

## Terms and Conditions of STACKIT GmbH & Co. KG

### 1. Scope of Application

- 1.1 The legal relationships between the Customer ("Customer") and STACKIT GmbH & Co. KG, Stiftsbergstraße 1, 74172 Neckarsulm, Germany ("STACKIT") with regard to all services in the field of STACKIT Solutions shall be governed by these Terms and Conditions ("Terms and Conditions"), unless otherwise agreed. Excepted herefrom are the use of the STACKIT Cloud Portal and the procurement and provision of STACKIT Cloud Services, for which separate terms and conditions exist (Terms and conditions - STACKIT Cloud Services available at <https://www.stackit.de/en/general-terms-and-conditions/> as well as separately obtainable colocation services.
- 1.2 The services offered by STACKIT are aimed exclusively at traders within the meaning of section 14 of the German Civil Code (*Bürgerliches Gesetzbuch* – BGB), legal entities under public law or special funds under public law.
- 1.3 These Terms and Conditions shall apply exclusively. Conflicting or additional terms and conditions of the Customer shall not be incorporated into the agreement except to the extent STACKIT expressly consents to their application in writing. These Terms and Conditions shall also apply in those cases where the STACKIT accepts the Customer's performance in full knowledge of Customer's conflicting or differing terms and conditions.
- 1.4 These Terms and Conditions shall furthermore apply to all future transactions with the Customer.
- 1.5 The following contractual components shall supplement one another and, in the event of conflicting provisions, apply in the following order of priority:
  - the master agreements and contracts concluded with the Customer and declarations of acceptance by STACKIT including the agreed service certificates and/or service descriptions, in each case including the applicable annexes;
- 1.6 insofar as the agreed services fall within their scope of application, the Special Terms and Conditions of STACKIT for Domain Services/the Domain Expert Portal ("Special Terms and Conditions for Domains"), for IT Services ("Special Terms and Conditions for IT Services") and/or for Software Development ("Special Terms and Conditions for Software Development"), including the applicable annexes;
  - these Terms and Conditions, including the applicable annexes.
- 1.7 STACKIT shall be entitled to amend these Terms and Conditions, also insofar as they have become the subject of a master agreement, contract or STACKIT's declaration of acceptance, including the agreed service certificates and/or service descriptions. STACKIT will announce this in text form with a notice period of three (3) months to the date of the amendment. If the Customer does not object to an amendment to the Terms and Conditions within six (6) weeks of notification, this shall be deemed to constitute consent to the respective amendment. STACKIT shall advise the Customer of this effect of consent with the announcement.

### 2. Formation of Contract

- 2.1 Representations on the STACKIT website do not constitute a legally binding offer, but only an invitation to the Customer to submit an offer to STACKIT.
- 2.2 A contract can be concluded either by concluding a contract in written or text form or via the Domain Expert Portal (exclusively for domain services).
- 2.3 The Customer makes a binding offer to conclude a contract to STACKIT via the Domain Expert Portal as soon as the Customer completes the online ordering process.
- 2.4 The contract is not formed until STACKIT declares acceptance, which at the latest takes place when STACKIT provides the ordered service to the Customer.

### 3. Scope of Services, Changes to the Services

- 3.1 The type and scope of the services owed by STACKIT shall, as far as possible, be described separately in the master agreement, contract or in STACKIT's declaration of acceptance, including the agreed service certificates and/or service descriptions. Only insofar as necessary, it will be further developed on this basis in the context of project management, e.g., in an upstream design phase or continuously in the context of implementation.
- 3.2 STACKIT shall only owe the following services if expressly agreed (at least in text form):
  - Assessment or procurement of rights to media (e.g., images, photos, sounds, motion pictures, films, data feeds);
  - Assessment or licensing of intellectual property rights (e.g., trademarks, patents, utility models, design patents);
  - Provision of source code;
  - Assessment of legal issues, in particular the performance of trademark searches, their evaluation, an examination of possible conflicts of the services with pre-existing intellectual property rights (e.g., trademarks, design patents or utility models), legal assessment of the concepts or processes specified by the Customer for the services of STACKIT (e.g., compliance of ordering processes specified by the Customer with regulations on distance contracts or data protection) and/or a (competition) legal review of the services;
  - Achievement of a specific result/result under a contract to produce a work.
- 3.3 It is the Customer's responsibility to check the specifications to ensure that the selected services suit its needs, if necessary with the use of consulting services by STACKIT or third parties. The Customer is responsible for selecting the services it wishes to receive from STACKIT.
- 3.4 Unless this is contractually stipulated or the Customer is entitled to manage and control the cooperation, STACKIT is free to determine how it designs and implements the services. This applies in particular to standards, guidelines and norms (e.g., DIN, ISO, W3C, accessibility), unless they are part of the state of the art and are generally used.
- 3.5 The Customer shall communicate any subsequent change requests to STACKIT in text form as early as possible in the form of a specific and verifiable proposal. STACKIT shall review the change request with regard to additional costs. Cost increases of up to 15% of the originally agreed net remuneration shall be remunerated by the Customer without separate approval, unless a fixed price has been agreed. In other cases or in the event of a need for additional review, the parties will coordinate their actions. Change requests result in a

corresponding postponement of dates and deadlines by the review and coordination period. Until an agreement is reached, the originally agreed scope of performance shall otherwise remain unchanged.

- 3.6 If STACKIT provides more than insignificant additional services at the request of the Customer, these shall be remunerated in case of doubt on a time and material basis according to STACKIT's general rates.
- 3.7 STACKIT may refuse to provide its services or make them dependent on the provision of security for the outstanding remuneration if it becomes apparent after conclusion of the contract that the claim for remuneration is at risk due to the Customer's inability to perform. A risk is to be assumed in particular if the Customer does not pay a due fee despite having received a reminder. Any further rights of STACKIT shall remain unaffected.

#### **4. Remuneration, Payment, Reservation of Right to Change, Dates, Deadlines**

- 4.1 All STACKIT prices are net prices, i.e., plus the applicable statutory value added tax.
- 4.2 If STACKIT states (e.g., in the master agreement, contract or STACKIT's declaration of acceptance, including the agreed service certificates and/or service descriptions) estimated expenses for services, this shall constitute a non-binding cost estimate, for the accuracy of which STACKIT assumes no liability. If there is a risk of the cost estimate being exceeded by more than 15% - whereby STACKIT shall advise the Customer of this without undue delay - the Customer may terminate the corresponding order for this reason within two (2) weeks of becoming aware of this; STACKIT shall then be remunerated for the services actually provided and any costs incurred by STACKIT shall be reimbursed.
- 4.3 The services provided by STACKIT shall be remunerated on a time and material basis, based on the actual amount of work at STACKIT's standard hourly rates (time and material basis), unless otherwise agreed. STACKIT invoices in billing increments of ten (10) minutes or part thereof. If STACKIT works outside normal business hours (Monday to Friday with the exception of public holidays at STACKIT's registered office, in each case from 8:00 a.m. to 5:00 p.m.) at the Customer's request, the remuneration shall be increased by 50%. If per diem rates are agreed, this shall include eight (8) hours of work per day during STACKIT's normal business hours.
- 4.4 The Customer consents to the electronic transmission of invoices and/or electronic invoices.
- 4.5 The parties agree that the term of payment shall be thirty (30) days from the date of invoice to the Customer, unless otherwise agreed.
- 4.6 In the case of invoicing on a time and material basis, STACKIT is entitled to invoice on a monthly basis.
- 4.7 In the case of fixed prices, 30% shall be due upon conclusion of the contract, 40% at the latest upon handover and 30% at the latest - if acceptance is required due to the nature of the service - upon acceptance by the Customer; if no acceptance is required, 70% shall be due upon handover of the service to the Customer. STACKIT may also require advance payments to a reasonable extent, taking into account the value of the service provided by it and owed under the contract. If the services provided by STACKIT are not in accordance with the contract, the Customer may refuse to pay a reasonable part of the advance payment.
- 4.8 Fixed prices expressly stated in the master agreement, contract or STACKIT's declaration of acceptance, including the agreed service certificates and/or service descriptions, shall neither be undercut nor exceeded, subject to the provisions in clauses 3 and 4 of these Terms and Conditions.
- 4.9 Insofar as the subject matter of the master agreement, the contract or the declaration of acceptance by STACKIT, including the agreed service certificates and/or service descriptions are recurring services (continuing obligations), if the market conditions have changed, or if the procurement costs have materially changed, STACKIT has the right to adjust the prices for the respective services in line with such changes, observing a notice period of no less than four (4) weeks. In the case of services with a fixed minimum contract term, any such increase will be permissible for the first time upon expiration of the agreed minimum term. Unless the Customer objects to such price adjustment by written notification to STACKIT within ten (10) days of receipt of the relevant notice, said adjustment will be deemed to have been accepted. In its notice of modification, STACKIT will expressly advise the Customer of the legal consequences, the time limit and the date of entry into effect.
- 4.10 For services that STACKIT, in agreement with the Customer, does not provide at its registered office, the expenses, in particular travel time, costs and expenses, shall be invoiced separately at the maximum tax rates applicable in each case or against itemized receipts. Travel by car is charged per kilometer driven plus VAT. Travel time is deemed to be working hours.
- 4.11 Deliveries are made at the Customer's risk and expense from STACKIT's registered office, unless otherwise agreed.
- 4.12 Deadlines for the provision of services shall only be binding for STACKIT if expressly confirmed and finalized. Otherwise, the dates stated e.g., in the declaration of acceptance are non-binding target dates that are intended to improve coordination between the parties and are subject to ongoing updates. In the case of non-binding target dates, the Customer may request the provision of the outstanding services

four (4) weeks after the scheduled date expires, setting a reasonable deadline; upon expiration of this deadline, the Customer's claim to this service shall fall due.

- 4.13 Delays in performance for which the Customer is responsible (e.g., failure to provide cooperative assistance on time) or due to force majeure (e.g., strikes, lockouts, official orders, general disruptions in telecommunications, etc.) shall entitle STACKIT to postpone the affected services for the duration of the impeding event plus a reasonable period to resume operations.
- 4.14 STACKIT shall be entitled to make partial deliveries and invoice them separately insofar as this is reasonable for the Customer.

