



General Terms and Conditions for the Permanent License, Maintenance of XFT Standard Software and for services

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Part A - General provisions

§ 1 Scope of application

- 1.1. These General Terms and Conditions apply to all contracts with XFT GmbH, SAP Partner-Port, Altrottstraße 31, 69190 Walldorf (hereinafter referred to as "XFT") for the permanent license and maintenance of XFT standard software.
- 1.2. Other XFT terms and conditions apply to other XFT services, e.g. services, software installation, parameterization or adaptation of standard software, instructions or training. Such additional services are not part of the contract and are subject to separate agreement.
- 1.3. These General Terms and Conditions apply exclusively; we do not recognize the terms and conditions of the Customer which conflict with or are contrary to our General Terms and Conditions unless XFT has explicitly approved the application of such terms and conditions in writing. Deviating general terms and conditions of the Customer are not recognized as being part of the contract even if XFT performs an order for the Customer without contradicting the general terms and conditions of the Customer referred to in the order. If, in addition to signing the contract, the Customer requires the generation of a separate order for internal processing processes, only the provisions of these General Terms and Conditions and the respective contract shall apply in the event of contradictions.

§ 2 Prices

- 2.1. Unless otherwise stated, all prices are exclusive of VAT, unless turnover is exempt from VAT.

Part B – Delivery and use of software

§ 3 Delivery item

- 3.1. If XFT and the Customer have entered a contract for the permanent license of XFT standard software ("software license agreement"), XFT will deliver the XFT standard software (hereinafter referred to in the following briefly as "Software") designated in the contract to the Customer. Unless stipulated otherwise in the software license agreement, the software will be supplied in the version generally approved by XFT for marketing at the time of delivery. Unless stipulated otherwise in the software license agreement, XFT will, along with the software, also supply the Customer with the user documentation belonging to the software in printable, electronic form.
- 3.2. The conditions of use and scope of functions of the software are determined according to the provisions of the software license agreement and the product description in the user documentation valid at the time the contract is agreed. Where there are contradictions, the provisions in the software license agreement take precedence. XFT is not obliged to provide any further software features. The Customer cannot, in particular, derive such an obligation from other representations of the software in public statements or in XFT's advertising, unless an XFT general manager with powers of representation has explicitly confirmed such further software features in writing.
- 3.3. For third-party software (including open source software) and other third-party products that XFT supplies to the Customer, unless otherwise agreed, the contract and license conditions of the respective manufacturer apply (or the license conditions under which the third-party software including open



source software is made available to the general public). In particular, these may contain regulations on the granting of rights of use as well as on warranty and liability that deviate from these General Terms and Conditions. If there are gaps in the contract and license conditions for the third-party software, the conditions in these General Terms and Conditions shall apply accordingly. Insofar as the XFT standard software contains third-party software (including open source software), this is listed below

- 3.3.1. In the following XFT products, third-party software components (including open source software components, later "OSS") are used in an unchanged form or in a form modified by XFT. The third-party software including OSS (exception: XFT Zeugnismanager - text module library) is provided free of charge. The Customer is entitled to use the third-party software in accordance with the license conditions (OSS license conditions) specified below. In the event of a violation of these OSS license conditions, the Licensor named there is also entitled to assert the resulting claims and rights in his own name in addition to XFT. The acceptance of the liability exclusions and warranty exclusions contained therein is a clear prerequisite for the use of the third-party software including OSS.

3.3.1.1. XFT Document Connector

The XFT product „XFT Document Connector“ uses the PocketSOAP component, which is licensed under the MPL 1.1 license. More information on the MPL license can be found at https://de.wikipedia.org/wiki/Mozilla_Public_License or <https://www.pocketsoap.com/pocketsoap/>.

3.3.1.2. XFT Outlook Plugin

The XFT product „XFT Outlook Plugin“ is based on Outlook File Drag from Tony Federer, which is licensed under the MIT-license. More information on the MIT-license can be found at <https://de.wikipedia.org/wiki/MIT-Lizenz> or <https://opensource.org/licenses/MIT>.

