## Special terms and conditions of business for Cloud Services

Chemnitz, January 03, 2019

### 1　Scope

1.1　These special terms and conditions of business shall apply to all Managed Cloud services to be provided by c.a.p.e. IT.

1.2　The STCs for Cloud Services supplement the general terms and conditions of business and the Cloud SLA.

### 2　Subject matter of the contract

2.1　The Cloud contract always builds on a corresponding support and maintenance agreement. The services agreed in the Cloud contract complement the support and maintenance services accordingly.

2.2　The subject matter of the Cloud contract, as well as the contents and scope of the service obligations, shall be in accordance with the respective client order, the service overview for Managed Cloud, as well as the Cloud SLA.

### 3　Commencement of the contract

The contractual term shall commence on the date stated by c.a.p.e. IT in the provisioning notification.

### 4　Duties of cooperation of the client

4.1　The client shall ensure that it has access to the Internet so that it can make use of the Cloud services.

4.2　The client shall maintain its own IT systems, in particular end devices and communication connections (DSL etc).

4.3　The client shall purchase updates if these are necessary for the functionality of the supported components (Subclause 2.2 – Cloud SLA).

4.4　The client shall immediately give notification of downtime, disruptions and impairments of access to the KIX components by means of an error description. Should the client fail to comply with its duties of cooperation under Subclause 4.5 herein, Section 536 c of the German Civil Code (BGB) shall apply accordingly.

4.5　All changes to the system that the client implements without the involvement of c.a.p.e. IT after the handover to c.a.p.e. IT must be immediately reported to c.a.p.e. IT in writing and approved by both parties.

### 5　Rights in respect of the results of the use of the programs

5.1　All proprietary rights, be they of a copyright, performance-protection, patent-law or other nature, that arise from or as a result of the use of the KIX components under this contract, shall be owned exclusively by the client. c.a.p.e. IT shall not claim any such rights for itself. The same shall apply in respect of all documents and information, all expertise, as well as all other content that the client uses in the system environment hosted by c.a.p.e. IT under this contract.

5.2　Any agreements that deviate from the above, such as in relation to any future joint developments of the parties in the development environment, shall require a written agreement.

### 6　Contract data processing

6.1　The client shall be solely responsible for all content and all data that are used and/or processed with the hosted KIX application and all KIX additional modules and programs.

6.2　In this context, the client undertakes to relieve c.a.p.e. IT of liability should a third party bring a lawsuit against it, alleging that certain contents and/or data, and/or the saving and use of said contents and/or data infringe rights to which it or a third party are entitled.

6.3　The agreement on contract data processing in terms of Section 11 of the German Federal Data Protection Act (BDSG) shall apply.

### 7　Remuneration and payment terms

7.1　c.a.p.e. IT shall receive the fixed price agreed under the regulations of the general terms and conditions of business from the client on an annual basis, unless otherwise agreed.

7.2　In addition to the agreed remuneration, the client shall bear the travel and hotel costs and expenses of the deployed employees of c.a.p.e IT in accordance with the regulations of the general terms and conditions of business.

7.3　If the client defaults in respect of payment of the remuneration for more than two months, c.a.p.e. IT shall be entitled to block the access of the client to the KIX components until such a time as the client has paid the outstanding remuneration. The claim to remuneration shall not be affected by such a blocking of access. The access shall be restored immediately upon settlement of the arrears.

### 8　Term and termination of the contract

8.1　The Cloud contract is concluded for a term of 12, 24 or 36 months (hereinafter "Minimum Contractual Term").

8.2　Following the end of the Minimum Contractual Term, the Cloud agreement shall always be extended by one year, unless terminated by giving three months' notice before the end of the Minimum Contractual Term or before the end of any subsequent contractual period.

8.3　Both parties shall retain the right to extraordinary termination for good cause. Section 314 of the German Civil Code (BGB) shall apply. In addition, c.a.p.e. IT shall generally be able to block the access of the client to the programs as a less severe course of action if c.a.p.e. IT would also be entitled to extraordinary termination.

8.4　In the case of justified extraordinary termination by c.a.p.e. IT, the client shall be obliged, if it is responsible for the grounds for termination, to remunerate c.a.p.e. IT, less any expenses saved by c.a.p.e. IT, until the date on which the contract would have ended in the case of an ordinary termination.

8.5　Declarations of termination must be made in writing. Compliance with the written form is a prerequisite for the effectiveness of the termination. Faxes and emails shall not suffice for the written-form requirement.

### 9　Legal consequences in case of qualitative service disruptions

9.1　For cases in which the availability of the supported components (Subclause 2.2 – Cloud SLA) fails to meet what is due, or the due response or resolution time (including the grace period under Subclause 8.2 of the Cloud SLA) is exceeded, Subclause 8 of the Cloud SLA contains conclusive regulations concerning the respective claims of the client.

9.2　If the services that form the subject matter of the contract fail to be provided in accordance with the contract or if they are rendered defectively, and if c.a.p.e. IT is responsible for this, c.a.p.e. IT shall be obliged to provide the service in accordance with the contract (for a second time if applicable) without any additional expense to the client and within a reasonable deadline. A complaint issued by the client shall be a prerequisite for the above. The complaint must be made in writing immediately, at the latest within 2 weeks of the problem becoming apparent, and must contain a precise description of the defect, which will allow c.a.p.e. IT to investigate the complaint. If significant elements of the services under the contract cannot be performed, even within a reasonable grace period to be stipulated by the client, due to reasons for which c.a.p.e. IT is responsible, the client shall be able to extraordinarily terminate this contract if the additional statutory requirements under Section 314 of the German Civil Code (BGB) are fulfilled and/or bring a claim for damages in accordance with the provisions of Clause 6 of the general terms and conditions of business. Further claims against c.a.p.e. IT due to defective services shall be excluded.

9.3　Claims due to qualitative service disruptions shall lapse one year after their becoming apparent, however at the latest one year following the full provision of services or premature termination of the contract. The above shall not apply in respect of claims for damages related to injury to life, body or health, or which are due to intent or gross negligence. In such cases, the statutory period of limitation shall apply.

9.4　The client shall not be entitled to implement a cost reduction by means of deduction from the agreed fee. Any claims of unjust enrichment or damages claims shall not be affected.

### 10　Liability of the client

10.1　Should a third party – in particular copyright holders, owners of exclusive rights of use or other licence owners or licensors – bring a lawsuit against c.a.p.e. IT, members of its board of directors, its employees and/or its other workers due to the use of the programs under this contract, in particular the installation, running and granting of use infringing the rights of the said party according to its submission, in particular copyright, performance protection rights and legal interests under patent laws, the client shall be able to subsequently purchase any legal interests that are lacking or have not been acquired to a sufficient extent, but regardless of this, the client shall be obliged to indemnify c.a.p.e. IT, the members of its board of directors, its employees and other workers against any liability and all costs, including legal fees for the defence of the lawsuit, as well as possible and actual costs of court proceedings, and, if and to the extent that the said liability and costs have already been incurred, to relieve them of the same.

10.2　c.a.p.e. IT shall inform the client of the lawsuit and, to the extent that is possible and reasonable, shall grant the client the opportunity to defend itself against the claim that has been asserted. The client shall in return be obliged to immediately and fully inform c.a.p.e. IT of all information in its possession that concerns the matter at hand.

10.3　Any claims for damages to which c.a.p.e. IT is entitled beyond the above shall remain unaffected.

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