

# General terms and conditions of Gebauer GmbH

As at: August 2020

Obere Dammstrasse 8–10, 42653 Solingen, Germany | Telephone +49 (0)212 230 350 | Fax +49 (0)212 230 3545 | www.timeline-erp.de

## SECTION A - GENERAL PROVISIONS

### 1. Scope of application

1.1. These general terms and conditions (“**GTC**”) of Gebauer GmbH (“**Gebauer**”), in the version valid at the time when the contract is concluded, apply to all business contracts between Gebauer GmbH and the customer (“**Customer**”) which concern:

- (1) the licensing and the standard software solution *TimeLine* pursuant to *Section B*,
- (2) the licensing of third party software pursuant to *Section C*,
- (3) the rendering of software maintenance services pursuant to *Section D*,
- (4) the rendering of hosting services pursuant to *Section E*,
- (5) the rendering of works and services pursuant to *Section F*, and
- (6) the sale of hardware pursuant to *Section G*.

1.2. General terms and conditions of the Customer or any other contractual terms prescribed by the Customer (“**Customer GTC**”) will not become an integral part of the contract (even if Gebauer does not expressly reject them), unless Gebauer accepts the Customer GTC in writing. This also applies if the Customer makes reference to the **Customer GTC** in a standard order form or otherwise in connection with an order, or if Gebauer – knowing that there are conflicting Customer GTCs – renders services unconditionally.

1.3. Contractual relationships between Gebauer and the Customer are governed solely by these GTC and the documents referenced herein. There are no verbal side agreements. Any specifications, catalogues of requirements, and other documents which the Customer sends to Gebauer in the period before the contract is concluded will only become an integral part of that contract if they are expressly mentioned in the contract or if Gebauer gives its express written confirmation.

1.4. If provisions of these GTC are or become invalid, either wholly or in part, this does not affect the validity of the remaining provisions of these GTC. The same applies in the event of a loophole. Instead of the void, invalid, contestable or unenforceable provision (or to close the loophole), an appropriate provision will apply which – to the extent legally possible – comes as close as possible to what the parties would have wanted from a commercial point of view if they had recognised that the contract had a regulatory gap.

### 2. Conclusion of the contract

2.1. A contract between Gebauer and the Customer is concluded upon written confirmation by Gebauer or when a contract between Gebauer and the respective Customer is

signed by both of these parties. Order confirmations may be sent by email.

2.2. If both of the parties sign a contractual document, this document determines the scope, type and quality of the deliveries and services to be rendered by Gebauer; otherwise the service specification set out in the offer or in Gebauer’s order confirmation is decisive. Any other information or requirements will only become an integral part of the contract if Gebauer expressly confirms this in writing.

### 3. Contract amendments

3.1. All agreements which amend, supplement or further specify these GTC or contain any other contractual provisions agreed between the parties, and any other representations or covenants, must be in writing. If these are declared by representatives or agents of Gebauer, they are only binding if Gebauer confirms this in writing.

3.2. Gebauer is entitled to amend these GTC or other contractual terms during the term of the contract, subject to the following provisions:

- a) Gebauer is entitled to amend these GTC or other contractual terms for good cause. Good cause in this sense includes a change in the caselaw, new technical developments or due to other equivalent reasons. In such cases, Gebauer will inform the Customer about the changes to the terms of the contract in writing or by email. The amended terms and conditions will become an integral part of the contract if the Customer does not raise an objection in writing or by email within six (6) weeks of receiving the notification of the amendment, informing the Customer that the amended terms and conditions will become part of the contract.
- b) In addition, Gebauer is entitled to adjust the agreed maintenance- or hosting fees no more than once per quarter to suit changing market conditions or if there is a material increase in procurement costs. If price increases exceed the increase in the official consumer price index for the Federal Republic of Germany or any successor index by more than two (2) full percentage points, the Customer has a right to terminate the contract if prices are adjusted. In such cases, Gebauer will notify the Customer of its right of termination a reasonable period in advance in text form.

### 4. Liability, warranties

4.1. Gebauer’s liability for damages or compensation for fruitless expenditures under or in relation to the contract is restricted as follows – regardless of the legal basis for the claim (e.g. a legal transaction or relationship of obligations similar to a legal transaction, breach of obligation, tort, guarantee claim):

4.1.1. Gebauer’s liability is unlimited

- a) for intention,

## General terms and conditions of Gebauer GmbH

As at: August 2020

Obere Dammstrasse 8–10, 42653 Solingen, Germany | Telephone +49 (0)212 230 350 | Fax +49 (0)212 230 3545 | www.timeline-erp.de

