## 1. Scope

**1.1** These General Purchasing Conditions for IT-Deliverables apply to the German companies of the HENSOLDT Group (hereinafter referred to as **"Purchaser"** or **"Party"**) and to their orders and sourcing of

- any kind of software including pertinent software documentation (hereinafter referred to as **"Software"**),
- consulting services and other services, which are related to information technology (hereinafter referred to as **"IT"**), (hereinafter referred to as **"IT-Services"**), as well as
- IT hardware and IT hardware components/parts (hereinafter referred to as "**Hardware**")

from another company (hereinafter referred to as **"Supplier"** or **"Party"**). Software, Hardware and IT-Services are collectively also referred to as **"IT Deliverables"**, and Purchaser and Supplier are collectively also referred to as **Parties**.

**1.2** If these General Purchasing Conditions require the written form or something shall be done in writing, then also the form of e-mail, PDF-file, telefax and similar electronic formats shall suffice if the issuer of the declaration is clearly shown and the electronic format can be stored on a durable medium (§ 126b BGB / German Civil Code).

**1.3** Any general terms and conditions of the Supplier that are contradictory to, deviating from or extending these General Purchasing Conditions are not binding for the Purchaser. The aforesaid applies even when the Purchaser has not expressly objected to the Supplier's general terms and conditions or when the Supplier states that the Supplier's general terms and conditions shall be the exclusive basis for its deliveries or when the Supplier references its general terms and conditions in offer confirmations, acceptances, invoices or similar documents.

**1.4** The Supplier agrees that each individual company that is part of the Purchaser's group of companies is authorized to issue purchase orders and to conclude orders with the Supplier in accordance with the regulations of these General Purchasing Conditions. Companies that are part of the Purchaser's group of companies are all companies that are affiliated with the Purchaser as per §§ 15 et seqq. AktG (German Stock Corporation Act) (hereinafter referred to as **"Group Companies"**). In no case, however, are the Purchaser and its Group Companies liable for any Orders or other actions or omissions of another Group Company; any joint and several liability is excluded.

## 2. Contract Conclusion

**2.1** The Supplier can accept purchase orders of the Purchaser regarding IT Deliverables only in writing and within 2 (two) weeks after receipt of the purchase order; any extension of the acceptance period by the Purchaser needs to be confirmed in writing. A binding contract is concluded upon Supplier's timely acceptance of the order and if the acceptance matches with the purchase order (herein referred to as **"Order"**). If purchase order and acceptance declaration do not fully match, the entire purchase order is deemed incomplete and not concluded, unless the Purchaser confirms the deviating part in writing or that the purchase order is valid only for the consistent part.

**2.2** The acceptance of a purchase order has to refer to the relevant essential order information, especially to the IT Deliverables, the order number, the order date and the delivery date/performance date. The Supplier is liable for any delays or ambiguities that arise because of any violation of this provision by the Supplier.

## 3. Prices

**3.1** Unless agreed otherwise in the Order, the prices are understood as all inclusive fixed prices, including any taxes and fees that apply for the IT-Deliverables; additional charges or price increases of whatsoever kind regarding the IT Deliverables are not permitted.

**3.2** Unless otherwise agreed shipment of Hardware is subject to DAP INCOTERMS 2020 designated place by Purchaser.

## 4. Payment Terms

**4.1** The invoices of the Supplier must be issued in duplicate and must contain all required information as specified in the purchase order for each delivery.

**4.2** Any payment by the Purchaser is conditioned to the review of the invoice for correctness and that the supply/performance of the IT Deliverables is compliant with the Order requirements. Payment will be made via bank transfer to the Supplier's regular bank account as specified by the Supplier.

**4.3** Unless otherwise agreed in the Order, the Purchaser will make due payments within 30 (thirty) days upon receipt of the proper invoice. If the end of the payment period is a Saturday, Sunday or public holiday at the Purchaser's or the Purchaser bank's place of business, the period shall be automatically extended and shall end with the following working day.

**4.4** In the event of disagreement between the Parties whether the supply/performance of the IT Deliverables is in line with the Order, the Purchaser reserves the right to retain payments to a reasonable amount (value of the subject of disagreement plus reasonable security surcharge) until the disagreement has been settled. This retention right also applies to payment obligations of the Purchaser resulting from other contractual relationships with the Supplier which are not subject to the disagreement.

**4.5** A sole electronic invoicing of the Supplier requires a prior written agreement with the Purchaser about a common electronic invoicing standard and must meet all requirements established by commercial and tax law.

## 5. Content of the IT Deliverables (incl. granting of licenses)

The features and contents of the IT Deliverables to be provided by the Supplier are primarily described in the purchase orders, the Order and the attachments or other documents referenced therein. Apart from that, the minimum standards as stated in the following sections 5.1 to 5.4 shall apply for the IT Deliverables.

**5.1** General Features and Contents of the IT Deliverables:

**5.1.1** Prior to accepting any purchase order, the Supplier shall examine the Purchaser's specifications and requirements and the content and standards of these General Purchasing Conditions; Supplier confirms with its acceptance that it has the necessary expertise and resources to provide the IT Deliverables in accordance with the Order.

**5.1.2** The Supplier still remains responsible and liable for the proper supply / performance of the IT Deliverables even if the Purchaser signs, initials, stamps or otherwise approves for further use under the Order any plans, drawings, concepts, calculations or other Order-related documents or data provided by the Supplier. Any special written approvals of the Purchaser that expressly confirm individual items or facts as being compliant with the Order remain unaffected hereof. However, no approval or special authorization of any kind issued by the Purchaser shall release the Supplier from its notification duties as per section 5.1.3 below.

**5.1.3** If, due to of the Supplier's professional expertise with regard to the IT Deliverables, the Supplier has concerns or doubts regarding the technical correctness, completeness or practicality of
a) instructions, specifications or requirements of the Purchaser,
b) documents and/or data provided by the Purchaser, irrespective whether these documents and/or data originate from the Purchaser itself or from a third party, and/or
c) services or works of other companies that have been commissioned by the Purchaser,

or if the Supplier believes there are circumstances preventing the proper performance of the IT Deliverables, the Supplier has to notify the Purchaser in writing immediately, but not later than 2 (two) weeks, after the Supplier discovered or must have discovered such concerns or doubts, also suggesting, as far as possible, suitable measures to remedy or improve any shortcomings.

