

**General Purchasing Conditions (GPC) of Arvato Systems GmbH, An der Autobahn 200, 33333 Guetersloh, Germany, and its affiliated companies (hereinafter: Client) for the provision and maintenance of (standard) software**

(Version: November 2017)

**1 Scope of application**

1.1 These General Purchasing Conditions apply exclusively and to all agreements concluded for the provision of (standard) software. Conditions of the Contractor which contradict or deviate from these conditions are explicitly not recognized. General conditions of business of the Contractor are not recognized even if the Client does not explicitly object to them.

1.2 These General Purchasing Conditions apply only to companies in the sense of § 14 para. 1 German Civil Code (BGB); they are also agreed for all future agreements with the Contractor.

1.3 The application of the business conditions of the Contractor or third parties by means of conduct implying acceptance is excluded. The acceptance of deliveries or services and payment by the Client shall in particular not render the business conditions of the Contractor a component of this agreement.

1.4 §§ 631 et seq. BGB shall in particular apply to the contractual services of the Contractor relating to the maintenance of software.

**2 The scope of the service**

The object of this agreement is (a) the provision of standard software including the corresponding materials such as documentation (user handbooks etc.), concepts, drafts and the provision of other services of the Contractor relating to the provision, whereby the proper use of the software is based on the function and product specification and (b) the provision of software maintenance services and other services of the Contractor relating to the maintenance of software according to the order.

**3 Principles of the provision of the service**

3.1 The Contractor shall provide the contractually-agreed services according to the state-of-the-art at the time of conclusion of the agreement and by personnel qualified for the provision of the agreed services.

3.2 The contact partners of the parties to the agreement are solely the responsible contact partners named in the agreement. In addition to the contact person appointed by the Contractor, the Client is further entitled to validly submit explanations relating to the services to be provided by the Contractor to the former's representative.

3.3 The Client may demand the exchange of a person employed by the Contractor for the fulfilment of the agreement if said person has violated contractual obligations or does not possess the required specialist knowledge. The costs resulting from the exchange must be borne by the Contractor.

3.4 The employment of third parties as subcontractors for the Contractor requires the prior authorization of the Client, which must be in text form according to the applicable law and shall be pursuant to the eIDAS requirements.

3.5 All deadlines set by the Client shall be binding.

**4 Placement of orders**

4.1 The content of the order, which must be in text form according to the applicable law and shall be pursuant to the eIDAS requirements,

4.2 shall be solely decisive for the provision of the service. Verbal ancillary agreements are not made, and shall only come into effect upon confirmation by the Client, which must be in text form according to the applicable law and shall be pursuant to the eIDAS requirements.

4.3 The Contractor is obligated to accept the order within a period of 14 days. This period shall begin upon receipt of the (see 4.1) order, which must be in text form according to the applicable law and shall be pursuant to the eIDAS requirements. Any acceptance after the end of this period shall be considered a new offer. This shall only assume legal validity if the Client does not veto it within 14 days.

4.4 Cost estimates, the development of offers, the creation of specifications, project planning documents, plans, drawings and models or other related preparations or similar items shall only be subject to costs upon specific agreement.

**5 Scope of services**

5.1 Insofar as nothing different is agreed, the **provision of standard software** shall in particular include the following services:

5.1.1 Delivery:

- a) The Contractor shall deliver to the Client the software designated in the order alongside the corresponding program and user documentation as well as any other handbooks (hereinafter designated as "software products").
- b) The software products must be delivered free of defects and charge (including postage and customs duties) in packaging usual to the trade and on suitable data carriers to the delivery address stated in the order. If no delivery address is stated, delivery shall be made to the registered office of the Client. The software products can alternatively be made available to the Client for download free of charge via an encrypted Internet portal.
- c) The software products must be delivered within the delivery period stated in the order and on the delivery date stated in the order. Deliveries shall take place without any retention of title.
- d) The transfer of risks shall take place upon defect-free transfer of the software products at the place of delivery in accordance with letter b) and/or upon defect-free storage of the software products on a data carrier of the Client.
- e) The Contractor is obligated to conclude the insurances required for the transport to the contractually-agreed place of delivery in accordance with letter b) at its own costs.
- f) In the event of a default in delivery, the Client shall be entitled to the legal claims. Furthermore, in the event of a default by the Contractor, the Client is entitled to demand a contractual penalty of 0.5% of the total order value per partial day of default.

Insofar as the Contractor exceeds an agreed delivery deadline by more than 7 calendar days, the Client is entitled to immediately withdraw from the agreement.

A contractual penalty paid by the Contractor for default shall be credited to any on-going claims for damage compensation.

Any further claims by the Client in the event of default shall remain unaffected.

5.1.2 Security copies / Replacement:

- a) The Client is entitled to create copies of the software in machine-readable form to ensure proper data security for the event of a loss of and/or damage to the software.
- b) The Contractor shall guarantee a free replacement of the most recent version of the software in productive use by the Client as well as the preceding version in the event that, following losses, inadvertent deletions or similar events, the Client possesses no executable version of the software.