- b) for culpable injury to life, limb or health,
  - c) according to the provisions of the Product Liability Act, and
  - d) within the scope of warranties given by Gebauer.
- 4.1.2. Apart from in the cases specified in Article 4.1.1, Gebauer's liability for negligence is limited as follows:
- a) Gebauer's liability for gross negligence is limited to the damage which is typical for the type of transaction and which was foreseeable when the contract was concluded.
  - b) In the event of a slightly negligent breach of a material contractual obligation, the fulfilment of which is a prerequisite for the proper performance of the contract and the observance of which the Customer regularly relies on and may rely on, and the breach of which jeopardises the achievement of the purpose of the contract ("**Cardinal Obligation**"), Gebauer's liability is limited to the damage that is typical for the type of transaction and was foreseeable at the time of the conclusion of the contract. In addition to the foregoing, Gebauer's liability in such cases is limited, irrespective of the legal reason, per damage event to the payments made by the Customer to Gebauer under the respective individual contract in the twelve (12) months prior to the damage event as consideration for the respective performance, but not exceeding EUR 25,000.00. Gebauer is not liable for the slightly negligent breach of other contractual obligations which are not Cardinal Obligations.
  - c) No damages can be claimed for lost profits, lost savings or disruptions to business operations.
- 4.1.3. Gebauer is liable for the loss of saved data according to the above rules, but only if the Customer has ensured that this data can be recovered at reasonable expense by performing a proper back-up. Liability is limited to the costs of recovering the data.
- 4.2. Gebauer has only given a warranty in the legal sense if the respective provision or document has been expressly labelled as a "warranty".
- 4.3. The above limitations on liability under this Article 4 apply to all employees, representatives, corporate bodies and agents of Gebauer.
- 5. Confidentiality and data protection**
- 5.1. The parties will keep all confidential information, documents, business processes and data which are sent to them by the other party in the course of performing the contract or of which they otherwise become aware (hereinafter referred to collectively as the "**Confidential Information**") confidential, will not disclose it to third parties and will only use it for the purpose specified in the contract. The parties must apply the same level of care in respect of the Confidential Information as it applies to its own confidential information, but in any case the level of care of a prudent businessman.
- 5.2. Unauthorised third parties within the meaning of Article 5.1 do not include consultants to the parties and/or employees and/or consultants to the parties' respective affiliate companies or companies belonging to the TimeLine Business Solutions Group who/which need the information to carry out their work on the respective contract ("**Authorised Third Parties**"). The parties will ensure that all Authorised Parties are bound in writing to comply with the provisions of this contract, if the Authorised Parties are not already bound by such confidentiality obligations. The Authorised Parties' confidentiality obligations survive and continue to apply after the departure of an employee from a party.
- 5.3. The parties will observe the respective applicable provisions of data protection law and ensure that any of their staff who are involved with the contract and its performance are bound by data secrecy obligations if they are not already bound by such obligations.
- 5.4. If the Customer collects, processes or uses personal data in the course of performing the contract, it must ensure that it has the relevant authorisations under the applicable provisions of data protection law and will indemnify Gebauer against any claims of third parties in the event of a breach. If Gebauer processes personal data on behalf of the Customer pursuant to a contract, the Customer is liable for the lawfulness of the disclosure of data to Gebauer. If required, the parties will set out the specific details concerning data protection in a separate data processing agreement.
- 6. Payments; setting off; assignment of claims; right of retention**
- 6.1. The Customer may only set off using claims which are not disputed by Gebauer and which have been legally established. The above restriction on the Customer's right to set-off does not apply with regard to contracts to produce a work.
- 6.2. Apart from in the cases specified in section 354a German Commercial Code (*Handelsgesetzbuch*, HGB), the Customer is not entitled to assign any claims under the contracts it concludes with Gebauer and may not assign or transfer any rights or obligations under contracts with Gebauer either wholly or in part without the consent of Gebauer. This also applies to guarantee claims.
- 6.3. The Customer may not exercise its right of retention pursuant to section 273 German Civil Code (*Bürgerliches Gesetzbuch*, BGB). The Customer may only assert a right to withhold performance pursuant to section 320 BGB based on undisputed, legally established claims, or claims with regard to which a decision is imminent.
- 7. Place of performance/fulfilment; retention of title**
- 7.1. The place of performance and fulfilment for hosting services is the data centre where the applications and data are hosted. For the remainder, the place of performance and fulfilment for all claims under the contract is

## General terms and conditions of Gebauer GmbH

As at: August 2020

Obere Dammstrasse 8–10, 42653 Solingen, Germany | Telephone +49 (0)212 230 350 | Fax +49 (0)212 230 3545 | www.timeline-erp.de

Solingen, unless the parties expressly agree otherwise in the individual case.

- 7.2. Gebauer retains title in all items and objects delivered (“Retention of Title Goods”) until all claims which Gebauer has against the Customer, either at present or in the future (including all balance claims on current accounts), have been settled. If the Customer breaches the contract – including by defaulting on payment of remuneration – Gebauer is entitled to withdraw from the contract, provided that Gebauer first sets a reasonable grace period for performance. If Gebauer takes back the Retention of Title Goods, Gebauer is deemed to have withdrawn from the contract. The Customer will bear any transport costs incurred for taking the goods back. Gebauer is also deemed to have withdrawn from the contract if it subjects the Retention of Title Goods to distraint. Any Retention of Title Goods which Gebauer takes back may be sold by Gebauer. Proceeds from the sale may be applied to set off such amounts as the Customer owes Gebauer, after Gebauer has deducted a reasonable amount to cover the costs of sale.
- 7.3. The Customer must handle the Retention of Title Goods with care. It must insure them at its own expense against fire- and water damage and theft. The insurance must cover the replacement value of the goods. If maintenance and inspection work is necessary, the Customer may carry out such work at its own expense.
- 7.4. If Retention of Title Goods are subject to distraint or other interference by third parties, the Customer must make indication of Gebauer’s property rights and notify Gebauer in writing without undue delay so that Gebauer may enforce its property rights. If the third party does not wish to reimburse Gebauer for the costs it has incurred in this regard in and out of court, the Customer is liable for such costs.
- 7.5. If the Customer so requests, Gebauer is obliged to release the securities to which Gebauer is entitled to the extent that their realisable value exceeds the value of the outstanding claims against the Customer by more than 10%. Gebauer may select which securities it releases.

### 8. Restrictions on exports and imports

- 8.1. The parties acknowledge that the software licensed under the contract or other services to be rendered under the contract may be subject to import and export restrictions, e.g. in the form of obligations to obtain permits or other restrictions on using the software or other services abroad.
- 8.2. The Customer must comply with all applicable export and import rules in the Federal Republic of Germany, the European Union, the United States of America and any other relevant import and export rules. Gebauer’s obligation to perform the contract is subject to the condition that fulfilment is not prevented or impeded by any provisions of national or international export- or import law, and does not conflict with other applicable provisions of law.

### 9. Place of jurisdiction and choice of law

- 9.1. The exclusive place of jurisdiction for all disputes which arise in the course of conducting the contractual relationship is Solingen. However, Gebauer is entitled to bring legal action against the Customer at the Customer’s general place of jurisdiction.
- 9.2. The contract is exclusively governed and construed in accordance with the laws of the Federal Republic of Germany, excluding standard UN Sales Law (the United Nations Convention on Contracts for the International Sale of Goods).

## SECTION B – SOFTWARE LICENCE FOR THE STANDARD SOFTWARE SOLUTION TIMELINE

### 10. Scope of application

The following provisions of this *Section B* apply in addition to the provisions of *Section A* to contracts between Gebauer and the Customer concerning the licensing of the standard software solution *TimeLine* (“**Software**”) for its use for an unlimited term (purchase licence).

### 11. Scope of services

- 11.1. By concluding the contract, Gebauer accepts an obligation towards the Customer to (i) provide the agreed Software modules, including the user’s handbook (collectively referred to as the “**Licensed Object**”) pursuant to Article 12 and (ii) to grant the rights to use the **Licensed Object** pursuant to Article 13.
- 11.2. By placing the order, or signing the contract, the Customer confirms that, at the time of concluding the contract, it is aware of the essential functional characteristics of the Licensed Object and that the agreed specifications match its needs and wants.

