

# General Terms and Conditions ("Terms and Conditions") of primion Technology GmbH ("primion")

## A. General Provisions

### § 1 — Scope

1. The following Terms and Conditions apply exclusively; differing or additional terms and conditions, particularly provisions of the Contracting Party regarding penalties for breach of contract, do not apply without primion's express written consent. The Terms and Conditions also apply in their respective valid version to all future agreements with the Contracting Party.
2. These Terms and Conditions apply only to entrepreneurs, public law legal entities and special public law funds in accordance with § 310 par. 1 of the German Civil Code.

### § 2 — Conclusion of Contract, Contents of Service, Written Notice

1. Order forms signed by the Contracting Party are understood as an offer on the part of the Contracting Party, unless it is recognised in an individual case, for example with the signatures of both parties, that an immediate conclusion of contract was agreed. primion has 4 weeks in which to accept such an offer.
2. The contents of service owed are conclusively determined by the written order confirmation from primion, or in the event of immediate conclusion of contract (subpar. 1) by the appropriate contract form. Unless otherwise explicitly agreed, for example in a consultancy contract, the Contracting Party is solely responsible for the selection and suitability of the delivery and service.
3. All agreements, as well as any possible additional or differing agreements entered into at a later time, are only valid if made in writing. This also applies to the revocation of the requirement of written notice. Offers made by primion itself are non-binding and are only valid for an appropriate amount of time to be made known in the offer.

### § 3 — Conditions of Payment, Set-Off, Right of Retention

1. Price listings from primion are understood to exclude costs arising from delivery and transport as well as applicable legal value added tax (VAT). Full payment for all services performed by primion comes due immediately. Payment deadlines listed on invoices are not understood as due dates.
2. Default of payment occurs when the Contracting Party does not pay the invoice within two weeks of it coming due and receipt of the invoice. In the event of default, primion has the right to demand interest in the amount of 9 percentage points above the base interest rate. The right to assertion of further damages is reserved.
3. primion has the right to refuse all services incumbent on it as a result of the business relationship or to only perform services with advance payment as long as the Contracting Party is in default on its payment obligations. The Contracting Party is only entitled to set-off or retention if its counterclaim is uncontested or has been upheld by a court of law.

4. If primion is obligated to provide services in advance of payment, service can be refused – without resulting in default – provided that circumstances become apparent after conclusion of the contract that indicate that the Contracting Party cannot fulfil its obligations, particularly its payment obligations. In this case, primion has the right to determine an appropriate deadline before which the Contracting Party must pay for the services provided or provide security.  
If the deadline passes without payment, primion can withdraw from the contract and demand compensation for damages or wasted expenditures.

#### **§ 4 — Deliveries, Deadlines, Reservation of Delivery, Handover Certificate**

1. Deliveries occur ex works, i.e. at the expense and risk of the Contracting Party. If agreed, primion will secure transportation insurance at the Contracting Party's expense.
2. Delivery and service times are determined by the written order confirmation from primion, or in the event of immediate conclusion of contract (§ 2 subpar. 1) by the corresponding contract form. Unless otherwise agreed, given dates are approximate. The final dates will be announced by primion with appropriate advance notice. primion has the right to partial deliveries and services; any claims on the part of the Contracting Party regarding performance faults are not hereby affected.
3. All service obligations on the part of primion are dependent on timely and correct delivery by suppliers. In the event of delayed or incorrect delivery and other constraints beyond primion's control, primion reserves the right to extend the delivery period – without entering into default – by the duration of the delay caused hereby.
4. Insofar as agreed, primion will connect hardware and install software so that it is in working order. Working order can be proven by successfully running a test programme or performing a trial run. The Contracting Party shall confirm that the equipment is in working order by signing the handover certificate.
5. Operating instructions can be provided in digital form.

#### **§ 5 — Retention of Title**

1. primion retains title of the object of the contract until full payment for all current and future outstanding bills from the business relationship has been received.  
The resale, pledging, assignment as security or other domain over the object of the contract on the part of the Contracting Party is prohibited as long as the retention of title is in effect.
2. The Contracting Party is required to handle the items with care during the term of the retention of title. This includes in particular insuring the items for their value at the Contracting Party's expense against theft, damage and destruction and conducting necessary, regular maintenance work.  
The Contracting Party transfers to primion at this time all claims from the insurance policy. primion has the right to demand proof of insurance coverage.
3. The Contracting Party shall inform primion in writing immediately of damages to, seizures of or other interference with items that are the property of primion. In the event of seizure of primion property, the Contracting Party shall indicate that the item is the property of primion and shall bear all costs incurred in recovering the item, including legal costs, provided that these cannot be recovered from the third party.
4. The Contracting Party can demand the release of securities provided that the attainable value of the securities exceeds the value of the outstanding receivables by more than 20%; primion is entitled to choose which securities to release.
5. Processing or altering by the buyer of goods under retention of title is always undertaken on our behalf. If the goods under retention of title are processed with other goods that do not belong to us, we gain joint

ownership of the new goods in the ratio of the value of the goods under retention of title (final invoice amount including VAT) to the value of the other processed goods at the time of processing. Otherwise, the same applies to the new item created by the processing as for the goods under retention of title.