5.1.3 Implementation / test phase / instruction:

- a) Insofar as nothing different is agreed in the order, in addition to the provision of the software, the Contractor shall also install and configure it for the Client and guarantee its technical readiness for operation (implementation).
- b) To ensure quick and effective implementation, the Contractor shall provide a sufficient number of employees in order to ensure that the Client's business processes are not excessively affected.
- c) The Client shall, upon initial use of the software, be entitled to carry out a test period of 14 calendar days from confirmation of the activity stated under letter a). During this period, the Client is entitled to withdraw from the purchase agreement at any time should the contractually-agreed functions of the software not have been fully delivered. Should the Client have tested the software free of charge prior to ordering, the aforementioned right shall not apply.
- d) The Contractor shall support and train the employees of the Client to the extent required and at its own expense so that the Client is enabled to use the software professionally (instruction).
- e) The work to be carried out by the Contractor under letter a) must be accepted by the Client.

5.1.4 Documentation: The Contractor must provide printed, or at least printable, comprehensive programming and user documentation as well as any other handbooks in German or, if not available, in English. The documentation provided should permit the Client to properly operate the software. The Contractor shall provide free replacements in the event that the Client no longer has a current version of the aforementioned documents following a loss, inadvertent deletion or similar event.

5.1.5 Security: The Contractor shall ensure that the software products do not contain any functions which permit security features to be weakened, avoided or disabled and which are not notified to the Client in text form according to the applicable law and shall be pursuant to the eIDAS requirements, prior to transfer. It shall further ensure that the hardware and software do not permit unauthorized third parties to access the system or data of the Client without the latter's authorization.

5.1.6 Manufacturer warranty: The Contractor shall transfer any manufacturer warranty claims - insofar as the manufacturer generally offers them - to the Client free of charge. If the Contractor is itself the manufacturer of the software, the Contractor shall offer a manufacturer warranty typical for the industry to the Client free of charge.

5.2 Insofar as nothing different is agreed, the **software maintenance** shall include the following services in particular:

5.2.1 Resolution of defects: The Contractor shall take responsibility for the resolution of defects in the software in its current and previous versions. If the Contractor offers the Client new software for the avoidance or resolution of defects, in particular in the form of free patches, bug fixes, updates, upgrades, new releases, new versions etc., the Client is obligated to accept these and to install them onto its hardware in accordance with the installation instructions of the Contractor. The Client may decline the aforementioned form of defect resolution at least once without stating its reasons, as well as at the next installation of new software, if it does not demonstrate the same compatibility and functionality as the replaced versions or if its use is not reasonable for the Client for other well-founded reasons. In the event of defects which can be easily and simply resolved by the user, the Contractor may provide support to the Client in the form of user-appropriate instructions via telephone. If the Contractor temporarily provides the Client with a workaround, the Contractor's obligation to provide a permanent resolution for the defect shall remain unaffected.

5.2.2 Software modifications/improvements: The Contractor is obligated to provide any publicly-available and released updates and new versions of the software to the Client free of charge for the improvement of the delivered software. In the event of modifications to the software the Contractor shall, if required, promptly instruct the Client's employees in the use of the new version of the software without any separate remuneration.

5.2.3 Further development: The Contractor shall continue to develop the software and make such developments available to the Client in the form of free updates, upgrades, releases or versions. The Client shall have the opportunity to provide suggestions for possible further developments. The Contractor shall give serious consideration to these suggestions. A claim by the Client to the realization/implementation of these suggestions shall require a specific order. Insofar as client-specific adaptations to the software have been carried out, the Contractor shall take these into consideration in the context of any further developments.

5.2.4 User support: The Contractor shall assume responsibility for providing user support for the software versions in use with the Client and shall regularly notify the Client of general user instructions and other specific advice and information regarding important questions and problems relating to the software. It shall support the Client in relation to other possible uses and problem solutions for the software and inform it about new products.

5.2.5 Telephone service: The Contractor shall provide advice and (user) support via telephone during the agreed service hours for defects which occur, usage problems, disruptions or other difficulties in the context of the software processes.

- 5.2.6 **Remote diagnosis/trouble-shooting:** The Contractor is entitled to carry out remote diagnosis and trouble-shooting as follows following agreement with the Client: The Client shall provide the Contractor with remote access (VPN connection or remote desktop sharing) during the agreed service hours for the diagnosis and handling of defects which arise, usage problems, disruptions or other difficulties with the functioning of the software.
- 5.2.7 **Documentation:** In the event of modifications to the software on the basis of this agreement, e.g. by means of the remediation of a defect or the delivery of new software, the Contractor shall carry out a corresponding addition/update to the user handbook and installation manual for the software ("Documentation") with an explanation of the resulting modifications. The updating of the documentation shall take place in a form (paper or electronic) and scope in accordance with the ideas and requirements of the Client.
- 5.2.8 **Adaptation to modified norms:** If there is a change to vital legal framework conditions (i.e. applicable laws, ordinances or supervisory requirements) which apply to the proper use of software, the Contractor shall provide suitable modifications in the context of its operational and commercial abilities within a suitable period and free of charge. This obligation shall not apply if the adaptation would require work which is unreasonable for the Contractor and the Contractor has sufficiently explained the reasons for the unreasonable work to the Client. In this event, the modification may only be carried out in exchange for corresponding additional compensation if the Client has previously requested it.
- 5.2.9 **Service level:** The Service Level Agreement according to Annex 1 shall apply.
- 5.2.10 **Security:** Where, as part of the software maintenance, software is provided in the form of patches, bug fixes, updates, upgrades, new releases, new versions, among others, the Contractor shall ensure that the software does not contain functionalities which may make it possible to weaken, evade or turn off security functions, and about which the Client was not informed in text form according to the applicable law and shall be pursuant to the eIDAS requirements, prior to the hand-over. In particular, the Contractor shall ensure that this software does not enable unauthorized access of third parties to systems or data of the Contractor without the Contractor's prior consent.