### 12. Delivery

- 12.1. If the Customer does not wish to procure any hosting services pursuant to *Section D* in relation to the Software, the Software will be delivered by transmitting the Software or by sending the information to the Customer which is necessary for downloading the Software.
- 12.2. If the Customer procures hosting services pursuant to *Section D* in relation to the Software, the Software will be delivered by (i) providing the Software on the cloud server, and (ii) delivering access software (“**Client**”) which enables access to the Software during the agreed term of the contract pursuant to Article 31.
- 12.3. The Licensed Object will be delivered/provided in the object code version. The Customer does not have any right to the provision of the source code for the Licensed Object.

## General terms and conditions of Gebauer GmbH

As at: August 2020

Obere Dammstrasse 8–10, 42653 Solingen, Germany | Telephone +49 (0)212 230 350 | Fax +49 (0)212 230 3545 | www.timeline-erp.de

- 12.4. Information about the delivery- or performance schedule is only binding if it is expressly stated to be so in the contract.
- 12.5. The parties may expressly agree that Gebauer will also install the purchase licence object according to *Section E* for a separate fee. Otherwise, the installation of the purchase licensed object is not part of the performance owed by Gebauer.
- 13. Rights to use**
- 13.1. Upon the payment in full of the agreed licence fees, Gebauer will grant to the Customer a non-exclusive, perpetual licence to use the Licensed Object to the extent specified in the contract according to the following provisions. The licence includes the right (i) to install the Licensed Object, and (ii) to register and use the Software with the acquired number of seat licences (“*per seat licence*”). At any one time, the Software may be used by a maximum of the number of seats agreed in the contract. The Customer is entitled to print out the user’s handbook provided, if it was provided on a data carrier.
- 13.2. The right of use pursuant to Article 13.1 is limited to the intended use of the Licensed Object of supporting internal business operations of the Customer and its affiliated companies. Use for the purpose of supporting third party business operations is not included in the licence granted and requires a separate agreement. No further rights are granted. The licence granted does not include the right to distribute the Licensed Object or make it accessible to the public.
- 13.3. The grant of rights under Article 13.1 does not include the source code for the Licensed Object. It is not permitted to either convert the object code version of the Licensed Object provided into source code and/or to edit it. The Customer is solely entitled to decompile and duplicate the machine-readable Licensed Object, provided that this is absolutely necessary according to the mandatory provisions of intellectual property law to achieve interoperability with other programmes; however, this only applies subject to the condition that Gebauer has failed to provide the information required to do this to the Customer within a reasonable period upon being requested.
- 13.4. The Customer is entitled to create a copy of the Licensed Object for back-up or archiving purposes only, or – if it is only keeping the original for back-up or archiving purposes – to transfer the software to a hard drive. The Customer must label the backup copy it creates as a “backup copy” and affix Gebauer’s copyright mark on it so that it is visible.
- 13.5. The Customer is not permitted to assign or transfer the licence rights granted to it to third parties, or sub-license them, or to publicly reproduce the Licensed Object over cable or wireless networks, or to rent out, lease or lend the Licensed Object, or to enable third parties to use it otherwise, e.g. by way of application service providing or as software as a service. Regardless of this, the Customer is – subject to prior written consent by Gebauer – entitled to hand over the Licensed Object to a third party permanently, surrendering the licence certificate and the related documentation. Gebauer may only refuse this consent on reasonable grounds. If it does hand over the Licensed Object in this way, the Customer must surrender the use of the Licensed Object completely, remove all installed copies of the Licensed Object from its computers and erase all copies on other data carriers or hand them back to Gebauer. This applies unless the Customer is obliged by law to keep such items for a longer period. Upon Gebauer’s request, the Customer will give written confirmation of the completion of the measures specified, or specify the reasons for keeping the relevant items for a longer period. Furthermore, the Customer will expressly agree with the third party that the scope of the rights granted under this agreement must be complied with. It is not permitted to split licence volume packages which have been acquired.
- 13.6. If the Customer uses the Licensed Object to an extent which exceeds the acquired rights of use qualitatively (in respect of the type of use permitted) or quantitatively (in respect of the number of licences acquired), it will acquire the rights of use which are necessary to allow this use without undue delay. If it fails to do this, Gebauer will enforce its own rights.
- 13.7. The Customer will not remove from the Licensed Object (or change) the copyright mark or any other features which serve to identify the programme.
- 14. Material defects**
- 14.1. Gebauer guarantees that, in essence, the Licensed Object has the functions specified in the agreed product specification, provided it is deployed and used according to the instructions in the user’s handbook. There are no guarantees for parts of programmes which the Customer modifies or does not deploy or use in compliance with the instructions in the user’s handbook, unless the Customer proves that the modification or non-compliant use was not the cause of the defect.
- 14.2. In the event of a material defect, Gebauer is initially entitled to provide subsequent performance. If subsequent performance fails, the Customer may request a reduction in price or withdraw from the contract. Gebauer may choose whether to render subsequent performance by delivering a substitute item or by improving the defective item. If there are any disruptions to the function of the software, subsequent improvement may also be effected or supported by delivering or installing an update or patch.
- 14.3. The Customer will assist Gebauer as appropriate as part of error analysis and troubleshooting and will describe any problems which occur with the Licensed Object specifically and inform Gebauer about such problems comprehensively without undue delay. Gebauer is entitled to troubleshoot the error by way of remote maintenance

## General terms and conditions of Gebauer GmbH

As at: August 2020

Obere Dammstrasse 8–10, 42653 Solingen, Germany | Telephone +49 (0)212 230 350 | Fax +49 (0)212 230 3545 | www.timeline-erp.de

or remote diagnosis to the extent that this is reasonable for the Customer.

- 14.4. The Customer is not entitled to remedy material defects itself and then claim compensation for the costs incurred.
- 14.5. The Customer must notify obvious defects without undue delay but in any case within four (4) weeks of the relevant delivery. Any other defects must be notified without undue delay after being discovered. A comprehensible description of the defect must be attached to the notification. If the notification is not made in a timely manner, the Licensed Object is deemed to have been accepted with regard to this defect. To that extent, any guarantee claims will lapse.
- 14.6. Gebauer does not provide any guarantee and does not assume any liability (i) to the extent that the Customer fails to discharge its notification obligations or the failure of the Licensed Object was caused by misuse or improper use, or (ii) for the defect-free interoperability of the Licensed Object with third-party software which the Customer uses at its own initiative.
- 14.7. The statute of limitations for claims due to material defects begins to run when the performance object is delivered to the Customer and expires after one (1) year.