If the goods under retention of title are inseparably connected to or mixed with other goods that do not belong to us, we gain joint ownership of the new goods in the ratio of the value of the goods under retention of title (final invoice amount including VAT) to the value of the other connected or mixed goods at the time of connecting or mixing. If the goods under retention of title are connected or mixed in such a way that the buyer's item is to be seen as the main item, the buyer and we are already in agreement that the buyer shall transfer proportional ownership of the item to us. We shall accept this transfer. The buyer shall safeguard the resulting sole or joint ownership of the item for us.

## **§ 6 — Contracting Party's Secondary Obligations and Obligation to Cooperate**

1. The Contracting Party undertakes to ensure within its area of responsibility that primion is able to provide the contractually owed services, particularly delivery, connection and installation of hardware and software in working order and maintenance work, unhindered and at the announced times. primion must be notified of foreseeable hindrances to service (company holiday, etc.) in writing.
2. It is the responsibility of the Contracting Party to comply with the following conditions in order to retain the right to claims for performance and defects:
  - a) Connection/Installation Requirements
    - naming and providing the required personnel to support connection/installation work;
    - allowing a trial run or running a test programme under normal operating conditions and granting the required computing time.
  - b) Data Administration
    - regular data backups, especially before conducting maintenance work, to minimise the risk of data loss.
  - c) General Conditions of Service
    - naming a qualified contact person as well as a substitute;
    - immediately informing of defects that may arise and providing a detailed description including appropriate paperwork (records of the defect, etc.);
    - in the event of an agreed upon remote diagnosis: setting up and maintaining the necessary infrastructure (telephone connection, etc.) at the Contracting Party's expense.

## **§ 7 — Return and Disposal of Electronic Devices**

1. The Contracting Party assumes from primion the obligation of the manufacturer to dispose of business products (B2B devices) used by the Contracting Party in accordance with § 19 par. 1 of the Electrical and Electronic Equipment Act (ElektroG) and also agrees therewith to properly dispose of these products or have them disposed of in accordance with the legal regulations (particularly §§ 20 and the following of ElektroG) at the Contracting Party's expense.
2. In the event of the transfer of the devices purchased from primion to a new user, whether through sale, loan, rental, etc., the Contracting Party shall ensure that the new user assumes the obligations agreed to herein. primion grants its permission for such a transfer to other buyers. The requirement to transfer the disposal obligation to the new buyers also includes the requirement to transfer this obligation in writing to possible future buyers of the concerned devices.
3. In cases where the Contracting Party intends to resell the business products (B2B devices) to third parties, the Contracting Party hereby assumes the obligation to arrange on behalf of primion with its contracting parties, in the case of further resale of the concerned devices, that the respective buyer takes over fully the disposal obligation of the manufacturer in accordance with § 19 par. 1 cl. 4 of ElektroG and on its own responsibility and at its own expense properly disposes of the purchased devices. The Contracting Party shall also ensure that this buyer transfers or has transferred the obligation of proper disposal to future users. primion already gives permission for a further transfer of this obligation and authorises the

Contracting Party with its buyers to transfer the agreed obligation in the name of primion in accordance with § 19 par. 1 clause 4 of ElektroG.

4. If the Contracting Party neglects to transfer on behalf of primion the disposal obligation to his buyers, the Contracting Party will fulfil the disposal obligation of the manufacturer in accordance with ElektroG properly and at its own expense. Furthermore, the Contracting Party releases primion from the disposal obligation in accordance with § 19 par. 1 of ElektroG as well as from possible claims from third parties. In the event of a corresponding claim against primion on the part of third parties, the Contracting Party is required to make available to primion all required paperwork in which the transfer of the disposal obligation on the part of the Contracting Party's buyer or third parties was agreed and to offer all necessary support.

