General Terms and Conditions (GTC) of AGILITA AG for AGILITA Software Products On-Premise

1 General

1.1 Validity

These General Terms and Conditions («**GTC**») apply to contracts for the permanent provision of AGILITA standard software and to contracts for the maintenance of AGILITA standard software.

1.2 Delimitation

Other services provided by AGILITA, such as services, software installation, parameterisation or adaptation of standard software, instruction or training, shall be subject to different terms and conditions of AGILITA. Such additional services do not form part of the contract and must be agreed separately.

1.3 General Terms and Conditions of the Client

General terms and conditions of business of the Client that deviate from these terms and conditions, such as purchasing conditions, are explicitly rejected.

1.4 Order of the Principal

Deviating general terms and conditions of the Client shall not become part of the contract even if AGILITA executes an order of the Client without objecting to the general terms and conditions of the Client referred to in the order. By placing an order, the Client confirms that it accepts these AGILITA General Terms and Conditions as the only valid ones.

1.5 Order of the Principal

If, in addition to signing the contract, the Client requires the generation of its own separate purchase order for its internal processing, it shall formulate the text of the purchase order in such a way that it is consistent with these General Terms and Conditions and the provisions in the respective contract.

1.6 Deviating Conditions

If the Client sends AGILITA its own order after conclusion of the contract, deviating terms and conditions in this order shall only become part of the contract if AGILITA expressly confirms them in writing.

2 Delivery

2.1. Delivery Item

If AGILITA and the Client have concluded a contract for the permanent transfer of AGILITA standard software («**software transfer contract**»), AGILITA shall supply the Client with the AGILITA standard software designated in the contract (hereinafter referred to as «**software**») together with documentation.

2.2. Version

Unless otherwise agreed in the software transfer contract, the software shall be delivered in the version current at the time of delivery and generally released for distribution by AGILITA.

2.3. Documentation

AGILITA shall also supply the Client with the documentation belonging to the software in printable, electronic form, unless otherwise stipulated in the software transfer agreement.

2.4. Operating Conditions and Scope of Functions

The conditions of use and functional scope of the software are determined by the information in the software transfer contract and the product description in the documentation valid at the time of conclusion of the contract. In the event of contradictions, the information in the software transfer contract and the product description in the documentation valid at the time of conclusion of the contract shall have priority. In the event of contradictions, the information in the software transfer agreement shall take precedence. AGILITA shall not owe any further quality of the software. In particular, the Client cannot derive such an obligation from other representations of the software in public statements or in advertising by AGILITA, unless a managing director of AGILITA authorised to represent the Client has expressly confirmed the additional quality in writing.

2.5. Delivery

Unless otherwise agreed in the software transfer contract, AGILITA shall deliver the software in electronic form.

2.6. Delay in Delivery

Delivery shall be subject to correct and timely delivery to AGILITA. AGILITA shall inform the Client of any delays that become apparent.

3 Rights of Use

3.1. Right of Use

In return for payment of the agreed remuneration, AGILITA shall grant the Client a permanent, non-exclusive right of use for the intended use of the software and documentation specified in the software transfer agreement.

3.2. Scope of Use

The scope of the intended use is based on the agreements in the respective software transfer contract and these terms and conditions. In the event of contradictions, the agreements in the software transfer contract shall take precedence over the provisions in these terms and conditions.

3.3. Copies

The Client may make backup copies of the software in the number required for proper data backup. Copyright notices of AGILITA may not be changed or removed in the process. In addition, copies of the software or the associated documentation shall only be permitted insofar as they are necessary for use in accordance with the intended purpose.

3.4. New Version

If the Client receives, e.g. within the scope of subsequent performance, a new version of the licensed software which replaces a previously provided version of the software, its rights of use shall expire with respect to the previously provided and now replaced software as soon as it uses the new software productively. Until the time of productive use, the new version of the software may be used as a test system in addition to the previously provided, still operationally used software.

3.5. Limits of Use

The Client may only install, load, run and use the software within the limits of use set out in the software transfer agreement and these

General Terms and Conditions.