3.3.1.3. XFT Print Client

The XFT product „XFT Print Client“ uses the third-party software "Debenu PDF", for which XFT has a license. For more information see <http://web.archive.org/web/20141204002633/http://www.debenu.com/products/development/debenu-pdf-library/help/software-license-agreement/>.

3.3.1.4. XFT Zeugnismanager

On request, the XFT product "XFT Zeugnismanager" contains a text module library from the Boorberg-Verlag, which XFT also sells to the Customer.

Warranty note on the XFT product "XFT Zeugnismanager": XFT warrants that the database containing the text modules for references, which are purchased externally, is free from third-party rights that could be contrary to contractual use. Any further liability for the database contents is excluded. It is the responsibility of the Customer to check whether the text modules for work certificates are suitable for the specific application and satisfy the requirements of labor law; XFT is not liable for this.



- 3.3.2. XFT is liable for the products, including the OSS contained therein, in accordance with the license terms applicable to the product. Any liability for the use of the OSS beyond the program flow intended by us for the product as well as any liability for defects caused by changes to the OSS is excluded. XFT does not provide technical support for the products if these have been modified.
- 3.3.3. Some license terms of third-party software components used in these products may oblige XFT to provide the Customer with the source code and other information for these components. This information is located directly on or near the products (e.g. on mass storage media, DVD). If this is not possible for technical reasons, XFT will make an effort to send you this information against reimbursement of the processing costs.

§ 4 Delivery

- 4.1. Unless otherwise agreed in the software license agreement, XFT must supply the software either by sending a data carrier to the Customer's delivery address or by making the software available for electronic download by the Customer (electronic delivery).

§ 5 Rights of use

- 5.1. The parties agree in the software license agreement on the licenses purchased by the Customer in accordance with the XFT list of prices and conditions. XFT shall transfer the software licenses to the Customer upon payment of the agreed remuneration. The licenses provide authorization for the intended, permanent and non-exclusive use of the software and the user documentation. XFT expressly advises the Customer that he as the user, is responsible for acquiring adequate SAP licensing.
- 5.2. The Customer undertakes not to convert the standard software into another code form or to make changes to the code, unless this is permitted under the copyright regulations.
- 5.3. The Customer is entitled to make backup copies of the software to the extent that this is necessary for the future use of the software.
- 5.4. If the Customer receives a new version of the licensed software, e.g. in the context of subsequent performance, which then replaces a previously licensed version of the software, the Customer's right to use the previously transferred and now replaced software shall lapse as soon as the new software is put to productive use. Until the new version goes live, the Customer may use the new version of the software as a test system alongside the previously licensed and still operatively used software. A new version also includes software that has been provided with an update or support package.
- 5.5. Unless specifically stated otherwise in the contract, the Customer may only use the software for the purpose of handling its internal business and that of its associated undertakings. An "associated undertaking" is a legal person which is owned by the Customer (subsidiary) or to which the Customer belongs (parent company) or which belongs to the owner of the Customer (affiliate). "Ownership" refers in this context to a direct shareholding of more than 50%.
- 5.6. The use of software for the purpose of providing IT services to third-party undertakings is subject to the explicit, written granting of rights in the software license agreement.



- 5.7. If the Customer does not wish to use the software itself, it may only arrange for the software to be used for its own purposes by a third-party undertaking (e.g. hosting provider or outsourcing company), including its own associated undertakings, if this has been agreed in writing with XFT. XFT will not unreasonably refuse such agreement, thereby safeguarding its legitimate operational interests including but not limited to compliance with the contractual provisions regarding use and transfer of the software by the third-party undertaking.

