

## EURO-LOG AG (EURO-LOG) Hallbergmoos

### I: Standard terms and conditions (last updated: April 2017)

#### 1. Content of contract, execution of contract, cooperation obligations of the customer

- 1.1 EURO-LOG provides services (sales, development and/or installation of software/hardware, Software as a Service, service provision, consultancy services, personal training etc.) exclusively in accordance with these General Terms and Conditions. The provisioning of any software maintenance and/or support services shall be governed by the stipulations of *Specific EURO-LOG software support and maintenance conditions* (section II). The scope and nature of any specific deliverable shall be governed by the relevant individual contract and system description.
- 1.2 The customer shall be bound by the customer's purchase order for a period of four weeks. Any EURO-LOG offer shall be nonbinding.
- 1.3 Prior to commencement of EURO-LOG activities, the customer shall assume responsibility for securing any personal data in such a way as to preclude any adventitious accessing of such data by EURO-LOG.
- 1.4 During the term of this Agreement, the customer shall ensure that the contractual software is always used in accordance with the valid and specified usage conditions as laid out in the system description. In case of doubt in this regard, and notably in the case of intentional use of the software in combination with third party software, the customer shall notify EURO-LOG accordingly as a matter of course. During the term of this Agreement, the customer shall in all cases notify to EURO-LOG, in advance and without delay, any intentional change in the following: the software installation site; the contractual software; and/or the software usage conditions.
- 1.5 One of the customer's cardinal contractual duties shall be to back up data and software at intervals that are commensurate with the application involved, and at least once daily, in a machine readable form, with a view to ensuring that such data and software can be recovered with reasonable effort.
- 1.6 One of the customer's cardinal contractual duties shall be to ensure, as a matter of course, that (a) all documentation necessary for performance of this Agreement is submitted to EURO-LOG in a timely manner, free of charge, without delay, and in a complete and accurate form; and (b) all information is provided and all technical equipment (including phone and electronic data connections) is in good working order that could potentially be relevant for performance of the Agreement. For on-site services, the customer shall provide EURO-LOG with secure and unimpeded access to the software installation site.

On commencement of the contractual activities, the customer shall appoint a managerial staff member who shall be available on an ongoing basis to provide EURO-LOG with information and issue and receive legally binding documents.

- 1.7 In the interest of compliance with work safety regulations, it will be necessary for the customer or a customer agent to be present while EURO-LOG is provisioning services at the installation site.
- 1.8 Any customer breach of any of the aforementioned duties to cooperate shall have the following legal consequences: Any fruitless expenditure incurred by EURO-LOG resulting from any customer default on any of the aforementioned duties to cooperate shall be reimbursed to EURO-LOG separately in accordance with the currently valid EURO-LOG price list. In lieu of the foregoing, EURO-LOG shall be entitled to lodge a claim for damages (in lieu of performance). Any deadline or performance period that has been set shall be extended by the length of the delay resulting from any default on the customer's duty to cooperate. Following expiration of a reasonable deadline that is defined in writing, EURO-LOG shall also be entitled to terminate the entire Agreement. In such a case, EURO-LOG shall be entitled to payment in full for all services that have been provided, minus any expenditure that EURO-LOG was able to forego as the result of such termination.
- 1.9 Only the designated managerial customer staff member pursuant to section 1.6 or their legally authorized representative (e.g. chief executive, board member) shall be entitled to issue legally binding documents under this Agreement (e.g. defect notifications; deadline-setting documents; notices of termination; contractual modifications).

#### 1a. Software as a Service, cooperation obligations of the customer, special conditions

- 1a.1 Software as a Service (SaaS) refers to services provided by EURO-LOG, in which the customer is given the technical capabilities and the authorisation to access a software application hosted on a EURO-LOG server by means of telecommunication, and to use the software application within the framework and scope of the contract concluded with the customer.

The customer is responsible in particular for:

- a) naming all foreseeable users of the SaaS. The customer is also obliged to inform EURO-LOG of any change to the designation of users, caused by changes in the organisation, changes of employees or similar;
- b) to safeguard the user rights and/or access rights assigned to him or his users, as well as the identification and authentication safeguards, against access by third parties, not passing them on to unauthorised users;
- c) and ensuring that (e.g. in the case of transferring third party text and data to EURO-LOG servers) all industrial property rights and copyrights are observed;
- d) obtaining the necessary consent from the party concerned - in so far as he collects, processes or uses personal data within the scope of using the SaaS, and refraining from interfering with any statutory permissions;
- e) not using SaaS improperly or allowing the improper use of it, in particular not transmitting any information with unlawful or unethical content, or referring to such information as is used for incitement to violence or to glorify or trivialise violence, information that is sexually offensive or pornographic, information that could morally endanger children or young adults or interfere with their welfare, or that which could harm the reputation of EURO-LOG;
- f) refraining from attempting to retrieve information or data either himself or through unauthorised third parties, or interfering or allowing the interference with programs operated by EURO-LOG, or penetrating EURO-LOG data networks without authorisation;
- g) not utilising the possible exchange of electronic messages improperly - for the unsolicited transmission of messages or information to third parties for advertising purposes (spamming);
- h) releasing EURO-LOG from all third party claims due to the unlawful use of the SaaS by him or by others with his endorsement, or that arise, in particular, from any data protection, copyright or other legal disputes in connection with the use of the SaaS. If the customer is aware, or is in a position to recognise, that a violation of this nature is about to occur, he is obliged to inform EURO-LOG immediately;
- i) reimbursing any expenses incurred from an inspection, after the issuance of a fault report (cf. Performance Specification) by EURO-LOG, if, after the inspection, it is found that no fault in the technical facilities of EURO-LOG was present and the customer could have recognised this through a reasonable check for faults;
- j) for obliging any users authorised by him in accordance with § 1, to comply with the provisions for the use of the SaaS as per the

provisions listed under clauses 1a.1 b) to g), i) and j);

- k) to back up his existing data in the system by download, until the time of the termination of the contract, as it cannot be ruled out that after the contract has been terminated, this data is no longer accessible to the customer.

1a.2 EURO-LOG is entitled to access the SaaS in the event of an unlawful infringement by the customer or a user designated by him against one of the essential obligations laid down in this contract, in particular in the event of a breach of the obligations specified in clauses 1a.1 e) - g), and to block his data. Access shall only be restored when the breach of the relevant essential obligation has been permanently remedied, or no risk of repetition exists - ensured through the provision of a cease and desist declaration to EURO-LOG. In this event, the customer remains obliged to continue paying the monthly fee.