3.6. Intended Use

In the absence of any express provision to the contrary in the contract, the Client may only use the software for the purpose of carrying out its internal business transactions.

3.7. Services for Third Parties

The use of the software to provide IT services for third parties requires the express, written granting of rights in the contract.

3.8. Operation by Third Parties

If the Client does not wish to operate the software itself but has it operated for its own purposes by a third company (e.g. hosting provider or outsourcing company), including affiliated companies of the Client, this shall only be possible on the basis of a written agreement with AGILITA. AGILITA shall not unreasonably refuse to conclude such an agreement while safeguarding its justified operational interests, in particular respect for the contractual provisions on the use and transfer of the software by the third company.

3.9. Disclosure to Third Parties

The Client is entitled to transfer the software to third parties (hereinafter referred to as «**new user**») insofar as:

- he himself completely abandons the use of the software, including modified or edited versions, and deletes or otherwise destroys existing copies, and
- the new user agrees in writing to the rights of use and restrictions of use agreed with the Client in respect of the software.

3.10. Transmission

The software must be transferred in its entirety. The transfer of only parts of the software is not permitted. The transfer of copies or partial copies is also not permitted.

3.11. Transfer

The Client is not entitled to rent, lease or otherwise make the software or parts of the software available to third parties on a permanent or temporary basis.

4 Remuneration

4.1. Remuneration

The Client shall pay AGILITA the remuneration specified in the contract for the delivery of the software specified in the software transfer contract and the granting of the rights of use for use in accordance with the intended purpose. Insofar as no remuneration for the software has been agreed in the contract, the Client shall pay AGILITA the AGILITA list price of the software valid at the time of conclusion of the contract as remuneration.

4.2. Due Date

The transfer fee is due for payment upon delivery and invoicing.

5 Retention of Title, Reservation of Rights

5.1. Rights to the Software

All rights to the software and the associated documentation, in particular the exercise of all proprietary rights thereto, shall be exclusively vested in AGILITA in relation to the Client. The Client shall only receive the non-exclusive rights of use to the software agreed in the software transfer agreement.

5.2. Retention of Title

AGILITA expressly reserves the permanent granting of the rights to use the software and the documentation in accordance with their intended purpose as well as ownership of the data carriers supplied and - in the case of delivery in paper form - of the documentation until the agreed remuneration has been paid in full.

5.3. Reservation of Rights

If the software is delivered before the agreed transfer remuneration has been paid in full, the Client shall acquire a non-exclusive, non-transferable right to use the standard software together with the associated documentation to the otherwise agreed extent («**provisional right of use**») for the period between delivery and acquisition of the permanent right of use («**pending period**»). During this pending period the Client's provisional right of use may only be revoked by AGILITA withdrawing from the contract due to default in payment on the part of the Client following an unsuccessful reminder. The Client's provisional right of use shall automatically expire upon acquisition of the permanent right of use, unless it has previously expired as a result of AGILITA's lawful withdrawal.

5.4. Duty to give Instructions

Insofar as third parties pursue execution against the Client's assets during the pending period, the Client shall be obliged to expressly draw their attention to the retention of title and reservation of rights to the software and the documentation that applies during this period. The same shall apply towards the insolvency administrator in the event of the opening of insolvency proceedings against the assets of the Client.

5.5. Compensation for Overuse

If the software is used beyond the agreed scope and beyond the intended use without the corresponding prior granting of rights by AGILITA, the costumer shall pay compensation to AGILITA for this overuse in accordance with AGILITA's then valid price list.

5.6. Written Notification in Case of Overuse

The Client shall immediately notify AGILITA in writing of any exceeding of the agreed intended use.

6 End of the Authorisation to Use

In all cases of termination of the Client's right to use the software (e.g. through justified withdrawal), the Client shall return all deliveries and copies on data carriers of the software to AGILITA and delete all other copies of the software unless it is legally obliged to retain them for a longer period. In this case, the claim to return and deletion shall be extended by the duration of the legal retention obligation.