## **5. Acceptance**

- 5.1 If in the exception case STACKIT is responsible for achieving a specific result (obligation under a contract to produce a work) or if acceptance has been expressly agreed, this shall be carried out by the Customer in accordance with this clause 5 of the Terms and Conditions.
- 5.2 Acceptance should be in text form. Acceptance may also be inferred by conduct on the part of the Customer, in particular by using the service in the productive environment, by payment without reservation or call-off of further services based on the service or the result of the service.
- 5.3 The Customer shall inspect and test the services provided to it; STACKIT may also provide the Customer with independently testable partial services for this purpose. Overall acceptance shall only take place if no partial acceptance has taken place or if overall acceptance is contractually stipulated despite partial acceptance.
- 5.4 The Customer shall ensure that STACKIT's services are not used in the productive environment before completion of the tests and acceptance, unless otherwise agreed between the parties.
- 5.5 If the services or partial services of STACKIT meet the agreed requirements or if there are only insignificant deviations, the Customer shall declare acceptance without undue delay. In particular, deviations that only insignificantly impair the functionality are deemed insignificant.
- 5.6 If the Customer does not declare acceptance within four (4) weeks after handover of a service and if it has not notified STACKIT of any defects specifically and in text form during this period, the services or partial services of STACKIT shall be deemed to have been accepted. When giving notice of defects, the Customer shall indicate in each case if it wishes to make acceptance dependent on the rectification of the defects.
- 5.7 STACKIT may also set the Customer a reasonable deadline for acceptance after completion of the work, usually two (2) weeks. The work shall be deemed to have been accepted if the Customer has not refused acceptance within this period, stating at least one defect.

## **6. Cooperation by the Customer, Indemnification**

- 6.1 The Customer shall support STACKIT to a reasonable extent in the provision of services without being requested to do so, in particular by promptly communicating implementation specifications and approvals and by responding to inquiries. The Customer shall notify STACKIT if it has not fulfilled its obligations, has not fulfilled them on time or has not fulfilled them in full or is unlikely to do so. The Customer shall fulfill its obligations under this clause 6 of the Terms and Conditions at its own expense.
- 6.2 The Customer shall provide STACKIT with the necessary (technical) information, materials and documents (collectively "Material"). The Customer shall only deliver such Material that has the formats required by STACKIT and is quality-assured with regard to content and carrier (including checking for malware, viruses or other technical problems).
- 6.3 The Customer shall retain a copy of the Material during the collaboration. STACKIT is entitled to use the Material freely in accordance with the purpose of the contract, unless the Customer expressly indicates otherwise. STACKIT shall not be responsible for limitations on performance resulting from a breach of duty by the Customer in the provision of the Material, unless STACKIT is responsible for this through intentionally or through gross negligence.
- 6.4 The Customer shall ensure and is responsible for ensuring that the Material provided by it does not violate statutory or official provisions (e.g., on the protection of minors, data protection or competition law) and is not encumbered by third-party rights (in particular rights of publicity or copyrights) that could prevent it from being used as intended. In this respect, the Customer shall indemnify STACKIT against all claims, including reasonable legal costs, unless the Customer is not responsible for this. STACKIT shall be entitled to suspend its services in the event of doubts regarding the Material provided by the Customer and to require reasonable security from the Customer for the continuation of services.
- 6.5 Any necessary name and trademark searches, corresponding applications and/or registrations of services as intellectual property rights as well as checking their legality (e.g., under data protection, competition and/or trademark law) are the responsibility of the Customer.
- 6.6 The Customer shall name a competent contact person to STACKIT who shall not be replaced for the duration of the respective project and who is authorized to make and receive binding declarations for the Customer. The Customer shall bear the additional costs of replacing its contact person. The Customer shall inform STACKIT without undue delay of any change in the contact person; until then, the old information shall still be considered correct.
- 6.7 If services are provided by STACKIT at the Customer's premises, the Customer shall provide STACKIT with appropriately equipped workstations and access to the necessary resources (e.g., electricity, Internet connection) free of charge.
- 6.8 If the Customer is in default with the fulfillment of an act of cooperation or does not fulfill it properly, STACKIT may demand reasonable compensation, which includes the costs of wait time (contingency costs). Other rights of STACKIT arising from default or breach of duty by the Customer, in particular claims for damages, shall remain unaffected.
- 6.9 The Customer shall indemnify STACKIT upon first demand against all claims of third parties that are based on a use of the services of STACKIT or services procured by STACKIT (including the violation of terms of use and license conditions with regard to standard software provided or procured by STACKIT) by the Customer in violation of the law or the contract or with the Customer's approval. The Customer shall inform STACKIT without undue delay if it has reason to suspect such a violation.
- 6.10 STACKIT shall not be responsible for limitations on performance that are based on a breach of duty or obligation by the Customer, unless STACKIT is responsible for this intentionally or through gross negligence.

## **7. Provision of Services by Third Parties, Indemnification**

- 7.1 Insofar as services of third-party providers ("Third-party Services") are indicated and expressly agreed in the master agreement, contract

- or the declaration of acceptance, including the agreed service certificates and/or service descriptions, e.g., standard software (e.g., libraries, components), media (e.g., images (in particular stock photos), sounds, films, data feeds), or devices (e.g., test devices, IT equipment), STACKIT shall be authorized to procure these on behalf of the Customer or itself at the Customer's expense (including any follow-up costs) in accordance with the terms and conditions (including license terms and conditions) of the manufacturer/supplier or their sales partner or to arrange the corresponding contract. STACKIT shall not be obligated to pay the costs required for this. Unless otherwise agreed, STACKIT shall be entitled to charge a reasonable service fee (usually 20% of the Third-party Service) for the processing of Third-party Services (e.g., request for quotation, commissioning, contract processing, etc.). The Customer shall observe all relevant terms and conditions for Third-party Services (e.g., open source, freeware) and, if necessary, extend the contract or license independently. STACKIT shall not be responsible for the provision of the Third-party Service. STACKIT shall not be responsible for any fault on the part of the provider of the Third-party Service. The Customer is aware that STACKIT cannot or does not check Third-party Services for hidden or undocumented functions or other defects. The Customer shall therefore check the suitability of the Third-party Services for its needs itself.
- 7.2 If the Customer engages other service providers ("Third-party Service Providers"), these shall be deemed to be vicarious agents of the Customer. As the customer of both STACKIT and the third-party service provider, the Customer is responsible for the consistent and manageable definition, coordination and monitoring of the areas of activity and responsibility of the various contractors. The Customer shall take the necessary management and control measures independently.
- 7.3 STACKIT is entitled to engage subcontractors or freelancers.
- 7.4 Where the services provided to the Customer by STACKIT infringe third-party rights despite being used by the Customer in accordance with the contract, STACKIT will, at its choice and opportunity, either procure, at its own cost, the required license to use the infringed rights or modify the relevant services in such a way that they no longer infringe rights but are still in concordance with the contractual agreements.
- 7.5 Provided that STACKIT has acted intentionally or negligently with regard to such infringement of third-party rights in connection with the provision of the services, and the Customer has informed STACKIT without undue delay about the assertion of claims for an alleged infringement of third-party rights by the services provided by STACKIT, and the Customer cedes the entire legal defense to STACKIT upon request and assists STACKIT to a reasonable extent in averting any such claims, STACKIT will indemnify the Customer against any and all third-party claims that have been declared final and binding by a court of law as well as the associated costs of the legal defense incurred by said third parties.
- 8. Rights of Use and Exploitation, Retention of Rights and Title**
- 8.1 Unless otherwise agreed, the Customer shall receive a non-exclusive right to use STACKIT's services for the contractually intended purposes. If necessary, the Customer may transfer the right of use to third parties or make changes to the services. The rights to use certain components of the services may be restricted by third-party licenses (e.g., open source or commercial product licenses, image rights).
- 8.2 STACKIT shall not provide the entirety of the services for the Customer to other customers without changes. However, STACKIT remains entitled to continue to use generally valid components and elements (e.g., libraries, modules, construction kits, templates, tools) within the scope of its business operations and to utilize them without customer-specific details while maintaining confidentiality.
- 8.3 The rights of use to Third-party Services (see clause 7.1 of the Terms and Conditions) are governed exclusively by the contractual or license terms of the Third-party Service Provider.
- 8.4 The granting of rights of use or exploitation by STACKIT is subject to the condition precedent that the remuneration owed for the corresponding services has been paid in full by the Customer. Until full payment has been made, the Customer is revocably permitted to use the services within the scope of the actions to be performed by the Customer in accordance with the contract (e.g., tests) or contractually agreed uses. The revocable permission shall lapse if the Customer defaults on payment.
- 8.5 If STACKIT makes changes to services previously provided by STACKIT for the Customer, the rights of use granted to the Customer shall correspond to the rights of use agreed when the original service was provided.
- 8.6 The Customer shall retain copyright (e.g., copyright notices) or other references to STACKIT in or on services unchanged.
- 8.7 STACKIT shall retain title to the delivered goods until full payment has been made by the Customer.
- 8.8 The Customer may only use the content of pitches, presentations, offers or cost estimates provided to it free of charge for the purpose of reviewing its decision to commission STACKIT. The Customer is not entitled to use or exploit STACKIT's services contained therein in any

other way or to have them used or exploited. The Customer shall not acquire ownership of documents, models, drafts, etc., provided in this context and shall return them without undue delay after a decision has been made to commission STACKIT.