## 6 Usage rights

6.1 The Contractor shall grant the Client all usage rights to the software products and the products of the software maintenance services according to section 5.2 required for the purpose of the agreement and for the operation of the software.

Insofar as the order does not provide for anything different, the Contractor shall grant the Client the simple, irrevocable, transferable, sub-licensable, local, i.e. independent of location and processor, and temporally unlimited usage right for the software products for its own business purposes, including the use and surrender for use of software products or sections thereof for and by companies associated with Bertelsmann SE & Co. KGaA in a group in the sense of §§ 15 et seq. German Stock Corporation Act (AktG), Bertelsmann SE & Co. KGaA itself or other third parties (e.g. end Clients). The Client shall receive exclusive usage rights to definable components of the software products which are adapted to the operational processes of the Client (e.g. customizing).

6.2 Insofar as the order limits usage rights to individual locations and/or processors, the client shall be entitled to temporarily use the software at locations and/or on processors other than those listed in the order, without additional remuneration, if the latter are temporarily not in working order.

If a change of location and/or processor within the Bertelsmann group is required due to organizational or technical modifications in this case, the Contractor shall authorize the use of the software products by the Client on the new processor and/or at the new location upon request.

6.3 The Contractor is obligated to inform the Client of possible limitations of the usability, modifiability or distribution of the delivered software arising from applicable third party license conditions. This shall in particular apply in the event of software or software components which are subject to an open source license or a comparable licensing model.

## 7 Partial performance

Partial performances shall not be accepted as contractual services. In the event of partial performances, the Client shall, insofar as it has no interest in the partial performance, be entitled to compensation instead of the complete performance. §§ 280 et seq. BGB shall apply.

## 8 Delivery / Functional test / Acceptance

8.1 Prior to the actual delivery of the software provided under section 5.1 or the software maintenance services provided under section 5.2 to the Client, the Contractor is obligated to thoroughly inspect the services itself, in particular to establish whether they fulfil the contractually-determined requirements, in particular the functions listed in the detailed product specification. If this requires the cooperation of the Client, the Contractor shall promptly inform the Client of this.

8.2 The services in accordance with the preceding section must be delivered to the Client at the contractually-agreed time after implementation for the purpose of the execution of a functional inspection. A record, which must be in text form according to the applicable law and shall be pursuant to the eIDAS requirements, must be created of the execution of the functional inspection and its result. The record must be signed by the Contractor and the employee appointed by the Client.

8.3 If the functional inspection does not detect any significant defects, the Client shall be obligated to declare its acceptance. The Contractor shall then carry out the orientation in accordance with section 5.1.3 letter d) at the contractually-agreed time. Both the acceptance and the completed orientation must be confirmed in text form according to the applicable law and shall be pursuant to the eIDAS requirements according to the regulation above.

8.4 If the functional inspection detects significant functional disruptions or faults (defects, in particular those of error classes 1 and 2 according to Annex 1), the Client shall be entitled to refuse its acceptance. In this case, the Contractor shall be obligated to remedy them immediately, or within a suitable period at the latest. A new functional inspection shall then take place in accordance with section 8.2. If it is successful, section 8.3 shall apply accordingly.

8.5 If an extension of more than 7 calendar days is required for reasons which are the responsibility of the Contractor, the Client is entitled to demand a contractual penalty of 0.5% of the total remuneration per partial calendar day of the default.

A contractual penalty paid by the Contractor for default shall be credited to any on-going claims for damage compensation.

Any further claims by the Client shall remain unaffected.

## **9 Principles of personnel deployment**

9.1 The Contractor is to render its services via its own or third-party personnel (hereinafter "personnel").

9.2 The Client is entitled by way of a justification, which must be in text form according to the applicable law and shall be pursuant to the eIDAS requirements, to demand the replacement of the personnel deployed by the Contractor if the personnel concerned repeatedly violates contractual duties or if some other important reason exists vis-à-vis the personnel deployed preventing cooperation between the Client and the Contractor.

Insofar as the Contractor deploys third-party personnel (such as freelancers or temporary staff), the Client may moreover demand the replacement of the third-party personnel subject to the provision of justification, which must be in text form according to the applicable law and shall be pursuant to the eIDAS requirements, of this, if further engagement could not reasonably be expected to be acceptable to the Client. The Contractor in its sole responsibility ensures and controls as a primary contractual duty that possibly deployed external personnel or sub-contractors will be deployed and managed pursuant to legal provisions, in particular that pension and social contributions will be paid correctly. Upon Client's request the Contractor is to provide evidence of a documentation regarding performed controls and confirm proper conduct in text form according to the applicable law and shall be pursuant to the eIDAS requirements, towards the Client. Inconsistencies or missing confirmation documents entitle the Client to terminate the contractual relationship immediately and extraordinarily without notice.