§ 6 Transfer

- 6.1. The Customer may only transfer the software, which it has received for permanent use from XFT, to a third party (hereinafter referred to as the "second buyer") if:
- software which is supplied on data carriers is only transferred by means of the original data carriers (no copies);
 - the Customer has ceased using the software entirely and has erased or otherwise destroyed any existing copies; and
 - the Customer has informed XFT of the name and the full address of the second buyer.
- 6.2. Unless otherwise stated in this paragraph, the software may only be transferred as a whole. In its entirety the software also includes all subsequently purchased licenses for the relevant software and in this respect, these form a single item. Volume licenses may only be split in accordance with statutory provisions.
- 6.3. The Customer is not entitled to rent or lease the software to third parties.

§ 7 Remuneration

- 7.1. The Customer shall pay to XFT the contractually-agreed remuneration for delivery of the software designated in the software license agreement and for the rights to use the same for its intended purpose. If no remuneration has been agreed in the contract for the software, the Customer shall pay as remuneration to XFT the XFT list price for the software which applies at the time the contract is agreed.
- 7.2. The remuneration shall be payable when delivery is made and an invoice is issued.
- 7.3. XFT retains all rights to the software pending full settlement of the receivables arising from the software license agreement.

§ 8 End of right of use

- 8.1. When the right to use the software acquired by the Customer lapses (e.g. as a result of legitimate withdrawal), the Customer shall return all data carriers supplied to it with the software to XFT and, unless the Customer is required by law to comply with longer retention periods, shall erase any other copies of the software. In this case the right to demand return and erasure shall be extended for the period of the statutory retention period. The Customer shall provide written assurance to XFT that these steps have been taken.



Part C – Software maintenance

§ 9 Software maintenance services provided by XFT

- 9.1. If XFT and the Customer have entered a contract for the maintenance of XFT standard software ("maintenance agreement"), XFT shall provide the following maintenance services in return for payment of the agreed maintenance fees and in accordance with the provisions agreed in the maintenance agreement and the following provisions.
- 9.2. The Customer must in all cases have all licenses for XFT software (including later additional purchases or software purchased in the framework of maintenance) maintained in full by XFT or must terminate the maintenance agreement entirely for the relevant software.
- 9.3. Support
 - 9.3.1. XFT shall support the Customer during the term of the maintenance agreement with any application problems by providing troubleshooting, fault avoidance and workaround information.
 - 9.3.2. Support can be obtained from XFT from Monday to Friday, excluding statutory public holidays in Baden-Württemberg, between the hours of 9 a.m. and 6 p.m. ("support hours") via the SAP Service Marketplace using support component XX-PART-XFT.
 - 9.3.3. XFT draws the Customer's attention to the fact that support cannot replace the technical know-how regarding the ways in which the software is operated which is required in order to make use of the software. The XFT Support is therefore entitled to refuse to accept enquiries made by the Customer if such enquiries are based on the inadequate expertise of the personnel deployed by the Customer. XFT reserves the right to refer the Customer to further training courses which are relevant to specific enquiries made.
- 9.4. New releases, patches, support packages
 - 9.4.1. The Customer can demand all new releases of the software products included in the software maintenance, including patches and support packages for these software packages, during the term of the maintenance agreement. A new release is available as soon as a new software development stage has been generally released for marketing by XFT where such new stage differs from the previous version. A new release is accompanied by an increase in the version designation of the software (e.g. from 3.1 to 3.2).
 - 9.4.2. The release, patch or support package demanded by the Customer may be provided by XFT on a data carrier or as an electronic download. XFT is not obliged to implement the release, the patch or the support package as part of the maintenance agreement.
 - 9.4.3. XFT draws the attention of the Customer to the fact that compatibility with other computer programs with a new release of the software, a patch or support package may change. XFT therefore recommends that a new release of the software, a patch or support package is first tested in a non-operational environment.
 - 9.4.4. XFT grants the Customer the same rights of use to a supplied release, patch or support package for software as it originally granted to the Customer when the software was licensed.