**5.1.4** The Purchaser orders the supplies and/or services from the Supplier because of its personal competence and expertise. For this reason the Supplier is not allowed to subcontract third parties without prior written consent of the Purchaser. In case any subcontracts are concluded with third parties without the Purchaser's consent, the Purchaser has the right to terminate the Order in whole or in part while reserving all rights for damage claims, especially with regard to any additional costs incurred because of this.

**5.1.5** Any supplies, services or use rights not specifically mentioned in the Order (including any referenced attachments or other documents) are nevertheless considered being part of the Order, if and insofar these supplies, services or use rights are necessary for the proper contractual provision of the ordered IT Deliverables, their functional suitability and/or for achieving the contractual purposes, because otherwise their functional suitability would not be given or would be reduced or the contractual purposes could not be fully achieved. The Supplier is not entitled to demand any extra remuneration for this.

**5.1.6** If the provision of the IT Deliverables is of a project nature, the Supplier shall designate a central and qualified point of contact as project manager, who will act as direct contact for the Purchaser regarding any Order-related information and advice.

**5.1.7** Any Software or Hardware possibly purchased from sub-suppliers shall be examined by the Supplier as soon as possible, but at the latest before using it for or forwarding it to the Purchaser, and the Supplier must also examine whether such Software or Hardware meets the agreed quality criteria and, in the absence of explicit specifications, the quality standards that can normally be expected in the defense and security industry, and in particular whether it has no security vulnerabilities or risks of data loss.

**5.1.8** With regard to Hardware and/or Software used for execution of the Order, the Supplier warrants to observe the always latest version of the manufacturer's installation, maintenance and care manuals as well as all relevant standards for telecommunications, IT security and electrical engineering.

**5.1.9** If Supplier produces copyrighted works (in particular Software, documentations and manuals) for the Purchaser under an Order, the Supplier will not assert the copyright naming right pursuant to § 13 sentence 2 UrhG (German Copyright Act) and shall take suitable measures to ensure that persons involved by it in the course of production of those copyrighted works (employees, temporary workers or freelancers of the Supplier or its subcontractors) do also not assert the copyright naming right.

**5.2** Features and Contents of Hardware:

**5.2.1** Subject to further specifications and requirements resulting from the Order, the Supplier warrants that the Hardware meets at least all official specifications and product descriptions of the manufacturer as well as the legal requirements for the electromagnetic compatibility (especially the EU directive 2014/30/EU and the German Electromagnetic Compatibility Law) insofar as the latter are applicable.

**5.2.2** The Hardware to be supplied must be brand new, unless the Order explicitly allows the provision of used Hardware. If the Hardware is wholly or partially a merchandise product for the Supplier, it may only be purchased directly from the original manufacturer or from a distributor certified by the original manufacturer.

**5.2.3** Regarding Personal Computers ("PC" / "PCs"), the Hardware must consist of standard components and parts, this means such are custom und regularly offered in the PC market, and can be readily replaced by other components or upgraded by additional components.

**5.3** Features and Contents of Software:

**5.3.1** All Software, including the associated documentation, such as installation instructions, user documentation and the like, must be available in German and English, and the graphical user interface should be designed to support multi-language use, with the addition of new languages being only a matter of configuration.

**5.3.2** The Supplier has to successfully test all Software not only for functionality but also for its behavior in the cases of marginal load that are to be expected according to the contractual purposes the Order. The Software must at all times reliably and without any performance impairments meet any Order-related requirements, unless those impairments are insignificant.

**5.3.3** All Software must be designed to be protected against user errors which are common or are typically to be expected (for example by value range checks, integrity rules and the like).

**5.3.4** For Standard Software, the features and contents as stated in sections 5.3.4.1 to 5.3.5.10 shall apply additionally:

**5.3.4.1** "**Standard Software**" in the meaning of these General Purchasing Conditions is software which that can be bought as ready-made software product for tasks that are performed in the same or similar manner within an industry sector or in across industry sectors, and which in particular is neither fully nor partially customized to meet the special requirements of the Purchaser or its Group Companies.

**5.3.4.2** Subject to further specifications and requirements resulting from the Order, Standard Software must regularly be provided as object code and to be handed over to the Purchaser together with appropriate installation instructions and user documentation. Standard Software can be supplied on a suitable storage medium or via a download possibility on the internet pages of the Supplier.

**5.3.4.3** The Standard Software must integrate into and work smoothly in a usual system environment that is customary in the industry; it is the Supplier's obligation to notify the Purchaser or its (end-)customers in writing and at the latest before conclusion of the Order about any special requirements to the system environment.

**5.3.4.4** Upon delivery of the Standard Software, the Purchaser and its Group Companies receive the irrevocable, non-exclusive, transferable, sublicensable and geographically, temporally and content-wise unlimited right to use the Standard Software within the agreed scope. This use right comprises the intended use of the Standard Software as per the contractual purpose which is primarily defined by the specifications and requirements from the purchase order, the Order and the attachments or documents referenced therein.

**5.3.4.5** The number of use licenses is agreed in the Order. Unless explicitly stated otherwise in the Order, the number of "licenses", "users" or the like shall always be understood to mean the number of concurrent users. Insofar the term "user" only refers to a natural person directly and actually using the licensed Standard Software. This does not apply to the use of multiplexing hardware; in this case the number of users will not be measured by the concurrent users at the multiplexing front-end, but rather by the number of multiplexing hardware in use.

**5.3.4.6** Unless explicitly stated otherwise in the Order, the licenses are not restricted to individual CPUs or specific CPU numbers. Additionally, the Purchaser is rather allowed to operate all licenses and supporting tools without any restrictions on its independent test systems, training systems und alternate systems. All licenses and tools needed for this purpose – including ongoing software maintenance – are neither requiring a separate agreement nor are subject to remuneration.

**5.3.4.7** The Parties agree that the term "license" and similar terms used in these General Purchasing Conditions and the Order may never be interpreted in such a way that a mere change in technology or the technical infrastructure may lead to an additional demand in licenses as long as the actual scope of use for the affected Standard Software is not extended beyond the originally agreed scope.