The Contractor is to comply without delay with any demand lodged by the Client in respect of the replacement of personnel. The additional expenses incurred due to personnel enhancement or replacement shall be borne by the Contractor.

9.3 The Contractor is to name its own project manager in the single order as a central point of contact. This project manager is to manage the entire project work on behalf of the Contractor and is the only person with exclusive authority of instruction vis-à-vis the personnel deployed by the Contractor. As far as the Client is concerned, it is to appoint its own project manager as the central point of contact for all project implementation matters. This project manager is to manage the entire project work on behalf of the Client. The Client's project manager has no authority of instruction vis-à-vis the Contractor's personnel - either in technical/subject-related or disciplinary terms.

9.4 On no account will the Contractor's personnel be integrated into the Client's operation. The Contractor remains fully and solely responsible for such personnel and also retains the exclusive authority to instruct. There will be no work-sharing collaborative arrangements between personnel of the Client and the Contractor's personnel. The personnel deployed by the Contractor will not be included in the internal holiday planning and absence management of the Client. Times of deployment or service times will only be agreed with the project manager contractually specified by the Contractor. The Contractor's personnel will not take part in internal meetings and events of the Client with company-specific content and activities (e.g. presentation/seminar sessions, company parties). They will only be allowed to take part in project and technical meetings which are directly connected with specifying the contractual performance, the provision of services or the approval of services. The Contractor and the personnel deployed by the same will use their own equipment/resources unless there is an objective reason which necessitates the use of the Client's equipment (e.g. IT security, data protection).

9.5 No project-related agreements, instructions or comparable communication will take place between the personnel deployed by the Contractor and the personnel of the Client without the participation of the project managers mentioned in Section 9.3. The Contractor must call on the Client's project manager for binding information and for all queries arising in the context of the fulfilment of the contract. The project manager of the Client will provide information without delay and make or communicate decisions. Decisions and information provided by other persons are only binding for the Contractor and his personnel if they have been initiated or confirmed in text form according to the applicable law and shall be pursuant to the eIDAS requirements, by the project manager of the Client.

9.6 In the event of any complaints concerning faults/defects in the service provided by the Contractor, the Contractor's project manager is the sole point of contact for the project manager of the Client. The Contractor's service provision will not be the subject of complaint towards any other of the Contractor's personnel.

9.7 The Contractor will ensure that all the personnel deployed by him have read, understood and are aware of the rules presented to the Contractor with regard to confidentiality, data protection, plant safety/work security, the information sheet on the German Federal Data Protection Act (Bundesdatenschutzgesetz), the flyer for emergencies as well as the Client's information security (IS) policy, and that they observe such rules accordingly.

9.8 On request, the Contractor must keep the Client informed at reasonable intervals of the status and progress of the project and adherence to contractual demands, and communicate any interim results. Moreover, the Client may request to access/inspect the relevant documents and parts thereof.

## **10 Personnel deployment on end-customer's premises**

10.1 Insofar as the Contractor provides services to an end-customer of the Client in the context of this agreement, the Contractor and the Client will each be solely responsible for their own respective personnel. This means that neither the Client's personnel nor the Contractor's personnel will be integrated into the end-customer's operations. There will also be no work-sharing collaborative arrangements and no direct communication between personnel of the Contractor, the Client or the end-customer.

10.2 Any project-related agreement, instruction or comparable communication with the end-customer will exclusively take place via the Client's project manager mentioned in Section 9.3. This project manager is the sole point of contact for both the end-customer and the Contractor's project manager with regard to the services to be provided to the end-customer of the Client as part of this agreement. In all other respects, the above provisions of Sections 9.3 to 9.6 will apply mutatis mutandis.

## **11 Minimum wage**

11.1 The Contractor shall pay its employees the statutory minimum wage. At the Client's request the Contractor, during the entire term of the contract up to six months after the end of the present contractual relationship, shall prove to the Client within 14 days that it has complied with this obligation by submitting suitable documents [particularly documents in accordance with § 17 (1) of the Minimum Wage Act (Mindestlohngesetz, MiLoG), clearance certificates from the responsible social insurance fund, holiday pay fund etc.].

11.2 The Contractor shall on first demand indemnify the Client against all third-party claims (particularly those of the Contractor's employees, the Client's own clients, the Federal Labour Office) in connection with any breach of the obligation to pay the statutory minimum wage.

11.3 The Contractor shall impose an obligation of the same extent on any possible sub-contractor to verifiably pay the statutory minimum wage and indemnify the Client, in the same way as the Contractor bears an obligation under Sections 11.1 and 11.2. If the sub-contractor uses the services of other sub-contractors, the Contractor shall ensure that the corresponding obligation is also imposed on all sub-contractors.

