does not apply to knowledge that refers exclusively to the special features of the business operation of the customer.

(4) The delivery of the source code is not part of the delivery scope within the scope to the creation of individual software.

3. Termination

(1) The right to termination of an individual contract for the performance of professional services at any time is precluded. The right of both parties to terminate such an individual contract for cause remains unaffected.

(2) We particularly consider cause to be:

- a) If the customer discontinues its business or has announced the discontinuation of its business;
- b) If judicial measures to recover receivables from the respective individual contract or earlier individual contracts from the customer were unsuccessful.
- c) If the customer violates its cooperation duties and does not attend to its cooperation duties within a reasonable period of time which must be at least 14 days despite a written demand.

(3) Terminations require the written form to be valid. A cancellation or termination of the individual contract leaves the effectiveness of the remaining individual contracts and other agreements existing between the customer and us untouched.

4. Due date of the remuneration

(1) Insofar as remuneration is agreed on a "time and material" basis, the respective remuneration will be due and invoiced by us on a monthly basis.

(2) Insofar as a fixed remuneration is agreed, the due date will depend on the payment dates specified in the individual contract. Unless otherwise agreed upon in the individual contract to that regard, Part II Subparagraph 5 applies accordingly.

5. Liability for defects – amending provisions

The provisions in Part II Subparagraph 6 apply accordingly to Professional Services in addition to the provisions in Part I Subparagraph 9.

request – stop any disposal of the goods subject to retention of title whatsoever. In this case, we are furthermore entitled to withdraw from the contract and to demand the surrender of the goods subject to retention of title.

5. Liability for defects – amending provisions for Part I Subparagraph 9

(1) Quality information requires an express agreement.

(2) Insofar as a material defect occurs in the system software installed on the hardware by the manufacturer, this material defect does not entitle to the assertion of warranty claims because of the included hardware unless expressly otherwise agreed upon in the respective individual contract.

VI. Special conditions for the sale of hardware and system software

1. Area of validity

These special conditions for sale of hardware and the associated software apply in addition to the provisions in the general conditions Part I, insofar as the delivery of hardware components is (also) an item of an individual contract.

2. Scope of services

(1) Our business activity does not comprise the production of hardware. Therefore, insofar as hardware components are also included in the scope of services within the scope of an individual contract, we herewith clarify that we did not produce them.

(2) The scope of services complies exclusively with the contractual agreements. Insofar as it turns out during delivery and/or installation that additional hardware components are required, these must be ordered and paid for separately or procured by the customer itself.

(3) The customer is obligated to use the system software delivered with the hardware components, i.e.

- a) Supplied system software that must be installed on the hardware after the setup and/or installation of the hardware, as well as
- b) Software components already firmly integrated in the hardware only according to the respective licence terms of the respective manufacturer of this software.

3. Prices – amending provisions

(1) Unless otherwise agreed upon, remuneration for the hardware is due as follows:

- a) 50 % after conclusion of the respective individual contract
- b) 50 % at delivery of the hardware

(2) Insofar as any also ordered software has not been installed and/or configured at the time of the delivery of the hardware, this will not affect the due date of the sales price portion for the hardware.

4. Retention of title, current account retention

(1) The delivered hardware shall remain our property until full payment has been made for the sales price portion for the hardware.

(2) In addition, the delivered hardware shall remain our property up until the final payment for all our receivables from the transaction associated with the purchase of the hardware (purchase and licensing of standard software and/or licensing and configuration of standard software) has been made.

(3) The customer must not sell, pledge or assign as security to third parties goods subject to retention of title that are in our sole ownership or in co-ownership. Pledging, assignment as security or assignment for security are prohibited to the customer.

(4) If the effectiveness of the retention of title requires the cooperation of the customer, for instance for registrations required according to the law in the country of purchase, then the customer must carry out such actions.

(5) If the objective prerequisites for the customer's duty to file for insolvency are present, then the customer has to – without requiring an appropriate