**5.3.4.8** The Purchaser is entitled to create backup copies to the extent necessary for securing the future utilization of the Standard Software for the contractual purposes. The Purchaser is entitled to edit the Standard Software for the purpose of preserving or recovering the agreed functionalities. In addition, the provisions of § 69d and § 69e UrhG (German Copyright Act) apply without limitation.

**5.3.4.9** The Purchaser has the right to transfer purchased copies respectively licenses of the Standard Software to a third party permanently, whether for payment or free of charge. In this case the Purchaser will in return fully cease its own use of the Standard Software, incl. the removal of all installed copies from its business PCs and storage media, unless the Purchaser is required by law to store back-

up copies for a certain period of time. If the Purchaser has purchased volume license packages from the Supplier, the Purchaser's aforesaid entitlement also includes the piecewise transfer of individual copies respectively individual licenses.

**5.3.5** For Customized Software, the features and contents as stated in sections 5.3.5.1 to 5.3.5.11 shall apply additionally:

**5.3.5.1** "**Customized Software**" is software which is or shall be individually created or customized to meet the requirements of the Purchaser or its Group Companies. This implies computer programs (such as add-ons or plug-ins) that change and/or upgrade Standard Software in order to meet the requirements of the Purchaser or its Group Companies.

**5.3.5.2** The features and contents of the Customized Software as well as the time and project schedule are primarily defined in the Order. It is understood that Customized Software always includes provision of proper and professional software documentation. For subsequent changes and supplements to the agreed contents and scope of work the change request procedure as per section 7 shall apply. However, the mere interpretation of the contents and scope of work in order to eliminate ambiguities or to close gaps does not count as a subsequent change or supplement, and furthermore section 5.1.5 applies without limitation.

**5.3.5.3** The Customized Software has to be created with due professional care according to the state of the art. All relevant coding guidelines, procedure descriptions and industry standards (such as ITIL, ISO, EN or DIN standards) that are recognized in the industry must be considered as well as any individually by the Purchaser communicated specific methods and application practices. The Customized Software has to be programmed in such a way that it can be easily adapted to any changed environmental conditions, both from the IT system side and the market side, and it has to be designed in a platform and operating system independent manner.

**5.3.5.4** The Supplier notifies die Purchaser in regular intervals as required by current situation, but at least monthly, about the actual progress and the observance of deadlines. The Supplier shall notify the Purchaser automatically and immediately about any impending delays or change requirements. If the Supplier uses project planning tools the Supplier shall grant the Purchaser read access to these.

**5.3.5.5** The Purchaser is entitled to inform itself about the current work progress at any time. For this purpose, the Supplier shall upon request forward any required information to the Purchaser or allow inspection of such information in the Supplier's premises during normal business hours. Furthermore, the Purchaser may at any time request from the Supplier without the need to state any reason to immediately hand over any work results already produced by the Supplier.

**5.3.5.6** Prior to its use, every software version has to be fully tested in accordance with a defined and proven test concept, which meets customary industry standards, by a testing team consisting of Supplier's employees other than the software programmers. Upon request, the Purchaser is entitled to inspect the concept and the tests results.

**5.3.5.7** Unless agreed otherwise in the Order, the subject of the Order also includes a proper and professional instruction training of a sufficient number of Purchaser's employees by the Supplier in the use of the Customized Software and in the handling of the associated work tools. Time, period, place, type and scope of the training will be agreed upon separately by the Parties.

**5.3.5.8** Customized Software must be made available permanently as source code and in the required number of copies. Delivery can be made on a suitable data carrier or by remote data transmission via a connection that is sufficiently protected against external access. The scope of delivery includes a complete, structured and easily comprehensible documentation of the program development and program application, in English and German. The source code and the pertaining source code documentation shall contain sufficient information that enables a qualified third person to independently remedy software errors and to modify and further develop the Customized Software.

**5.3.5.9** The Supplier grants the Purchaser, at the time of its creation, the exclusive, irrevocable and geographically, temporally and content-wise unlimited right to all known and unknown types of use of the Customized Software, including the associated documentation and design materials; further, the Supplier grants the Purchaser the sole and unrestricted ownership to all development and/or adaptation results to which such a right can be established and transferred. The Purchaser is in particular entitled, without any restriction, to duplicate the Customized Software and any work results, to edit them (particularly to combine the Customized Software with other programs, redesign it and to convert it into other programming languages and for use with other operating systems), to change the Customized Software and any work results to other presentation forms and to modify them in any other manner, to extend them, supplement them, distribute them in unchanged and modified form, to reproduce them publicly in a wired and wireless manner, to grant sublicenses and to transfer them to its Group Companies and/or third parties, against payment or free of charge.

**5.3.5.10** Insofar as development works and/or customization works performed by the Supplier under the Order yield results for die Purchaser that can be protected by industrial property rights the Supplier must inform the Purchaser immediately in writing about this fact. The Purchaser is entitled, at its own discretion, to register these property rights in its name or in the name of one of its Group Companies. The Supplier shall support the Purchaser comprehensively and shall in particular immediately provide the Purchaser with all required information and will also make all necessary declarations and take all required measures. The Supplier shall not make a registration in its own name or in the name of any third party nor shall it support third parties, either directly or indirectly, by such registration. For inventions and technical improvements the regulations of the German Employee Invention Act have to be observed, if applicable.

**5.3.5.11** If it is necessary to use other existing intellectual property of the Supplier, especially copyrights, which the Supplier already owned before concluding the Order, in order to properly utilize the Customized Software, then the Supplier also grants to Purchaser an irrevocable, non-exclusive, transferable, sublicensable and free of charge right to use this existing intellectual property insofar as it is necessary for properly exercising and exploiting the use rights, which were for the Customized Software, and for achieving the contractual purposes.

**5.4**     Features and Contents for IT Services:

**5.4.1**     The features and contents of the IT Services as well as the time and project schedule are primarily defined in the Order. The Supplier will always use and contribute its professional know-how comprehensively and proactively for the performance of the IT Services.