The Client shall assure AGILITA in writing of the completion of the work.

7 Services within the Scope of Software Maintenance

7.1. Care Services

If AGILITA and the Client have concluded a contract for the maintenance of AGILITA standard software («**maintenance contract**»), AGILITA shall provide the maintenance services listed below in return for payment of the agreed maintenance fees in accordance with the agreements in the maintenance contract and the following provisions.

7.2. Support

7.2.1 Application Problems

AGILITA shall support the Client during the term of the maintenance contract in the event of application problems occurring by providing advice on troubleshooting, error prevention and error avoidance.

7.2.2 Support Hours

AGILITA's support can be reached via the AGILITA support portal from Monday to Friday, excluding public holidays in Zurich, between 08:00 and 17:00 («**Support Hours**»).

7.2.3 Qualification

AGILITA draws the Client's attention to the fact that support does not include referring the Client to attend such training.

7.3. New Release

7.3.1. New Release

In addition, during the term of a maintenance contract the Client shall receive on call all new releases of the software products covered by the software maintenance. A new release shall be deemed to exist if AGILITA has generally released a modified or improved new version of the software for distribution. The Client shall receive the new version of the software electronically on demand at the discretion of AGILITA.

7.3.2. Implementation

The use of a new release of the software usually requires the implementation of this new release by a specialist, which may incur additional costs. The implementation of a new release is not owed by AGILITA within the scope of the maintenance contract.

7.3.3. Testing

AGILITA draws the Client's attention to the fact that the compatibility with other computer programmes of a new release of the software may change in relation to a previous release of the software. AGILITA therefore recommends that the Client first test a new release of the software in a non-production test environment.

7.3.4. Rights of Use

AGILITA shall grant the Client the same rights of use to a delivered release of software as were originally granted to the Client when the software was provided.

7.4. Troubleshooting

7.4.1. Error Message

If the Client reports an error in the software during the term of a maintenance contract, AGILITA shall support the Client in finding the cause of the error and shall undertake the elimination of the error or measures as to how the error can be circumvented or bypassed as set out below.

7.4.2. Defects

A defect shall be deemed to exist if the software, when used in accordance with the contract, does not perform a function listed in the product description or performs it incorrectly and this has a more than insignificant effect on the contractually presumed use. The basis for assessing defects is the functional scope of the standard software of the respective manufacturer (e.g. SAP).

7.4.3. Defect classes

The following defect classifications apply to defects:

Defect class 1 Operation-preventing defect:

Due to an error in the software, it is no longer possible to use the software.

Defect class 2 Significantly operation-impeding error: Due to an error in the software, essential functions of the software are restricted or cannot be used.

Defect class 3 Other defects:

All other defects according to subclause 7.4.2 which are not to be classified in defect class 1 or defect class 2.

7.4.4. Defect classification

AGILITA and the Client shall classify a reported defect in one of the defect classes by mutual agreement. If a mutually agreed classification is not possible, AGILITA shall classify the reported defect in accordance with the information provided by the Client and considering the interests of the Client.

7.4.5. Response times

According to the classification, the Client receives feedback on the start of the troubleshooting and the status of the processing within the following response times:

- Failure class 1 Within 1 working day
- Defect class 2 Within 5 working days
- Failure class 3 Within 10 working days

The response time is calculated from the time at which the error message is received by AGILITA support. If the error message is received outside the support hours, the response time shall begin to run with the next start of work of the support.

7.4.6. Measures

AGILITA shall rectify a reported error in the software or documentation within a reasonable period of time. Error correction is possible in this context, but not conclusive, through one of the following measures:

- Delivery of a new, available release
- Delivery of available support packages or patches
- Provision of a workaround
- Instructions (hint) for correcting or bypassing the error
- Error service via remote access

7.4.7. Troubleshooting

If AGILITA offers the Client a new release, a support package, a patch or a workaround in order to avoid or remedy a fault in the software, the Client shall accept these. The Client may only refuse to accept the new release if the acceptance of the new release would have unreasonable consequences for the Client, such as adaptation or conversion problems.