## **9. Warranty**

- 9.1 Insofar as STACKIT's services are subject to the statutory warranty, the following provisions of this clause 9 of the Terms and Conditions shall apply. This merely defines existing statutory claims, but does not give rise to any claims.
- 9.2 Technical data in the master agreement, contract or STACKIT's declaration of acceptance, including the agreed service certificates and/or service descriptions, are mere quality specifications and are not the subject of a guarantee or representation by STACKIT.
- 9.3 Warranty claims of the Customer shall become time-barred one (1) year after delivery or acceptance, insofar as acceptance is provided for by law; the statutory liability of STACKIT in the cases specified in clause 10.1 of the Terms and Conditions shall remain unaffected.
- 9.4 STACKIT assumes no warranty with regard to software services supplied by STACKIT to the Customer
- for defects that are not reproducible or cannot be demonstrated by machine-generated output,
  - for the error-free condition of the software supplied by STACKIT, insofar as the errors are insignificant,
  - for the suitability of the software for the Customer's intended use and
  - for the results achieved with the software.
- 9.5 Warranty claims by the Customer are excluded,
- if the Customer has made changes to STACKIT's services without prior consent or
  - if instructions or information from STACKIT are not followed by the Customer or the services are handled improperly, unless the Customer proves that the defects are not attributable to this or that the warranty work is not or only insignificantly impeded.
- 9.6 If a certain performance is contractually agreed, this shall only be owed to the exclusion of such impairments that do not originate from a sphere for which STACKIT is responsible.
- 9.7 If it turns out that a defect claimed by the Customer is not covered by STACKIT's warranty obligation, STACKIT may demand reimbursement of the expenses incurred in this respect in accordance with its general rates. This does not apply if the non-existence of the warranty obligation was not recognizable to the Customer even with careful examination.
- 9.8 The Customer shall report defects without undue delay in text form and with as precise a description as possible of the circumstances of their occurrence and their effects. In principle, only the contact person named in clause 6.6 of the Terms and Conditions is authorized to report defects. The Customer shall support STACKIT to a reasonable extent in determining and eliminating errors and shall grant access to documents from which further information can be obtained.
- 9.9 In the event of a defect, STACKIT may, at its discretion, remedy the defect or deliver a replacement (cure). A reasonable workaround made available to the Customer shall also be deemed to constitute the establishment of contractual use, to the extent that an insignificant error remains after taking the workaround into account. Any further rights of the Customer shall remain unaffected. Rescission by the Customer requires prior notice.

## **10. Liability**

- 10.1 The provisions on STACKIT's liability in this clause 10 of the Terms and Conditions apply to all claims for damages and cases of liability, regardless of their legal basis (e.g., warranty, default, impossibility of performance, any breach of duty, existence of an impediment to performance, tort, etc.). Except for:
- claims of the Customer for injury to life or limb or health,
  - claims of the Customer for fraudulent concealment of a defect by STACKIT or due to the absence of a quality for which STACKIT has provided a guarantee,
  - claims of the Customer based on intentional or grossly negligent behavior on the part of STACKIT,
  - claims of the Customer under the German Product Liability Act (*Produkthaftungsgesetz*) and
  - claims of the Customer within the scope of application of sections 69, 70 of the German Telecommunications Act (*Telekommunikationsgesetz – TKG*).

As regards the above exceptions, the statutory provisions continue to apply.

- 10.2 STACKIT shall only be liable for slight negligence in the event of a breach of material obligations, i.e. obligations that enable the due and proper execution of the contract or the purpose of the contract and on the observance of which the Customer may regularly rely. In the event of a breach of such obligations, STACKIT's liability is limited to compensation for the typical loss or damage that was foreseeable for STACKIT at the time the contract was concluded. Otherwise, STACKIT is not liable for loss or damage caused by slight or simple negligence.
- 10.3 Insofar as STACKIT is liable in accordance with the above provisions in clause 10.2 of the Terms and Conditions, liability shall be limited to the respective order value; in the case of continuing obligations, liability shall be limited to the net remuneration paid by the Customer to STACKIT within the last twelve (12) calendar months prior to the event giving rise to the damage under the respective contractual relationship. In addition, STACKIT's liability for compensation of loss due to default is limited to 0.3% of the net order value per working day of delay, up to a maximum of 5% of the net order value.
- 10.4 The Customer's claims for damages under clause 10.2 of the Terms and Conditions become time-barred one (1) year beginning at the end of the year in which the claims arose and the Customer became aware of the circumstances giving rise to the claim and the identity of the debtor or should have become aware of them but for gross negligence on its part; irrespective of any knowledge or grossly negligent lack of knowledge, they become time-barred five (5) years after their occurrence; and irrespective of their occurrence and the knowledge or

grossly negligent lack of knowledge, within ten (10) years after the commission of the act, the breach of duty or the other event causing the loss or damage (maximum period).

10.5 The strict liability of STACKIT in the area of tenancy/lease law and similar usage relationships for errors already existing at the time of conclusion of the contract in accordance with section 536a (1) alternative 1 BGB is expressly excluded.

10.6 STACKIT's liability is otherwise excluded.

## **11. Confidentiality**

11.1 The parties shall treat confidential information of the other party as confidential for an indefinite term; specifically, they shall not disclose such information to third parties, shall protect it against unauthorized access by applying reasonable technical, organizational and legal measures to keep the information confidential and shall use it solely within the scope of the cooperation. The right of ordinary termination with respect to this non-disclosure obligation shall be excluded.

11.2 Confidential information shall include:

- the existence and terms of the Agreement;
- information developed or emerging in the context of the cooperation;
- all information or documents disclosed to the Customer by STACKIT or any Schwarz Group Company, or about STACKIT or any Schwarz Group Company in the context of the cooperation prior or subsequent to the execution of the Agreement;
- all information or documents disclosed to STACKIT by the Customer or any Customer Group Company or about the Customer or any Customer Group Company in the context of the cooperation prior or subsequent to the execution of the Agreement; and
- information about internal or organizational processes at the respective parties, any Customer Group Company or any Schwarz Group Company to which the parties become privy in the context of the cooperation.

11.3 This non-disclosure obligation shall not apply if and to the extent that:

- the confidential information was already known to the other party prior to execution of the Agreement or is subsequently disclosed to it by a third party lawfully, i.e., without breach of any non-disclosure agreement, statutory provision or official order;
- the confidential information was in the public domain prior to execution of the Agreement or subsequently enters the public domain without any breach of the obligations as under this confidentiality clause;
- the confidential information was obtained through own discovery or creation or through a publicly available product;
- disclosure is required in the context of the cooperation or to protect the legal interests of the party and such disclosure is made to auxiliaries (e.g., subcontractors) who are bound in writing to the same non-disclosure obligation stipulated above or to advisors who are subject to a professional duty of confidentiality;
- disclosure is made by one Schwarz Group Company to another Schwarz Group Company that is bound to the same non-disclosure obligation stipulated above;
- disclosure is made by one Customer Group Company to another Customer Group Company that is bound to the same non-disclosure obligation stipulated above;
- the disclosing party has released the receiving party from the non-disclosure obligation;
- § 5 of the German Act for the Protection of Trade Secrets (*Gesetz zum Schutz von Geschäftsgeheimnissen*) applies, or
- disclosure is mandated by law or by operation of law or by court or official order. In such case, the party subject to disclosure shall notify the other party of the disclosure in writing or in text form without undue delay and together the parties will determine the extent to which they may limit disclosure within the bounds of the law.

11.4 The Schwarz Group Companies include: D. Schwarz Beteiligungs-KG as well as all foreign and domestic entities in which the aforementioned company holds a direct or indirect majority equity interest.

11.5 The Customer Group Companies include: companies affiliated with Customer within the meaning of section 15 et seq. of the German Stock Corporation Act (*Aktiengesetz – AktG*).

## **12. Reference**

STACKIT may name the Customer as a reference.

## **13. Set-off/Withholding of Performance/Assignment**

13.1 The Customer's rights to set off or to withhold performance may only be exercised with counterclaims that are uncontested, ripe for adjudication or have been declared final and binding by a court of law. The Customer may exercise its right to withhold performance only if its counterclaim is based on the same contractual relationship.

13.2 The Customer may not assign its claims against STACKIT to third parties. Section 354a of the German Commercial Code (*Handelsgesetzbuch – HGB*) shall remain unaffected, i.e., the assignment may be valid, but STACKIT may still discharge its obligations by effecting payment to the Customer. STACKIT is entitled to assign the claims arising from the business relationship.

## **14. Term, Termination**

14.1 If the master agreement, contract or STACKIT's declaration of acceptance, including the agreed service certificates and/or service descriptions, provides for a specific contractual term, the contractual relationship may not be terminated subject to a notice period until this term has expired. In this case, the contractual relationship shall be extended by the duration of the previous term, but by a maximum of one (1) year in each case, unless it is terminated subject to three (3) months' notice to the end of the term.

14.2 If the master agreement, contract or STACKIT's declaration of acceptance, including the agreed service certificates and/or service descriptions, does not provide for a term, either party may terminate the contractual relationship subject to a notice period of three (3) months to the end of a calendar month. In the event of termination subject to a notice period, all services provided by STACKIT in

- accordance with the contract up to the time of termination shall still be remunerated (pro rata) by the Customer. In the case of any purchase contracts, contracts for work and materials or contracts for work and services, the statutory provisions shall apply exclusively.
- 14.3 The right to terminate the Agreement for good cause shall remain unaffected. STACKIT shall have good cause, in particular:
- if the Customer's financial situation deteriorates significantly,
  - if the insolvency administrator refuses to enter into the contract in the event that insolvency proceedings are opened against the Customer's assets, or
  - if the opening of insolvency proceedings against the Customer is rejected for lack of assets.
- 14.4 All notices of termination must be in writing to be effective (a simple electronic signature is sufficient).

## **15. Compliance**

- 15.1 The Customer is responsible for checking the applicability of the legal provisions associated with the use of STACKIT's services and ensuring compliance with them. In particular, the Customer shall ensure and be responsible for ensuring that the Material provided by it does not violate statutory or official provisions (e.g., on the protection of minors, data protection or competition law) and is not encumbered by third-party rights (in particular rights of publicity or copyrights) that could prevent it from being used as intended. In this respect, the Customer shall indemnify STACKIT against all claims, including reasonable legal costs, unless the Customer is not responsible for this.
- 15.2 The Customer understands that the STACKIT solutions and the associated software applications and data may be subject to restrictions under export laws, foreign trade laws, sanctions regimes and other regulations ("Trade Regulations"). The Customer hereby agrees to comply with the applicable Trade Regulations. By submitting its offer via the Domain Experts Portal or by submitting its offer in the context of concluding a contract in writing or in text form, the Customer warrants in particular that it is not based in a country or region that is subject to extensive trade restrictions or embargoes (e.g., Cuba, Iran, North Korea, Syria). Notwithstanding any licensing arrangements to the contrary, the Customer also agrees not to provide any STACKIT solutions to natural or legal persons subject to restrictions under the applicable Trade Regulations. STACKIT is not required to meet any existing performance obligations owed to the Customer if doing so would violate applicable Trade Regulations.