1a.3 EURO-LOG shall be entitled to delete the affected data in the event of a breach of section 1a.1 e) - g).

1a.4 If the customer is guilty of a culpable breach relating to clauses 1a.2 and 1a.3, the customer is obliged to pay damages. EURO-LOG reserves the right to assert other claims for damages.

1a.5 In the event of an unlawful violation by the user of the obligations set out in clauses 1a.1 e) - g), the customer shall, upon request, immediately notify EURO-LOG of all details for asserting claims against the user, in particular his name and address.

## 2. Acceptance; transfer; delivery; payment

2.1 Insofar as any acceptance or partial acceptance has been expressly covenanted or is prescribed by law, any deliverable or portion thereof shall be deemed to have been accepted insofar as any of the following criteria are fulfilled:

- Insofar as the customer expressly or implicitly indicates to EURO-LOG that the deliverable in question has been accepted.
- Insofar as, within four weeks of delivery of any contractual product (pursuant to section 2.8) and in accordance with the provisions that follow, the customer fails to notify any defect to EURO-LOG that could substantially interfere with or impair use of the product as laid out or required in the Agreement, or that would interfere or impair customary and standard use of a product of this nature. Any customer notice of defect shall be effected in writing or via fax and shall indicate the exact nature of the defect. Any defect that interferes with or impairs product use, within the aforementioned meaning, to only a minor extent shall not entitle the customer to refuse to accept such product in whole or in part. Any such defect shall be remedied by EURO-LOG under the warranty in accordance with section 6 hereof.

- Any substantial defect pursuant to the aforementioned provisions that is duly notified to EURO-LOG in the prescribed fashion (notably in terms of formal requirements and timeliness) shall be eliminated by EURO-LOG within a period that is commensurate with the nature of the defect in question. On receipt of a notice of defect elimination, the customer shall check the results of such defect elimination within five working days, and insofar as such defect elimination has been successful, the customer shall accept/partially accept the deliverable in question in writing or via fax. Insofar as the customer fails to issue such acceptance within the said period or fails to indicate that any substantial defect still exists, the deliverable in question shall be deemed to have been accepted/partially accepted. On the other hand, insofar as the customer duly notifies EURO-LOG that a substantial defect still exists, EURO-LOG shall be entitled and obligated to make a second attempt to correct the defect within a reasonable period. Insofar as such second attempt fails and subject to fulfillment of the additional criteria prescribed by law, the customer shall be entitled to (a) lodge a claim for (i) loss or damage in lieu of the deliverable in question and (ii) reimbursement of fruitless expenditures and/or (b) terminate the Agreement, and/or (c) demand payment for any expenditure that was necessary in order to carry out any proprietary defect elimination activity.
  - A deliverable/partial deliverable shall also be deemed to have been accepted by the customer insofar as the customer undertakes any intervention in the system without prior written authorization from EURO-LOG.
- 2.2 EURO-LOG's fee for the contractual services shall be based on the price indicated in the relevant individual contract. Insofar as not otherwise stipulated in any individual contract, all payments for EURO-LOG services shall be due within ten days following the invoice date. All prices shall be subject to the legally applicable sales tax, without any deduction. All payments shall be effected via a debit transfer to EURO-LOG's bank account. Checks will be accepted as conditional payment only
- 2.3 Insofar as any amount due is invoiced on the basis of actual labor time spent or materials used, the following terms and conditions shall apply insofar as not otherwise stipulated in the individual contract:
- 2.3.1 EURO-LOG employees shall issue weekly work records indicating their work and travel time and any other activities.
- 2.3.2 Travel time (round trip travel time) shall be subject to the same charge as work time.
- On submission to the customer of the relevant receipts and invoices, the customer shall effect payment for any out-of-pocket expenses of any kind arising from performance of the Agreement, insofar as such expenses are more than € 50 per month.
- 2.3.3 Insofar as list prices are covenanted, the price list that was in effect on conclusion of the contract shall apply insofar as no change is effected in such list four months prior to the delivery date. In the event of any such change, the modified prices shall apply.
- 2.4 Insofar as not otherwise stipulated in the individual contract, EURO-LOG shall bill the customer monthly for labor and materials. A copy of any such invoice shall be enclosed with the work records referred to in section 2.3.1. Any customer objection to any indication in any such work record must be submitted within ten days following the invoice date in writing or via fax, whereby such objection shall also indicate the reasons therefor. Insofar as no such objection is lodged, the customer shall be deemed to have accepted the indications in the work records. Invoices shall be payable within 10 days of the invoice date. All prices shall be subject to the legally applicable sales tax, without any deduction.
- 2.5 Insofar as the customer is in arrears on any payment, as from the payment due date EURO-LOG shall be entitled to charge the customer interest in accordance with the currently valid statutory late-payment interest rate. The foregoing shall be without prejudice to EURO-LOG's right to demonstrate that EURO-LOG has incurred greater interest related loss or damage and to lodge a claim therefor.
- 2.6 The customer shall be entitled to deduct or withhold payment of any amount due EURO-LOG solely in connection with an undisputed receivable or a receivable whose validity has been upheld in a court of law.
- 2.7 EURO-LOG shall be entitled to exercise its right to refuse performance until such time as all amounts due EURO-LOG arising from this Agreement, as well as any other amount due EURO-LOG arising from the ongoing business relationship with the customer, have been paid in full.
- 2.8 Insofar as, by law and/or pursuant to this Agreement, any contractual product is to be transferred to the customer, such transfer shall be deemed to have been effected insofar as the customer or any customer-designated agent has been afforded the opportunity to exercise actual discretionary control over the product.
- 2.9 The contractual product shall be deemed to have been delivered within the meaning of the applicable statutory and/or contractual provisions insofar as such product has been transferred as provided in section 2.8 hereof.

An exception to the foregoing sentence shall be deemed to exist solely insofar as EURO-LOG is contractually obligated to install the contractual software and/or provide customer operating personnel with an introductory course in respect to such software. In such a case, the software shall be deemed to have been delivered on completion of such installation and/or introductory course.