### 15. Legal defects

- 15.1. Gebauer guarantees that the use of the Licensed Object by the Customer in compliance with the contract does not infringe any third party rights. In the event of a legal defect, Gebauer may choose whether to provide the Customer with a legally unobjectionable way to use the Licensed Object or provide an equivalent Licensed Object which is free of legal defects.
- 15.2. The Customer must inform Gebauer in writing without undue delay if third parties commence legal action against the Customer due to a breach of property rights in the Licensed Object.
- 15.3. The statute of limitations for claims due to legal defects begins to run when the performance object is delivered to the Customer and expires after two (2) years.

### 16. Remuneration

- 16.1. As consideration for the provision of the Licensed Object and the grant of the licence, the Customer will pay remuneration to Gebauer in the amount of the one-off fee specified in the order confirmation or the contractual document.
- 16.2. All prices stated are net and are exclusive of the respective statutory VAT.
- 16.3. The remuneration will be billed according to the schedule set out in the order confirmation or the contractual document. Invoices fall due for payment without deduction within fourteen (14) days of the date on the invoice.

### 17. Customer's cooperation obligations

- 17.1. The Customer is required to cooperate to the extent reasonable. In particular, this means that the Customer must provide all the necessary business and project-related information.
- 17.2. The Customer must ensure the functionality of the work environment in which the Licensed Object will be used. This does not apply to a working environment which Gebauer provides as part of hosting services for the Customer.
- 17.3. The Customer must take reasonable precautions for the event that the Licensed Object does not work. In connection with the use of the Licensed Object, the Customer must make regular data backups and use state-of-the-art software to protect against viruses and other malware.
- 17.4. Obligations to cooperate within the meaning of this Article 17 are material core obligations of the Customer and are agreed on as such.

### 18. Right of inspection; prohibition on use

- 18.1. The Customer grants Gebauer the right to have compliance with the agreed licence terms verified by an expert who is bound by confidentiality obligations or by means of remote access to the Licensed Object. The Customer will assist Gebauer (or the expert) to the extent required as part of the inspection and ensure that the inspection can be carried out without impediment. Gebauer will notify the Customer of inspections to be carried out by an expert or by means of remote access at least five (5) days in advance. If the inspection should identify a breach of the licence, the Customer must bear the costs of the inspection. The Customer must pay any additional licence fees according to the respective valid price list of Gebauer for each breach of the terms of a licensing agreement between Gebauer and the Customer.
- 18.2. Gebauer may prohibit the use of the licence material for good cause. Good cause in this context includes a continuing breach of the terms of use under the contract ten (10) days after having been issued with a warning.

## SECTION C – SOFTWARE LICENCE FOR THIRD-PARTY SOFTWARE

### 19. Scope of application

The following provisions of this *Section C* apply in addition to the provisions of *Section A* to contracts between Gebauer and the Customer concerning the licensing of the data bank *SAP SQL Anywhere* and/or another software solution from a third-party provider ("**Third-Party Software**") for its use by the Customer.

## General terms and conditions of Gebauer GmbH

As at: August 2020

Obere Dammstrasse 8–10, 42653 Solingen, Germany | Telephone +49 (0)212 230 350 | Fax +49 (0)212 230 3545 | [www.timeline-erp.de](http://www.timeline-erp.de)

### 20. Licence terms for Third-Party Software

- 20.1. The right to sell on or sub-license the Third-Party Software is granted to Gebauer by a third-party provider (“**Third-Party Software Provider**”).
- 20.2. If additional licence terms for the Third-Party Software (“**Third-Party Software Licensing Terms**”) are provided to the Customer in the offer or in another way prior to the conclusion of the contract, these will apply with priority to the agreement on the use of Third-Party Software. Unless the parties expressly agree otherwise, the Customer acknowledges the application of the Third-Party Software Licensing Terms which are sent to it prior to the conclusion of the contract.
- 20.3. If the Third-Party Software Provider requests the Customer to make a direct declaration to the Third-Party Software Provider in relation to the application of that provider’s licensing terms (“**End User Licensing Terms**”) and Gebauer has informed the Customer of this before the conclusion of the contract, presenting or making reference to the respective End User Licensing Terms, the Customer accepts an obligation upon concluding the contract to consent to the End User Licensing Terms before it begins using the third-party software by submitting a declaration to the Third-Party Software Provider and must also comply with the End User Licensing Terms. The Customer must inform itself about the content of the End User Licensing Terms before the conclusion of the contract.

### 21. Additional provisions

- 21.1. The provisions of Section D also apply to the contract between Gebauer and the Customer concerning the licensing of the Third-Party Software.
- 21.2. If, in relation to Section 20.2, there are any discrepancies between the individual Third-Party Software Licensing Terms and the terms of Section B, the Third-Party Software Licensing Terms prevail.

## SECTION D – SOFTWARE MAINTENANCE

### 22. Scope of application

- 22.1. The following provisions of this *Section D* apply in addition to the provisions of *Section A* to contracts between Gebauer and the Customer concerning the rendering of maintenance services in relation to the standard software solution *TimeLine*. If the Customer has also licensed a data bank of a third-party software provider from Gebauer, Gebauer will not maintain such a data bank. The data bank is subject to the terms and conditions of the respective provider.
- 22.2. The agreed maintenance services for software acquired by the Customer do not include any individual programming services which Gebauer or third parties have rendered to the Customer in relation to the Software.

### 23. Scope of services

- 23.1. Maintenance includes
  - a) troubleshooting beyond the scope of any guarantee obligations in relation to the Software which is subject to software maintenance (“**Object of Maintenance**”), including fast-track troubleshooting in urgent cases pursuant to Article 24,
  - b) the continued development of the Object of Maintenance and the provision of new versions of the programme (updates) pursuant to Article 25, and
  - c) the provision of a hotline pursuant to Article 26.
- 23.2. Gebauer will render the maintenance services during the term of the contract, starting with the conclusion of the contract and operative use of the Object of Maintenance being commenced by the Customer.
- 23.3. Gebauer will render the maintenance services according to the current state of the art and in a way which is geared towards the overall interests of software users.
- 23.4. Gebauer must only render maintenance services in relation to the current programme version of the Object of Maintenance and the version which was provided by Gebauer directly prior to that.
- 23.5. If the Customer acquires additional licences in relation to the Object of Maintenance during the term of the contract, e.g. for the use of additional modules or additional seats, any existing maintenance agreement will, at the point when the agreement to extend the licence is concluded, extend to cover the parts of the Software which are affected by the extension.