9.5. Rectification of errors

- 9.5.1. If the Customer reports a software error during the term of a maintenance agreement, XFT shall provide the Customer troubleshooting support searching for the source of and rectifying the error or with measures to work around or bypass the error as detailed in the following.
- 9.5.2. An error exists if, when used as contractually intended, the software fails to perform or to perform correctly a function specified in the product description and if this error has more than an insignificant impact on the contractually envisioned use.
- 9.5.3. Errors are classified as follows:

Error class 1 (very high)	Very serious consequences for normal business operations and urgent, business-critical work cannot be carried out. The malfunction can lead to serious losses.
Error class 2 (high)	Regular business operations are seriously affected, and necessary tasks cannot be performed. The entire productive business process can be significantly affected.
Error class 3 (medium)	Regular business operations are affected.
Error class 4 (low)	Regular business operations are affected little or not at all. Functions that are not needed every day or used infrequently.

- 9.5.4. XFT and the Customer will reach agreement on the classification of any reported errors to one of these error classes. If it is not possible to agree on a classification, XFT will classify the reported error according to the information provided by the Customer taking account of the Customer's interests.
- 9.5.5. XFT will provide the Customer with an initial qualified answer according to the classification and within the specified response times, which means, XFT will provide the Customer with qualified answers so that the Customer can start the solution process for a software error that causes such an incident.

Error class 1:	Within 1 working day
Error class 2:	Within 5 working days
Error class 3:	Within 10 working days
Error class 4:	Within 20 working days

The response time begins from the time at which the error report is received by XFT's Support. If the error report is received outside of support hours, the response time will commence as soon as Support recommences work.



- 9.5.6. XFT will rectify a reported software or documentation error within a reasonable period of time. XFT shall not be held responsible for any delays caused by the conduct of SAP over which XFT has no influence. Errors may be rectified, although not necessarily finally, by one of the following measures:
- Delivery of a new available release
 - Delivery of available support packages or patches
 - Provision of a workaround
 - Instructions (notes) on how to rectify or workaround the error
 - Remote access error service
- 9.5.7. The Customer must accept any new release, support package or workaround for avoiding or rectifying a software error offered to the Customer by XFT. The Customer may only refuse to accept if this would have an unreasonable impact, such as adjustment or conversion problems for the Customer.

§ 10 Maintenance of old software releases and obligation to update

- 10.1. After a new release has been approved the Customer will only receive services under this maintenance agreement for the rectification of errors, delivery of new releases and support for updated software and the last two software releases generally approved by XFT. If the Customer is using an older version of the software, XFT may opt to continue providing services under the maintenance agreement unless stated otherwise in the following.
- 10.2. XFT services under this maintenance agreement for updated versions of the software and the two last software releases will be provided for the software versions of SAP system environments for which the relevant XFT releases have been approved and for which SAP AG itself still provides general maintenance services. If SAP discontinues maintenance services for a particular version, XFT's obligation to provide services for the relevant version of the SAP system environment under this maintenance agreement will also end.
- 10.3. If SAP still offers general maintenance services for a software version of the SAP system environment for which the current or one of the last two previous software releases have not been approved, XFT shall continue to maintain the last release approved for the SAP system environment until such time as SAP discontinues maintenance for this software version of the system environment.
- 10.4. If the Customer changes the system environment in which it operates the XFT standard software to a more recent SAP version, the Customer shall simultaneously change the XFT standard software to the latest release approved by XFT for this latest SAP version.

§ 11 Term and termination

- 11.1. The maintenance agreement shall come into effect on the stated contract commencement date. If no contract commencement date has been stated, the maintenance agreement shall come into effect when the maintenance agreement has been signed.
- 11.2. The maintenance agreement may be terminated by both parties at the end of a calendar year by serving written notice of three months, no earlier however than at the end of the calendar year in which two full contract years end as calculated from the start of the maintenance agreement. Partial termination of the maintenance agreement is not permissible.