**5.4.2**     The Supplier shall provide the IT Services with utmost diligence and conscientiousness according to the state of the art. All relevant process descriptions and industry standards (such as ITIL, ISO, EN or DIN standards) that are recognized in the industry must be considered as well as any individually by the Purchaser communicated specific methods and application practices

**5.4.3**     The Supplier is in principle free to choose the place of service and determine the working hours for performing the IT Services. If, however, the Order specifies a particular place of service or if the Purchaser requires the service to be rendered at a specified place, because it is a requirement of the task in question or more appropriate for it, then the Supplier must perform the service at this particular place. The Supplier's working hours have to be aligned with any joint work actions of the Parties and with the observance of agreed deadlines. If the IT Services include a hotline or similar remote services, the Supplier has to ensure a continuous and sufficient accessibility at the specified service times, which in principle have to be aligned with the requirements of the Purchaser (e.g. Purchaser's regular working hours, business days and holidays).

**5.4.4**     Regarding any work result of the Supplier, meaning all works created either by the Supplier itself or on behalf of the Supplier for the provision of the IT Services, in particular documents, project outlines, presentations and drafts as well as Customized Software, as the case may be, the Supplier grants the Purchaser the following rights at the time of creating such works: The exclusive, irrevocable, transferable, sublicensable and geographically, temporally and content-wise unlimited right to use the work results incl. all known and unknown types of use, in particular regarding their duplication, distribution, exploitation and processing; Supplier also grants the Purchaser the sole and unrestricted ownership to all work results to which such a right can be established and transferred. In case Customized Software is part of the work results, then insofar the sections 5.3.5.8 to 5.3.5.11 apply.

**5.4.5** The abovementioned right of use shall be granted to Purchaser without any further remuneration; they shall be deemed to have been paid in full with the remuneration agreed in the Order for the IT Services.

## 6. Security Obligations of the Supplier

**6.1** The Parties assume that the Purchaser is deemed to be an operator of an infrastructure of special public interest, which may require special legal IT security requirements affecting the Order, such as the Act on the Federal Office for Information Security ('*Gesetz über das Bundesamt für Sicherheit in der Informationstechnik*'; hereinafter: "**BSIG**"). The Supplier takes this assumption into consideration when preparing any offer and when providing the IT Deliverables and will comply in the frame of its performances with at least any requirements to the security of information technology as stipulated by the BSIG. Subject to any further agreements in the Order, the IT Deliverables must always correspond at least to the current state of the art that exists at the time of Order conclusion with regard to the protection against harmful software as well as to the prevention and avoidance of security gaps. For the terms 'security of information technology', 'harmful software' and 'security gaps' the definitions from the BSIG shall apply.

**6.2** The Supplier shall immediately inform the Purchaser if, after conclusion of Order, the Supplier becomes aware or has reason to assume that the IT Deliverables which have already been delivered or are to be delivered are exposed to risks in terms of security of information technology, especially risks of security gaps or harmful software. The same shall apply, if the Supplier has experienced or still experiences an attack on its IT infrastructure which is likely to have an impact on the safety of the IT Deliverables or the Purchaser's data.

**6.3** Insofar as IT security laws, such as the BSIG, provide the possibility that products can receive a specific IT security certificate, then the Supplier shall have its products certified accordingly, even if the IT security certificate should not be declared by such laws as mandatory for manufactures.

**6.4** The Supplier shall reasonably support the Purchaser regarding the fulfillment of any obligation resulting from IT security laws and incumbent on the Purchaser, such as from the BSIG, especially with regard to the fulfillment of any information and cooperation obligation towards governmental authorities or by conducting IT-security audits that are requested by governmental authorities from the Purchaser.

## 7. Change Request Procedure

**7.1** The Purchaser can, especially with regard to Orders for Customized Software, at any time between Order conclusion and acceptance or delivery of the IT Deliverables request changes and supplements to the Order subject, provided the request is technically and professionally feasible and reasonable for the Supplier. The Supplier examines any change requests immediately upon receipt and notifies the Purchaser about the result and the resulting additional costs or cost reductions, as the case may be, and possible changes to the project schedule and/or any delivery dates in form of a written and binding offer. The Supplier's consultation and offer preparation with regard to the change request is conducted free of charge for the Purchaser.

**7.2** The Purchaser shall in return evaluate the offer immediately after receipt of the complete offer documents. In case the Purchaser accepts the offer in writing, all changes and supplements become part of the Order and the Supplier has to adjust all work results, including any documentation, to the agreed changes. If the Purchaser refuses the offer, the Parties shall proceed with the Order unchanged as initially agreed.

**7.3** During an ongoing change request procedure the Supplier shall continue the provision of the IT Deliverables as originally agreed in the Order, unless das Purchaser instructs the Supplier in writing to cease or partially cease the services or works until a decision regarding the change request has been taken. The Supplier shall immediately notify the Purchaser in writing, if the Supplier assumes or has to assume that IT Deliverables or other works which are to be delivered or performed during the continuation will later, in case of a successfully agreed change request, reasonably no more of use. It the Supplier fails to notify the Purchaser in time, the useless expenses and costs resulting thereof shall be borne by the Supplier.

**7.4** If the Supplier does not notify the Purchaser about any additional costs and/or required postponements in accordance with section 7.1, but nevertheless starts to execute the agreed changes, then it will be presumed that the changes do not entail any additional costs or delays.

## 8. Acceptance

**8.1** Unless otherwise agreed in the Order, formal acceptance by the Purchaser shall only take place in case of the creation and delivery of Customized Software and shall be carried out taking the specifications and requirements from the Order as well as any other agreed specifications into consideration. In addition, the acceptance is subject to § 640 BGB (German Civil Code) unless the following paragraphs do not contain any different provisions.

**8.2** The prerequisite for acceptance is that the Supplier hands over the owed Customized Software in full to the Purchaser and notifies the Purchaser about its readiness for acceptance. An acceptance protocol about the acceptance procedure and the result shall be drawn up in writing. If the Customized Software cannot be accepted by Purchaser, the reasons shall be noted in the acceptance protocol and the Purchaser will set a deadline for renewed acceptance; the latter applies without prejudice to any rights which Purchaser may have in the event the Supplier is already in delay at the time of acceptance or falls behind schedule because of the unsuccessful acceptance attempt.

**8.3** If only insignificant defects are identified and the Purchaser accepts the delivery pursuant to § 640 paragraph 1 sentence 2 BGB (German Civil Code), then acceptance is conditioned to the immediate rectification of such defects by the Supplier. These insignificant defects shall be noted in the acceptance protocol.