- 2.10 The customer shall not be entitled to refuse to cooperate with transfer or delivery of a contractual product on account of any product defect that would not preclude acceptance of such product within the meaning of section 2.1. The foregoing notwithstanding, the presence of any such defect shall be without prejudice to the customer's right to lodge a defect claim pursuant to section 6, insofar as the criteria defined therein are fulfilled.

### 3. Retention of title

- 3.1 Until such time as payment has been effected of all amounts due EURO-LOG arising from this Agreement, as well as any other amount due EURO-LOG arising from the ongoing business relationship with the customer, EURO-LOG shall retain title to any delivered product, which the customer shall only be entitled to sell via a duly executed business transaction. Insofar as the customer carries out work on any product that is still owned by EURO-LOG, EURO-LOG shall acquire title to any newly created element arising from such work, subject to the provisions of section 3.4.
- 3.2 Having regard to any deliverables arising from this Agreement and to any software, tools system and/or data that are used in connection with this Agreement or that are made available to the customer, EURO-LOG shall retain title and sole right of control, as well as all copyright, industrial property rights, and intellectual property rights (including patents, patent applications, brand name rights, trademarks and so on), insofar as the right of control or licensing rights are expressly granted to the customer pursuant to the individual contract between the parties and the additional provisions in section 9.
- 3.3 Insofar as any EURO-LOG product is brought to any customer site, EURO-LOG shall be entitled to label such product "property of EURO-LOG." Insofar as any product owned by EURO-LOG is accessed by any third party – notably in connection with any third-party seizure – the customer shall indicate that such product is the property of EURO-LOG and shall notify such event to EURO-LOG without delay. The customer shall grant EURO-LOG access to any site necessary for performance of this Agreement and for accessing EURO-LOG property. On termination or expiration of this Agreement, the customer shall enable EURO-LOG to retrieve any EURO-LOG property that is on the customer's premises
- 3.4 By carrying out work on the said EURO-LOG products, the customer shall not acquire any title to any wholly or partially new element that is thus created. Such work shall be performed without charge and solely for EURO-LOG. The foregoing notwithstanding, insofar as EURO-LOG's retention of title lapses on account of any circumstance whatsoever, EURO-LOG and the customer hereby agree that title to the product in question shall be assigned to EURO-LOG upon such product being worked on, whereby EURO-LOG hereby accepts such assignment. In such a case, the customer shall remain the product custodian, without charge.
- 3.5 For the eventuality of any resale of any conditional product, the customer hereby assigns to EURO-LOG any receivable arising from any such resale, insofar as the product has been worked on. Insofar as any previously worked-on product contains, in addition to any EURO-LOG conditional product, additional components solely comprising elements that are either owned by the customer or that were delivered subject to so called simple retention of title, the customer shall assign to EURO-LOG the entire purchase-price receivable arising from the resale. However, insofar as such receivable has been previously assigned to two or more vendors, EURO-LOG shall be entitled to a portion of such receivable in accordance with the ratio of the invoiced amount of the conditional product to the invoiced value of the other items that were worked on.
- 3.6 On request from the customer, EURO-LOG shall release any financial guarantee accruing to EURO-LOG in accordance with the aforementioned stipulations and in EURO-LOG's discretion, insofar as the value of such financial guarantee persistently exceeds by more than 20 percent the EURO-LOG receivables covered by such guarantee.
- 3.7 Insofar as the customer meets its payment obligations to EURO-LOG, the customer shall be entitled to debit the receivables for its own use until revocation of such right. The right to perform additional work on or to resell any product, as well as the right to debit receivables, shall lapse in the event of any of the following: any suspension of payment of amounts due; filing for bankruptcy, or initiation of bankruptcy proceedings in accordance with the *Insolvenzordnung* (Bankruptcy regulation); any objection to any check or bank draft; any pledging of any product. Following any such event, any incoming payments for any outstanding receivables shall be accumulated immediately in a special account.
- 3.8 Any taking back of any product by EURO-LOG shall be realized solely as a precautionary measure and thus shall not constitute termination of the relevant contract, including in cases where partial payment is covenanted subsequently.

3.9 Any right arising from or in connection with performance of this Agreement shall be retained or acquired by EURO-LOG insofar as not otherwise stipulated in the individual contract or the additional provisions in section 9 hereof. This shall include the right to copyright contractual deliverables realized under the Agreement that are eligible for copyright protection.

#### **4. Delivery dates and periods; transfer of risk**

4.1 All indicated delivery dates and other performance deadlines shall be nonbinding in view of the fact that they are based on preliminary determination of the scope of the work involved. Delivery dates and delivery periods shall only be binding insofar as this is expressly covenanted in writing and the customer has met, in a timely manner, all of the customer's obligations to cooperate.

4.2 Any instance of force majeure or any unforeseeable circumstance (e.g. illness, sabotage, labor conflicts, fire and the like) that is unavoidable despite reasonable due care having been exercised in accordance with the circumstances of the case, the deadline/period in question shall be extended by a reasonable amount of time.

4.3 Insofar as EURO-LOG defaults on the provisioning of any deliverable that is due, the customer may terminate the Agreement and/or lodge a claim for loss or damage in lieu of the deliverable, or demand reimbursement for any reasonable expenditure effected by the customer in the good faith belief that the deliverable would be forthcoming, insofar as the customer previously gave EURO-LOG reasonable advance notice, in writing or by fax, concerning the impact of the deliverable and indicating that the customer intended to refuse delivery on the deliverable if delivery was not effected by the delivery date or by the end of the delivery period. If delivery is not effected by such date or by the end of such period, the customer may no longer request that the deliverable in question be provided. The criteria that must be met for the customer to assert the aforementioned type of claim shall also be governed by the applicable statutes and regulations. The amount of any customer claim for loss or damage (in lieu of the deliverable in question) or for reimbursement of any fruitless expenditure, insofar as either of the foregoing arise from any delayed performance, shall be limited to 10 percent of the gross invoice amount for the deliverable whose performance was delayed. Any claim for any greater amount shall be excluded, except insofar as such claim arises from any willful intent or gross negligence on the part of EURO-LOG. Any customer termination of the Agreement on the ground of delayed performance shall relate solely to the contractual relationship in whose scope the delay in question falls.

4.4 The price and performance risk for any deliverable that is shipped shall pass to the customer on transfer of such deliverable to the shipper. The foregoing shall also apply to any composite system installation that is subject to an acceptance procedure pursuant to this Agreement or as provided by law.