11.3. This shall not affect the right to terminate for good cause. Notice to terminate shall also be made in writing.

§ 12 Remuneration and adjustments in remuneration

12.1. The Customer shall pay to XFT the flat-rate maintenance fees stipulated in the maintenance agreement. The flat-rate maintenance fee shall be due for settlement at the start of the maintenance period. Fees shall be settled every three months, six months or every year as agreed. If no specific agreement is made, fees shall be paid for an entire year in advance. Unless otherwise agreed, the settlement period refers to full calendar months (with the exception of settlement for the beginning of the first calendar month falling within the contract term).

12.2. If a flat-rate maintenance fee is not explicitly agreed in the maintenance agreement, this shall be 20% of the net list price of the software covered by the maintenance agreement per contract year.

12.3. If the Customer wishes to enter into a maintenance agreement despite having licensed older versions of the software at this time (e.g. because the Customer had not concluded a maintenance agreement at the time the software was purchased or had previously terminated an existing maintenance agreement), the Customer shall make an additional lump sum payment in addition to the agreement flat rate fee in order to receive the latest version at the time the contract began. The additional payment shall be due for payment in full at the time the maintenance agreement begins. Unless otherwise agreed in the maintenance agreement the additional payment shall correspond to the amount which would have been payable to XFT for a maintenance agreement from the time at which the software was purchased or if the maintenance agreement had continued to be effective. No claims may, however, be asserted against XFT for subsequent or renewed conclusion of a maintenance agreement.

12.4. XFT has the right to adjust the flat-rate maintenance fee for the maintenance agreement once per contract year with effect for the following calendar year no earlier, however, than six months after the contract has been signed.

12.4.1. The adjustment must be based on the consumer price index which is calculated and published once a month by the Federal Statistical Office in Wiesbaden.

12.4.2. The reference value for the consumer price index is the value of the consumer price index at the time the relevant maintenance agreement is signed. If maintenance services are agreed subsequently by the contracting parties, the value of the consumer price index at the time the supplementary agreement is made shall apply.

12.4.3. The reference remuneration is the flat-rate maintenance fee originally agreed by the contracting parties excluding price adjustments under this section 12.4.

12.4.4. XFT may request an increase in the reference remuneration by the percentage amount by which the value of the consumer price index has increased over the reference value at the time the request for an increase is made.

12.4.5. XFT must give advance written notice of at least two months of any price adjustments.



§ 13 Right to refrain from providing services

- 13.1. XFT shall be entitled to refrain from providing all or some of the services if the Customer has been in default of payment for longer than 30 days after an agreed maintenance fee is due for settlement. All further claims held by XFT remain unaffected.

Part D – Services

§ 14 Scope of application

- 14.1. These General Terms and Conditions apply to all contracts with XFT GmbH, SAP Partner-Port, Altrottstraße 31, 69190 Walldorf (hereinafter referred to as "XFT") for ordering services as well as performing of trainings.
- 14.2. These General Terms and Conditions apply exclusively; we do not recognize the terms and conditions of the Customer which conflict with or are contrary to our General Terms and Conditions unless XFT has explicitly approved the application of such terms and conditions in writing. Deviating general terms and conditions of the Customer are not recognized as being part of the contract even if XFT performs an order for the Customer without contradicting the general terms and conditions of the Customer referred to in the order. If, in addition to signing the contract, the Customer requires the generation of a separate order for internal processing processes, only the provisions of these General Terms and Conditions and the respective contract shall apply in the event of contradictions.
- 14.3. The handling of services and remuneration is defined in a range of services. The offers of XFT are always non-binding.
- 14.4. With the services provided under these conditions, XFT supports its Customer exclusively in the projects that the Customer carries out under its own responsibility. In connection with the services provided, XFT accepts no responsibility for a specific result or any responsibility for the project or its success, unless otherwise expressly agreed. XFT employees form their own organizational unit and are not integrated into the customer's operational business. The customer is not directly authorized to issue instructions to the XFT employees. XFT is committed to providing the service in accordance with the principles of proper professional practice.