**8.4** The provisions about notional acceptance pursuant to § 640 paragraph 2 sentence 1 BGB (German Civil Code) shall apply with the following provisos:
a) The deadline must be set by the Supplier in writing.
b) The acceptance period must be at least three (3) weeks.
c) The Supplier must expressly draw attention in writing in its request for acceptance to the consequences if acceptance is not declared by the Purchaser or refused without indication of defects.

## 9. Place of Performance / Transfer of Ownership

**9.1** Unless agreed otherwise in the Order, the place of performance is the Purchaser's branch as specified in the purchase order, or, if no branch has been specified, the Purchaser's headquarters. The Supplier shall bear all costs and risks (especially the risk of transport) associated with the delivery to the place of performance.

**9.2** The Supplier shall grant and transfer to the Purchaser the full and unencumbered ownership to the Hardware and to data carriers containing the Software. The Ownership will be transferred to the Purchaser upon delivery and receipt of the item.

## 10. Delivery Dates / Liquidated Damages for Delay

**10.1** In the event that the Supplier is in default with agreed deadlines or deadlines promised by Supplier itself for the provision of the IT Deliverables, the Purchaser shall be entitled to demand from the Supplier as liquidated damages per commenced business day 0.2 % (zero point two percent) of the Order value for the IT Deliverables that are delayed, but in total not more than 5 % (five percent) of the total Order value. IT Deliverables that despite having been delivered in time are reasonably not of use or of interest for the Purchaser, because of the delayed delivery of other IT Deliverables, shall also be considered as delayed.

**10.2** The Purchaser can demand the liquidated damages also after it has paid the corresponding invoice, without having to declare any reservation in this regard at the time the Purchaser makes the payment or receives or accepts the provision of the IT Deliverables. The liquidated damages can rather be claimed up to one year from their due date.

**10.3** The Purchaser is entitled, without limitation and in accordance with the applicable statutory law provisions, to set off its claims for liquidated damages against counterclaims of the Supplier (e.g. by deducting the amounts due from invoices of the Supplier).

**10.4** The Purchaser reserves the right to assert other rights and claims arising from the Order or applicable law. However, liquidated damages already paid by the Supplier in respect of the same case of delay will be deducted from such further claims.

## 11. Source Code Deposit

**11.1**    Insofar as the Supplier is not already obliged to deliver Software in form of source code (refer section 5.3.5.8), the Supplier shall deposit the source code in accordance with the following paragraphs as a security for the Purchaser. The purpose of the deposit is to ensure the continuity of the contractual use of the IT Deliverables by the Purchaser respectively to preserve the provision of IT Services owed by Supplier in accordance with the Order in the cases described in section 11.8.

**11.2**    The Supplier shall deposit with the Purchaser the source code for any Software to be supplied, made available and/or to be maintained by Supplier including the complete development documentation as well as any programming tools and libraries which are not available on the free market (hereinafter referred to as "**Deposited Object**"). The Supplier may demand that the deposit be made with a suitable third party (e.g. a notary in public), provided the Supplier bears all costs for this.

**11.3**    The Supplier shall effect the deposit immediately, but not later than within 2 (two) weeks after the provision of the Software or conclusion of a contract about Software support or maintenance services, whereas the deposit must be made in a suitable file format. At the time of deposit, the Deposited Object must be complete and of such a nature that an average software developer can make itself familiar with it within appropriate time and that a professional troubleshooting, maintenance and further development of the Software without the support of the Supplier or third parties is possible. After the Deposited Object has been assessed by the Purchaser, the Supplier may seal the Deposited Object before finally handing it over.

**11.4**    Upon the provision of a new, updated or otherwise modified version of the Software or parts thereof (such as software patches and software updates), the Supplier will also immediately deposit a complete, updated version of the Deposited Object. For updated Software versions the provisions of this section 11 apply accordingly.

**11.5**    The Purchaser shall store the Deposited Object and protect it adequately against unauthorized access. The Purchaser is only permitted to inspect and open the seal in the cases mentioned in section 11.8.

**11.6**    The Purchaser may have the Deposited Object assessed at any time for contractual conformity at its own cost by a third person which is engaged by Purchaser and bound to confidentiality. The Purchaser shall notify the Supplier about the result of this check.

**11.7**    Upon deposit of the Deposited Object the Purchaser receives the irrevocable, permanent, non-exclusive and non-transferable right (with the exception of its Group Companies) to duplicate, to edit, to compile in modified or unchanged form and to use the so generated object code within the general frame of its use rights that are granted for the Software. Aforesaid use rights comprise in particular the non-exclusive right of the Purchaser to analyze, translate, modify, supplement and otherwise rework the source code itself or by a third party, in particular for maintenance purposes, including correction of errors and the adaptation to a changed system environment at the Purchaser. The Purchaser is entitled to appoint third parties to exercise the Purchaser's rights to the Deposited Object.

**11.8**    The Purchaser shall exercise the rights of section 11.7 only in the following cases:
a) Supplier files an application for the opening of insolvency proceedings regarding its assets;
b) insolvency proceedings have been opened with regard to the assets of the Supplier or have not been opened due to lack of assets;
c) the ownership or control of the Supplier changes in a way that is not acceptable for the Purchaser with regard to the performance of the relevant Order (e.g. influence by competitors or fear of know-how or other business secrets being leaked);
d) the Supplier is no longer able to fulfill its major obligations under the relevant Order or suspends its performances in whole or in part for a substantial period of time or intends to do so.
e) The Purchaser is entitled to immediately terminate the relevant Order for good cause, for which the Supplier is responsible.
The Purchaser shall inform the Supplier in advance of its intention to exercise the abovementioned rights.

**11.9**    All expenditures and costs incurred by the Supplier in connection with the deposit, including the rights of use granted to the Deposited Object pursuant to section 11.7, shall be deemed as fully compensated by the remuneration under the Order. The Purchaser shall bear its own costs and expenses in connection with the deposit.

**11.10**    If the security purpose, as defined in section 11.1, ends, the Supplier can demand the return or the destruction of the Deposited Object.

## 12. Open Source Software

**12.1**    To the extent reasonable for the Supplier under an objective point of view, the Supplier shall ensure that the IT Deliverables do not consist of, do not contain or include any open source software. For the purpose of this provision, open source software means any software that the respective licensor provides to any user free of charge on the basis of a license or other agreement with the right to modify and/or distribute such software (e.g. GNU General Public License (GPL); GNU Lesser GPL (LGPL); BSD License; Apache License or MIT License).