### **§ 8 — Default**

1. In the event of default, the Contracting Party can set primion an appropriate grace period with the notice that after this grace period ends, the Contracting Party will fully or partially withdraw from the contract or demand compensation for damages due to non-fulfilment.
2. If the Contracting Party demands compensation for damages due to non-fulfilment, the amount primion is required to pay is limited to 8% of the value of the defaulted services under the terms of the contract.

### **§ 9 — Defect Rights (particularly Sale), Withdrawal**

1. Clearly visible defects must be reported in writing to primion within 5 workdays of delivery, transfer or acceptance in order to maintain rights regarding defects; concealed defects within the statute of limitations period; and defects that occur later within 5 workdays of discovery of the defect.
2. The statute of limitations period for defects to newly manufactured items is one year from delivery or acceptance.
3. If a defect occurs within the statute of limitations period, primion can, as it so chooses, either deliver a replacement or resolve the defect. If the delivery of a replacement or the resolution of the defect fails within an appropriate period or is unreasonable, the Contracting Party has the right to a reduction of the purchase price, to withdraw from the contract or to demand compensation for damages due to non-fulfilment, whereby primion's liability is limited to 1.5 times the purchase price of the defective item.
4. Rights regarding defects are precluded in cases where the defect is due to improper operation, use or treatment of the hardware or software, or a change or modification of the hardware or software that is not authorised by primion.
5. Servicing times do not count as outage time provided that service measures do not result from defectiveness of the contractual object for which primion is responsible (for example, defective maintenance measures, updates, etc.).
6. The Contracting Party's right to withdraw is precluded if primion is not responsible for the circumstance which would lead to withdrawal.

### **§ 10 — primion's Total Liability**

1. In the case of simple negligence – regardless of the legal basis – the liability of primion, its agents, employees and subcontractors for damages is limited to damages that could typically be foreseen by primion at the time of conclusion of the contract due to circumstances that were known at the time. However, primion is not liable for indirect damages, consequential damages and lost profit.

2. The liability for data loss is limited to the cost of recovering the data that would have occurred with regular data backups appropriate to the level of risk.
3. Irrespective of other liability regulations in these General Terms and Conditions, primion is not liable under any circumstances for an amount of more than EUR 100,000.--.
4. Liability in excess of the sum limit contained in these General Terms and Conditions can only be assumed as a results of a separate written agreement.
5. The liability limitations above and the others in these General Terms and Conditions do not apply in the case of malice or gross negligence, or in the case of culpable injury to life, body and health, for liability claims in accordance with the German Product Liability Act, or in the case of a contractually agreed warranty obligation independent of negligence (guarantee).

#### **§ 11 — Confidentiality, Privacy**

1. The Contracting Parties are required to keep secret indefinitely any information and data that becomes accessible during the business relationship which is designated as confidential or which due to miscellaneous circumstances is recognisable as confidential, particularly as business or trade secrets, and – insofar as it is not required for contractual purposes – to neither record nor share this information or data with third parties nor to utilise it in any other way. The same is required of employees and involved third parties.
2. To protect personal details, primion will comply with the relevant privacy provisions, and in particular will require data secrecy in accordance with § 5 of the Federal Data Protection Act (BDSG) of the persons employed by primion to fulfil the contract.

#### **§ 12 — Place of Jurisdiction, Export Control**

1. Place of jurisdiction for all disputes resulting from this business relationship is Sigmaringen. The mutual right of the Contracting Parties to litigation in their place of general jurisdiction remains unaffected.
2. If the contractual object is being exported, the Contracting Party is responsible for complying with the applicable provisions, particularly the German Foreign Trade and Payments Act and, if applicable, the US export control regulations. For all agreements between primion and a customer, exclusively German law applies, excluding the UN Sales Convention.

## **B. Special Provisions for Software Transfer**

#### **§ 1 — Provision of Software, Right of Use, Source Codes**

1. primion grants the Contracting Party, within the scope of the following provisions, unlimited, non-exclusive and – subject to subpar. 4 – non-transferable right of use for the provided software. The scope of the right of use for software from other manufacturers ("third-party software") is determined, in the event of its use, primarily by the conditions of use of the respective manufacturer.
2. The Contracting Party has the right to use the software on the available hardware in accordance with contractual and legal provisions. The simultaneous use on more than one device or in a network

(simultaneous use by more than one user) requires – provided that use by more than one user is outside of the approved usage – a separate agreement. In the event of a hardware changeover, the software is to be deleted from the previously used hardware.