§ 15 Rights on Performance Results

- 15.1. Unless otherwise explicitly agreed in an order, XFT grants the Customer at the time the service is rendered, a non-exclusive, transferable, territorially unlimited, sublicensable for non-commercial purposes, permanent and irrevocable right to use the intended use within the scope of the contractually agreed purpose performance results.
- 15.2. The right of use relates to the performance results in all development, intermediate and final stages as well as other materials necessary for the exercise of the rights of use, such as analysis, specifications and functional specifications, training documents, concepts and descriptions.
- 15.3. For the avoidance of doubt, the Parties agreed that the Z-coding (Customer specific developments) and customizing (of XFT products and in Z-tables) done in the Customers namespace is part of the work product and thus the ownership of Customer. The copyrights of XFT for its products (developed in /XFT/, /XFT1/ namespace) remain unaffected by this regulation.



Part E – Common provisions

§ 16 Obligations of the Customer

- 16.1. The Customer is responsible for installing the software and new versions of the software as well as patches, support packages and workarounds at its own cost correctly and in compliance with stipulations.
- 16.2. The Customer must create the necessary conditions required for the installation and use of the new versions of the software, patches, support packages and workarounds. This applies in particular to the installation of newer versions of the operating system or other third-party software needed to use the new version.
- 16.3. In the context of warranty for defects and maintenance, the Customer shall inform XFT without delay via Support of any software errors and provide any information which is pertinent. In the context of defect rectification and/or maintenance the Customer shall provide XFT with all the information necessary, e.g. about the system environment or a detailed description of the error, promptly and at no charge. The Customer shall also support XFT at no charge to the extent required with the rectification work and maintenance services.
- 16.4. If it is not clear which system components have provoked the failure, the Customer shall perform an analysis with XFT personnel of the software system environment and, where applicable, involve third companies with the required system environment know-how.
- 16.5. The Customer shall, at its own cost, provide and retain for the term of the maintenance agreement the technical infrastructure (e.g. lines, modems) required in order provide XFT remote access to the software which is to be maintained and the system environment.
- 16.6. If a Customer purchases the XFT add-on component XFT1, the Customer shall, at its own expense, provide the necessary development and correction infrastructure for the support staff of XFT for the provision of the support services, ia. as follows:
 - Customer's SAP Cloud Platform Account with activated service "SAP WEB IDE Full-Stack";
 - SAP Cloud Connector, which connects the development system of the customer's system landscape with its SAP Cloud Platform Account;
 - Support user on the SAP Cloud Platform account with appropriate permissions for import/export/maintenance of the SAPUI5 applications of the add-on package XFT1.
- 16.7. The Customer is responsible for proper, regular and risk-compliant data backups.

§ 17 Overuse and measurement

- 17.1. The Customer shall notify XFT without delay in writing of any overuse of the agreed right of use ("overuse"). Overuse can occur in particular if the maintenance agreement does not cover all the software licenses (cf. 9.2).
- 17.2. In the event of overuse, the Customer must retrospectively pay a fictive license fee or fictive flat-rate maintenance fee to XFT as compensation for such overuse. The fictive license fee or fictive flat-rate



maintenance fee is based on the list of prices and conditions in effect at the time of such overuse. If the overuse takes place within the effective period of various lists of prices and conditions, the first list of prices and conditions for the relevant period of infringement shall apply. Further claims for compensation held by XFT are not affected if the Customer acts with wilful intent or gross negligence.

- 17.3. XFT has the authority to measure the licensed software once a year. For this purpose the Customer shall start a software routine and send the results to XFT or XFT shall, with the agreement of the Customer, perform the measurement itself remotely. Following measurement and a written request by XFT the Customer shall confirm in writing for XFT the actual scope of use, such as that the licensed software has only been used and is only being used for its contractually agreed purpose.