#### **5. Customer refusal to accept delivery/accept the products**

Insofar as the customer refuses to accept any contractual deliverable despite being contractually obligated to do so, EURO-LOG shall be entitled to set a 14 day grace period for the customer in writing. No such grace period need be set insofar as the customer adamantly and definitively refuses to accept delivery or is evidently not in a position to fulfill the customer's contractual payment obligations within such 14 day period. The legal regulations concerning cases entailing the foregoing of grace periods shall also apply in such instances. Insofar as any such grace period expires without a satisfactory resolution, or insofar as a grace period is foregone, and the customer refuses to accept/ take delivery on the product in question, EURO-LOG shall be entitled to terminate the Agreement and/or lodge a claim for damages (in lieu of payment) or for fruitless expenditures. Insofar as EURO-LOG lodges a claim for damages in such a case, EURO-LOG shall be entitled to demand payment of 30 percent of the gross invoice value of the product that was refused, as a lump sum damage payment. The foregoing shall be without prejudice to (a) the customer's right to demonstrate that EURO-LOG incurred no damages whatsoever or less extensive damages than claimed; and (b) EURO-LOG's right to lodge a claim for greater damages.

#### **6. Guarantee concerning defects in title and product defects**

6.1 Pursuant to the provisions that follow, EURO-LOG shall ensure that all products provided by EURO-LOG meet the performance and functional characteristics laid out in the product description that was valid on conclusion of the Agreement. This shall constitute a contract concerning specific characteristics but not a guarantee in this regard. The same shall apply to any technical data, specifications, performance descriptions, service manuals or quality descriptions that are issued by EURO-LOG. No public statement made by EURO-LOG or any EURO-LOG employee or agent, notably in any advertising, shall constitute a contractual product characteristic or a product-characteristic guarantee. Instead, any such guarantee must be expressly designated as such. In the absence of any expressly covenanted characteristics, EURO-LOG shall warrant that the contractual products are suitable for the contractually defined purpose (or at a minimum for the customary purpose) and exhibit characteristics that are customary for deliverables of this type and that the customer can reasonably expect to obtain.

In addition, EURO-LOG shall warrant that the contractual products are unencumbered by any third party rights that would restrict or preclude use of the products as defined in the contract.

## 6.2 Product defect warranty

6.2.1 The software shall be programmed in accordance with the generally recognized rules of programming and the state of the art at the time the Agreement was concluded. However, the contractual parties recognize that the current state of the art does not allow for data processing programs to be completely free of defects under all usage conditions. Hence any warranty to the effect that the contractual software will always be ready for operation without interruption is excluded. Hence the relevant defects that could thus potentially constitute a product defect that would engender a warranty claim shall be limited to the following, subject to the additional requirements defined in section 6.1:

- Any defect that could cause the computer system to fail to carry out its defined tasks in such a way that the results of such system's performance would fail customary commercial standards.
- Irrespective of the foregoing, a defect within the meaning of this clause shall constitute any syntax related and logical software error that substantially interferes with use of the system.
- Any degradation of user friendliness and/or user comfort or of any interface and/or screen layout, as well as any problem in understanding the product documentation and other accompanying materials, shall only constitute a defect insofar as such event substantially interferes with system use.

6.2.2 Insofar as any EURO-LOG customer notifies a defect within the meaning of sections 6.1 and 6.2.1 hereof following delivery, or following acceptance pursuant to the contract or as prescribed by law, subject to the stipulations of sections 6.2.6 and 6.2.7 EURO-LOG shall, in its discretion, either eliminate the defect or provide a defect-free product. For provisioned software, a defect may also be eliminated by EURO-LOG by providing the customer with a new software version (update) that is free of the defect notified by the customer. Such defect elimination, or provisioning of a contractually compliant software version (update), shall be realized within a reasonable period that is commensurate with the severity of the notified defect. On notification of elimination of the defect or delivery of a replacement product, the customer shall test out the performance results or replacement product within five working days. Insofar as the defect has been eliminated or the replacement product is free of the notified defect, within an additional five working days the customer shall submit, in writing or via fax, a confirmation of successful elimination of the notified defect.

Insofar as the customer fails to issue such confirmation within the said period or fails to indicate that the defect in question still exists, the product defect shall be deemed to have been successfully eliminated. On the other hand, insofar as the customer duly notifies EURO-LOG that the notified defect still exists, EURO-LOG shall be entitled and obligated to make a second attempt to correct the defect within a reasonable period either by eliminating the defect or providing a replacement product. In such a case, the customer shall notify EURO-LOG in writing or by fax as to whether or not such second attempt was successful.

6.2.3 Insofar as such second attempt fails, subject to the following requirements and the additional criteria prescribed by law, the customer shall be entitled to terminate the contract, deduct the relevant payment, file a claim for damages (in lieu of performance), or file a claim for reimbursement of fruitless expenditures or for expenditures arising from any customer effort to eliminate the defect. Insofar as EURO-LOG provides the customer with the contractual product under a long-term contract, the customer shall be entitled to terminate such long-term contract for Good Cause only after the second attempt to remedy the defect has failed.

6.2.4 The customer and EURO-LOG hereby agree that title to any item that is removed for reasons of replacement or repair shall pass to EURO-LOG.

6.2.5 Insofar as the customer lodges a claim for damages following failure of the second attempt to remedy a defect, the contractual product shall remain on the customer's premises insofar as this is reasonable for the customer. Any termination of the Agreement shall be excluded in such a case. This also applies to any customer claim concerning reimbursement of fruitless expenditures or of any necessary expenses incurred by the customer in attempting to eliminate the defect himself. Any such damages shall be limited to the difference between the amount paid by the customer for the defective product and the product's actual value. Insofar as any product is provisioned under a long-term contract, EURO-LOG's liability for damages shall be limited to the gross invoice amount during a contractual year.

6.2.6 Insofar as provisioning of a contractual product is evaluated in accordance with the provisions of sales law, within four weeks following delivery of the product (section 2.9) the customer shall verify the product's contractual conformance and in so doing shall notify to EURO-LOG any obvious or other defect within five additional working days (not counting the day upon which the said four week period ends) in writing or by fax. Insofar as the customer fails to carry out the verification of the contractual product and/or fails to notify a defect within the aforementioned period, the customer shall no longer be entitled to lodge any warranty claim arising from any obvious or other defect.