3. The transfer or disclosure of the source code of the software is not owed. primion is not required to further develop the delivered software. The Contracting Party is not allowed to modify, edit or duplicate the software without permission from primion, as long as this is not necessary for proper use (§ 69d German Copyright Act – UrhG). Decompiling is only allowed in accordance with the provisions of § 69e of UrhG.
4. The Contracting Party is not permitted to transfer its right of use to third parties or to grant third parties rights of use (sub-licence). The right of the Contracting Party to resell the purchased software remains hereby unaffected, providing the Contracting Party permanently ends its own use, the buyer is bound by the applicable terms of use, and necessary duplications are deleted in accordance with subpar. 3. In the event of resale, primion must be informed in writing of the name and address of the buyer.
5. The preceding provisions apply also to the provided user and operation documentation. primion has the right to provide documentation in electronic form and in German or English.
6. In the event of a breach of contract, particularly a breach of the preceding provisions or of the applicable export control regulations, primion has the right to demand, among other things, the relinquishment, possible surrender or destruction of illegal copies, as well as compensation for damages. primion's right to cancel right of use with immediate effect or to withdraw from the contract remains unaffected.

## **§ 2 — Property Rights**

1. primion guarantees that the transfer and use of the software in the Federal Republic of Germany does not infringe on the rights of any third parties. primion makes no guarantees for infringement of property rights in the case of third party software.
2. If claims are made by a third party against the Contracting Party resulting from or in connection with an infringement for which primion is allegedly responsible, primion is to be informed immediately. The Contracting Party is required to acknowledge no infringement to the third party, and to leave any dispute with the third party, whether in court or out of court, to primion exclusively or to carry out said dispute in coordination with primion.
3. At primion's request, the Contracting Party will cease use of the software immediately. primion has the right to provide the Contracting Party with different or edited software which largely corresponds with the agreed performance features. For the duration of the interference with use that this causes, the Contracting Party is freed from the payment of rental interest or the purchase price will be appropriately reduced.
4. In addition, primion will take all appropriate and necessary measures to defend the Contracting Party against the raised claims. In the event of a proved or recognised infringement by primion, primion will release the Contracting Party from any necessary expenditures, compensation for damages and other payment claims by third parties up to the amount of EUR 100,000.--.
5. The Contracting Party will support primion in defending property rights in primion's favour relating to the software. The Contracting Party will inform primion immediately of property rights infringements that become known.

## C. Special Provisions for Work

### § 1 — Approval

1. The Contracting Party is required to approve contractual services. Approval cannot be refused due to minor defects. If requested, the Contracting Party shall confirm the approval in writing.
2. The approval is considered completed in accordance with § 640 Abs. 1 S. 3 of the German Civil Code when the Contracting Party does not refute it within 10 workdays after notification of contractual services.

### § 2 — Rights Regarding Defects

1. The statute of limitations period for defects on performed services is one year after the legal start of the limitations period.
2. If a defect occurs within the statute of limitations period, the Contracting Party can request resolution of the defect within an appropriate period. If the resolution fails or is unreasonable, the Contracting Party has the right to reduce compensation, withdraw from the contract or demand compensation for damages due to non-fulfilment, whereby primion's liability in the case of a one-time commission is limited to 1.5 times the agreed upon compensation and within current service contracts to the yearly service fee.

## D. General Service Conditions

### § 1 — Duration, Cancellation, Extension

1. If no duration is stipulated, the contract is made for 12 months.  
If nothing else is explicitly stipulated, the contract begins with the start of relevant services by primion.
2. The contract can be cancelled effective at the end of the contract period with advance notice of 3 months. If cancellation does not occur, the contract is extended by 12 months in the case of an agreed duration of up to 24 months, and by 24 months in the case of an agreed duration of at least 24 months. The right to cancel for an important reason remains unaffected.
3. In order to take effect, a cancellation must be presented in writing.

### § 2 — Fees

1. If no differing agreement exists, the agreed upon fees come due and are to be paid in advance on the first workday of the month. If the contract does not start at the beginning of the month, the prorated fees for that month come due immediately with the start of the contract and are to be paid within 10 workdays of the start of the contract.
2. primion has the right to increase the fees within a contract year with an advance notice period of 3 months if the costs for the service components contained in the fees increase. primion makes the concrete causes of the price increase known at the time of increase.  
In the event of a fee increase of more than 5% within a contract year, the Contracting Party has the right to cancel the contract relationship in writing with a deadline of one month before the end of the advance notice period.
3. primion can demand from the Contracting Party an adjustment of the fees provided that the circumstances present at the time of the conclusion of the contract have changed in such a way as to compromise the relationship between services rendered and compensation.