**12.2**    If it is not possible to provide the IT Deliverables without open source software, the Supplier shall notify the Purchaser of the fact that its IT Deliverables include open source software as early as possible during the pre-contractual phase, however, no later than upon the conclusion of an Order. In this case, the Supplier shall also provide to the Purchaser the following:

a) The source code of the relevant open source software if the applicable conditions require the source code to be disclosed;
b) a list of all open source files used, stating the relevant use license and including a copy of the complete license text; and
c) a written declaration that the intended use of the open source software will not result in that the Supplier's IT Deliverables or the Purchaser's products will be subject to the so called "copyleft effect". For the purpose of this provision, copyleft means that specific Software of the Supplier, as well as any variants thereof, may only be distributed in accordance with the terms and conditions of the open source license, especially only if the source code is disclosed.

**12.3**    If the Supplier notifies the Purchaser of the fact that the IT Deliverables contain open source software not earlier than upon Order conclusion or later, then the Purchaser is entitled to terminate the Order for cause either in full or, if part of the IT Deliverables remain specifically usable, partially within 4 (four) weeks of receipt of the notification and provision of all information listed in the above paragraph. The Purchaser reserves all rights to claim damages in case the Supplier has not informed it in time about the fact that open source software is used.

## 13. Purchaser Materials / Exclusive Use

Any documents and data made available to the Supplier by the Purchaser during the negotiation or execution of the Order shall remain in the sole ownership of the Purchaser. Without the prior express and written consent of the Purchaser, these documents and data, including any industrial property rights or know-how, must only be used for the provision of the IT Deliverables to the Purchaser and not for any other purposes outside of the scope of the Order. In particular, any transfer or making available to third parties (= natural or legal persons other than the Purchaser or its Group Companies) is prohibited and the documents and data must not be used, either directly or indirectly, to produce or develop the same or substantially similar IT Deliverables for third parties or to offer, sell, deliver or otherwise provide them to third parties. In any case, the documents and/or data provided by Purchaser shall be considered confidential information that is protected under sections 18.2 to 18.5.

## 14. Warranty and General Liability of the Supplier

**14.1**    The warranty obligations and any other liability of the Supplier shall be governed by the relevant statutory law provisions without restriction and further in accordance with the following sections 14.2 to 14.5:

**14.2**    <u>Terms valid for all IT Deliverables</u>:

**14.2.1**  The Purchaser is entitled to enforce its rights to supplementary performance (§ 439 BGB / German Civil Code) even before delivery or acceptance, if the defect has already been detected at this point in time.

**14.2.2**  If the Order is a purchase agreement and the requirements of § 281 paragraph 2, § 323 paragraph 2 or § 440 BGB (German Civil

Code) are fulfilled, the Purchaser may remedy the defect itself, for instance by acquiring a replacement from a third party, and may request compensation from the Supplier for the necessary expenses. In case the Order is a contract to produce work, then § 637 BGB (German Civil Code) remains unaffected hereof.

**14.2.3**  If the Supplier is obliged to provide supplementary performance, the Purchaser is entitled to retain a reasonable part of the agreed remuneration with regard to the defect and the expenditure required to remedy it until the supplementary performance has been effected in full.

**14.2.4**  The Purchaser always reserves the right to choose the method of supplementary performance, irrespective of whether the underlying Order is legally classified as a purchase agreement or contract to produce work.

**14.2.5**  The Supplier warrants that the IT Deliverables do not violate any rights of third parties. If third parties claim a violation of their rights against the Purchaser, the Supplier shall indemnify the Purchaser against from all damages and cost resulting therefrom, including costs for court proceedings and settlements and the costs of legal advice required at the Purchaser's reasonable discretion. The Supplier proactively supports the Purchaser during judicial and extrajudicial defense and settlement of such disputes with third parties. The Parties endeavor to cooperate in each single case. However, the Purchaser shall have the sole authority to conduct litigation and to finally decide about conclusion of any judicial or extrajudicial settlements.

**14.2.6**  If the contractual use of the IT Deliverables conflicts with any rights of third parties, the Supplier shall be obliged to remedy this conflict by acquiring the necessary use rights at its own expense for the benefit of the Purchaser or by redesigning the affected IT Deliverables in such a way that the violation of rights is eliminated without impairing or reducing the contractually promised functionality and quality of the IT Deliverables, measured against the purpose of the contract.

**14.2.7**  The statutory warranty period shall apply. In case of supplementary performance, the statutory warranty period shall begin anew for the replaced item or the repaired item, starting from the day on which the supplementary performance was completed.

**14.3**  Terms valid for Hardware only:

**14.3.1**  The Supplier warrants that the Hardware is of the agreed quality or, if no express quality has been agreed, that it is suitable for the purpose presupposed in the Order but at least suitable for the regular use, which is usual and can be expected; the Supplier warrants further that in all cases the use of the Hardware by the Purchaser and/or its (end-)customers is neither violating nor impairing any rights of third parties.

**14.3.2**  The Purchaser's incoming goods inspection according to commercial law is limited to checking the delivered quantities, the correct items and whether the items bear any externally visible, apparent transport damage.

**14.3.3**  The Purchaser notifies the Supplier about any defects Purchaser obtained knowledge about as soon as it is to be considered appropriate taking the specific circumstances of the case and the Purchaser's business operations into consideration. In any case, a period of two weeks shall be deemed to be appropriate.

**14.3.4**  Any assembly and reassembly costs that are due in the course of supplementary performance count to the Supplier's obligation for supplementary performance and shall be on account of the Supplier as well as any other required expenses necessary for the purpose of supplementary performance, such as in particular costs of transportation, travel, labor and material. The aforesaid applies regardless whether supplementary performance is required at the Purchaser's or its (end-)customers' premises.

**14.4**  Terms valid for Software only:

**14.4.1**  The Supplier warrants that the Software is of the agreed quality or, if no express quality has been agreed, that it is suitable for the purpose presupposed in the Order but at least suitable for the regular use, which is usual and can be expected; the Supplier warrants further that in all cases the use of the Software by the Purchaser and/or its (end-)customers is neither violating nor impairing any rights of third parties.