7.4.8. Remote access

In order to ensure proper error service, the Client shall provide AGILITA with remote access to the software installed at the Client's premises during the term of the maintenance agreement.

8 Maintenance of old software release, obligation to update

8.1. Maintenance of old software release 1

After the release of a new version, the Client shall receive services under this maintenance contract for the elimination of errors, the delivery of new releases and support only for the current and the last two releases of the software generally released by AGILITA beforehand. If the Client is using an older version of the software, it shall be at the discretion of AGILITA to still provide services under the maintenance contract, unless otherwise stipulated below.

8.2. Maintenance of old software release 2

AGILITA's services under this maintenance contract for the current and the two previous releases of the software shall be provided for the software versions of the SAP system environments for which the respective release was released by AGILITA and for which general maintenance services are still offered by SAP AG itself. If SAP ceases to provide maintenance services for a version, AGILITA's obligation to continue to provide services under the maintenance contract for this version of the SAP system environment shall also end.

8.3. Maintenance of old software release 3

If SAP still offers general maintenance services for a software version of the SAP system environment for which the current or one of the two previous releases of the software have not been released, AGILITA shall continue to maintain the last release released for this SAP system environment until SAP discontinues the maintenance services for this software version of the system environment.

8.4. Duty to update

If the Client converts its system environment in which it operates the AGILITA standard software to a newer SAP version, the Client shall at the same time undertake to convert the AGILITA standard software to the latest release generally approved by AGILITA for this newer SAP version.

9 Cooperation obligations of the Client

9.1. Information

Within the scope of the maintenance services, the Client shall provide AGILITA with all necessary information, such as details of the system environment or a detailed error description, promptly and free of charge. Likewise, the Client shall support AGILITA to the necessary extent in the performance of the maintenance services free of charge.

9.2. Central contact persons

The Client shall appoint an employee working at the installation site as the central contact person for AGILITA. The Client shall also appoint sufficient deputies of the central contact person who, like the central contact person, have in-depth knowledge of the software to be maintained and the existing system environment so as to ensure that a competent contact person is always available at the Client's premises.

9.3. Installation

The proper installation of new releases, patches and workarounds in accordance with the regulations is the responsibility of the Client at his own expense.

9.4. System environment

Insofar as the import and use of the new releases, patches and workarounds require this, it shall be the responsibility of the Client to create the necessary conditions in the system environment. This applies in particular with regard to the installation of new versions of the operating system or other third-party software required for the use of the new releases, patches and workarounds.

9.5. Patches, workarounds and new releases

The Client shall inspect patches, workarounds and new releases for completeness of delivery and obvious errors immediately upon receipt and notify AGILITA of any complaints immediately.

9.6. Error message

The Client shall report errors in the software to be maintained to AGILITA without delay via support, stating the information that can be recognised by the Client with reasonable effort and that is useful for the error analysis.

9.7. Third-party companies

Insofar as it is unclear which system component is provoking a malfunction, the Client shall carry out an analysis of the system environment of the software together with the staff of AGILITA and, if necessary, call in third-party companies with the necessary know-how regarding the system environment at its own expense.

9.8. Remote access

In order to grant AGILITA remote access to the software to be maintained and its system environment, the Client shall provide the technical infrastructure facilities (e.g. lines, modems) required on its side at its own expense and maintain them for the duration of the maintenance contract.

9.9. Data backup

Proper data backup is the responsibility of the Client. Proper data backup shall include all technical and/or organisational measures required to ensure the availability, integrity and consistency of the IT systems, data, programmes affected by possible errors in the software to be maintained General Terms and Conditions for the Permanent Provision and Maintenance of AGILITA Standard Software and that an immediate or at least short-term restoration of the original state is possible.

10 Term and termination

10.1. Duration

The care contract shall commence on the contract commencement date stated in the care contract. If no contract commencement date is specified, the care contract shall commence upon conclusion of the care contract.