## **16. Data Protection**

- 16.1 The parties shall comply with the statutory provisions on data protection, in particular the provisions of the EU General Data Protection Regulation (GDPR) and the German Federal Data Protection Act (*Bundesdatenschutzgesetz* – BDSG), and shall obligate their employees accordingly. The controller or the respective transmitting party shall ensure that the processing of personal data is lawful in accordance with the provisions of data protection law. If necessary, the parties shall agree supplementary provisions on processing data on behalf of a controller in accordance with Article 28 GDPR.
- 16.2 The Customer acting as controller is responsible for checking the data protection aspects of the use of STACKIT's services.

## **17. Miscellaneous**

- 17.1 German law shall apply subject to the exclusion of its conflict of law provisions and the UN Convention on Contracts for the International Sale of Goods (CISG).
- 17.2 The place of performance for all obligations arising from the legal relationship between the parties shall be STACKIT's registered office.
- 17.3 Exclusive place of jurisdiction is Stuttgart, Germany. However, STACKIT may sue the Customer at its general place of jurisdiction.
- 17.4 In the event of a dispute, the parties are entitled to conduct conciliation proceedings under the applicable conciliation rules of the competent conciliation office (for IT disputes) of the International Chamber of Commerce (ICC) before conducting court proceedings. Where the competent arbitration board does not provide conciliation rules for IT disputes, the conciliation proceedings will be conducted in accordance with the IT Conciliation Rules of the German Association of Law and Informatics (*Deutsche Gesellschaft für Recht und Informatik* – DGRI).
- 17.5 Should any provision of the Terms and Conditions be or become void, invalid or unenforceable, either in whole or in part, this shall not affect the validity or enforceability of the remaining provisions of the Terms and Conditions. The void, invalid or unenforceable provision shall be replaced by a provision that most closely reflects the economic intent and the purpose of the void, invalid or unenforceable provision to the extent permitted by law. This shall apply *mutatis mutandis* to any unintended omissions in these Terms and Conditions.

## **Special Terms and Conditions of STACKIT GmbH & Co. KG for Domain Services/the Domain Expert Portal ("Special Terms and Conditions for Domains")**

### **1. Scope of Application**

- 1.1 These Special Terms and Conditions for Domain Services/the Domain Expert Portal ("Special Terms and Conditions for Domains") shall govern all services provided by STACKIT GmbH & Co. KG ("STACKIT") to the Customer ("Customer") via the Domain Expert Portal ("DX Portal") and to the domain services agreed with the Customer in the contract, in STACKIT's declaration of acceptance, including the agreed service certificates and/or service descriptions, which may include, for example, DX Brand Monitoring, DNS Management, DX SSL and Domain Broker Services in individual cases.
- 1.2 The Special Terms and Conditions for Domains shall supplement, and in the event of conflicting provisions, take precedence over the Terms and Conditions of STACKIT ("Terms and Conditions").

### **2. Scope of Performance**

- 2.1 For the duration of the contractual relationship, STACKIT enables the Customer to register, maintain and administer domains including the administration of DNS zones via the DX Portal on the basis of the rules and regulations of the domain registries, as amended from time to time.
- 2.2 If the (legal) rules and regulations of the domain registries change or if the parameters for the registration and maintenance of domains change for any other reasons outside STACKIT's sphere of control, STACKIT and the Customer shall adjust their contractual relationship to account for the changes accordingly.
- 2.3 STACKIT shall provide the services detailed in the following paragraphs during the term of the contract.
- 2.4 An order for the new registration of domains, and also the change of technical data of a domain that has already been registered, is placed by entering all necessary data in the DX Portal or – where necessary – by sending this data by e-mail to STACKIT to the e-mail address: info@stackit.cloud, followed by processing in line with the order (in particular application for registration addressed to the relevant Network Information Center; NIC) through STACKIT. The Customer authorizes STACKIT to carry out all actions necessary for the registration or change. The Customer may revoke the authorization to STACKIT at any time, at least in text form. The Customer can view the status of the registration process in its account via the DX Portal.
- 2.5 STACKIT is not responsible for the actual availability of the domain; in particular, STACKIT does not assume any liability for any prioritized third-party registrations in the time between the placing of the order and the application for the domain. The Customer is responsible for fulfilling the requirements for the registration of domains as a (natural or legal) person. However, STACKIT will inform the Customer if it determines from the data provided by the Customer that the Customer does not meet the requirements for successfully applying for domains.
- 2.6 Upon request, STACKIT shall provide the technical services required for the registration and accessibility of the domain, e.g., nameserver entries on its own servers and shall assume functions as the contact for the domain (e.g., as Tech-C, Zone-C or Billing-C) to the extent required for the fulfillment of this agreement (i.e., where these are required in accordance with the conditions for registration laid down by the respective domain registry). The provision of further resources required for the use of the domain, e.g., web space, e-mail accounts, etc., are not part of STACKIT's performance obligation, but can be ordered separately from STACKIT.
- 2.7 STACKIT shall pay any fees due to the relevant NIC during the term of this agreement. These fees are included in the annual fee in accordance with the price list.
- 2.8 STACKIT is not obligated to provide any consulting or other services in connection with the registration, maintenance and administration of domains beyond the services agreed upon above. If such additional services are rendered at the request of the Customer, they are subject to a separate agreement and are usually charged on a time and material basis in accordance with STACKIT's price list. Insofar as STACKIT provides consulting services for the Customer, STACKIT owes the provision of the consulting services specified in the master agreement, contract or in STACKIT's declaration of acceptance, including the agreed service certificates and/or service descriptions, but not a specific economic result.

### **3. Ownership of the Domain; Third-party Rights**

- 3.1 The domain can only be registered if it is available and the application is submitted correctly and in full in accordance with the rules and regulations of the domain registry. The Customer shall be responsible for ensuring the veracity and accuracy of the entries made by the Customer in the DX Portal for the purpose of submitting the application and, where applicable, the data transmitted by e-mail.
- 3.2 The registration of the domain merely amounts to the allocation of an Internet address by the domain registry. As a rule, this does not give the Customer any rights to the name vis-à-vis third parties. It is the Customer's responsibility to check whether it requires such rights or already have them and whether it wishes to secure any such rights.
- 3.3 It is the sole responsibility of the Customer to check before submitting an application whether the domain or its intended use infringes intellectual property rights of third parties (rights relating to the use of a name or company name, trademark rights, etc.) or is otherwise unlawful. The Customer is aware that this may mean that the domain may not be used or may not be used as intended by it and that it may be liable for damages to third parties for infringements of intellectual property rights.
- 3.4 Notwithstanding the provisions of clause 10 of the Terms and Conditions, STACKIT is not liable for any loss or damage or any other detriment suffered by the Customer caused by rights of third parties to the name chosen as the domain. Should third parties assert claims against STACKIT due to the infringement of intellectual property rights by the domain, the Customer shall indemnify STACKIT against all claims and claims for damages by third parties upon first demand, unless the Customer can prove that it is not responsible for the

infringement of third-party intellectual property rights. STACKIT shall inform the Customer without undue delay in text form of any such assertion of third-party rights against STACKIT relating to the infringement of intellectual property rights by the Customer's domain.

#### **4. Change of Provider; Assignment of the Domain; Deletion of a Domain**

- 4.1 A change of provider, a transfer of domains to third parties (assignment) or a deletion of domains is permitted during the term of the contractual relationship in accordance with the following provisions.
- 4.2 If the Customer wishes to have a domain used by it administered by another provider, this requires an application by e-mail to STACKIT for the intended change of provider and an instruction by the new provider to the registry to effect the change of provider. In such cases, STACKIT will agree to the change of provider vis-à-vis the registry.
- 4.3 If the Customer wishes to transfer a domain used by it to a new license holder, the Customer is required to submit a corresponding application by e-mail to STACKIT, and the new license holder must establish a corresponding contractual relationship with STACKIT. If the new license holder wishes to have the domain administered by another provider, clause 4.2 of the Special Terms and Conditions for Domains shall apply *mutatis mutandis*.
- 4.4 The deletion of a domain requires an application by the Customer by e-mail to STACKIT sent to the e-mail address: info@stackit.cloud.
- 4.5 A change of provider, assignment or deletion of a domain constitutes a termination of the contractual relationship for the domain in question, to take effect at the next possible date. It does not affect STACKIT's claim to remuneration. Fees already paid will not be refunded unless they relate to periods after the end of the contractual relationship.

#### **5. Remuneration, Payment**

- 5.1 The Customer shall pay STACKIT ongoing fees per domain for its services. The amount of the ongoing fees as well as the other remuneration components and their amount are set out in the STACKIT price list and are displayed directly during the registration process in the DX Portal. STACKIT invoices the fees for domains on a calendar year basis (January 1 to December 31, also "Billing Period"). Fees for domains are charged *pro rata temporis* for the year of initial registration or takeover from (and including) the month of registration to the end of the year. Thereafter, the fee will be calculated for the whole calendar year.
- 5.2 The ongoing fees per domain shall be paid annually in advance for each Billing Period. The first Billing Period for a domain starts with the registration and ends on December 31 of the year in which registration occurs.
- 5.3 If STACKIT takes over already registered domains, the first Billing Period begins with the takeover and ends on December 31 of the year in which the domain is taken over. The fee for the first Billing Period is due and payable after the start of the Billing Period and thirty (30) days from the date of invoice to the Customer. The due date of the other remuneration components is set out in the price list.
- 5.4 If the Customer is in default with the payment of the remuneration by more than four (4) weeks, STACKIT may terminate the contractual relationship without notice. Termination is only permissible provided that STACKIT has given the Customer reasonable advance notice. In that case, the Customer is obligated to transfer the domain to a provider of their choice without undue delay (see also clause 7 of the Special Terms and Conditions for Domains).