### 24. Troubleshooting

- 24.1. Gebauer will troubleshoot errors and defects (collectively referred to as “**Errors**”) in the Object of Maintenance which occur during the term of the maintenance agreement according to the following provisions.
- 24.2. Gebauer will commence troubleshooting within the following periods after receiving the text report of an Error by the Customer (to be sent to [hotline@timeline.de](mailto:hotline@timeline.de)) (reaction time):
  - a) If the Error is halting business operations, within an hour of receiving the report during Gebauer’s business hours.
  - b) If the Error is impairing business operations, within one working day of receiving the report during Gebauer’s business hours.
  - c) For other Errors: within a reasonable period, but as part of the next update at the latest.
- 24.3. The parties agree on the following categories of Error:
  - a) Errors which halt business operations: Serious Errors which result in the complete failure of the entire Object of Maintenance or essential parts of it, so that it is completely or almost completely impossible to

# General terms and conditions of Gebauer GmbH

As at: August 2020

Obere Dammstrasse 8–10, 42653 Solingen, Germany | Telephone +49 (0)212 230 350 | Fax +49 (0)212 230 3545 | www.timeline-erp.de

use. Operation is impaired in such a way that it is necessary to seek help immediately.

- b) Errors which impair business operations: Errors which impair the use of the Object of Maintenance so that the intended use of the system in relation to at least one non-material function is only possible with restrictions.
- c) Other Errors: Other Errors which do not (or do not materially) impair the use of the Object of Maintenance.

- 24.4. Gebauer will perform troubleshooting according to the maintenance agreement as quickly as possible, but generally as part of patches which, as a rule, are made available on a monthly basis.
- 24.5. In the event of Errors which halt business operations, troubleshooting will also be done outside of the patch cycle (Express Bug Fix).
- 24.6. If troubleshooting necessitates a serious change to be made to the programme (which change poses a risk to the programme version), Gebauer reserves the right to wait until the next update to fix the error to rule out consequential- or parallel errors. In this case, Gebauer will (if necessary) provide the Customer with an interim solution ("work-around") for the period until the next update, upon request within the framework of the maintenance contract.
- 24.7. The condition precedent for fixing the Error as part of maintenance is that the Error may be replicated.
- 24.8. Gebauer is entitled to troubleshoot the Error by way of remote maintenance or remote diagnosis.

## 25. Further development; updates

- 25.1. As part of maintenance, Gebauer will provide new programme versions ("Updates") on a regular basis (in general every eighteen (18) months). Updates may entail functional or technological adaptations to the basic system and/or the additional modules.
- 25.2. Gebauer grants a licence in the Updates to the Customer, the scope of which corresponds to that agreed in the respective licence agreement between Gebauer and the Customer for the Object of Maintenance.

## 26. Hotline

- 26.1. Gebauer will provide a hotline for the Customer to report Errors in the course of maintenance and to provide advice to the Customer over the telephone on questions which arise in the course of using the software. In principle, the hotline will be available during Gebauer's business hours under the telephone number Gebauer provides to the Customer. This does not apply to short periods of downtime which are typical for the type of service (e.g. if maintenance works are being done on the system or if several incoming calls occur at once). The Customer will only use the hotline for the above-mentioned purposes which

are covered by the maintenance contract and limit its use of the hotline to the extent necessary.

- 26.2. If maintenance services have been agreed for an individual programming service relating to the software, the Customer (subject to prior consultation with Gebauer) may also send error reports during business hours to the project manager at Gebauer who is competent for the individual programming.

## 27. Business hours

- 27.1. Currently, Gebauer's business hours are Monday to Friday 8 a.m. to 5 p.m., excluding Sundays and public holidays at the location of Gebauer's corporate seat.
- 27.2. Gebauer reserves the right to adjust its business hours to a reasonable extent which is customary for the industry (e.g. to adjust to changing market conditions). In the event of such changes, Gebauer will inform the Customer in good time, but at least four (4) weeks in advance.

## 28. Services which are not included

- 28.1. The maintenance contract does not cover the following services:
  - Training,
  - Services rendered on-site and remotely (e.g. installation of updates, EBFs and patches done on-site),
  - reporting of Errors and troubleshooting outside of the specified hotline hours,
  - the migration of individual adaptations to new programme versions, patches and EBFs,
  - care of the programme for individual interface programmes, and/or
  - troubleshooting defects caused by improper use by the user, interference by third parties or force majeure.
- 28.2. If the Customer would like to receive other troubleshooting- and adaptation services which are not covered by the maintenance contract, Gebauer will examine this and may render such services based on a separate order and subject to the terms of *Section F*.

## 29. Maintenance fees

- 29.1. The annual maintenance fees are specified in the order document and are calculated based on the current list prices at the time when the order is placed. The maintenance fees for each calendar year must be paid in full at the start of the respective calendar year in advance. The maintenance fees must be paid for the first time when the Licensed Object to be subject to maintenance is provided to the Customer or – if the Licensed Object has already been provided to the Customer at the time when the contract is concluded – a pro rata temporis portion of the

## General terms and conditions of Gebauer GmbH

As at: August 2020

Obere Dammstrasse 8–10, 42653 Solingen, Germany | Telephone +49 (0)212 230 350 | Fax +49 (0)212 230 3545 | www.timeline-erp.de

maintenance fees for the period from the conclusion of the contract to the end of the calendar year must be paid.

- 29.2. If the Customer acquires additional licences in relation to a Licensed Object during the term of an existing maintenance contract (e.g. additional seat licences or additional modules), the maintenance contract will also extend to cover the newly acquired licences from the time when the new Licensed Object is provided. The annual maintenance fees will be increased from this date by the maintenance fees for the extended licences, whereby the current list prices at the time of the subsequent order plus the workstation factor will also be used to calculate the maintenance fees for the new licences.