10.2. Cancellation

The care contract may be terminated by either party in writing with a notice period of three months to the end of a calendar year, but for the first time to the end of the calendar year in which two full contract years, calculated from the beginning of the care contract, end. Partial termination of the care contract is not permitted.

10.3. Termination for important reason

Termination for an important reason shall remain unaffected by the above provision.

11 Remuneration and remuneration adjustment

11.1. Annual remuneration

The Client shall pay AGILITA the initial annual maintenance fee specified in the software maintenance contract.

11.2. Care lump sum

Insofar as no initial annual maintenance fee is specified in the maintenance agreement, this shall amount to 20% of the net list price of the software covered by the maintenance agreement valid at the time of conclusion of the maintenance agreement.

11.3. Price increases for flat-rate nursing care

AGILITA is entitled to increase the annual flat-rate care fee at the beginning of each new contractual year by up to 5% in relation to the flat-rate care fee of the previous contractual year.

11.4. Price increases Extension of use

The provision in clause 11.3 shall not apply to price increases based on an extension of use by the Client. In this case AGILITA shall be entitled to calculate and invoice the flat-rate maintenance fee with immediate effect in accordance with AGILITA's then valid list price for the extended use.

11.5. Settlement of care fees

Unless otherwise agreed in the software maintenance contract, the maintenance fees shall be invoiced pro rata in the middle of each calendar quarter.

11.6. Back payments

If the Client wishes to conclude a maintenance contract even though he has licensed an outdated release of the software at that time (e.g. because he did not conclude a maintenance contract with the purchase of the software or had previously terminated an existing maintenance contract), he must pay the additional payment agreed in the maintenance contract as a one-off payment in addition to the agreed maintenance flat rate in order to reach the current release required at the start of the contract. The additional payment is due in full immediately upon commencement of the maintenance contract. Unless otherwise agreed in the maintenance contract, the additional payment shall correspond to the amount that would have been payable to AGILITA for a maintenance contract from the time of the acquisition of the software or in the event of continuous continuation of the maintenance contract. However, there shall be no claim against AGILITA for subsequent or renewed conclusion of a maintenance contract.

12 Right of retention

AGILITA shall be entitled to retain the care services in whole or in part if the Client has been in default of payment for more than 30 days after the due date of an agreed care fee. Further rights shall remain unaffected.

13 Duty to examine and to give notice of defects

13.1. Duty to investigate

Upon receipt of a delivery, the Client shall immediately inspect it for completeness and any defects and notify AGILITA of any complaints without delay.

13.2. Duty to reprimand

The Client shall declare complaints with a precise, comprehensible description, also in writing at the request of AGILITA.

14 Measurement

14.1. Scope of use

In addition to the obligation under clause 5.6 to notify the Client of any overuse, the parties agree that the licensed software shall be measured once a year. In addition to the measurement, the Client shall, at AGILITA's written request, confirm to AGILITA in writing the actual scope of use, e.g. that the licensed software is and was only used within the scope of the contractual, intended use.

14.2. Annual survey

Once per calendar year the installations and the volume of use of the software will be measured. For this purpose, the Client will start a routine of the software and transmit the measurement results to AGILITA or AGILITA will, after consultation with the Client, carry out the measurement independently via remote access.

14.3. Right to demand additional payment

If it emerges from a measurement or confirmation by the Client that the products have been overused, AGILITA shall be entitled to demand payment of the licence fees incurred for the overuse in accordance with the then current AGILITA price list pursuant to clause 5.5.

15 Claims for defects by the Client

15.1. Defects in quality

15.1.1 Guarantee

AGILITA guarantees that its products and services have the agreed properties, furthermore those properties which the purchaser may assume in good faith even without a special agreement according to the respective state of the art.

15.1.2 Warranty

In the event of a material defect, AGILITA warrants that a delivery or service has the contractually agreed quality at the time of transfer of risk to the Client.

15.1.3 Material defect

If there is a material defect in the delivery or service of AGILITA at the time of the transfer of risk to the Client, AGILITA shall be entitled to remedy the material defect at its discretion either by making a new delivery or by remedying the defect (rectification).