#### **6. Term, Termination**

- 6.1 The contractual relationship between STACKIT and the Customer is concluded for an indefinite period. Contractual relationships entered into under these Special Terms and Conditions for Domains for the registration of individual domains are also concluded for an indefinite period.
- 6.2 Contractual relationships entered into between STACKIT and the Customer under these Special Terms and Conditions for Domains can be terminated in writing by giving one (1) month's notice to take effect at the end of a contract year, but to take effect for the first time at the end of the calendar year following the conclusion of contract.
- 6.3 Termination of the Customer account for the DX Portal is only possible if there is no longer a contractual relationship between the Customer and STACKIT regarding the registration of individual domains. The Customer shall send its notice of termination by e-mail to STACKIT at the e-mail address: info@stackit.cloud. The Customer's termination shall take effect upon receipt of this notice of termination by STACKIT; STACKIT shall delete the Customer's account no later than three (3) months after receipt of the notice of termination by STACKIT. Any such deletion will not affect any data which STACKIT is required by mandatory law to retain. If STACKIT gives notice of termination, STACKIT may, at the same time as giving notice, declare that the contractual relationships for all domains shall end at the same time as any existing master agreement or the Customer account. In this case, any fees already paid for the period after the termination takes effect must be reimbursed by STACKIT, where applicable, on a *pro-rata* basis.
- 6.4 The termination of individual domains shall not affect the validity of any master agreement that may have been concluded or the Customer account in the DX Portal.
- 6.5 The right to terminate the Agreement for good cause shall remain unaffected.
- 6.6 If a contractual relationship entered into under these Special Terms and Conditions for Domains ends in accordance with clauses 6.1 to 6.5 of the Special Terms and Conditions for Domains, the Customer shall arrange for the prompt transfer of the affected domain(s) to another provider after termination of the contract or instruct STACKIT to delete the domain at the end of the contract.
- 6.7 If the Customer does not fulfill its obligation under clause 6.6 of the Special Terms and Conditions for Domains even after STACKIT has set a reasonable grace period, STACKIT may stop providing its services that make the domain technically accessible. This may result in the deletion of the domain by the relevant NIC. STACKIT may also return the domain(s) concerned to the registry or have it/them deleted. Alternatively, STACKIT is authorized to continue its administrative services for a further Billing Period and to invoice the Customer for the contractually agreed fees for this. STACKIT shall decide on the above measures at its reasonable discretion, taking into account the legitimate interests of the Customer.
- 6.8 STACKIT is not obligated to pay any fees due for the renewal of domain registrations to the relevant registry after the end of the respective contract concluded under the Special Terms and Conditions for Domains. STACKIT will inform the Customer if a registration threatens to expire so soon after the end of the contract that a timely transfer of the domain to a new provider before it expires does not appear

feasible. In this case, STACKIT shall cooperate in the renewal of such domains at the written request of the Customer. Even in this case, STACKIT is only obligated to pay fees if the Customer pays the fees to STACKIT beforehand or provides security in this regard.

- 6.9 The Customer's access to the DX Portal and all entitlements to services by STACKIT will be blocked or canceled upon termination of the contract. As regards its data stored on the system, the Customer is responsible for making sure beforehand that such data is either saved elsewhere or deleted. In the event that STACKIT terminates the contract for good cause, STACKIT will grant the Customer limited access to the DX Portal and the data stored therein for the purpose of data backup for seven (7) days after termination of the contract.

## **7. Data Protection**

Domain transfers are initiated as part of a consolidation. If, in this context, personal access data of existing provider accounts is handed over to STACKIT by the Customer, STACKIT undertakes to treat both access to and content of the account confidentially. Likewise, actions within this account are only carried out subject to prior agreement with and in the interests of the Customer. STACKIT shall disclose all actions and measures taken in accounts at the Customer's request.

## **Special Terms and Conditions of STACKIT GmbH & Co. KG for IT Services ("Special Terms and Conditions for IT Services")**

### **1. Scope of Application**

- 1.1 All IT services provided by STACKIT GmbH & Co. KG ("STACKIT") to the Customer ("Customer") in the area of managed services shall be governed by these Special Terms and Conditions for IT Services ("Special Terms and Conditions for IT Services").
- 1.2 IT services of STACKIT in the area of managed services comprise the services specified in the contract, STACKIT's declaration of acceptance, including the agreed service certificates and/or service descriptions.
- 1.3 The Special Terms and Conditions for IT Services shall supplement, and in the event of conflicting provisions, take precedence over the Terms and Conditions of STACKIT ("Terms and Conditions").

### **2. General, Scope of Performance**

- 2.1 STACKIT's services are governed by the provisions on services (sections 611 *et seq.*) in the German Civil Code (*Bürgerliches Gesetzbuch – BGB*), unless expressly stipulated otherwise.
- 2.2 The exact subject matter of STACKIT's services is specified in the master agreement, contract or, as a rule, in STACKIT's declaration of acceptance, including the agreed service certificates and/or service descriptions.
- 2.3 As far as possible, STACKIT generally provides its services by means of remote maintenance and diagnosis.
- 2.4 If STACKIT already provides services for the Customer that fall under these Special Terms and Conditions for IT Services, STACKIT shall be entitled to take appropriate measures to avert any risks in the event of recognized imminent danger, e.g., in the event of security vulnerabilities, attacks or virus infections, even without a separate order, and shall be remunerated for the services provided for this purpose on a time and material basis. STACKIT shall inform the Customer where possible before initiating corresponding measures.
- 2.5 A specific availability of services is only owed if expressly agreed. Unless otherwise agreed, planned maintenance measures shall not be taken into account when calculating availability.
- 2.6 Maintenance measures are carried out as unobtrusively as possible for the Customer. Regular or scheduled maintenance work is carried out at times when general use is as low as possible and announced well in advance. In addition, unannounced maintenance measures may be necessary, e.g., in the event of unforeseeable incidents (e.g., attacks, viruses). The Customer shall be notified of regular or scheduled maintenance work at least one (1) week in advance. In the event of unscheduled maintenance work, the Customer will be informed as soon as possible.
- 2.7 The provision of third-party services (software, cloud services, infrastructure, administration, etc.) by the Customer is only permitted if expressly agreed. If adjustments, bug fixes or support services by STACKIT become necessary due to the provision of materials by the Customer or third parties authorized by the Customer, these are not part of STACKIT's services, but will be provided by STACKIT for an additional fee on a time and material basis.
- 2.8 If the Customer is required to procure the licenses necessary for the use of STACKIT's services, STACKIT shall be entitled to suspend the services until the Customer provides the necessary licenses; this shall apply in particular if the use of STACKIT's services without the licenses to be procured by the Customer would violate the license terms and conditions on which STACKIT's services are based. If the Customer fails to comply with its obligation to procure the licenses even when requested to do so by STACKIT within a reasonable period of time, STACKIT shall be entitled to terminate the affected contract for good cause. The same shall apply if software used by the Customer violates the license terms and conditions of the licenses on which STACKIT's services are based. STACKIT advises the Customer that licenses under the Service Provider License Agreement (SPLA) are used for virtual servers with Microsoft operating systems and that all subsequent licenses for Microsoft products (also beyond the operating system (e.g., MS SQL, Exchange, etc.)) must also be licensed under the SPLA for use in such an environment.
- 2.9 STACKIT and the Customer may agree that STACKIT shall provide subsequent services if the Customer requests changes to the work products after the work has been completed. If STACKIT provides subsequent services without a specific agreement, this shall not constitute a legal obligation, but shall be done as a gesture of goodwill.

### **3. Provision of Data center Capacities and Managed STACKIT Cloud Services**

- 3.1 If contractually agreed, STACKIT shall also provide the Customer with managed services for STACKIT Cloud Services purchased by the Customer.
- 3.2 STACKIT Cloud Services provided to the Customer shall be governed by the Terms and conditions - STACKIT Cloud Services, which are available at <https://www.stackit.de/en/general-terms-and-conditions/>, in addition to these Special Terms and Conditions for IT Services. In the event of conflicts, the Terms and conditions - STACKIT Cloud Services shall take precedence.
- 3.3 STACKIT shall provide the Customer with the agreed infrastructure with the agreed specifications (e.g., regarding CPU, RAM, HDD, virtualization environment, etc.) and/or functionalities for use for the agreed duration and shall establish the connection of the infrastructure with the agreed bandwidth at the agreed access point. STACKIT shall make STACKIT Cloud Services available to the Customer with the agreed functions for use via the Internet.
- 3.4 The provision of infrastructure and cloud services does not include services such as the installation of (virtual) servers or standard software (see clause 4), the procurement, maintenance of software (see clause 6), support services (see clause 8) or making individual backups for the Customer.

