ORACLE Gold Partner
Specialized
Primavera P6 Enterprise
Project Portfolio Management

General Terms and Conditions (GTC) of XPMSOFT GmbH

1. Scope of these GTC; Nature and Extent of the Services

1.1

These General Terms and Conditions (GTC) of XPMSOFT GmbH (hereinafter "XPMSOFT") apply to all services provided by XPMSOFT under an individual contract between XPMSOFT and the client (hereinafter the "Customer"). The following services may be commissioned, in particular:

- IT consulting
- Training
- Support with project management
- Support with the installation, configuration and implementation of software
- Support with migration projects and/or data collection
- Support with the development and customization of software (software programming)
- Support with the operation of software

1.2

The Customer may commission XPMSOFT to support it with software programming. Software programming exists where software, program modules, tools etc. are created for the Customer's needs. This also includes customizations of standard or custom software at source code level. Software programming is carried out with the Customer's assistance and in close communication with the Customer, using an iterative and incremental approach (agile software development). XPMSOFT performs quality assurance only to the extent agreed as part of the support work. Software is provided in object code, not in source code.

1.3

Offers and price lists of XPMSOFT are non-binding unless they become part of a contractual agreement or of an offer from XPMSOFT to the Customer that is expressly designated as binding. Dates and deadlines are non-binding unless expressly designated as binding.

1.4

Contracts are formed by offer and acceptance subject to these GTC. Offers made by XPMSOFT to the Customer are binding for a period of 21 days, unless the offer provides otherwise. If the Customer accepts the offer within the binding period (in writing, by fax or by email), the contract is formed subject to these GTC.

1.5

The Customer bears responsibility for the project and for its overall results. XPMSOFT supports the Customer in its project.

1.6

If the parties have agreed special terms, these do not apply to concurrent or future contractual relationships with the Customer unless expressly agreed otherwise.

1.7

XPMSOFT is entitled to use third parties, in whole or in part, to perform its services.

1.8

The Customer's own terms and conditions are hereby rejected, unless agreed otherwise. These GTC shall also apply exclusively where XPMSOFT, with knowledge of Customer terms

that conflict with or deviate from these terms, performs delivery to the Customer without express reservation.

1.9
In the event of conflict, provisions of the individual contract take precedence over the corresponding provision of these GTC.

2. Customer Obligations and Duties to Cooperate

2.1
The Customer shall provide the cooperation services agreed in these GTC and in the contract. These include in particular the provision of the infrastructure, personnel, technology and documents required for performance of the contract, organizational support, and the appointment of a project manager on the Customer's side. The Customer shall provide XPMSOFT with the required data and information in good time and in sufficient scope.

2.2
The Customer shall make all reasonable efforts and shall fulfil the tasks, provisions and cooperation duties incumbent on it and agreed upon in such a timely manner that project progress is not impaired. XPMSOFT is entitled to use expert employees of the Customer to perform the contract. The qualified employees shall be selected in consultation with the Customer.

2.3
If the agreed obligations are not fulfilled, XPMSOFT shall not be in default from the time of the breach until it has been remedied. XPMSOFT may set a reasonable period for performance and, after that period has expired without result, terminate the contract and claim damages. Alternatively, XPMSOFT may perform the actions owed by the Customer itself or have a third party perform them at the Customer's expense. XPMSOFT shall be compensated for the effort resulting from rescheduling, in particular XPMSOFT's downtime, at the hourly rates agreed in the contract or, if no hourly rates are specified there, in accordance with its price list, even if XPMSOFT has approved a new schedule. Any other claims in the event of non-performance of cooperation duties remain unaffected.

2.4
Proper data backup is the Customer's responsibility.

3. Remuneration

3.1
The price list of XPMSOFT in effect at the time the contract is concluded applies. Prices are net prices in euros and are exclusive of statutory value added tax.

3.2
Unless otherwise agreed, the invoice amount is payable without deduction 14 days after the invoice date. Unless otherwise agreed, XPMSOFT invoices in arrears.

3.3
Remuneration on a time-and-materials basis agreed in the individual contract is payment for the time spent on the contractual services. If a daily rate is agreed, a maximum of eight hours of service per day is owed unless otherwise agreed. If more than eight hours are worked per

day, the additional hours will be invoiced separately on a pro rata basis. If an hourly rate is agreed, each hour begun is charged as a full hour.

3.4
A fixed price agreed in the contract is payment for all contractual services. The fixed price is paid by way of the advance payments agreed in the contract. These fall due on the dates agreed in the contract.

3.5
Travel time, travel costs and expenses are invoiced separately. All travel costs incurred (transportation costs) are charged to the Customer as follows: for trips by car, a flat rate of EUR 0.51 per kilometer driven is reimbursed. Subsistence expenses and accommodation costs, as well as costs for flights, train travel, taxis and rental cars, are reimbursed by the Customer upon presentation of the corresponding receipts.

3.6
Unless otherwise agreed, preliminary work requested by the Customer, such as the preparation of cost estimates, service specifications, project planning documents and specifications (requirements specifications), is to be agreed and remunerated separately.