**14.4.2**  Regarding the supplementary performance in form of sending a replacement, the Purchaser is only obliged to accept a new Software version, if this new Software will not cause any impairments to Purchaser, except these impairments are insignificant and must be deemed as acceptable.

**14.4.3**  § 377 HGB (German Commercial Code) does not apply for the purchase and delivery of Software.

**14.4.4**  With regard to Software defects the following defect classes apply:

- *Defect class 1 (severe defect)*: The contractual utilization of the Software or significant parts thereof is impossible, or using the Software constitutes an actual security risk for the Purchaser's system or its (end-)customers' system. The operational process at the Purchaser or at its (end-)customers is to such extent impaired that an immediate remedy is required. Several significant defects (defect class 2) and/or several other defects (defect class 3) can constitute in sum a severe defect of defect class 1, if in sum the aforesaid conditions are met.

- *Defect class 2 (significant defect)*: The contractual utilization of the Software or significant parts thereof is impaired to such extent that regularly working with the Software requires additional efforts, or using the software likely constitutes a security risk for the Purchaser's system or its (end-)customers' system. A short term remedy is required. Several other defects (defect class 3) can constitute in sum a significant defect of defect class 2, if in sum the aforesaid conditions are met.

- *Defect class 3 (other defect)*: The contractual utilization is impaired or the contractually agreed status not met, however, it is possible to use the software without additional efforts and security risks for the Purchaser's system or its (end-)customers' system can be excluded. A remedy of the defect is necessary, but not time critical.

**14.4.5**  Any defects of defect classes 1 and 2 are always to be considered as defects that entitle the Purchaser to refuse acceptance of the Software (see section 8). In return, defects of defect class 3 are not automatically counted as insignificant defect in the meaning of § 640 paragraph 1 sentence 2 BGB (German Civil Code), rather only if the relevant legal requirements for this are fulfilled.

**14.4.6**  With regard to the Supplier's obligations to supplementary performance for defects detected after delivery or acceptance, the abovementioned defect classes shall be appropriately considered when determining the grace period to be set by Purchaser for supplementary performance, i.e. defects of defect class 1 justify in principle a very short grace period, whereas defects of defect class 3 justify a longer one. Any response periods and/or remedy periods agreed in the Order for the abovementioned defect classes shall remain unaffected hereof.

**14.5**  Terms valid for IT Services only:

**14.5.1**  The Supplier warrants that the IT Services will be provided as agreed in the Order on the agreed deadlines and in a professional manner, at least with the diligence customary in business.

**14.5.2**  In the event IT Services are not performed as agreed in the Order or as otherwise agreed, the Purchaser is entitled to, at its own reasonable discretion, either request the Supplier to provide the IT Services again in a correct manner within a reasonable period of time, if those IT Services can be provided again and if the Purchaser has still an interest in those IT Services, or reduce the agreed remuneration in proportion to the part that was not performed as agreed. The legal rights of the Purchaser, in particular its rights to claim damage compensation and/or to terminate the Order, are not limited by this and apply additionally.

## 15. Environmental and Safety Regulations (RoHS, REACH etc.) and Social Responsibility

**15.1**  The Supplier must ensure at its own cost and expense that the IT Deliverables meet the relevant requirements of the applicable safety and environmental laws and regulations, including the laws concerning hazardous materials, waste prevention and environmental compatibility, the prevention of accidents, and health and safety at work, as well as any other applicable legal provisions.

**15.2**  The Supplier shall at all times comply with all national and European laws and regulations that apply in relation to the delivered items

and ensure that they remain marketable and usable, including any required labeling and information obligations. The Supplier shall in particular ensure that the delivered items comply with the requirements of the EU Directive 2012/19/EU on WEEE and the EU Directive 2011/65/EC on RoHS and their respective implementation into national law. The Supplier shall be responsible for taking back and disposal of goods according to these regulations and shall bear any costs associated with this.

**15.3** In addition, the Supplier shall ensure that any delivered item complies, in particular but not limited to, with Regulation (EU) 2019/1021 on persistent organic pollutants ("POP") and Regulation (EC) No. 1907/2006 concerning the Registration, Evaluation, Authorization and Restriction of Chemicals ("REACH"). The Supplier shall in particular comply with any and all duties imposed upon it by articles 31 to 33 (including the first and last number) of the REACH regulation and provide all information required by law. A current version of the safety data sheet in the German and English language shall be included upon delivery. Information pursuant to Article 33 REACH shall be provided for each individual product and taking into account the most recent version of the candidate list at https://www.echa.europa.eu/candidate-list-table. In the event that the candidate list changes, any information already provided must be updated for all deliveries no less than 12 (twelve) months before the change comes into effect if the products are still being delivered by the Supplier to the Purchaser or one of its Group Companies after the change of the SVHC list.

**15.4** Any Supplier located outside the European Union shall comply with the requirements of the regulation as an importer of goods into the European Union, if necessary by appointing a sole representative or agent. The Supplier shall notify the Purchaser in the event that, irrespective of the obligations of the Supplier under this section, further measures are necessary on the part of the Purchaser to ensure that the delivered items remain marketable and usable.

**15.5** The Supplier shall observe the Purchaser's provisions on Corporate Social Responsibility in Sourcing ("HENSOLDT CSR Sourcing Provisions") which can be retrieved and downloaded on the website of the Purchaser under www.hensoldt.net (Supplier Information). Upon written request the Purchaser provides the Supplier with a printout of these regulations in German or English.

**15.6** Notwithstanding any other statutory or contractual rights, in the event of a breach of the aforementioned obligations, the Purchaser shall be entitled to suspend the Order and its performances thereunder until the breach has been remedied or to terminate the Order for cause in the event of serious, irreparable or repeated breaches. If the Supplier culpably fails to comply with the above-mentioned obligations, it shall indemnify and hold harmless the Purchaser from and against any and all costs or damages resulting therefrom. This shall apply, in particular, to any necessary product recalls, asserted third-party claims and/or imposed fines.

## 16. Access Rights

**16.1** Purchaser's authorized employees and representatives of competent authorities shall have access during normal business hours to Supplier's premises where work is carried out for the Purchaser. They are entitled to inspect all relevant and Order-related documents for auditing purposes or to check compliance with legal regulations. This right of access during visits shall in particular be granted to all authorized persons of Purchaser who are responsible for monitoring the progress of the work commissioned from Supplier and for the associated performance of audits or investigations, or who are responsible for the qualification of Supplier.