It shall fall to the customer to submit proof in respect to all claim related criteria, and notably in respect to the defect itself and timely notification of the defect.

- 6.2.7 The customer's right to lodge a warranty claim shall be subject to the customer having exhibited reasonable cooperation in respect to elimination of the defect, notably by submitting to EURO-LOG, immediately after the defect first comes to light, a readily understandable description of the defect and information that will be useful in detecting it. Insofar as the customer defaults on this duty to cooperate, EURO-LOG shall be entitled to charge the customer for any labor time that is expended on verifying the presence of the notified defect.
- 6.2.8 Any farther-reaching warranty claim, notably damage claims, shall be excluded, subject to the provisions of section 7. The warranty shall be voided insofar as, without written authorization from EURO-LOG, any hardware and/or software is used improperly or modified, or if its original technical identifiers are modified or removed. Insofar as the customer effects any system modification or fails to follow the operating manual instructions or maintenance instructions, it shall fall to the customer to prove that the defect notified by the customer was not provoked by such modification or intervention. Application of the foregoing shall be excluded insofar as EURO-LOG granted prior authorization for such modification or intervention.
- 6.2.9 Warranty work shall be carried out, in EURO-LOG's discretion, either on the customer's premises or at a EURO-LOG site. The customer hereby states that the customer is willing to accept an initial defect elimination attempt that takes the form of the customer receiving instructions from EURO-LOG that allow for an initial attempt to eliminate the defect. Insofar as such attempt fails, EURO-LOG shall be entitled to eliminate the defect via an online connection or at the customer's location.
- 6.3 Warranty for defects in title; third party copyright
- 6.3.1 The customer shall notify EURO-LOG in writing without delay insofar as any third party lodges a copyright infringement claim against the customer. The customer hereby grants EURO-LOG power of attorney to handle alone any legal dispute with such third party both in court and out of court. Insofar as EURO-LOG uses such power of attorney (whereby such use shall be in EURO-LOG's sole discretion), the customer shall refrain from recognizing any third party claim without prior EURO-LOG consent. In addition, in such a case EURO-LOG shall mount a legal defense in respect to the third party claim at EURO-LOG's sole cost and expense and shall hold the customer harmless against any legal costs or any damages of any kind arising from such defense, insofar as the third party claim is not attributable to any breach of contract on the part of the customer.

- 6.3.2 Insofar as the customer's contractual use of any provisioned product does in fact infringe any third party copyright, EURO-LOG shall remedy this situation by either (in EURO-LOG's discretion) (a) modifying the contractual product in such a way that it no longer falls within the copyright domain of the third party rights but in such a way that the product still exhibits the contractually defined or prescribed usability; or (b) take action to ensure that the customer can use the contractual product without restriction, at no additional cost, and in accordance with the contract.
- 6.3.3 The provisions of sections 6.2.2, 6.2.3, 6.2.4, 6.2.7 and 6.2.8 shall apply accordingly.
- 6.4 The warranty period for product defects and defects in title shall be one year as from the date of delivery of the contractual product (section 2.9). The statute-barred period shall not be interrupted or restricted by any optimization work, obtaining an expert report concerning a purported defect, or any similar measure. A new warranty period shall begin for any component that is replaced by a new component during the warranty period.
- 6.5 Any customer assignment of any warranty claim shall be excluded.
- 6.6 Insofar as any notified defect is undetectable, the customer shall assume the cost of any service that is performed in connection with such notified defect, whereby the price of such service shall be in accordance with the current EURO-LOG price list.

## **7. Liability**

- 7.1 EURO-LOG's liability shall be unlimited in the event of any breach of any contractual duty resulting from willful misconduct or gross negligence. For damages resulting from any breach of contract that is attributable to neither willful misconduct nor gross negligence on the part of EURO-LOG, nor to the absence of any contractually guaranteed characteristic, EURO-LOG's liability shall be limited to indemnification for damages that were foreseeable and characteristic for the contract involved and that should have been averted either by fulfilling the contractual duty that was breached or by the guarantee. Notably, EURO-LOG's liability for data loss shall be limited to the characteristic expense that would have been incurred for data recovery had backup copies been realized at regular intervals and in a manner commensurate with the risk involved. EURO-LOG shall be entitled to require the customer prove that the customer was insured against the risk of such data loss via insurance obtained from an insurer that is authorized to operate within the European Union.

In addition, EURO-LOG shall only be liable in the case of a culpable breach of a material duty where the contractual purpose is jeopardized, however this is always limited to the amount of turnover achieved by the customer in the calendar year of the damaging incident (excluding VAT), up to a maximum of EUR 100,000.00 per incident, however. Per calendar year, the maximum amount of liability against a customer is EUR 250,000.00. Furthermore, any EURO-LOG liability for any information or advice that is provided orally shall be excluded, except insofar as EURO-LOG has expressly assumed such liability.

- 7.2 EURO-LOG's liability for any late delivery shall be governed by the provisions of section 4.3. EURO-LOG's liability for product defects and defects in title in any contractual product shall be governed by the provisions of section 6.
- 7.3 The limits of liability laid out in section 7.1 shall also apply to any customer claim in respect to reimbursement for any expenditure reasonably effected by the customer in good-faith expectation of receipt of any contractual service (so called fruitless expenditures). However, application of the said limits of liability shall be excluded for personal injury and for any liability pursuant to the *Produkthaftungsgesetz* (Product Liability Act).
- 7.4 Except in cases involving loss, damage or personal injury arising from willful misconduct or gross negligence, any claim against EURO-LOG concerning loss, injury, damage or fruitless expenditures shall become statute-barred after one year. The said statute-barred period shall begin at the time stipulated in Article 199(2) of the German Civil Code (BGB), and shall begin no later than on expiration of the maximum periods stipulated in Articles 199(3) and 199(4) of the German Civil Code (BGB). This clause 7.4 shall be without prejudice to the divergent statute-barred period for liability for product defects and defects in title as provided in section 6.4 hereof.
- 7.5 Any EURO-LOG liability shall be excluded on any legal ground whatsoever, except insofar as otherwise stipulated in this section 7.