15.1.4 Elimination of material defect

The elimination of a material defect may, at AGILITA's discretion, also consist in AGILITA giving the Client reasonable instructions by telephone, in writing or electronically on how to avoid the material defect.

15.1.5 Withdrawal or reduction

If AGILITA is unable to remedy a material defect within a reasonable period of time or if the rectification or new delivery is deemed to have failed for other reasons, the Client may, at its discretion, either withdraw from the contract or reduce the remuneration. In the case of a continuing obligation (e.g. a care contract), the right to terminate the contract extraordinarily shall take the place of the right of withdrawal. AGILITA shall be free to choose the number of attempts at subsequent performance during the reasonable period of time allowed for subsequent improvement or new delivery. Failure of the rectification or the new delivery can only be assumed if AGILITA seriously and definitely refuses these actions, unreasonably delays them or if there are other special circumstances as a result of which it is unreasonable for the Client to wait any longer.

15.1.6 No material defect

If, in the course of troubleshooting, it transpires that the delivery or service provided by AGILITA did not have any material defect at the time of the transfer of risk, AGILITA shall be entitled to charge the Client for the time and effort involved in analysing and processing the defect in accordance with AGILITA's then valid price list for services. This shall apply in particular if the reported error is due to unsuitable or improper operation, faulty installation by the Client or by a third party commissioned by the Client, the use of software in a system environment that has not been agreed or improper intervention by the Client or a third party commissioned by the Client in the delivery or service of AGILITA (e.g. for the purpose of eliminating errors).

15.1.7 Complaint deadline

Defects must be objected to within 60 days of discovery. The warranty rights shall expire within one year from the date of overall acceptance. After the rectification of defects complained of, the periods for the repaired part shall start anew. Claims for fraudulently concealed defects may be asserted for ten years from the date of overall acceptance.

15.1.8 Deviating warranty services

Deviating warranty services for third-party products are to be regulated in the contract deed.

15.2. Duty of cooperation of the principal

15.2.1 Duty to cooperate

The Client shall notify AGILITA without delay of any material defects detected, stating the type of material defect and, if applicable, the programme sequence in which the material defect occurs. The Client shall support AGILITA in the search for defects and their processing to the necessary extent and free of charge, in particular by providing the data, information and files required for the processing of material defects and, in the event of a defect in delivered software, by taking the measures required on its part to enable AGILITA to access the software and its respective system environment by way of remote access if necessary.

15.2.2 New installation

In the event of software defects, the Client shall take over a new version of the software supplied by AGILITA and install it at its own expense, provided that the intended scope of functions is retained and the installation does not lead to unreasonable adjustment and conversion problems for the Client.

15.3. Legal defects

15.3.1 Violation of protection by AGILITA

If the intended use of the deliveries or services of AGILITA leads to the infringement of copyrights or other industrial property rights of third parties, AGILITA shall, at its own expense and at its own choice, either procure for the Client the right to continue to use the deliveries or services as intended or modify or replace the delivery or service in a manner that is reasonable for the Client so that the infringement no longer exists. If this is not possible under economically reasonable conditions or within a reasonable period of time, the Client shall be entitled to withdraw from the contract or, in the case of a maintenance contract, the right to extraordinary termination of the contract shall take the place of the right of withdrawal.

Furthermore, AGILITA shall exempt the Client against undisputed or legally established claims of the holders of the property rights concerned.

15.3.2 AGILITA commitments

The obligations of AGILITA referred to in clause 15.3.1 above shall only exist if:

- the Client informs AGILITA without delay of any infringements of property rights asserted against it,
- the Client supports AGILITA to a reasonable extent in defending the claims asserted and/or
- AGILITA enables the modification or replacement of the delivery or service,
- AGILITA reserves the right to take all defensive measures, including out-of-court settlements,
- the infringement of the property right is not based on an instruction of the Client and
- the infringement of property rights has not been caused by the fact that the Client has modified the delivery or service of AGILITA on its own authority or has used it in a manner not in accordance with the contract.