### 30. Customer's cooperation obligations

- 30.1. The Customer will assist Gebauer to a reasonable extent as part of rendering the maintenance services and, if a defect is identified, implement the required measures to identify and mitigate the defect and will provide Gebauer with all the necessary documents.
- 30.2. The Customer will grant Gebauer's staff or other persons engaged by Gebauer access to its IT systems to the extent required to render the maintenance services owed. The Customer will provide the technical facilities which are needed to perform the maintenance in a ready-to-use condition and to a reasonable extent free of charge.
- 30.3. The Customer will ensure that the persons who are mandated to operate the Maintenance Object have sufficient programming knowledge.
- 30.4. Obligations to cooperate within the meaning of this Article 30 are material core obligations of the Customer and are agreed on as such.

### 31. Term; termination

- 31.1. Unless the parties agree otherwise in an individual contract, the maintenance contract commences when the Object of Maintenance is provided. The maintenance contract is concluded for one calendar year. The term extends by periods of a whole calendar year if the contract is not terminated in writing by a party, subject to a notice period of three (3) months running to the end of the respective calendar year. The earliest point at which the maintenance contract may be terminated is at the end of the second calendar year after the software was put into proper operation. There is no right of ordinary termination during the first calendar year after the software is put into operation.
- 31.2. This does not affect the right to terminate for good cause. Gebauer has good cause for termination in this context (for example) if the Customer is in arrears with payment of remuneration which has fallen due for payment for more than two (2) months despite having been issued with a payment reminder. If the Customer is to blame for the grounds for termination, the Customer must pay the agreed remuneration to Gebauer (less any savings which

Gebauer has made) by the date on which the contract would have terminated had there been ordinary termination.

- 31.3. Notices of termination must be in writing to be effective. Neither fax nor email are deemed to be written form for the purposes of this requirement.

## SECTION E – HOSTING SERVICES

### 32. Scope of application

The following provisions of this *Section E* apply in addition to the provisions of *Section A* to contracts between Gebauer and the Customer concerning the rendering of hosting services.

### 33. Scope of services

This subject matter of the hosting contract is (i) the provision of system resources on a cloud platform ("**Cloud Server**") operated by a provider ("**Cloud Provider**") pursuant to Article 34, and (ii) the provision of access software ("**Client**") during the term of the contract pursuant to Article 35.

### 34. Hosting services

- 34.1. To the extent agreed in the contract, Gebauer provides the Customer with system resources on the Cloud Server to save and make accessible the software, the data bank and customer data which is managed in the software and the data bank ("**Customer Data**").
- 34.2. The Cloud Server used to provide the services is operated by the Cloud Provider in Germany, unless the parties agree to use a cloud server operated in a different country in the individual contract.
- 34.3. Gebauer guarantees an annual average accessibility of the Cloud Server of 99 %. This does not include down time where the Cloud Server is not available due to technical or other problems which are outside the Cloud Provider's or Gebauer's control (e.g. force majeure events or the fault of a third party who/which is not an agent of Gebauer). The Customer acknowledges that the Cloud Provider may restrict access to the services if required for network security reasons, to maintain network integrity, including avoidance of serious network disruptions in the network, in the software operated or saved on the Cloud Server, the data bank or Customer Data.
- 34.4. Gebauer will perform the administration, technical configuration and management of the Cloud Server, unless otherwise agreed by the parties in the individual case.
- 34.5. The technical standards and security measures applied by the Cloud Provider will be notified to the Customer upon request. The technical standards and security measures



## General terms and conditions of Gebauer GmbH

As at: August 2020

Obere Dammstrasse 8–10, 42653 Solingen, Germany | Telephone +49 (0)212 230 350 | Fax +49 (0)212 230 3545 | www.timeline-erp.de

may be changed at any time, provided that this does not result in any material detriment for the Customer.

- 34.6. The Customer may only use the hosting services for the purpose of using the software, the data bank and to process Customer Data for its own purposes. The hosting services may not be used for any other purpose.
- 34.7. Gebauer has no obligation to provide any support by telephone or email or to provide other technical support for the management of the Cloud Server or otherwise in connection with the hosting services.

### 35. Access; client

- 35.1. Access to the software and data bank which are operated and saved on the Cloud Server and the Customer Data occurs via a Client which Gebauer provides to the Customer. The Client is provided by sending the information to the Customer which is required to download the Client. The Customer may only use the Client to access the cloud server to the agreed extent. For the remainder, with regard to the grant of rights in the Client, the rights of (and restrictions on) use agreed for the Licensed Object apply.
- 35.2. Access to the cloud server is restricted to the number of seat licences which the Customer has acquired for the software. The Customer expressly acknowledges that Gebauer and the cloud provider also have restricted access to the content of the cloud server.
- 35.3. The Customer must take the necessary precautions to prevent unauthorised parties from using the cloud server, including by implementing reasonable protection against unauthorised access. The Customer must select a secure password for access and change this password at regular intervals during the term of the contract. The Customer must keep the login data provided to it for accessing the cloud server secret and refrain from disclosing it to third parties. The Customer is liable for each breach of this obligation by an employee or a third party it has engaged.

### 36. Customer's obligations and responsibilities

- 36.1. The Customer will not wilfully impede the proper operation of the cloud server.
- 36.2. The Customer is liable for any other people it authorises to use the hosting services.
- 36.3. The Customer will notify Gebauer without undue delay if it becomes aware that the hosting services are no longer available or cannot be properly provided for another reason and provide reasonable assistance to Gebauer in identifying and troubleshooting the problem.
- 36.4. The Customer is responsible for all the client data which is saved and processed on the cloud server. The Customer must, on its own initiative and under its own responsibility, make regular backups of the Customer Data which is saved on the Cloud Server, keep backup copies of the data and take other precautions for the event that the Customer Data is lost.

- 36.5. The Customer will not save any illegal data or data which breaches instructions or rules of state authorities on the Cloud Server, or any data which (i) contains pornographic or obscene material, (ii) glorifies war, terror or other violent acts, (iii) is likely to place children or juveniles in moral danger, (iv) depicts humans in a way which violates their human dignity and/or depicts an actual event without there being any overriding legitimate interest in this kind of reporting, (v) incites hatred against parts of the population or a certain group which is defined by nationality, race, religious views or traditions, or encourages violent or arbitrary acts against them, or infringes the human dignity of others by insulting, maliciously disparaging or defaming parts of the population or one of the aforementioned groups, (vi) depicts cruel or inhumane violent acts against humans or animals in such a way as glorifies or trivialises such acts, or which depict the cruelty or inhumanity of such acts in a way which offends dignity, (vii) which is likely to disown, insult, threaten or slander others.