## 8. Term and termination of long-term contracts

- 8.1 Individual contracts concerning long-term contractual relationships shall come into force on being signed by both parties. Insofar as not otherwise agreed or insofar as not otherwise entailed by the nature of the contract, the term of any such individual contract shall be that defined in the contract itself. Insofar as an individual contract is concluded for an indeterminate period, the contract or specific clauses thereof shall be subject to termination by either party in writing with three months' notice prior to the end of any quarter, insofar as such termination does not result in the minimum term of the contract falling short of 12 months.

- 8.2 The foregoing shall be without prejudice to either Party's right to terminate the Contract for Good Cause and without notice. EURO-LOG shall be entitled to terminate a long-term contract for Good Cause notably insofar as any of the following events occur:

- Insofar as any payment is in arrears by more than 30 days.
- Insofar as the customer repeatedly and egregiously breaches any contractual duty or commits such breach despite having received a warning in this regard.
- Insofar as the criteria pursuant to sections 1.4 through 1.6 have not been met or substantiated, despite a warning having been issued in this regard.
- Insofar as the customer goes bankrupt, is subject to a procedure pursuant to the *Insolvenzordnung* (Bankruptcy regulation), or insofar as a petition for any such procedure is denied for reasons of insufficient assets.

Insofar as the customer sells or decommissions any contractual product during the term of the contract, this shall not constitute Good Cause for the customer's termination of the contract without notice.

## 9. Software licenses; software usage rights; materials; new developments

- 9.1 Any service involving the delivery of EURO-LOG software, upgrades, updates or other materials shall be governed by the licensing conditions that were accepted by the customer in the individual contract. The following licensing conditions shall apply insofar as not otherwise stipulated in such individual contract:
- 9.2 Any right of use to EURO-LOG software, upgrades, updates or any other materials granted under a long-term contract shall be granted for an indeterminate period and shall be subject to termination for Convenience by either contractual party in accordance with the notice period stipulated in section 8.1. The foregoing shall be without prejudice to either party's right to terminate for Good Cause such contract concerning the granting of rights.
- 9.3 Subject to the provisions of section 9.4, EURO-LOG shall grant the customer the non-exclusive and non-assignable right to the following,
- Unrestricted use of the software and other materials in accordance with the purpose defined in the individual contract, for all possible usage modalities.
  - The right to use, duplicate, forward, or employ in any other manner all associated information, insofar as any such action is necessary to achieve the defined purpose of the contract.

- 9.4 The customer shall be entitled to exclusive use of the rights mentioned in sections 9.2 and 9.3 to any copyrighted software or materials that are newly developed by EURO-LOG for the customer under this Agreement for a specific project or user. Insofar as any such software or materials are developed from software or materials that were available at EURO-LOG prior to the effective date of the contract, the customer's said exclusive right of use shall apply solely to any change or customization that is realized, but not to the underlying software or materials. In addition, under no circumstances shall the customer's said exclusive right of use include the underlying algorithms and/or any technical software procedure, or notably the source code, for any project or application specific software or materials.
- 9.5 The rights of use to the following shall be based on the covenanted rights of use to the individual software: know-how arising from programming; any development method that is devised; any generally applicable module such as program routines and drivers or any other saleable copyright; any idea, concept or other basis for any individual program. The right to any patentable invention that is realized in performing the contract shall accrue solely to EURO-LOG. The customer shall take all steps necessary to make such rights accessible to EURO-LOG and to assign such rights to EURO-LOG. EURO-LOG shall be entitled to patent any such invention under EURO-LOG's own name and at EURO-LOG's own cost and expense. The customer shall be entitled to simple, gratis, irrevocable, and unrestricted co-use of any invention.
- EURO-LOG shall not forego its right to designation of authorship in respect to any software that may be developed by EURO-LOG. Any customer right to indicate in such software that it owns the copyright to such software shall be excluded.
- 9.6 The customer shall not be entitled to do any of the following: grant sublicenses to any third party for the software or any copyrighted materials; rent, lease or market the software or materials to any third party. Insofar as the customer breaches this obligation, the customer shall either (a) effect payment to EURO-LOG of any proceeds arising from such breach; or (b) indemnify EURO-LOG for at least the damages incurred by EURO-LOG in the amount that EURO-LOG could have earned, in the presence of such breach, based on EURO-LOG's current price lists and the elements.
- 9.7 Insofar as, pursuant to an express contractual agreement, the customer is entitled to disseminate software or materials within the framework of the clauses above, the customer shall impose the same restrictions on the recipients as those stipulated by this Agreement.
- 9.8 Any right of use that is granted shall apply solely to software in object code. Accordingly, any customer right of any kind whatsoever to the source code of the contractual software shall be excluded.
- 9.9 Insofar as necessary to achieve interoperability with other software, EURO-LOG shall enable the customer to access the necessary information, whereby such access shall be granted solely for the said purpose of interoperability.
- 9.10 EURO-LOG shall act solely in the capacity of middleman in connection with third party software. Any software licensing agreement shall be concluded solely between the third party vendor and the customer in accordance with a separate covenant that is to be realized.
- 9.11 Insofar as not otherwise stipulated above, the licensing conditions that apply on acquisition of the original license shall also apply to any subsequently provisioned upgrade, update, new version, documentation or any other accompanying materials.
- 9a. Supplementary condition regarding usage rights, cooperation obligations etc. with the SaaS**
- 9a.1 The customer is given the non-exclusive right, limited to the duration of the contract, to access the SaaS by means of telecommunication, and via a browser, to use the functionalities connected with the SaaS in accordance with this agreement. The customer does not receive any additional rights, in particular to the software application or the operating software.
- 9a.2 The customer is not entitled to use the SaaS beyond the permitted use as per the contract, or to allow third parties to use it, or make it accessible to third parties. In particular, the customer is not permitted to duplicate, sell or permit the temporary use of the SaaS or parts thereof by another party, and he is especially not permitted to rent or loan the SaaS.
- 9a.3 The customer shall be liable for any loss incurred and the loss of profit for any usage of the SaaS by a third party that is culpably enabled by the customer. The customer shall retain the right to prove that no damage, or significantly less damage, occurred. In this case, EURO-LOG may exclude the customer with immediate effect from using the SaaS.
- 9a.4 In the event of an unauthorised transfer of use, the customer shall, upon request, immediately notify EURO-LOG of all details for asserting claims against the user, in particular his name and address.
- 9a.5 If the contractual use of the SaaS is adversely affected by the third party's proprietary rights without EURO-LOG being at fault, EURO-LOG shall be entitled to refuse the services concerned.