3.7
XPMSOFT reserves the right to increase the remuneration agreed in an individual contract in line with cost increases that have occurred, but no earlier than four months after conclusion of the respective individual contract. Such an increase takes effect no earlier than three months after the end of the month in which XPMSOFT notified the change. If the increase, calculated over a period of 12 months, exceeds five percent of the agreed remuneration (for recurring services, five percent of the annual remuneration), the Customer has the right to terminate the respective individual contract in writing with one month's notice effective as of the date the new fee takes effect. XPMSOFT is entitled to remuneration for the services rendered under the contract up to the time the termination takes effect.

3.8
In the event of late payment, XPMSOFT is entitled to default interest of 10 percentage points above the base rate in effect at the time. XPMSOFT's other statutory rights in the event of the Customer's late payment remain unaffected. Where receivables are overdue, incoming payments are applied first to any costs and interest, and then to the oldest receivable.

4. Change Requests

4.1
After conclusion of the contract, the Customer may request changes to the scope of services in writing within the scope of XPMSOFT's capacity, unless this is unreasonable for XPMSOFT.

4.2
XPMSOFT shall review the Customer's change request and notify the Customer within ten calendar days whether the change request is unreasonable for it or requires extensive review, and shall submit a corresponding review offer with its price estimate. Within ten calendar days, the Customer shall either issue the review order in writing or decline it.

4.3
If XPMSOFT has neither rejected the change as unreasonable nor requested that a review order be placed pursuant to Clause 4.2, XPMSOFT shall submit to the Customer an

implementation offer setting out the effects on existing contractual agreements (e.g., service period, dates, remuneration).

4.4
The Customer shall accept or decline XPMSOFT's implementation offer within the offer's binding period. Upon acceptance of the offer, the offered changes to the services are commissioned and the contract changes contained in the offer become binding.

4.5
If the Customer's change request has no effect on existing contractual agreements (e.g., service period, dates, remuneration), XPMSOFT shall notify the Customer of this in writing within the 10-day period under Clause 4.2. The Customer and XPMSOFT shall then bindingly define the requested changes to the services and promptly make the necessary adjustments to the original contractual agreements.

4.6
The Customer and XPMSOFT may require that the work affected by the change request be suspended until the necessary adjustment of the contractual agreements has been made.

4.7
If the necessary adjustment of the contractual agreements is not reached within 14 calendar days after receipt of the change request, the work shall be continued on the basis of the original contractual agreements. The performance deadlines are extended by the number of calendar days on which work was suspended as a result of the change request or its review. For the duration of the suspension, XPMSOFT may claim the agreed remuneration, as well as the corresponding increase of any agreed cap or fixed price, if and to the extent that it or the employees affected by the suspension could not be deployed elsewhere and the Customer was notified of this in writing.

5. Rights of Use to Work Results

Unless otherwise agreed in the individual contract, upon full payment of the remuneration agreed in the contract, XPMSOFT grants the Customer a non-exclusive right, unlimited in territory and time, to use the work results (service and development results) produced under the contract, to the extent this follows from the purpose and field of application of the contract. Unless expressly provided otherwise in the individual contract, no rights of modification are granted to the Customer.

6. Liability

The following provisions apply to all contractual and statutory claims of the Customer against XPMSOFT for damages and reimbursement of expenses, including tort claims, arising from breaches of duty by XPMSOFT or any of its vicarious agents:

6.1
In the event of negligent breach of a material contractual obligation, liability is limited to compensation for the average damage that was foreseeable and typical at the time the contract was concluded. Material contractual obligations are obligations which, according to the content of the contract, the contract imposes on XPMSOFT in order to achieve the purpose of the contract, whose fulfilment is a prerequisite for proper performance of the contract in the first place, and on whose observance the Customer may regularly rely.

6.2
In all other respects, the following applies: liability for negligent breach of duty is limited to the contract value. In the event of data loss, XPMSOFT is liable only for the effort that would have been required to restore the data had the Customer performed proper and regular data backups.

6.3
The limitations of liability set out in Clauses 6.1 and 6.2 do not apply to claims arising from intent or gross negligence, fraudulent concealment, or injury to life, body or health, to the extent the Product Liability Act applies, or in the case of a guarantee, unless the guarantee declaration provides otherwise.

7. Term and Termination

7.1
The individual contract becomes effective upon signature by both contracting parties and, unless otherwise agreed, runs for an indefinite period. If the individual contract is concluded for an indefinite period, either contracting party may terminate it at any time with two months' notice to the end of a month.

7.2
The right to extraordinary termination remains unaffected.

7.3
Any termination must be in writing to be effective.

8. Set-off, Right of Retention, Assignment

8.1
The Customer is entitled to set off only where the counterclaim is undisputed, has been finally determined by a court, or has been acknowledged by XPMSOFT. Rights of retention and rights to refuse performance on the part of the Customer are excluded, unless XPMSOFT does not dispute the underlying counterclaims or they have been finally determined by a court.

8.2
Assignment by the Customer of claims arising from the contract concluded with the Customer is excluded.