**16.2** Upon the Purchaser's request, the abovementioned access right shall also be granted to representatives of the Purchaser's (end-)customers, insofar as the IT Deliverables are relevant for the Purchaser's (end-)customers.

## 17. Export Control / International Offset Obligations

**17.1** The Supplier shall observe all applicable laws and regulations regarding export control as well as the HENSOLDT Export Control Provisions which can be retrieved and downloaded on the Purchaser's website under www.hensoldt.net (Supplier Information). Upon written request the Purchaser provides the Supplier with a printout of these provisions in German or English.

**17.2** As far as reasonable, the Supplier has to support the Purchaser in connection with the Purchaser's international offset obligations by providing the Purchaser upon request with any relevant information about third party transactions pursuant to the HENSOLDT Group Offset-Provisions that can be retrieved and downloaded on the Purchaser's website under www.hensoldt.net (Supplier Information). Upon written request the Purchaser provides the Supplier with a printout of these provisions in German or English.

## 18. Confidentiality

**18.1** The Supplier is only allowed to name, show or use in any other manner the identity of the Purchaser (especially company name, logo/s and/or trademark/s of the Purchaser) in its advertising material or as customer or project reference or in any other publications issued by the Supplier itself or on its behalf, if the Purchaser has explicitly given its prior written consent.

**18.2** Insofar as the Supplier has concluded with Purchaser a separate written non-disclosure agreement, this non-disclosure agreement shall take precedence over the following sections 18.3 to 18.5.

**18.3** Die Parties agree to treat any confidential information disclosed during negotiation of the purchase order or execution of an Order as confidential and to use such information solely for the contractually agreed purposes. Confidential information within the meaning of this provision is any information, document, specification and data which are marked as confidential or similar or which by their nature are to be regarded as business secret. The Supplier agrees to grant access to any such confidential information of the Purchaser only to employees that are involved in concluding the purchase order or in the performance of the Order; for this purpose the Supplier maintains a suitable authorization and access concept. In case of rendering IT Services, each Party shall upon request of the other Party instruct its employees to sign an appropriate confidentiality commitment and present it to the other Party. Each Party agrees not to file applications for industrial property rights with regard to confidential information of the other Party.

**18.4** In the event that a governmental authority, a court or other public entity requires a Party to disclose confidential information belonging to the other Party, that Party has to notify the other Party immediately prior to the disclosure of any such information to the public entity.

**18.5** The termination or completion of an Order does not affect the above rights and obligations of the Parties. Both Parties agree to either return or destroy any existing confidential information of the other Party upon termination or completion of the Order, unless the confidential information has to be stored in accordance with applicable commercial or tax law.

## 19. Data Protection

**19.1** In the context of their cooperation, the Parties undertake to comply with all applicable laws and regulations on data protection, in particular on the protection of personal data. If personal data are processed, this shall only be done if and to the extent that the processing is legally permissible.

**19.2** Information on the collection and processing of personal data by the Purchaser is made available on the homepage of HENSOLDT (www.hensoldt.net) in the section "Supplier Information".

**19.3** If the Supplier processes personal data on behalf of the Purchaser and is deemed to be a processor within the meaning of Art. 4 and 28 Regulation (EU) 2016/679 'General Data Protection Regulation' (hereinafter: "**GDPR**"), then the Supplier shall conclude a separate and written agreement with the Purchaser on the processing which complies with the relevant data protection law requirements, in particular the requirements of Art. 28 GDPR. The Supplier shall not carry out any such processing before such an agreement has been concluded.

**19.4** Supplier shall take suitable and state of the art organizational and technical measures to ensure the availability, integrity, authenticity and confidentiality of its information systems, IT components and processes, which Supplier uses in the course of its performances under an Order, as well as of all data provided or made otherwise accessible by Purchaser. These requirements also apply to any communication and cooperation with the Purchaser. If Supplier uses systems which are not its own and not in its domain, the Supplier must impose corresponding obligations on its sub-providers and regularly monitor compliance with these obligations. Furthermore, the Supplier is obliged to

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carry out regular data backups to the extent necessary for the respective Order, but in any case to the extent customary in business.

**19.5** The Purchaser is entitled to check compliance with the data security requirements regulated herein at any time after prior written notice of at least 1 (one) week. For this purpose, Supplier shall grant Purchaser access to its business facilities relevant for such inspection, in particular the IT facilities, during Supplier's normal business hours.

## 20. Insurance policies

**20.1** The Supplier shall conclude and maintain with insurers of recognized reputation and security adequate insurance policies to cover its liabilities under these General Purchasing Conditions and the Orders concluded hereunder. At a minimum, Supplier shall maintain a General Third Party Liability Insurance for an amount of no less than 5.000.000 (five million) EUR per occurrence and in the yearly aggregate. The Supplier shall also conclude and maintain Product Liability Insurance. The limit of coverage of such insurance shall be not less than 5.000.000 (five million) EUR per occurrence and 10.000.000 (ten million) EUR in the yearly aggregate.

**20.2** The Supplier shall provide certificates of such insurances on request of the Purchaser at any time.

## 21. Applicable law and place of jurisdiction

**21.1** All legal relationships between the Purchaser and the Supplier are exclusively subject to the legislation of the Federal Republic of Germany excluding the CISG (United Nations Convention on Contracts for the International Sale of Goods from April 11th, 1980).

**21.2** Exclusive place of jurisdiction for all disputes arising from or in connection with the business relationship, in which these General Purchasing Conditions are incorporated, shall be Munich. However, the Purchaser reserves the right, at its own discretion, to bring legal proceedings against Supplier also before a court which is competent according to the statutory law provisions regarding the general place of jurisdiction for Supplier or any special place of jurisdiction.

## 22. Final clauses

**22.1** Any changes or supplements to these General Purchasing Conditions or an Order as well as side agreements must be made in writing. This also applies in the event of a waiver from this written form requirement.

**22.2** If one of the above provisions is or becomes invalid, the validity of the remaining provisions shall not be affected. In this case, the Parties undertake to replace the invalid provision by a valid provision which comes closest to the economic purpose of the invalid provision.

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