- 36.6. In principle, Gebauer does not have any knowledge of the Customer Data and does not inspect the content of the Customer Data. Gebauer has no obligation to inspect the Customer Data saved on the Cloud Server as to whether it breaches the law. If Gebauer becomes aware of such a breach, Gebauer is entitled to block the Customer's access to the Cloud Server without undue delay and maintain this block for the duration of the breach. In such cases, Gebauer will inform the Customer of the block without undue delay.

- 36.7. Obligations to cooperate within the meaning of this Article 36 are material core obligations of the Customer and are agreed on as such.

### 37. Data security; data protection

- 37.1. The Customer expressly acknowledges that, in view of the current state of the art, no comprehensive guarantee can be provided for complete data security when transmitting data over public networks such as the Internet. The Customer knows that the cloud provider can view the data of the Customer which is saved on the cloud from a technical point of view at any time. Other Internet users may also be technically able to interfere in network security without authorisation and to monitor communications. The Customer bears full responsibility for ensuring the security of any data it transmits over the Internet and saves on servers and that such data is backed up.

- 37.2. The Customer acknowledges that technical providers of some products which the Cloud Provider engages may access the physical server on which the Cloud Server is located remotely in exceptional cases to remedy technical faults and may therefore gain access the Customer's content. In such cases, the providers are only permitted to carry out such works as are necessary to troubleshoot the problem. They may not use these works or the data they access for any other purpose.

## General terms and conditions of Gebauer GmbH

As at: August 2020

Obere Dammstrasse 8–10, 42653 Solingen, Germany | Telephone +49 (0)212 230 350 | Fax +49 (0)212 230 3545 | www.timeline-erp.de

37.3. Within the scope of the applicable data protection laws, the Customer must obtain the required consents from those data subjects whose personal data is saved and processed on the cloud server. The Customer will indemnify Gebauer against all third-party claims and will hold Gebauer harmless for all damage caused by failing to obtain the relevant consents or authorisations to save data under data protection law.

### 38. Remuneration

38.1. As consideration for the hosting services, the Customer will pay Gebauer the hosting fees agreed in the respective individual contract in accordance with the respective agreed payment schedule.

38.2. All prices stated are net and are exclusive of the respective statutory VAT. Invoices fall due for payment without deduction within fourteen (14) days of the date on the invoice.

### 39. Term of contract and termination

39.1. Unless the parties have otherwise agreed in an individual contract, the term of the hosting contract is twelve (12) months, running from the first day of the month following the conclusion of the contract. The term extends by periods of twelve (12) months if the contract is not terminated in writing by a party, subject to a notice period of three (3) months running to the end of the respective calendar year.

39.2. Both parties have a right of extraordinary termination for good cause if the statutory requirements are met. Gebauer has good cause for termination in this context if the Customer is in arrears with payment of remuneration which has fallen due for payment for more than two months despite having been issued with a payment reminder. If the Customer is to blame for the grounds for termination, the Customer must pay the agreed remuneration to Gebauer (less any savings which Gebauer has made) by the date on which the contract would have terminated had there been ordinary termination.

39.3. Notices of termination must be in writing to be effective. Compliance with this requirement for written form is a condition precedent to the termination becoming effective. Neither fax nor email are deemed to be written form for the purposes of this requirement.

39.4. The rights granted to the Customer under the hosting contract in relation to the cloud services and the Client will extinguish when this contract terminates.

## SECTION F – PERFORMANCE OF SERVICES AND WORK

### 40. Scope of application

The following provisions of this *Section F* apply in addition to the provisions of *Section A* to all contracts between Gebauer and the Customer concerning the rendering of

implementation services, training, individual programming or other services and works.

### 41. Rendering performance

41.1. Gebauer will render performance owed according to the state of the art at the time when the respective order is placed.

41.2. Performance must be rendered by adequately qualified staff of Gebauer or of companies which belong to Gebauer's corporate group or by other third parties which have been engaged by Gebauer as subcontractors to discharge performance obligations according to the terms of the individual contract. Gebauer is expressly permitted to engage sub-contractors, subject to the terms of the GDPR.

41.3. Gebauer bears the sole responsibility for the way and manner in which (and by whom) the individual contract is performed, subject to the terms and conditions of the respective individual contract. To that extent, the Customer does not have any right to issue instructions to the staff deployed.

41.4. Any schedules for delivery or rendering performance which have been agreed are only binding to the extent that these have been expressly agreed as binding. Gebauer will inform the Customer in good time about any imminent delays in the rendering of performance of which Gebauer becomes aware. Gebauer is not liable to the Customer for delays which are outside Gebauer's control (e.g. due to force majeure events, strikes, war, unrest, disasters or similar events). In such cases, Gebauer may request a reasonable postponement of the deadline, including reasonable schedules for resuming the activities owed.

41.5. If training is to be provided and the Customer receives training documents, Gebauer grants the Customer a simple, perpetual licence to use those documents for the intended purpose in the course of the Customer's business. The licence granted may only be assigned with Gebauer's written consent. Gebauer may only refuse this consent on reasonable grounds.

### 42. Remuneration

42.1. The remuneration which has been agreed as consideration for the work or services to be rendered by Gebauer will be billed according to the schedule set out in the order confirmation or the contractual document.

42.2. All prices stated are net and are exclusive of the respective statutory VAT. Invoices fall due for payment without deduction within fourteen (14) days of the date on the invoice.

### 43. Customer's cooperation obligations

43.1. The Customer is required to cooperate to the extent reasonable. Cooperation means, for example (i) specifying a contact person for the specific project who is entitled

## General terms and conditions of Gebauer GmbH

As at: August 2020

Obere Dammstrasse 8–10, 42653 Solingen, Germany | Telephone +49 (0)212 230 350 | Fax +49 (0)212 230 3545 | www.timeline-erp.de

to give declarations on behalf of the Customer and take decisions relating to the project, and (ii) fully providing all the necessary information, documents and resources relating to operations and project organisation to the extent appropriate and in a timely manner.

- 43.2. At Gebauer's request, the Customer must confirm in writing that the information and documents provided are complete.
- 43.3. Obligations to cooperate within the meaning of this Article 43 are material core obligations of the Customer and are agreed on as such.