11.4 The Contractor shall be liable to the Client for all third-party claims resulting from any breach of the obligation to pay the statutory minimum wage by sub-contractors.

## **12 Remuneration**

12.1 All agreed prices are to be understood as plus the legally-applicable VAT and include any ancillary costs, in particular travel costs, travel time, transport costs and customs duties.

12.2 In the event of incorrect, deficient or partial delivery, the Client is entitled to refuse payment until proper delivery.

12.3 Insofar as the Contractor is obligated to provide a guarantee to the Client, the contractually-agreed services, in particular software maintenance services, shall be provided free of charge for the duration of the guarantee.

12.4 The agreed software maintenance services shall be remunerated by the monthly, quarterly, semi-annual or annual fixed-price maintenance fees established in detail in the order. Section 12.3 shall remain unaffected by this.

12.5 An increase in the corresponding maintenance fee shall not be possible before the end of a period of 24 months. The Contractor must announce the increase at the latest three months prior to its entry into force. The increase in the maintenance fee must remain within a scope usual for the industry; it may in no case exceed 2% of the previously-applicable annual maintenance fee. In the event of an increase, the Client retains the right to terminate the agreement before the entry into effect of the increase, with a notice period of two weeks. The termination shall enter into effect at the same time as the increase.

12.6 Unless a differing regulation applies, remuneration shall be due for payment 30 days after receipt of a verifiable invoice, but only following acceptance of the products of the work. The invoice must include the Client's order number and, if no fixed price remuneration is agreed, details of the provision of services (including time, location, service provided).

12.7 The Contractor shall grant the Client a discount of 3% of the invoice amount in the event of payment within 14 days after receipt of the verifiable invoice.

12.8 The Contractor is only entitled to withhold payments or services and products of work or to offset them against counterclaims if the Contractor's claims from the same legal relationship have either been recognized in text form according to the applicable law and shall be pursuant to the eIDAS requirements by the Client or there is a legally-enforceable ruling resulting from court proceedings. The assignment of claims of the Contractor against the Client to third parties is excluded.

## **13 Default**

In the event of default, the Client shall be entitled to the legal claims. Furthermore, in the event of a default by the Contractor, the Client shall be entitled to demand a contractual penalty of 0.5% of the total order value per partial day of default.

Insofar as the Contractor exceeds an agreed delivery deadline by more than 7 calendar days, the Client is entitled to immediately withdraw from the agreement.

The contractual penalty may be applied until final payment of the remuneration.

A contractual penalty paid by the Contractor for default shall be credited to any on-going claims for damage compensation.

Any further claims by the Client in the event of default shall remain unaffected.

## **14 (Notice of) Defect / Warranty**

14.1 § 377 German Commercial Code (HGB) shall apply in such a way that the Client is obligated to submit a notice of defect within one week after acceptance insofar as a defect is detected in the context of random sample inspections carried out within a reasonable scope. Visible transport damage shall be reported immediately, at the latest however within one week. A remuneration payment shall not represent acceptance of the service.

14.2 The Client shall be fully entitled to its legal warranty claims

14.3 The Contractor must immediately remedy defects during the warranty period.

14.4 Once a defect is remedied, the warranty period shall again begin to run.

## **15 Force majeure**

If, due to force majeure (comprehensive listing: war, unrest, industrial action, lock-out, fire and flooding), the Contractor is unable to duly provide the service, the Client may choose to withdraw from the agreement instead of unilaterally extending the period for the contractual provision of the service.

## **16 Liability**

16.1 If the Client demands compensation instead of the service, the claim for provision of the service shall only expire upon payment of the compensation by the Contractor.

16.2 Legal provisions shall also apply.

## **17 Duration and termination of the software maintenance**

Insofar as the order does not establish anything different, the following shall apply:

17.1 The software maintenance agreement shall have a duration of two years from the beginning of productive use of the software.

17.2 The Contractor must inform the Client of the end of the agreement period in text form according to the applicable law and shall be pursuant to the eIDAS requirements, three months prior to the expiry of the agreement. For clarification purpose, an email format does not comply with such requirements.

17.3 The Contractor may terminate the software maintenance agreement subject to a notice period of six months to the end of a given month, at the earliest, however, at the end of the second year. The Client may terminate the software maintenance agreement subject to a notice period of three months to the end of a given month.

17.4 The right to extraordinary termination for cause shall remain unaffected.

## **18 Rights of third parties**

18.1 The Contractor shall, regardless of fault, be responsible for ensuring that it is entitled to grant the Client's usage rights to the software products. It guarantees that the contractual use of the software (products) by the Client does not breach the rights of third parties.

18.2 Insofar as the software products or software maintenance services delivered by the Contractor violate the rights of third parties and such at least slightly-negligent violations are based on a service of the Contractor, the latter shall be obligated to hold the Client free of all third party claims and all costs related to legal defense, including costs for the suitable acquisition of licenses, at the first request.

## **19 Confidentiality**

19.1 The Contractor undertakes to maintain the confidentiality of all information (e.g. business and operational secrets, data, technical and commercial information of any type) of which it becomes aware in the context of this contractual relationship via the Client and the order, whether verbal, in writing, in electronic or other form, including beyond the duration of the contractual relationship and to maintain silence on this topic. The information must be stored in such a way as to exclude any misuse.