## E. Special Provisions for Services – Hardware

### § 1 — Content and Scope of Services

1. The content of service by primion is the maintenance, i.e. repair of occurring defects to the hardware listed in the service contract, from Monday to Friday between 7:30 and 17:00 as well as – by special agreement – the maintenance, i.e. execution of all measures necessary to maintain the hardware in working order. All replacement parts necessary for the execution of maintenance services are covered by the fees (fixed rate) paid by the Contracting Party, unless the replacement part in question is to be individually reimbursed according to contractual agreement.
2. primion has the right to employ contractors to carry out the owed services. Within the scope of the services contractually owed and covered by the agreed fees, primion can use new or replacement parts at its own discretion. Exchanged replacement or wear parts are to be retained by primion.

### § 2 — Special Maintenance Services

1. Maintenance services
  - outside of the times listed in § 1 subpar. 1,
  - which the Contracting Party shall perform itself in accordance with the contractual agreement or the operating instructions,
  - which become necessary due to improper use, handling, improper operation of the hardware, actions of third parties (for example due to viruses, hackers) or force majeure (accident, water, fire, lightning, high voltage or short circuit damages) as well as the delivery of replacement and wear parts that are to be individually reimbursed in accordance with the contractual agreement are "Special Maintenance Services" which are performed in accordance with a separate agreement.
2. Special Maintenance Services and the replacement and wear parts arising thereby are billed by primion in accordance with the corresponding valid price lists. Labour is billed according to time. Partial half hours are rounded up to a full half hour. Waiting times incurred by the Contracting Party for which primion is not responsible count as work time. Travel times is billed as work time. Expenses (overnight stay, travel costs, etc.) are billed at cost.

## F. Special Provisions for Maintenance Services - Software

### § 1 — Content and Scope of Services

1. Content and scope of the maintenance services from primion is – subject to differing agreements, for example within the scope of a separate software maintenance contract and sub-paragraph 6 – the delivery, at the discretion of primion also in electronic form, of updates (correction of errors and minor functional improvements to a programme version) with installation instructions as well as support in the event of diagnosis and resolution of occurring defects in the software listed in the service contract. primion does not guarantee constant operational readiness of the software.  
Maintenance services are performed from Monday to Friday between 7:30 and 17:00, on Fridays until 16:00.
2. primion will make updates available as it so chooses either via data storage device or via download; installation of the updates is not owed. Upgrades, i.e. important functional extensions of the software listed in the maintenance contract as compared to the product specifications, is offered by primion to the Contracting Party under special conditions. primion will inform the Contracting Party of the content and availability of updates and upgrades to the software listed in the maintenance contract. Delivery of updates and upgrades occurs in accordance with the agreements governing the original version of the programme.



3. Service is only performed for the newest version of the programme and for the previously released version, and in the case of software that is expandable via an interface, service is only performed up to the interface and no further. The Contracting Party is required to install the provided updates, insofar as it is reasonable.
4. Within the scope of repair of defects, the development of a workaround solution is sufficient, as long as the important functions of the software covered in the contract are thereby restored. primion has the right to employ contractors to carry out the owed maintenance services.
5. Support in the event of diagnosis and resolution of defects is carried out primarily by phone by primion's service department. If the defect cannot be resolved in this manner, primion will attempt to resolve the defect – as far as it is possible – through remote diagnosis, delivery of an update or on site.
6. The Contracting Party is aware that primion, in the case of third party software included in the maintenance contract, depends on the involvement of the respective manufacturers for the provision of services. primion can in this case only offer preliminary support. primion reserves the right to refer the Contracting Party to the respective manufacturer for further support in the case of diagnosis and resolution of defects, particularly – when available – to the manufacturer's service department hotline.

## **§ 2 — Special Maintenance Services**

1. Maintenance services outside of the times listed in Part F, § 1 subpar. 1, the installation of updates, the delivery of upgrades (new programme versions with expanded functions) and support during diagnosis and resolution of defects that are a result of force majeure, actions of third parties (for example due to viruses, hackers), improper use or handling, or modification, editing or extension of the software on the part of the Contracting Party or third parties are "Special Maintenance Services" which are performed according to a separate agreement.
2. Special Maintenance Services are billed in accordance with the respective valid price lists from primion. Labour is billed according to time. Partial half hours are rounded up to a full half hour. Waiting times incurred by the Contracting Party for which primion is not responsible count as work time. Travel time is billed as work time. Expenses (overnight stay, travel costs, etc.) are billed at cost.

## **G. Information in accordance with the Consumer's Alternative Dispute Resolution Act**

primion is not prepared or required to take part in dispute resolution proceedings before an Independent Consumer Arbitration Service as laid out in the Consumer's Alternative Disputer Resolution Act.

Valid 17 July 2018