EURO-LOG will immediately notify the customer thereof, and will allow him access to his data in a suitable manner. The customer is not obliged to pay in such an event. Any other claims or rights of the customer remain unaffected.

## 10. Non-disclosure

10.1 Insofar as, in performing this Agreement, either party gains knowledge of any confidential information concerning the other party or any such party's agent, and notably any information concerning any technical, business, or operational matter, the recipient of such information shall keep such information strictly confidential. This nondisclosure obligation shall also remain in force following expiration or termination of this Agreement and shall apply notably to any of the following elements that either party discloses to the other party in performing this Agreement: plans; specifications; procedures; diagrams; computer programs; technical reports; concepts; documentation in written or machine readable form or in any other form. No such information shall be made accessible to any third party without the prior written consent of the other party.

10.2 Application of this nondisclosure clause shall be excluded for the following types of information:

- Any information that was not designated as protected or confidential or that was not clearly recognizable as protected or confidential information.
- Any information that is in the public domain at the time such information is disclosed.
- Any information that was made public in a manner not attributable to any breach of contract on the part of the recipient of such information.
- Any information that was known to the recipient prior to receipt of such information by the recipient.
- Any information that was legally obtained by the recipient from a third party.
- Any information that was demonstrably developed by the recipient himself.
- Any information that the disclosing party made available to a third party without indicating that such information was confidential or protected.

## 11. Data protection and data security

11.1 Both parties shall observe the relevant applicable data protection regulations, in particular the data protection laws in force in Germany, and oblige their staff employed in connection with the contract to comply with data security measures pursuant to § 5 BDSG [German Federal Data Protection Act], insofar as these are not already generally compulsory.

11.2 If the customer either himself or through EURO-LOG collects, processes or uses personal data, he vouches that he is only authorised to do so in accordance with the applicable regulations, in particular with regard to data protection, and releases EURO-LOG from third-party claims in the event of an infringement

11.3 It is made clear that the customer remains "master of the data" (§ 11 BDSG) both generally in the contractual relationship and in a legal sense in terms of data protection. With regard to the right of disposal and ownership of all customer-specific data (data entered, processed, stored data, output data), the customer is the sole authorised party. EURO-LOG exercises no control of the data and content which is stored on behalf of the customer with regard to the legal permissibility of collection, processing and usage; this responsibility is assumed exclusively by the customer. EURO-LOG is only entitled to process and/or use the customer-specific data exclusively on the instructions of the customer (e.g. to comply with cancellation and blocking obligations) and within the framework of this contract; in particular, EURO-LOG is prohibited in particular from making the customer-specific data accessible to third parties in any way without the prior written consent of the customer. This also applies if and to the extent that there is a change or addition to customer-specific data. EURO-LOG is, however, entitled to process and use of the data of the customer in line with data protection regulations during the validity of this contract (e.g. billing data for the purpose of billing services against the customer).

The customer-specific data are made available to the companies concerned in accordance with the content of the contract, e.g. logistics service providers, shippers and consignees. These are excluded from the above.

11.4 The software application, server and operating software as well as other system components of the SaaS are currently operated in the data centre of EURO-LOG and in a third-party back-up data centre. EURO-LOG may assign subcontractors, but must impose on the subcontractor the obligations of the previous clause (order data management).

11.5 EURO-LOG complies with the technical and organisational safety precautions and measures in accordance with the Annex to § 9 BDSG.

11.6 The customer is fundamentally not entitled to request access to the premises of the software application, server and operating software, as well as other system components of SaaS. This shall not affect the rights of access of the data protection officer of the customer, after a written application for verifying compliance with the requirements in accordance with the Annex to § 9 BDSG, as well as the other legal and contractual arrangements of EURO-LOG for handling personal data within the framework of the operation of the SaaS, according to the contract.

**12. Force majeure**

- 12.1 EURO-LOG shall be exempted from the obligation to provide services in the contract, if and insofar as the non-performance of services is attributable to the occurrence of force majeure, after conclusion of the contract.
- 12.2 Examples of force majeure include war, strikes, unrest, expropriations, substantial changes in law, storms, floods and other natural catastrophes, as well as other circumstances not foreseen by EURO-LOG, such as, in particular, power failures or the interruption or destruction of data-carrying cables.
- 12.3 Each party shall promptly notify the other party in writing in the event of the occurrence of force majeure.

**13. Miscellaneous provisions**

- 13.1 The parties shall work together in a spirit of mutual trust that is based on reciprocal thoughtfulness and loyalty. Notably the parties wish to resolve any contentious issue in an amicable manner via a substantive discussion, insofar as possible. Notably, within 24 months following expiration or termination hereof, neither party shall hire, recruit, head-hunt or otherwise employ any of the other party's personnel that were involved in any way with performance of this Agreement.
- 13.2 Any assignment of any customer right and/or claim arising from this Agreement shall be subject to prior written consent from EURO-LOG. EURO-LOG is entitled to transfer the rights and obligations arising from this contract to an affiliated company within the meaning of § 15 of the German Stock Corporation Act.
- 13.3 Should any individual provision hereof be or become void, illegal or unenforceable, the validity of the remaining provisions hereof shall in no way be affected. In such a case, the parties shall replace any provision of the Agreement that becomes ineffective with a clause whose effectiveness and feasibility are as close as possible to the intentions of the invalid clause. The foregoing shall also apply to any contractual loophole, or in the event application of the terms and conditions hereof would constitute an unreasonable hardship for either party.

- 13.4 Any failure on the part of EURO-LOG to exercise any right hereof shall not be construed to mean that EURO-LOG has foregone future exercise of such right.
- 13.5 This Agreement shall be subject to the laws of Germany to the exclusion of German international private law, and thus to the exclusion of the UN Sales Convention.
- 13.6 Any dispute arising from or in connection with this Agreement shall be adjudicated, insofar as allowed by law, by the Munich court known as *Landgericht München I*.
- 13.7 Any modification of or amendment to this Agreement shall be valid only if executed in writing. This applies as well to waiver of the requirement pertaining to documentation in written form. The covenant that is concluded in writing shall replace all prior oral and written agreements between the parties in respect to the subject matter hereof and will be regarded by the parties as the complete and exclusive basis for the contract between the parties.