- 3.5 The Customer is responsible for establishing the connection to the agreed infrastructure access point with sufficient bandwidth.
- 3.6 STACKIT is entitled to provide infrastructure and cloud services in its own data centers or in third-party data centers. STACKIT is free to select third-party providers - in particular with regard to their registered office and/or data center locations.
- 3.7 The following provisions apply to data and content processed by the Customer on the systems provided by STACKIT:
- The Customer is responsible for checking the legality of all data and content processed on the infrastructure provided to it by STACKIT. In particular, it shall not store or process any data or content on the systems that violate criminal laws, copyrights or ancillary copyrights, other third-party rights or data protection regulations. The Customer shall also ensure that data stored by it on the systems is free of malicious software (viruses, malware, etc.). STACKIT is not obliged to carry out an inspection or monitoring.
  - STACKIT reserves the right to take appropriate measures if the Customer's content violates these provisions or applicable law. In particular, removal, blocking, editing, moving, deactivation or permanent deletion may be considered as appropriate measures. STACKIT shall inform the Customer - as far as possible - before implementing such measures. STACKIT is also entitled - particularly in urgent cases - to temporarily block potentially illegal data or content on infrastructure provided by STACKIT, to subsequently inform the Customer of this and to request proof of legality. If the Customer does not prove within ten (10) days of being notified that the data or content is lawful, STACKIT shall be entitled to delete it. The notice shall contain a clear justification for the measures.
- 3.8 The Customer shall inform STACKIT without undue delay if it suspects that unlawful data or content is being processed on infrastructure provided by STACKIT.
- 3.9 The Customer shall protect the usage and access permissions assigned to it or the users for the infrastructure as well as identification and authentication backups against access by third parties and shall not disclose them to unauthorized users. It will change passwords at regular intervals and, where possible, secure access using multi-factor authentication.
- 3.10 The Customer shall avoid placing an excessive load on the infrastructure, e.g., through processes that require an excessive amount of computing power, use an above-average amount of memory or cause an unusually high network load, and shall refrain from running scripts or measurement tools that place a maximum load on the performance of the systems over an unreasonable period of time. STACKIT is entitled to restrict access to processes or block content or programs that do not meet these requirements. STACKIT shall inform the Customer of such measures without undue delay and cancel them as soon as the Customer proves that the impairment has been eliminated.
- 3.11 If the Customer jeopardizes the security, integrity or availability of STACKIT's systems or if there are objective indications that serious disruptions to STACKIT's systems may occur, STACKIT may temporarily block or restrict access.
- 4. Server and Software Installation**
- 4.1 Insofar as STACKIT's service consists of the installation and/or setup of (virtual) servers, the installation of standard software and/or the administration of servers and IT workstations of the Customer, the provisions of this clause 3 of the Special Terms and Conditions for IT Services shall apply.
- 4.2 Servers may be set up, software installed and administered in accordance with the master agreement, the contract and/or STACKIT's declaration of acceptance, including the agreed service certificates and/or service descriptions on the Customer's hardware or on IT resources provided to the Customer by STACKIT.
- 4.3 The installation of servers comprises the establishment of the operational readiness of the overall system specified in the master agreement, contract and/or STACKIT's declaration of acceptance, including the agreed service certificates and/or service descriptions, in particular the installation of the corresponding operating systems and their initial setup in accordance with the specifications of the contract.
- 4.4 The installation of standard software includes its installation on the Customer's IT resources without customer-specific adaptations.
- 4.5 To the extent agreed, administration includes the management of the Customer's IT resources and, where applicable, IT workstations in coordination with the Customer or in accordance with the Customer's specifications (e.g., configuring settings in the Customer's network, creating users, managing rights, configuring settings or setting up certain standard functions on the Customer's IT resources in accordance with the Customer's specifications).
- 4.6 It is the Customer's responsibility to ensure that its data is backed up regularly and in particular before each installation. This shall not affect STACKIT's obligations to set up and create backups or otherwise functional backup copies of the Customer's IT resources or data as part of the master agreement, the contract and/or STACKIT's declaration of acceptance, including the agreed service specifications and/or service descriptions or on the basis of a separate agreement.
- 4.7 As part of the installation, software settings (such as parameterization and selection of setup options) are at the discretion of STACKIT.
- 4.8 The provision of the IT environment required for setting up the server/installing the software (e.g., required hardware or data center capacities, connection to its network including all cabling) is the responsibility of the Customer prior to installation, unless these are the subject of the order or the subject of STACKIT's services on the basis of a separate agreement.
- 4.9 During setup, test operation and installation, the Customer shall provide competent and trained employees and, if necessary, suspend other work with the IT environment concerned.
- 4.10 The software shall be installed using the agreed version, in the absence of an express agreement using the version available on the market at the time the contract is concluded. STACKIT does not owe the installation of all releases, updates, upgrades, patches and builds available at the time of installation, even if these are recommended by the manufacturer of the software and are already readily available on the market, unless otherwise expressly agreed or the corresponding installation is the subject of agreed maintenance by STACKIT (see also

clause 6 of the Special Terms and Conditions for IT Services). However, STACKIT is entitled to install later versions at its own discretion, unless this has been contractually excluded or the Customer objects in writing.

## **5. Procurement and Provision of Standard Software**

- 5.1 Insofar as STACKIT's service involves the procurement and provision of standard software for the Customer, the provisions of this clause 5 of the Special Terms and Conditions for IT Services shall apply.
- 5.2 STACKIT shall procure the agreed software in accordance with the master agreement, the contract and/or STACKIT's declaration of acceptance, including the agreed service certificates and/or service descriptions, either as a purchase or for use by the Customer for the contractually agreed term of use. The installation of the Software on the Customer's IT systems shall only be owed if expressly agreed and shall then be governed by clause 3 of the Special Terms and Conditions for IT Services.
- 5.3 STACKIT shall not be obliged to customize the software, adapt it to the Customer's needs or provide the source code of the software.
- 5.4 STACKIT procures software as a third-party service in the name and for the account of the Customer. In this case, STACKIT shall, in case of doubt, act as an intermediary for the contract on the procurement and use of the software with the provider. The contract is formed between the Customer and the respective seller of the software. Unless otherwise agreed, STACKIT shall be free to select the suppliers of the software.
- 5.5 The transfer or provision of standard software shall be exclusively subject to the license terms and conditions of the software manufacturer, which STACKIT shall send or make available to the Customer upon request. The use of standard software provided may also require the Customer's prior express consent to the software manufacturer's license terms and conditions and/or the creation of a user account. It is the Customer's responsibility to submit the relevant declarations of consent or to set up user accounts.
- 5.6 In the case of standard software, STACKIT shall provide the Customer with any user documentation supplied with the software by the software manufacturer and/or any (online) help provided as part of the software. STACKIT does not owe any further documentation.
- 5.7 In addition, the procurement of standard software for permanent retention by the Customer is governed by the provisions of sales law (sections 433 *et seq.* BGB) and the temporary provision of standard software is governed by the provisions of tenancy/lease law (sections 535 *et seq.* BGB).

## **6. Software Maintenance**

- 6.1 Insofar as STACKIT's service comprises software maintenance on the Customer's IT systems, the provisions of this clause 6 of the Special Terms and Conditions for IT Services shall apply.
- 6.2 Updates are carried out in accordance with the manufacturer's specifications or guidelines as amended. The Customer shall provide STACKIT with existing relevant specifications or guidelines of the manufacturer for the maintenance of the components of the IT system in good time, insofar as these are not available or known to STACKIT. If the manufacturer's specifications or guidelines subsequently change, the Customer shall submit these without undue delay.
- 6.3 STACKIT shall inform the Customer of the availability of updates, upgrades, patches, etc. ("New Versions") for the system used by the Customer as soon as STACKIT becomes aware of their availability and they are security-related New Versions.
- 6.4 STACKIT shall only install the New Version on the Customer's IT systems after approval by the Customer, at least in text form. If the Customer refuses to install a New Version, it shall bear the resulting risks. In the case of security-critical updates, STACKIT is entitled to install the New Version even without the Customer's consent.

## **7. Managed Security**

- 7.1 Insofar as STACKIT's service comprises the provision of services in the area of managed security, the provisions of this clause 7 of the Special Terms and Conditions for IT Services shall apply. Services in the area of managed security include in particular the following services in accordance with the master agreement, contract, STACKIT's declaration of acceptance including the agreed service certificates and/or service descriptions:
  - Setup, configuration and support of the Customer's security systems;
  - Configuration and support of relevant security measures and functions, in particular in connection with packet and content filters, virtual private networks, stateful packet inspection and deep packet inspection functions;
  - Awareness training and penetration testing;
  - Customization of the mail proxy;
  - Isolation of vulnerable clients and files;
  - Update of security components (endpoint/firewall, etc.);
  - Support with forensic measures;
  - Creation and analysis of reports on performance, attacks and utilization of the Customer's security systems.
- 7.2 STACKIT shall provide the services in accordance with the state of the art and in consultation with and, if applicable, in accordance with the instructions of the Customer. The Customer shall bear all risks resulting from the implementation of its instructions; however, STACKIT shall inform the Customer of any risks recognizable to STACKIT in the implementation of Customer instructions.
- 7.3 The purpose of penetration testing is to identify and document security vulnerabilities that become apparent during the implementation of the agreed measures. Accordingly, STACKIT does not warrant the absolute security of the Customer's tested IT resources when carrying out penetration testing, and in particular does not warrant that there are no security vulnerabilities other than those identified that can be exploited by measures or attacks other than those carried out as part of the penetration testing. For the purpose of carrying out penetration testing, the Customer agrees to any associated access to stored data or data in transit and authorizes STACKIT to analyze the corresponding IT resources and IP addresses (also by bypassing any protection mechanisms), to penetrate them and to carry out attacks under simulated real conditions. STACKIT shall only use subcontractors for the performance of penetration testing with the consent of the Customer and shall obligate all personnel involved to maintain confidentiality with regard to all information and documents in connection with the performance of the test prior to their deployment. Customer shall ensure and guarantee to STACKIT that it is authorized to carry out agreed penetration testing on the respective system and shall obtain any necessary consent from third parties before carrying them

out. The Customer shall provide evidence of this at STACKIT's request. The Customer is responsible for creating a complete backup before the start of penetration testing and during testing at regular intervals of no less than three (3) working days, unless this task is assumed by STACKIT in accordance with the order placed or on the basis of a separate contractual agreement. The backup must be designed in such a way that it enables complete recovery of the data potentially affected by the measures taken as part of the penetration testing. At STACKIT's request, the Customer shall confirm the proper data backup in text form.

## **8. Support Services**

- 8.1 Insofar as STACKIT's service comprises the maintenance and recovery of the Customer's IT systems and providing support to users ("Support Services"), the provisions of this clause 8 of the Special Terms and Conditions for IT Services shall apply. Support Services include in particular the following services in accordance with the master agreement, the contract and/or STACKIT's declaration of acceptance, including the agreed service certificates and/or service descriptions: Monitoring of the IT infrastructure, support in the event of errors or incidents with the aim of rectifying them and/or user support.
- 8.2 If a service level agreement has been concluded between STACKIT and the Customer for the agreed Support Services, the provisions of the service level agreement shall also apply to the provision of services by STACKIT.
- 8.3 "Response time" is the time between STACKIT receiving a warning from monitoring or a qualified error message and STACKIT initiating measures to rectify the error. The response time only runs during the service and support hours in accordance with clause 10 of these Special Terms and Conditions for IT Services. It should not exceed a period of forty-five (45) hours in the individual case.
- 8.4 Decisive for the initiation of the response times for reports by the Customer is the receipt of a qualified error message from the Customer at STACKIT via the agreed contact channels. An error message is deemed qualified if the described error is reproducible (i.e., the circumstances of its occurrence are described so precisely that a qualified STACKIT employee can trigger the error themselves at any time). If the error only occurs at individual workstations, the Customer must indicate these. If the Customer made modifications to the system before the error occurred, it must inform STACKIT of this.
- 8.5 Warranty claims of the Customer remain unaffected. Upon receipt of the incident report, STACKIT will check whether the incident is a warranty or support case.
- 8.6 Insofar as the rectification of defects is owed by a third party within the scope of an existing warranty or guarantee or other fault rectification or concerns system components that are wholly or partially within the sphere of responsibility of another service provider of the Customer, STACKIT shall coordinate the necessary steps with the third party or the responsible service provider.
- 8.7 If, in the opinion of STACKIT, troubleshooting requires the procurement of hardware (components), standard software, data storage media, batteries, printer units or other consumables, STACKIT shall obtain a separate order from the Customer for this purpose. If the Customer places the order, it shall bear the costs even if the desired result is not achieved.