19.2 The Contractor shall further be obligated to ensure that its employees, consultants and other vicarious agents which are charged with the execution of the agreement and receive information in accordance with 19.1 are obligated in writing to maintain this confidentiality.

## **20 Data protection and security**

20.1 The Contractor shall ensure that all persons charged with the fulfilment of this agreement shall comply with legal data protection regulations and are demonstrably obliged to maintain data confidentiality in accordance with data protection rules.

20.2 In case of contract data processing, the contractual parties shall conclude a separate agreement in accordance with § 11 German Federal Data Protection Law (BDSG).

20.3 The Client expressly does not grant any authorization for the use of contact data for marketing purposes. Any forwarding, transmission or other use of the contact data of the Client is explicitly prohibited.

20.4 The Contractor is obligated to take all necessary measures to ensure information and operational security as well as quality assurance for the Client. The corresponding regulations and bulletins from the Client made available to the Contractor at its request shall apply.

## **21 Insurance**

21.1 The Contractor is obligated to maintain operational liability insurance throughout the entire duration of the agreement, the scope and amount of which shall be appropriate for the liability risks under this agreement.

21.2 At the request of the Client, the Contractor shall provide evidence of the purchase and existence of the insurance as well as the payment of the corresponding premiums.

## **22 Audit**

22.1 The Customer is entitled to check compliance with the use restrictions agreed in the agreement at the premises of the Contractor with timely prior notice and during office hours.

22.2 Such an audit shall be carried out by the Customer or by an auditing company to be specified by the Customer.

22.3 The confidentiality of information of the Contractor shall be protected; reasonable security provisions shall be taken into consideration.

22.4 The Contractor is obliged to grant access to all systems, books, records, business processes and equipment that the Customer requires to carry out a proper and thorough audit. The Contractor shall cooperate with such an audit as required.

## **23 Final provisions**

23.1 This agreement may only be transferred to third parties with the authorization, which must be in text form according to the applicable law and shall be pursuant to the eIDAS requirements, of the other party. On the Client's side, third parties in the sense of this clause are not the companies affiliated with Bertelsmann SE & Co. KGaA, Guetersloh, Germany, in a group (§§ 15 et seq. AktG) or Bertelsmann SE & Co. KGaA itself.

23.2 The Contractor is not entitled to name the Client, details of the order or the end client of the Client as references without the latter's explicit authorization, which must be in text form according to the applicable law and shall be pursuant to the eIDAS requirements.

23.3 The contractual conditions established in these contractual conditions may not exceed 5% of the total value of the order overall.

23.4 The Contractor acknowledges the regulations of the 'Supplier Code of Conduct' of Bertelsmann SE & Co. KGaA and is obligated to act in accordance with said regulations. This code of conduct for business partners is available at [www.ethics.bertelsmann.com](http://www.ethics.bertelsmann.com).

23.5 Modifications, amendments and the annulment of this agreement must be in text form according to the applicable law and shall be pursuant to the eIDAS requirements. For clarification purpose, an email format does not comply with such requirements. The same shall apply for the annulment of the requirement of the written form.

23.6 The existence of this agreement shall not be affected by the validity of individual provisions or loopholes. An invalid provision or a loophole must be replaced and/or filled by a valid provision which corresponds as much as possible with the intent and purpose of the invalid provision or remaining regulations of this agreement.

23.7 The laws of the Federal Republic of Germany apply, to the exclusion of UN-CISG. The place of jurisdiction for all disputes arising from this agreement is the court factually and locally responsible for the Client.

**Annex 1 to the General Purchasing Conditions (GPC) of Arvato Systems GmbH, An der Autobahn 200, 33333 Guetersloh, Germany, and its affiliated companies (hereinafter: Client) for the maintenance of software**

(Version: November 2017)

**Service Level Agreement**

**1. Service Level Table**

	<b>Error class 1</b>	<b>Error class 2</b>	<b>Error class 3</b>
<b>Service period of the Contractor</b>	24x7	Mon. Fri., 8:00 am – 6:00 pm with the exception of federal bank holidays ("holidays"). These holidays shall be treated as Sundays.	
<b>Acceptance of enquiries by the Client (incidents)</b>	< 1 minute		
<b>Reaction time</b>	< 10 minutes	< 20 minutes	appropriate
<b>Time for the correction of errors</b>	< 2 hours	< 4 hours	appropriate
<b>Status report: Status of the error correction</b>	Every 60 minutes	Every 90 minutes	appropriate
<b>Post-mortem report</b>	2 working days after the correction of the error	5 working days after the correction of the error	–
<b>Maximum number of disruptions</b>	3 per year	6 per year	12 per year
<b>Documentation update</b>	10 working days after the correction of the error		
<b>Early warning</b>	< 48 hours		–

**Contractual penalties for non-compliance**

	<b>Error class 1</b>	<b>Error class 2</b>	<b>Error class 3</b>
<b>Error correction within service hours</b>	> 2 hours: - 10 % > 4 hours: - 30 % > 6 hours: - 70 % > 8 hours: - 100 % > each additional 4 hour period: each - 100 %	> 4 hours: - 10 % > 6 hours: - 25 % > 8 hours: - 50 % > each additional 8 hour period: each - 100 %	–

Non-compliance credit notes shall be calculated as a percentage of the average monthly remuneration to be paid during the base period of the agreement. Section 6.6 shall also apply.