**14. Contractual penalty for headhunting**

During the term of any contract between EURO-LOG and the customer, and for a period of one year following termination/expiration of the last contract that ended, the customer shall refrain from recruiting, for any independent or non-independent position, any EURO-LOG employee that is or was involved in whole or in part with performance of any contract. Any violation of this provision shall result in imposition of a €75,000 contractual penalty.

**EURO-LOG AG (EURO-LOG)  
Hallbergmoos**

**I: Specific EURO-LOG software support and maintenance conditions  
(last updated: April 2017)**

**1. Scope of the Agreement**

- 1.1 These terms and conditions of support and maintenance shall apply to the most recent version of any software that is provisioned by EURO-LOG insofar as at the beginning of the term of this Agreement the customer is provided with such software for purposes of use, or insofar as the customer obtains such software during the term hereof for the first time, additionally, or as a replacement for any currently used software, notably in the guise of an updated version (hereinafter referred to as the "Version Status"). The software Version Status that currently forms the basis for this Agreement shall be documented via a system description that is to be kept updated on an ongoing basis and whose current version is annexed to this Agreement and is an integral part thereof.
- 1.2 This Agreement shall notably not apply to the following:
- Measures for the purpose of eliminating any software problem that is covered by the warranty, that occurs during the statutory or contractual warranty period, and that is reported by the customer.
  - Maintenance of hardware components, including in respect to any operating system for any data processing equipment used by the customer.
  - Service and maintenance for any software version that is modified by the customer, or for any software application not authorized by EURO-LOG, or for any other third party software used by the customer.
  - Updating and archiving of customer data.
  - Installation of any software and any updated versions thereof.
  - Measures for the purpose of eliminating software problems provoked by (a) usage that runs counter to the currently valid specified usage conditions; or (b) any anomaly arising from any customer use of any software that does not fall within the scope of this Agreement.

**2. Scope of delivery**

- 2.1 The software services shall normally include help desk services (section 3), maintenance services (section 4), and update services (section 5). Training services shall be provided solely in accordance with a separate contract.
- 2.2 EURO-LOG shall be entitled to retain qualified third party vendors to provide the aforementioned services.

**3. Customer help desk**

The customer shall be entitled to phone the EURO-LOG help desk for questions concerning contractual software use at the following times: Monday through Thursday from 9 a.m. to 12 noon and 2-4 p.m.; Fridays from 9 a.m. to 2 p.m.

**4. Maintenance services**

EURO-LOG's maintenance service shall include the following deliverables:

- 4.1 Preventive maintenance for periodic updating of the contractual software.
- 4.2 The rectification of - reproducible - program errors and other deficiencies, which become apparent during the proper use of the software programs listed in the system description and/or in the associated user documentation, are carried out according to the following regulations. An error within the meaning of the foregoing shall be deemed to have occurred insofar as a software application does not conform with the specifications in the program description despite error-free operation of the software, or if the software functions do not perform as specified, in such a way as to (a) preclude use of the software as defined in the contract or (b) significantly interfere with such use. On the other hand, any other software defects shall be considered to be software anomalies that do not impair the functionality of the software or that only impair such functionality to a minor extent.

- 4.3 Software error elimination shall include error localization, error identification, and error elimination; or insofar as such error cannot be eliminated with reasonable effort, restoring software functionality via an error workaround. Insofar as not otherwise agreed in any specific instance, the customer shall assume sole responsibility for correcting the software's user documentation. Any other defects shall be remedied by EURO-LOG insofar as such remedy is realizable with reasonable effort. This shall notably not be deemed to be the case insofar as the defect can only be remedied by reprogramming key components of the software involved.
- 4.4 Insofar as any software error or other software defect cannot be remedied by migrating to a new version of the software involved, any EURO-LOG obligation to remedy any such error/defect shall be excluded insofar as the customer demonstrates that there is a good reason for the customer to forego migration to such new version. Application of the foregoing shall be excluded for any short term elimination of or workaround for individual software defects insofar as any such elimination or workaround is necessary in order to maintain software usability until such time as a new version of the software is installed.
- 4.5 EURO-LOG's maintenance service shall be available to the customer on working days as follows: Monday through Thursday from 9 a.m. to 12 noon and 2-6 p.m.; Fridays from 9-2 p.m. This shall - at EURO-LOG's choice - primarily be carried out via online remote maintenance or, if this is not possible, by means of a depot service, or by checking a program that is submitted by the customer on a data drive, or by means of an on-site service.
- 4.6 EURO-LOG's maintenance service shall be limited to maintenance of the most recent version of the software provided by EURO-LOG for the customer's use. On notification of issuance of a new updated version, support for the relevant prior version under this Agreement shall be provided for a maximum of six months.

## **5. Update service**

- 5.1 Any software provided by EURO-LOG shall be optimized in accordance with technical progress, user recommendations, the software maker's experience, and the system requirements stipulated by EURO-LOG.
- 5.2 During the term of this Agreement, EURO-LOG shall send the customer, at the customer's risk and expense, any updated version of any EURO-LOG software for use in the PCs indicated in the system description.

## **6. Customer's duty to cooperate**

The customer shall notify to EURO-LOG without delay and as a matter of course any circumstance that appears to necessitate any non-scheduled maintenance services.

## **7. Warranty**

- 7.1 Within the framework of EURO-LOG's maintenance and updating service, EURO-LOG shall provide a warranty to the effect that during the term of this Agreement any current software application or updated version thereof will exhibit its nominal state, which shall mean that when operated in accordance with the authorized usage conditions the software will conform with the specifications laid out in the currently valid software description.
- 7.2 Insofar as any effort to eliminate any software error fails to restore the said nominal state, the customer shall be entitled to require that the problem be remedied free of charge. Insofar as any problem occasioned by one and the same maintenance error is not remedied within a reasonable period by a second attempt to eliminate the problem, the customer shall be entitled, in the customer's discretion, to deduct the monthly service fee for the relevant contractual year for the software in question, or to partially terminate this Agreement in respect to the specific software affected. The lodging of any other customer claim shall be excluded in such a case.

## **8. Applicability of the Standard Terms and Conditions**

The Standard Terms and Conditions pursuant to Section I above shall apply to this Agreement additionally.