## **9. Training, Tests**

Training courses take place either online or in the agreed training rooms, otherwise in the training rooms to be determined by STACKIT. If training at the Customer's premises has been agreed, the Customer shall provide the technical equipment required for the training free of charge. The same applies with respect to conducting tests.

## **10. Service and Support Hours**

- 10.1 STACKIT provides its services under these Special Terms and Conditions for IT Services during the following service hours:
- Working days (Monday to Friday) from 8:00 a.m. to 5:00 p.m.
  - Public holidays at STACKIT's registered office are excluded.
- 10.2 Other service hours can be agreed in a separately concluded service level agreement.

## **11. Remuneration**

Prices are indicated in the contract. If no remuneration has been agreed in the contract, STACKIT shall receive the actual costs incurred for the service in accordance with the valid price list. All prices quoted therein are per hour worked plus statutory VAT.

## **12. Rights of Use and Exploitation, Work Products**

- 12.1 The scope of the rights of use granted to the Customer for standard software and/or cloud services is determined by the relevant terms of use and license terms and conditions of the provider. The Customer undertakes to comply with the terms of use and license terms and conditions.
- 12.2 If STACKIT produces work products which are eligible for patent, utility model or design protection in the course of the provision of services, STACKIT shall be entitled to register these in its own name and for its own account. However, STACKIT shall allow the Customer to use the intellectual property to the extent necessary to achieve the purpose of the contract within the scope of the services to be provided by STACKIT or together with the work products owed under the contract.
- 12.3 STACKIT shall be entitled to use the work products, including the know-how acquired during the provision of the services, in particular the concepts, procedures, methods and interim results on which the work products are based without limitation, subject to compliance with its confidentiality obligations.

## **13. Cooperation by the Customer**

- 13.1 If the installation, configuration, replacement of hardware or any other service is owed on site by STACKIT, the Customer shall ensure that STACKIT has free access to all premises and racks on the scheduled date and that a suitable contact person is available on site for the

duration of the activity, who can answer technical questions about the existing infrastructure and has the necessary knowledge and rights to make any adjustments to or installations on the Customer's systems.

- 13.2 The Customer shall inform STACKIT of any special rules of the Customer that are to apply to the activities of STACKIT or its employees (such as safety/security guidelines, authorization concepts, provisions for on-site activities, non-disclosure agreements) in good time, but no later than one (1) week before a service date. STACKIT employees are not authorized to represent STACKIT on site with regard to such declarations.
- 13.3 The Customer shall provide STACKIT with access to its IT resources at its own expense to the extent necessary for the provision of the service, in particular to provide identifiers and passwords with sufficient authorizations to the extent necessary for the provision of the service and to inform STACKIT of these in order to carry out the work. STACKIT's wait times resulting from non-compliance with this obligation shall be remunerated at cost.
- 13.4 The Customer shall oblige authorized users of STACKIT's services to comply with the provisions applicable to the use of the services. Such users are deemed to be vicarious agents of the Customer as between the parties.

#### **14. Term, Termination**

- 14.1 The term of contracts for services to be regularly provided by STACKIT (i.e., recurring or permanent services such as, in particular, the provision of data center capacities, support, software maintenance or provision, monitoring) shall be twenty-four (24) months from the date of commissioning. It shall be extended by a further twelve (12) months if neither party terminates the contract with three (3) months' notice to the end of the contract. Notice of termination must be given in writing. The parties' right to terminate for good cause remains unaffected.
- 14.2 It is the Customer's responsibility to back up the data stored on the resources provided by STACKIT in good time before the contract terminates or (if the contract is terminated without notice) without undue delay or to migrate it to a new system. Any cooperative assistance by STACKIT, e.g., the migration of the entire environment or the provision of the Customer's data on mobile data storage media, shall only be provided by STACKIT if separately agreed. If no separate remuneration has been agreed, all cooperative assistance shall be remunerated on a time and material basis in accordance with the general price list. STACKIT shall be entitled to permanently delete the Customer's data from its systems fourteen (14) days after termination of the contract.
- 14.3 The Customer shall return any hardware provided to STACKIT at the end of the contract in a condition corresponding to the contractual use. The Customer shall completely delete or destroy the Customer's data stored thereon. The Customer is obliged to confirm the complete return and deletion in writing upon request. The Customer shall carry out the dismantling and return transportation of the hardware at its own expense.

## **Special Terms and Conditions of STACKIT GmbH & Co. KG for Software Development ("Special Terms and Conditions for Software Development")**

### **1. Scope of Application**

- 1.1 All services provided by STACKIT GmbH & Co. KG ("STACKIT") to the Customer ("Customer") in the area of software development (including consulting, agency and technology services) shall be governed by these Special Terms and Conditions for Software Development ("Special Terms and Conditions for Software Development").
- 1.2 STACKIT's services in the area of software development comprise the services specified in the contract, in STACKIT's declaration of acceptance, including the agreed service certificates and/or service descriptions.
- 1.3 The Special Terms and Conditions for Software Development shall supplement, and in the event of conflicting provisions, take precedence over the Terms and Conditions of STACKIT ("Terms and Conditions").
- 1.4 The agreements made in the Special Terms and Conditions for Software Development serve as a uniform basis and legal foundation for all software development projects realized between the parties, whereby the respective project-specific provisions and special features of the individual projects are defined and agreed with the Customer in binding individual agreements ("Statement of Work" or "SOW").

### **2. General**

- 2.1 In accordance with the provisions of these Special Terms and Conditions for Software Development, STACKIT shall provide the following services within the scope of the respective project in accordance with the individual contractual agreements of the SOW:
  - advise the Customer on the use of software,
  - design and develop the necessary software components,
  - provide support services (in particular the creation of specifications, documentation, process modeling, performance of functional tests, data migrations, etc.),
  - provide project management services and/or
  - advise on third-party products that go beyond the development of the application, such as order management, resource management, interfaces, etc.
- 2.2 The detailed performance obligations of STACKIT within the scope of the respective project as well as their type and scope shall be specified in the respective SOW.
- 2.3 In the event of conflicting provisions, the provisions of a concluded SOW shall take precedence over the provisions of these Special Terms and Conditions for Software Development.

### **3. Services and Invoicing**

- 3.1 Development is carried out using agile software development methods. Each (sub)project is defined in the context of an SOW (in particular scope of performance and remuneration) and is divided into individual trades ("Epics") that the Customer can call-off. "Epic" refers to a topic area that is to be detailed or has already been detailed in the form of user stories.
- 3.2 STACKIT is not responsible for the Customer's infrastructure (hardware, operating system, databases, etc.) within the scope of services under these Special Terms and Conditions for Software Development. This shall not affect STACKIT's responsibility for advice provided by

STACKIT under individual agreements on the specification of the necessary dimensioning and configuration of the infrastructure and services based on other individual contractual agreements.

- 3.3 In the case of sprints, STACKIT shall issue a proper invoice after a positive sprint result review by the Customer (clause 6.6.2 of the Special Terms and Conditions for Software Development), taking into account any provisions in the relevant SOW. "Sprint" refers to a time-limited project step for the realization of a group of specific requirements.
- 3.4 STACKIT will properly record the time spent on a sprint and - except in the case of sprint flat rates - transmit it to the Customer. In the case of sprints or services based on actual expenditure, time records must be provided on a monthly basis.
- 3.5 STACKIT shall charge for consulting services in accordance with the generally agreed hourly rates. STACKIT shall provide the Customer with a statement of services rendered at the end of each calendar month or at the end of a sprint and shall invoice the Customer accordingly.

#### **4. Fixed Prices**

- 4.1 The prices stated in the SOW for the agreed services of STACKIT for the implementation of the Epics are binding until the respective "valid until date" of a SOW.
- 4.2 The SOWs also describe the agreed scope of time and expense in the form of the number of sprints required to implement the Epics.
- 4.3 Based on the uncertainty factors of the individual Epics, an uncertainty surcharge is defined in the SOW for each Epic in the form of a number of sprints. This uncertainty surcharge is applied if user stories turn out to be more complex than originally assumed by the parties.
- 4.4 If it turns out during development that a user story requires considerably more resources than originally estimated and the uncertainty surcharge has been exhausted, the following process will be initiated to manage the expense:
  - both parties work together to simplify other user stories, or
  - the parties define the user stories for Epics that are not yet defined in user stories, but where potential for simplification and reducing complexity is recognized and attempt to reduce complexity in the process, or- both parties work together to eliminate non-essential user stories from the product backlog.

#### **5. Project Organization**

- 5.1 As part of each project, the Customer appoints a product owner team to represent its interests, which is responsible for the overall project management, in particular the project budget and the progress of the project. The product owner team is made up of the "Product Owner STACKIT" and a "Product Owner Customer". Together they form the project management team appointed to the project.
- 5.2 The Customer and STACKIT shall notify each other immediately in text form of any changes in personnel in these functions in the course of a project.
- 5.3 The tasks of the project management are in particular:
  - Design of the project organization,
  - Creation and overview of the project plan and budget,
  - Coordination of internal and external interfaces and
  - Project controlling, project documentation and completion.
- 5.4 The project management also makes the decisions required for rapid project completion. In particular, it decides on change proposals and requests for additions to the respective service descriptions that significantly change the project objectives, schedules or budgets defined in these.