## 2. Hotline, error reporting

2.1. The Contractor shall receive reports of errors from the Client via telephone, e-mail or fax during the service hours defined in the Service Level Table.

2.2. The Client may record error messages – retroactively if applicable – in text form according to the applicable law and shall be pursuant to the eIDAS requirements and allocate the errors to a category according to paragraph 3.

2.3. The Client may collect previously-reported and newly-detected errors into open issue lists and forward them to the Contractor. The following regulations shall apply according to the errors included in these lists.

## 3. Error categories

Errors shall be allocated to the following categories by the Client: errors preventing operations (Error class 1), errors hindering operations (Error class 2) and other errors (Error class 3). After adaptation/handling of an error, the error category allocation may be changed. The establishment of the error category shall be determined by the following allocation:

3.1. **Error class 1:** An error which prevents operations is present when the use of a maintained system/program is rendered impossible or severely limited, for example due to error functions, incorrect results or response times. There are no functions available which could replace the disrupted function (“workaround solution”).

3.2. **Error class 2:** An error which hinders operations is present when the use of a maintained system/program is partially impossible or severely limited, for example due to error functions, incorrect results or response times, and there is workaround solution, which is reasonable for the Client in both type and scope, which can be used temporarily.

3.3. **Error class 3:** Other errors are present when the use of a maintained system/program is not and/or not significantly affected. Example: Awkwardly-defined basic settings, missing desired functions/additions (“nice-to-have functions”), defects in the documentation, negative effects on operating comfort, all without any negative effect on functions.

## 4. Reaction times and error correction

4.1. **Error class 1:** In the event of errors preventing operations, the Contractor shall begin to correct the error within the reaction time defined in the Service Level Table following notification of the error by the Client - if necessary on site - and continue without interruption, that is to say 24 hours per day, 7 days per week, in agreement with the Client until the correction is complete. The Contractor is obligated to correct errors preventing operations within the error correction time defined in the Service Level Table and shall remain constant contact with the Client throughout this period.

4.2. **Error class 2:** In the event of errors hindering operations, the Contractor shall begin to correct the error within the reaction time defined in the Service Level Table following notification of the error by the Client - if necessary on site - and continue on the days defined in the Service Level Table and during the support times defined in the Service Level Table in agreement with the Client until the correction is complete. In the event of particularly severe errors hindering operations, the Client may demand uninterrupted efforts to correct them during the support times for errors preventing operations (Error class 1) defined in the Service Level Table.

4.3. **Error class 3:** The correction of other errors shall take place in a reaction and correction time appropriate for the severity of the error, unless something different is defined in the Service Level Table.



4.4. **Error correction measures:** The Contractor shall correct any defects of which it becomes aware as it sees fit, in particular using one of the following measures:

(i) delivery of a patch/bug fix and, at the Client's request, installation.

(ii) delivery of a new program version which does not contain the defect. In the event of Error class 1 defects, a workaround which is reasonable for the Client must be prepared within the error correction time according to the Service Level Table.

(iii) instructions to the Client for a workaround of the defect or to remove the defect. The Client shall implement these instructions insofar as it is reasonable for it to do so. The Client is free to designate the error correction under this section as final or merely preliminary. Insofar as the Client informs the Contractor of the fact that the error correction is merely preliminary, the Contractor shall be obligated to achieve a final error correction within an appropriate period.

The correction of the error also includes correction of any consequences of the error correction, for example in the data.

4.5. **Reaction time:** A reaction means any reasonable measure by the Contractor undertaken to find the cause of the error. The reaction time is therefore the time from the Client's error report to the execution of this measure.

4.6. **Time for the correction of errors:** The Contractor is obligated to correct the error within the error correction time established in the Service Level Table. The error correction time is the time from the Client's error report to the Client's confirmation that the error has been corrected. The confirmation of the error correction by the Client takes place via the signature of the error correction record in accordance with 5.5.

4.7. **Status reports:** The Contractor shall continuously inform the Client at intervals in accordance with the severity of the error by means of status reports submitted by telephone, fax, e-mail or online reporting regarding the status of the error analysis and correction. The times defined in the Service Level Table within which status reports are to be delivered are at a minimum dependent on the severity of the error. In individual cases, the parties may agree a different logical cycle.

4.8. **Early warning:** Insofar as the Contractor receives notification of an error of Error class 1 from other clients or from the manufacturer, it shall inform the Contractor of this error and the required and/or recommended error correction measures within the periods defined in the Service Level Table and begin the implementation of the measures for the Client. The error correction periods defined in the Service Level Table shall apply accordingly. The period shall begin from the successful correction of the error by the Contractor for a different client or after its announcement by the manufacturer.