§ 18 Defect warranty rights

- 18.1. If at the time the risk passes to the Customer there are material or legal defects in the delivery provided by XFT, XFT may opt to either rectify the defect by making new delivery or to remove (subsequent improvement) the defect. XFT may also opt to rectify a defect by providing the Customer with reasonable instructions for a workaround by telephone, in writing or electronically to the extent that this does not unreasonably impair the usability of the software.
- 18.2. If XFT is unable to rectify a defect within a reasonable period of time or if the subsequent improvement or new delivery must be regarded as abortive for any other reasons, the Customer may opt to withdraw from the contract or ask for a reduction in remuneration. Where continuous obligations exist (e.g. a maintenance agreement) the right of withdrawal shall be replaced by the right to terminate the contract extraordinarily. XFT shall be entitled to make any number of attempts to provide subsequent performance during the appropriate period for subsequent performance or new delivery. Subsequent improvement or new delivery may only then be assumed to have been abortive when XFT has seriously and finally refused, unreasonably delays or is otherwise prevented from taking such action or if there are any other special circumstances which would render any further delay unreasonable for the Customer.
- 18.3. XFT is only responsible for the defects for which it is responsible. The liability for defects is limited to the standard software and the contractually agreed maintenance of the standard software. Other services and ancillary services are not subject to liability for defects.
- 18.4. If it becomes apparent in the context of troubleshooting that the delivery or service provided by XFT did not have any material defects at the time of passage of risk, XFT shall be entitled to charge the Customer the cost of troubleshooting and dealing with the defect.
- 18.5. In the event of material or legal defects the Customer will accept a new version of the software delivered by XFT and install it at its own cost to the extent that the intended range of functions is retained and the installation does not result in unreasonable adjustment and conversion problems for the Customer.
- 18.6. If the intended use of the XFT deliveries or services results in a violation of third-party copyright or other industrial property rights ("legal defects"), XFT shall also indemnify the Customer against all claims asserted by the relevant proprietors of such rights where such rights are not disputed by XFT or have been recognized by legally established judgment. Any unavoidable court and legal costs incurred by the Customer as a result of the violation shall be borne by XFT. The above obligations of XFT arising from this section 18.6 shall only apply if
- the Customer notifies XFT without delay of any claims brought against it for violation of property rights,
 - the Customer provides appropriate support to XFT in warding off any claims asserted, and



- the violation of property rights is not the result of instructions issued by the Customer.
- 18.7. Claims held by the Customer for material or legal defects shall be statute barred one year after delivery. In contrast, the statutory limitation periods shall apply if XFT has fraudulently concealed the defect, has caused the defect by gross negligence or has accepted a guarantee (within the meaning of section 443 of the German Civil Code, BGB) for the absence of agreed quality.
- 18.8. In the event of fraudulent concealment or acceptance of a guarantee for quality (within the meaning of section 443 German Civil Code, BGB) by XFT the Customer's statutory rights relating to material and legal defects remained unaffected.
- 18.9. There is no warranty if the customer or third parties make unauthorized changes to the standard software. This does not apply if the customer proves that this change is not the cause of the reported defect or the client only installs new program versions or error messages of the standard software, made available by XFT.

§ 19 Liability for losses and compensation for wasted expenses

- 19.1. XFT disclaims liability for slightly negligent breaches of duty where such breaches do not concern major contractual duties, damages from injury to life, body or health, guarantees or claims under the Product Liability Law (ProdHaftG). The same applies to violations of obligations by XFT's agents in performance and legal representatives. Liability for gross negligence and wilful intent is unlimited.
- 19.2. Liability for slightly negligent breaches of a major contractual duty is limited to losses typical for the contract and which could reasonably be foreseen at the time the contract was entered into. Major contractual duties are those contractual obligations which must be fulfilled for the contract to be performed properly and which the contracting party can routinely rely on being complied with.
- 19.3. The liability of XFT for slightly negligent breach in relation to this contract is limited, regardless of the legal grounds, to the volume of the order or EUR 50,000 (in words: fifty thousand euros) – whichever is higher. If data is lost, only the cost of recovering such data will be replaced.
- 19.4. The Customer must accept liability for contributory negligence.
- 19.5. Warranty note on the product "XFT Zeugnismanager": XFT warrants that the database containing the text modules for references, which are purchased externally, is free from third-party rights that could be contrary to contractual use. Any further liability for the database contents is excluded. It is the responsibility of the Customer to check whether the text modules for work certificates are suitable for the specific application and satisfy the requirements of labor law; XFT is not liable for this.

