

**Terms and conditions of business for the maintenance of software and additional modules (Software STCs)**

Chemnitz, January 03, 2019

**1 Scope**

1.1 These special terms and conditions of business shall apply to the provision of maintenance services for the software KIX Professional and additional modules.

1.2 The STCs for software and additional modules supplement the general terms and conditions of business.

1.3 KIX Professional (hereinafter referred to as the software or object of the service) and the additional modules are open-source systems licensed under the GNU Affero General Public License, Version 3 ("AGPLv3") or rather GNU General Public License, Version 3 ("GPLv3"). This shall also apply if the KIX Professional was further developed by c.a.p.e. IT. The licence text of AGPLv3 can be accessed at <http://www.gnu.org/licenses/agpl-3.0.txt>. The licence text of GPLv3 can be accessed at <http://www.gnu.org/licenses/gpl.txt>. Regardless of this, c.a.p.e. IT shall make the licence text available to the client.

**2 Subject matter of the contract**

The subject matter of the maintenance contract, as well as the contents and scope of the obligation to provide services, is in accordance with the respective client order and the maintenance service overview at the time of the contract being awarded.

**3 Commencement of the contract**

The contractual terms shall begin on the delivery day of the software by c.a.p.e. IT to the client or, where applicable, on the date indicated in the offer accepted by the client from c.a.p.e. IT.

**4 Open-source software; rights of use**

4.1 The granting of rights of use in respect of the patches, updates and upgrades for the software provided by c.a.p.e. IT in the context of the maintenance services shall be in accordance with and subject to the terms and conditions of AGPLv3 or rather GPLv3 in dependence of the specific software version.

4.2 c.a.p.e. IT shall provide the client with the source code of the initially delivered software and additional modules and shall again provide the full source code with each delivery of a new version.

4.3 c.a.p.e. IT shall be entitled to the exclusive rights of use in relation to generically usable further developments. c.a.p.e. IT hereby grants the client rights of use in relation to generically usable further developments in accordance with and subject to the terms and conditions of AGPLv3 or rather GPLv3 in dependence of the specific software version.

4.4 c.a.p.e. IT shall identify generically usable further developments by means of labelling in the header of the software file concerned by means of reference to the client (for example by means of "Thanks to [client name]") Unless the client objects to the classification of the components concerned in the acceptance protocol, these shall be deemed to be generically usable further developments. The client shall only be entitled to object to the classification as generically usable further developments if it sets out in writing why the component concerned is not to be considered to be generic. The contracting parties shall then reach a separate agreement concerning the disputed classifications.

**5 Documentation**

c.a.p.e. IT shall provide the client with installation and configuration documentation.

**6 Remuneration**

6.1 c.a.p.e. IT shall receive annually, from the client, the agreed fixed price in accordance with the regulations of the general terms and conditions of business.

6.2 If the maintenance agreement comes to an end and a new maintenance contract is subsequently concluded, the client shall not be able to claim the reduction of the remuneration from the second year of the contract in the case of the continued existence of the contract. Any pro-rata charging shall also be excluded.

6.3 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 withhold maintenance services until such a time as the client has paid the outstanding remuneration. The claim to remuneration shall not be affected thereby. The maintenance services shall be resumed once the arrears have been settled.

**7 Contractual term; termination**

7.1 The contract is concluded for one year (the Minimum Contractual Term).

7.2 Following the end of the Minimum Contractual Term, the maintenance agreement shall always be extended by one year, unless terminated by giving notice of three months to the end of

the Minimum Contractual Term or to the end of any subsequent contractual period.

7.3 Both parties shall retain the right to extraordinary termination for good cause. Section 314 of the German Civil Code (BGB) shall apply.

7.4 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.

7.5 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.

**8 Legal consequences in case of defective performance**

The legal consequences in case of defective performance shall be in accordance with the statutory provisions. However, the warranty period shall be reduced to 12 months.

**9 Liability for errors in the description of the operating environment**

If the client has not described the operating environment correctly, and if this lead to difficulties in the provision of services or even to damages on the part of the client, this shall be at the expense of the client. c.a.p.e. IT shall not be liable in this respect.