4.9. **Interfaces to other systems:** Insofar as the system/software is connected to other systems via interfaces and the Client identifies errors in these systems, or in others to be connected in the future, and that it cannot be excluded that these errors were caused by the system/software of the Contractor, the Contractor shall be obligated to proceed in accordance with the provisions of this Service Level Agreement until it has been demonstrated that the error was not caused by the system/software of the Contractor.

4.10. **Adaptation of the documentation:** In the event of program modifications/improvements and error corrections, the adaptation of the documentation shall take place within the periods defined in the Service Level Table. The periods shall begin at the time at which the parties agree regarding the success of the error correction.

4.11. **Remuneration for outlay:** Insofar as the Contractor determines that the error reported by the Client does not in fact exist or that it cannot be traced to the system/software of the Contractor, it shall be entitled to invoice the outlay incurred for the analysis and other handling to the Client in accordance

with the current price list as long as the Client was guilty of willful intent or gross negligence in the reporting of the error.

## 5. Error reporting

5.1. The Contractor will submit an error report to the Client by fax or e-mail alongside the first status report in accordance with section 4.7, which must list the following points: (i) time of the first error report or error detection, (ii) error description by the Contractor, (iii) procedure for the analysis and correction of the error by the Contractor; (iv) estimated error correction time.

5.2. If the error correction time stated by the Contractor is not acceptable for the Client, the Client may request that further measures be taken. In this case, the Contractor shall be obligated to immediately organize the implementation of further measures with the Client and to seek agreement regarding the details of the further measures and the allocation of the corresponding costs.

5.3. In cases in which the estimated or actual error correction times for errors preventing or hindering operations lead to interruptions of business operations or in which differences of opinion exist regarding the type and manner of logical error correction, the Client may demand the involvement of a neutral expert third party in the error analysis. The Contractor is obligated to cooperate with the third party and to provide all information required for the error analysis. If the correction of the error is only made possible by the involvement of the third party or if its involvement leads to the error correction time being significantly shorter than the time stated by the Contractor or to the negative effects related to the error being significantly reduced, the Contractor shall bear the costs of the involvement of the third party. The parties may first agree to an internal escalation in place of the involvement of an expert third party. If no agreement can be reached, the expert third party may be immediately involved.

5.4. **Error correction record:** Once the error has been corrected, the Contractor shall submit the error correction record to the Client. The error correction record includes all test measures to be carried out to verify the correction of the error. The Client shall immediately verify the success of the error correction measures. Only after the verification of the error correction and signature of the error correction record by the Client shall the error be considered resolved.

5.5. **Post-mortem report:** Once the error has been corrected, the Contractor shall submit an extensive error correction report (post-mortem report) to the Client within the period stated in the Service Level Table, documenting the cause of the error, the measures taken and modifications made to correct the error as well as the test measures undertaken to verify the correction of the error.

## 6. Delays and other disturbances / Right to termination

6.1. The agreed reaction, error correction and delivery times and deadlines are binding. Obstacles and delays must be immediately notified with an exact description of the circumstances and a calculation of the additional time required.

6.2. The Client is entitled to assign the work to a different company and to invoice the costs to the Contractor once an appropriate grace period has elapsed ("execution by substitution"). Furthermore, the Client may exercise its legal rights.

6.3. Section 6.2 shall apply accordingly if the Contractor repeatedly fails to comply with the reaction times and error correction times defined in the Service Level Table or interrupts the error correction before the error is resolved, does not resolve errors within a suitable and/or contractually-agreed time or is otherwise insignificant breach of its obligations.

6.4. If the Client exercises its right, established in section 6.2, to execution by substitution and if the source code is not in the possession of the Client, the Contractor shall immediately provide it to the Client with all corresponding information and documents. The material to be stored must be suitable for the generation of the version of the software/system which the Contractor most recently provided to the Client.

6.5. The Contractor is not obligated to take responsibility for delays if the Client modifies the software without the Contractor's authorization and the Contractor demonstrates that these modifications have made the error correction significantly more difficult or impossible. This shall not apply if the Client has used system parameterisation measures in accordance with the handbook or has used defined interfaces (Exits, API) in accordance with the documentation. The Contractor guarantees that this shall not lead to any defects.

6.6. In the event that error correction times defined in the Service Level Table are exceeded and that the Contractor is unable to demonstrate that it is not responsible for said delays, the Client may demand payment of the non-compliance credit notes defined in the Service Level Table without any prejudice to its other rights. Insofar as nothing different is established in paragraph 1, the non-compliance credit notes shall be calculated as a percentage of the average monthly remuneration to be paid during the base period of the agreement. The non-compliance credit notes shall be invoiced with the next remuneration owed for the maintenance services provided and itemised accordingly on the invoices. The enforcement of any additional claims by the Client shall not be affected.

6.7. **Maximum number of disruptions:** The Client is entitled to extraordinarily terminate the software maintenance agreement, either entirely or in part, subject to a notice period of 10 working days if the maximum number of disruptions defined in the Service Level Table has been exceeded and insofar as these disruptions were the responsibility of the Contractor. The termination must be announced within 2 months of the point at which the maximum number of disruptions has been exceeded. If the remuneration for the services has already been paid (advance payment), it must be partially refunded. The enforcement of any additional claims by the Client shall not be affected.