§ 20 Software developments

- 20.1. Any results, further developments or new developments produced by or for XFT and all and any intellectual property rights associated with or incorporated in such results and developments (referred to collectively as "developments") shall be the exclusive property of XFT. Unless otherwise explicitly agreed in an order, this shall also apply if such developments are based on proposals, orders or any other input originating with the Customer.
- 20.2. For the avoidance of doubt, the Parties agreed that the Z-coding (Customer specific developments) and customizing (of XFT products and in Z-tables) done in the Customers namespace is part of the work



product and thus the ownership of Customer. The copyrights of XFT for its products (developed in /XFT/, /XFT1/ namespace) remain unaffected by this regulation.

- 20.3. If intellectual property rights to developments have not already been transferred to XFT on other legal grounds, the Customer shall in the case of 20.1 sentence 2 transfer all transferable rights held by it to the developments at no cost at the time such developments are realized. The rights thus granted include but are not limited to XFT's right to exclusively and comprehensively use, exploit, modify and further elaborate on the developments and to provide or transfer them permanently or temporarily to third parties.
- 20.4. The Customer shall have simple rights to use such developments in accordance with § 5 to the extent that this is necessary for the contractual use of the software.

§ 21 Offsetting and retention

- 21.1. The Customer may only offset or assert a right of retention in relation to receivables which are not disputed or have been recognized by legally established judgment.

§ 22 Confidentiality and data protection

- 22.1. The contracting parties undertake only to use any confidential information from the other contracting party for the purpose of the contract and to keep such information secret in all other respects. This shall also apply beyond the term of the relevant contract. "Confidential information" includes all other documents and data which are identified as confidential or where the confidential status of which is apparent from the circumstances or the source code of the software. Such information is only then not confidential if it was already public knowledge at the time it was disclosed without such public knowledge having resulted from a breach of contract by the disclosing party. The obligation to keep this data or information confidential does not apply to an official or statutory duty to disclose.
- 22.2. XFT shall comply with German data protection law, in particular the European General Data Protection Regulation (DSGVO) and the new version of German Data Protection (BDSG-new). XFT employees must be committed in their contracts of employment to data privacy and to compliance with statutory provisions on data privacy. XFT shall take the technical and organizational measures required by law to secure data privacy. The contracting parties will conclude an order processing agreement if XFT is commissioned to process personal data for the Customer. In the event of contradictory rules, the rules of this order processing agreement shall have precedence over the provisions of these General Terms and Conditions.

§ 23 Text form

Subsidiary agreements cannot be made verbally. At least the text form is required for the legal effectiveness of an agreement. Transmission by fax or as a scanned document by e-mail is sufficient for this purpose. This also applies to the cancellation of this text form requirement.

§ 24 Place of performance

Unless otherwise agreed in the contract the place of performance is the seat of XFT.



§ 25 Choice of law and legal venue

- 25.1. The law of the Federal Republic of Germany shall apply to the exclusion of the United Nations Convention for the International Sales of Goods (CISG).
- 25.2. Walldorf is the exclusive legal venue for all legal disputes arising from or in connection with this contract, including these General Terms and Conditions. In its role as plaintiff or claimant XFT nonetheless is also entitled to bring an action at the court with jurisdiction for Berlin-Mitte (10117) or for the seat of the Customer.