### 44. Specific provisions for works

- 44.1. Any agreement to provide work between Gebauer and the Customer requires an express agreement which refers to the character of the obligation to render performance as a contract for works.
- 44.2. Gebauer shall expressly or impliedly release the work result by making them available for acceptance. The Customer must accept the work results without undue delay after Gebauer has made them available. Acceptance may not be refused due to minor defects. Even if no express declaration of acceptance is given, acceptance is deemed to have taken place if the Customer (i) puts the work results into operation either wholly or in part or uses them in another productive way, or (ii) does not expressly declare or justifiably refuse acceptance within a period of ten (10) working days after the work results were made available for acceptance.
- 44.3. Unless an individual contract specifies otherwise, Gebauer grants the Customer a licence to use the work results subject to the following provisions:
  - 44.3.1. If work results take the form of adaptations or additions to standard software of Gebauer ("**Programme Additions**"), Gebauer grants the Customer a simple, non-exclusive licence to use the licensed standard software according to the provisions of the licence agreement. For the remainder, all rights will remain with Gebauer.
  - 44.3.2. With regard to work results which are not Programme Additions within the meaning of Article 44.3.1, Gebauer grants the Customer a perpetual, worldwide, irrevocable simple licence to use all works results which are produced specifically for the Customer. The licence includes the power to edit and modify the work results. The licence is granted subject to the condition that the Customer has paid the remuneration for the work results which has fallen due to Gebauer in full and without any right to appeal. The licence granted may only be assigned with Gebauer's written consent. Gebauer may only refuse this consent on reasonable grounds.
  - 44.3.3. With regard to the rights in open source components and/or software from third-party manufacturers which have been integrated into the work results, the standard licence terms apply to the respective open source components or the respective manufacturer.

- 44.4. If a contract for work has been concluded for the provision of programming services, Gebauer is only obliged to provide the programming service in the object code version and the Customer does not have any claim to the provision of the source code, unless otherwise agreed by the parties.
- 44.5. Gebauer guarantees that the work results have the agreed characteristics and that the use of the work results in compliance with the contract by the Customer does not infringe any rights of third parties.
- 44.6. If there are any material defects with regard to a contract for works to which sales law applies, Gebauer is – after having properly notified the material defect – initially entitled to provide subsequent performance by remedying or finding a way to circumvent the defect by delivering work results which are essentially free of defects. If subsequent performance cannot be provided within a reasonable period, the Customer is entitled to withdraw from the contract or request a reduction in the agreed remuneration and – provided the legal requirements have been fulfilled – claim damages in addition to withdrawal; the Customer has no right to remedy defects itself and claim compensation for the expenses incurred. If programming services are to be provided, the condition precedent to valid guarantee claims is that the defects can be either replicated or identified. The Customer must notify defects without undue delay, stating all information of which it has knowledge and which is expedient to find the defects and also implement appropriate measures to facilitate the identification of the defects and their causes. The statute of limitations for claims due to material defects is twelve (12) months.
- 44.7. In the event of a legal defect, Gebauer may choose whether to provide the Customer with a legally unobjectionable way to use the work results or provide an equivalent performance object which is free of legal defects. The Customer must inform Gebauer in writing without undue delay if third parties commence legal action against the Customer due to a breach of property rights in the performance object. The statute of limitations for claims due to legal defects is two (2) months.

## SECTION G – HARDWARE

### 45. Scope of application; applicable rules

- 45.1. The following provisions of this *Section G* apply in addition to the provisions of *Section A* to contracts between Gebauer and the Customer concerning the acquisition of the hardware ("**Hardware**") by Gebauer's Customer.
- 45.2. Primarily, the specific contractual provisions which have been agreed by the parties apply to the purchase agreement. In addition, the below provisions of Sections 46 - 48 will apply to the purchase agreement (application is subordinate in the event of an objection being raised).

## General terms and conditions of Gebauer GmbH

As at: August 2020

Obere Dammstrasse 8–10, 42653 Solingen, Germany | Telephone +49 (0)212 230 350 | Fax +49 (0)212 230 3545 | www.timeline-erp.de

### 46. Scope of delivery; transfer of risk

- 46.1. The offer, the offer confirmation or the delivery certificate set out the specific details of the performance object.
- 46.2. The contract does not govern the set-up, installation, induction, training or the care of any operating system software or the maintenance or repair of the hardware, unless the parties expressly agree otherwise.

### 47. Material defects

- 47.1. Gebauer guarantees that the hardware essentially has the functions specified in the agreed product specification, provided that it is deployed and used in compliance with the contract. In the event of a material defect, Gebauer is initially entitled to provide subsequent performance. If subsequent performance fails, the Customer may request a reduction in price or withdraw from the contract. Gebauer may choose whether to render subsequent performance by delivering a substitute item or by improving the defective item. If the event of functional errors in the software contained in the hardware, such subsequent improvements may also be made or facilitated by providing or installing an update or by patching.
- 47.2. The Customer will provide support to Gebauer as part of error analysis and troubleshooting in an appropriate manner and will specifically describe any problems which occur with the hardware and provide a comprehensive notification of this to Gebauer without undue delay. The Customer is not entitled to remedy material defects itself and then claim compensation for the costs incurred.
- 47.3. The Customer must notify obvious defects without undue delay but in any case within four (4) weeks of the relevant delivery. Any other defects must be notified without undue delay after being discovered. A comprehensible description of the defect must be attached to the notification. If the notification is not made in a timely manner, the hardware is deemed to have been accepted with regard to this defect. To that extent, any guarantee claims will lapse. Gebauer does not provide any guarantee and does not assume any liability if the Customer fails to notify defects or the defects in the hardware were caused by misuse or improper use.
- 47.4. The statute of limitations for claims due to material defects begins to run when the performance object is delivered to the Customer and expires after one (1) year.

### 48. Legal defects

- 48.1. Gebauer guarantees that the use of the supplied items by the Customer in compliance with the contract does not infringe any third-party rights. In the event of a legal defect, Gebauer may choose whether to provide the Customer with a legally unobjectionable way to use the delivery object or provide an equivalent delivery object which is free of legal defects.

- 48.2. The Customer must inform Gebauer in writing without undue delay if third parties commence legal action against the Customer due to a breach of property rights in the delivery object.
- 48.3. The statute of limitations for claims due to legal defects begins to run when the performance object is delivered to the Customer and expires after two (2) years.