#### **6. Project Methodology**

- 6.1 The respective projects or SOWs are planned and implemented with different scopes, terms and teams and each requires an adapted organizational form in order to achieve the desired goals efficiently.
- 6.2 Software projects generally harbor the risk that specific requirements only become specifically foreseeable in the course of the project as individual parts are developed and usually cannot be planned and specified right from the start. The agile methodology is therefore chosen for the effective and efficient management of such projects, as it offers the necessary flexibility within the scope of the required project management options.
- 6.3 "Agile" in this sense means that in individual sprints with short (per SOW defined) lead times (2-4 weeks), in the form of user stories, specific and firmly agreed scopes of services are completed at agreed prices, in close cooperation between the Customer (or Product Owner Customer), STACKIT and the respective project and development team. The parties undertake to notify each other without undue delay of any anticipated difficulties with resources or scope of services.
- 6.4 Projects with low complexity, whose scope and requirements are known and can be defined in advance, are to be understood as agile projects with only a single sprint.
- 6.5 Components of the agile methodology:
  - 6.5.1 General

The integration of all roles involved in the development process in the form of sprint meetings is an integral part of every project. Communication is a basic prerequisite for successful collaboration. The sprint meetings in each sprint include backlog grooming, which revises the current product backlog, the sprint review to present the results of the previous sprint and sprint planning, during which the sprint backlog for the following sprint is filled.
  - 6.5.2 Product backlog meeting

STACKIT and the Customer meet regularly for product backlog meetings ("PBM"). These are used before the start of all sprints to obtain all requirements that describe the overall scope of the project (in the form of Epics in the product backlog). Each individual requirement is recorded either in the form of an Epic or (if already definable) a user story as a product backlog item ("PBI"), the entirety of which constitutes the product backlog ("Product Backlog"). The Product Backlog is regularly updated and refined during the project in the form

of backlog grooming and establishes a common understanding of the functions to be implemented. Based on the jointly agreed requirements to be realized, the project budget is estimated and defined for STACKIT's share of the services.

#### 6.5.3 Sprint planning meeting

STACKIT and the Customer meet regularly for sprint planning meetings ("SPM"). The SPM is used to plan the sprint and, in particular, to select and prioritize the PBIs to be processed in the sprint.

At the start of each sprint, the project management defines and specifies the Epics to be worked on next. This involves the development team dividing the Epics into user stories, estimating their scope again and thus estimating the overall scope of the sprint.

Both parties prioritize the user stories according to the following criteria:

- Transaction value for the Customer
- Complexity of the detail specification
- Technical complexity/risks

When selecting and prioritizing, the parties ensure that appropriate usable partial results or work products are achieved on which further development can be based.

If an Epic or user story has already been estimated at the start of the project and the new estimate exceeds the original estimate by more than 15%, the team works together to find a more cost-effective solution that fulfills the same business purpose.

The Product Owner STACKIT defines Epics as "successors" in the sprint planning, which are implemented if the team finishes faster than planned.

These decisions are recorded during sprint planning.

#### 6.5.4 Development process

STACKIT's development process is based on test-driven development and is carried out using SCRUM. This often involves the development of unit tests for the basic functionality, which typically includes the network, database and security-related areas. Integration and user interface tests are implemented as required.

STACKIT carries out the development with complete tests and hands over a piece of executable software at the end of each sprint - as far as technically feasible and appropriate - including automatically and individually created documentation and test log.

#### 6.5.5 Scrum of scrums

The purpose of the scrum of scrums meeting ("SoSM") is to exchange information about the status quo of the individual teams, upcoming activities and possible obstacles to development. The aim of the scrum of scrums is to synchronize the work of the various scrum teams and to identify team developments that influence other teams in the implementation of their requirements. Ideally, each team sends a representative to the SoSM so that all teams are equally represented.

The frequency and the day of the week or time of the SoSM are specified in the SOW.

#### 6.5.6 Change requests

The Product Owner Customer can change the sequence of features for each sprint planning, delete features from the scope of services or add new ones. In the event of changes or the addition of features, the Product Owner Customer together with STACKIT will inform the Product Owner STACKIT about possible technical implications and the development team will estimate the new status. If this increases the overall development expense, the development team can reject the change and request that it be implemented as separate Epics in a separate sprint in return for separate remuneration. During a sprint, the Product Owner STACKIT can propose changes to the Epics. If the development team considers these to be cost-neutral, it will implement them wherever possible. If the changes lead to increased expense, the Product Owner STACKIT can propose that Epics that have already been planned but not yet started be removed from the sprint (exchange for free, see below).

Ideas are discussed by both parties following sprint reviews and a decision is made as to whether these new functions should be included as new entries in the Product Backlog. If a new function is added, the development team then estimates the expense required to implement it. The Customer can then decide whether this function should be included in the Product Backlog and which other functions

should be removed from the Product Backlog instead, or whether these functions should be implemented in a later sprint. If no function is removed from the Product Backlog, additional expenses may be incurred, which are to be remunerated separately by the Customer.

#### 6.5.7 Exchange for free procedure

Requirements can be exchanged for requirements not included in the project scope during the course of the project, provided the scope and expense required to implement them is equivalent and the requirement to be exchanged is not yet being implemented.

Additional expenses for services outside the agreed scope, which are not exchanged according to the "exchange for free" principle, are not part of the agreed deliverable and are to be remunerated separately by the Customer.

#### 6.5.8 Sprint review meeting

At the end of each sprint, the team presents the result of its work live on the (dev/test) system to the Product Owner Customer and all interested stakeholders in a sprint review meeting ("SRM") and collects feedback.

On this basis, the Product Owner Customer decides whether the increment should be put into production or developed further. The Product Owner Customer has this option after every sprint. In this way, self-contained functional components of an overall system can generate benefits as early as possible.

The sprint review meeting is not part of the sprint result review.

#### 6.6 Sprint result review and overall acceptance if necessary

##### 6.6.1 Deployment

A sprint result is usually made available in the Customer's test environment within six (6) working days ("Deployment").

The Deployment includes the software with the agreed functionality, the documentation of the delivered software increment generated automatically from the unit tests, the relevant individual documentation, etc., insofar as agreed in the SOW.

##### 6.6.2 Sprint result review

The Customer shall review within six (6) working days whether the sprint result corresponds to the respective service description (possibly with reference to other sprint documents, if listed in the respective SOW) and whether the described functions have been fulfilled.

In the event of deviations, a reasonable deadline is mutually agreed for rectification and the affected function is presented again as part of a subsequent sprint review.

If the reviews are positive, the Customer approves payment for the respective sprint result and thus also declares the respective partial acceptance. If the Customer does not communicate the review result within six (6) working days after Deployment, the respective sprint result shall be deemed to have been accepted and payment approval shall be deemed to have been granted.

For functions created in completed sprints, attention must be paid to the continuity of functionality in the course of subsequent sprints and consideration must be given to further PBMs, SPMs and expense estimates.

##### 6.6.3 Overall acceptance

The overall acceptance follows after completion of the services agreed in the SOW and is based on integration tests by STACKIT.

Overall acceptance can also be implied (e.g., by payment without reservation after handover/provision of the overall system or use in the productive environment).

##### 6.6.4 Error categories

Acceptance criteria are fulfilled if the service essentially complies with the service description, the specifications and the project order, i.e., with the exception of insignificant deviations, and all expressly warranted characteristics are present. The existence of category 1 errors shall entitle the Customer to refuse acceptance - category 2 errors shall be deemed insignificant errors (no right to refuse acceptance) as follows:

Category	Error description:
1	<p><u>Significant errors/errors which prevent acceptance</u></p> <p>1. The expedient (economically appropriate) use of the entire system or a significant part of the system is only possible with considerable restrictions or the error has an impact on business processing and/or security</p> <p>and</p> <p>2. the error cannot be circumvented by the users of the system without significantly impairing the workflow.</p> <p>These include, for example system downtime without restart, data loss/data destruction, incorrect results during time-critical mass processing of data, etc.</p> <p>3. minor errors in functions, pages, if the affected services are accessible to the Customer's customers in accordance with their intended use and the Customer proves that a loss of reputation with the customer is to be expected due to the type of error.</p>
2	<p><u>Insignificant errors/errors which do not prevent acceptance</u></p> <p>All other errors.</p> <p>These include, for example: incorrect error messages, a program goes into standby mode and can only be reactivated by pressing a button, disturbing additional output on the screen, documentation and typos, etc;</p>

The assignment of the individual deviations to the error categories is carried out by the project management.

## **7. Duties of cooperation**

- 7.1 The Customer shall check the software components and data provided by STACKIT within the scope of the agreed sprints in accordance with the instructions, specifics and review procedures provided by STACKIT.
- 7.2 The parties shall each appoint competent project members and contact persons in all areas of cooperation and, where possible, shall inform the other party of these in advance.
- 7.3 Any necessary workstations for STACKIT employees and other service providers at the Customer's premises shall be provided by the Customer. The Customer shall bear the costs for this.
- 7.4 STACKIT training services are ordered separately by the Customer, if necessary, and carried out in separate sprints. The respective provisions are agreed in the respective SOW.

## **8. Grant of license and source code**

- 8.1 Upon payment in full of the agreed remuneration, the Customer shall acquire a non-exclusive, perpetual, unlimited, worldwide license to use and exploit STACKIT's services from the contractual cooperation within the framework of an individual agreement for software development as well as the provision of the services described in accordance with the individual service descriptions (collectively the "Work Products").
- 8.2 STACKIT shall in any case retain the right to archive Work Products and to continue to use the know-how acquired during the development without restriction in compliance with the agreement on the protection of confidential information, in particular also to develop new work products based thereon and to hand over these new work products, which may be similar to the Work Products delivered to the Customer, to third parties. STACKIT shall not deploy the Work Product developed for the Customer in its entirety at third parties if they are in a competitive relationship with the Customer and other affiliated companies of the Customer.
- 8.3 Insofar as the Work Product contains open source software components or other third-party services with the Customer's consent, the relevant open source or third-party license terms and conditions shall apply exclusively.
- 8.4 Unless otherwise agreed in the SOW, the provision of the created or edited source code to the Customer is not part of STACKIT's service.

## **9. Remuneration**

- 9.1 Unless otherwise agreed in the respective SOW, STACKIT shall be remunerated on the basis of the work actually performed (time and material basis). STACKIT invoices in billing increments of ten (10) minutes or part thereof.
- 9.2 The corresponding hourly rates are agreed in the SOW.

## **10. Term of SOWs**

- 10.1 An individual contract for software development is concluded for the duration of the provision of the contractually agreed services.
- 10.2 Individual agreements may be terminated by either party subject to three (3) months' notice to the end of a calendar month.
- 10.3 The right to terminate for good cause shall remain unaffected.
- 10.4 In the event of termination, the services provided by STACKIT in accordance with the agreement up until the date of termination shall still be remunerated and invoiced accordingly (pro rata).
- 10.5 In the event of termination, STACKIT shall make all Work Product that have not yet been handed over to the Customer but have already been created available to the Customer for download.

*Version 1.0, valid from 25.10.2024*