Legal defence

Any necessary court costs and lawyers' fees incurred by the Client as a result of the legal defence shall be borne by AGILITA.

Infringement of property rights by Client

Insofar as the Client itself is responsible for the infringement of property rights, claims against AGILITA shall be excluded.

15.4. Damages and reimbursement of expenses

Compensation for damages and reimbursement of expenses due to material defects or defects of title AGILITA shall only pay compensation for damages or reimbursement of futile expenses due to a material defect or a defect of title within the limits set out in clause 16.3.

15.5. Compensation and withdrawal

Compensation and withdrawal only in the case of significant material defects or defects of title. The Client's right to withdraw from the contract or to extraordinary termination and compensation only exists in the case of significant material defects and defects of title.

16 Liability for damages

16.1. Liability

AGILITA shall be liable for the damage caused by it or by a third party involved by it arising from the contractual relationship if AGILITA does not prove that neither AGILITA nor a third party involved is at fault. AGILITA shall be liable at most for the damage incurred.

16.2. Slight negligence

In the event of slight negligence, AGILITA shall be liable for property damage or personal injury within the scope of the payments of your public liability insurance.

16.3. Limitation of liability

AGILITA shall be liable exclusively within the scope of the payments made by your public liability insurance.

16.4. Exclusion of liability of AGILITA AG for consequential damages

The liability provisions set out in these GTC for AGILITA AG are conclusive. Any further liability, in particular for any indirect or consequential damages, such as loss of profit, unrealised savings, additional expenses incurred by the Client, loss of use, loss of production, loss of data and costs for data recovery or data restoration, costs associated with a business interruption or claims by third parties, is explicitly excluded.

16.5. Increased risks

Special agreements must be made for increased risks.

16.6. Data loss

Within the scope of the liability agreed here, AGILITA's liability for loss of data on the part of the Client shall be limited to the recovery expenditure that would have been incurred if the Client had backed up the data regularly and in accordance with the risk.

17 Prices, offsetting prohibition

17.1. Prices

Unless otherwise stated, all prices are exclusive of the applicable turnover tax, unless the turnover is exempt from turnover tax.

17.2. Cash discount

No discount will be granted.

17.3. Ban on offsetting

The Client may only offset or assert a right of retention with or on account of claims that are undisputed or have been legally established.

18 Subcontractor

AGILITA shall be entitled to engage subcontractors for services to be rendered.

19 Secrecy, data protection

19.1. Secrecy

AGILITA undertakes to use all data and information of the Client marked as confidential exclusively for the purposes of the contract and otherwise to keep them secret. Such data and information shall not be considered secret if they were already generally known or known to AGILITA at the time they were disclosed to AGILITA or if they become generally known at a later date. Insofar as there is an official or statutory obligation to disclose such data or information, the obligation to maintain secrecy shall not apply.

19.2. Data protection

AGILITA shall comply with the provisions of data protection law. Insofar as AGILITA obtains access to the Client's IT systems, this shall not be for the purpose of any business-related processing or use of personal data by AGILITA. The Client shall therefore secure the personal data stored on its systems in such a way that AGILITA does not have access to this data or shall agree with AGILITA in advance on a procedure for accessing and handling this data in order to comply with the provisions of data protection law. If this leads to additional expense for AGILITA, this additional expense shall be borne by the Client.

20 Written form

All agreements and legally relevant declarations, including amendments to these GTC and all contracts, must be in writing to be valid.

21 Severability clause

Should a provision of the contract be or become invalid or should a loophole occur, this shall not affect the validity of the remaining provisions of the contract. However, the contracting parties undertake in this case to replace the invalid provision in question with a valid provision or to close the loophole with such a provision that comes as close as possible to the intended economic purpose.

22 Applicable law and place of jurisdiction

The legal relationship shall be governed by Swiss law.

The contracting parties agree that Wallisellen, Switzerland, shall be the place of jurisdiction. In the absence of any agreement to the contrary in the contract, the place of performance shall be the registered office of AGILITA; however, AGILITA AG shall be entitled to take legal action against the Client at the costumer's registered office.