

# Xentral ERP Software GmbH

## General Terms and Conditions

### 1. Scope of Application

- 1.1. These General Terms and Conditions (the “GTC”) govern the use of the ERP software “Xentral” (the “Software”) provided by Xentral ERP Software GmbH, Fuggerstr. 11, D-86150 Augsburg, Germany (“Xentral”).
- 1.2. Xentral’s offer to use the Software is directed exclusively at entrepreneurs within the meaning of Section 14 of the German Civil Code (Bürgerliches Gesetzbuch – “BGB”) (hereinafter the “Customer”). Upon request by Xentral, the Customer shall be obliged to provide evidence of its status as an entrepreneur (e.g. by submitting a trade license) and to declare that it acquires and uses the products solely in its capacity as an entrepreneur.
- 1.3. These GTC shall exclusively govern the legal relationship between Xentral and the Customer. Any general terms and conditions of the Customer are excluded. Any confirmations or communications by the Customer that refer to the Customer’s own general terms and conditions are hereby expressly rejected.
- 1.4. The Controller agrees to the terms of this DPA on behalf of itself and any affiliate(s) who may be involved in the Processing of Personal Data under this DPA.

### 2. Subject Matter of the Contract, Functional Description, Intended Use

- 2.1 The subject matter of the contract is the provision of the Software in its respective current version for a limited period of time via the internet against payment (hereinafter the “Service”). German tenancy law (Mietrecht) shall apply to the temporary provision of the Software. The Service includes the provision of computing and storage resources operated by Xentral or by a subcontractor engaged by Xentral. Further details result from the respective service description, which is available at all times in its current version on Xentral’s website (the “Website”).
- 2.2 Xentral’s obligations are limited to providing the functions and features of the Software as set out in the applicable service description. Any adaptation of the Service to the Customer’s individual needs is excluded unless expressly agreed otherwise in writing.

- 2.3 Instruction or training of the Customer in the use of the Software is not part of the contractual obligations; however, instruction and training may be obtained subject to separate agreement and remuneration.
- 2.4 Xentral reserves the right to expand the Software and the Service and to make improvements where such measures (i) serve technical progress or (ii) are necessary to prevent misuse. Furthermore, Xentral shall be entitled to modify the Software and/or the Service if (i) such modifications are required by applicable law, (ii) the modifications are beneficial to the Customer, or (iii) the modifications are of a purely technical or procedural nature and do not have a material impact on the Customer. Any other changes shall be subject to Section 14 of these GTC.

### 3. Provision of the Software, Availability

- 3.1 The Software is hosted on server infrastructure licensed by Xentral. Xentral provides the Software for use at the router exit of the data center in which the server hosting the Software is located (the “Handover Point”). The Customer shall be responsible for the internet connection between the Customer and the data center, as well as for the required hardware and software (e.g. computer systems and network connections).
- 3.2 Xentral performs daily backups of the servers in order to enable restoration in the event of a disaster. These backups are so-called instant copies at block level, which make it possible to restore the state of a storage system to the point in time of an existing instant copy. Using this method, only the overall system state can be restored; individual files cannot be restored. Accordingly, the backups performed by Xentral do not serve the purpose of restoring individual Customer data. Pursuant to Section 7.6, the Customer is responsible for performing regular backups of its individual data, such as financial documents stored in the system.
- 3.3 Xentral shall provide the Customer with the access information and instructions required for use. The Customer shall not be permitted to disclose such access credentials to any third parties.

#### **4. Rights of Use to Xentral Software**

- 4.1 This section applies exclusively to the grant of usage rights in Xentral's Software to the Customer; the grant of any usage rights to third parties is governed by Section 5.
- 4.2 Subject to payment of the agreed remuneration, Xentral grants the Customer a non-exclusive, non-transferable right to use the Software during the term of the Agreement within the destination country agreed between the parties (the "License"). Upon termination of the Agreement, the License shall automatically expire without the need for any declaration by Xentral. Unless expressly agreed otherwise, the License is limited to the country in which the Customer has its registered office. The License entitles the Customer to use the Software solely for its intended purpose and within the agreed scope as set out in the applicable service or scope description. The Customer shall use the Software exclusively for the internal business purposes of its own company and not for the benefit of any affiliated companies within the meaning of Sections 15 et seq. of the German Stock Corporation Act (AktG) or for any third parties.
- 4.3 If the agreed license scope is exceeded, Xentral shall be entitled to demand additional remuneration, including retroactively, in accordance with the applicable price list and the service description available on Xentral's website. If no specific remuneration is defined for cases in which the license scope granted under the offer is exceeded, Xentral may demand additional remuneration calculated on a pro rata basis by reference to the list price license fee in proportion to the agreed license scope. Any further claims of Xentral, in particular claims for information and damages, shall remain unaffected.
- 4.4 The Customer shall not be entitled to make the Software available to any third parties for use, whether for consideration or free of charge. Any transfer, sublicensing or other making available of the Software is therefore expressly prohibited. In particular, the Customer shall not publicly reproduce or communicate the Software, whether by wire or wirelessly, including by making the Software publicly accessible in such a way that members of the public may access it from a place and at a time individually chosen by them (including, without limitation, outsourcing, application service provider (ASP) or software-as-a-service (SaaS)

operation). Furthermore, the Customer shall not decompile, disassemble or reverse engineer the Software, nor otherwise attempt to derive the source code. The Customer shall have no right to access or obtain the source code of the Software.

- 4.5 Under the conditions set out in this section, Xentral may create anonymized analyses using data generated through the Customer's or its users' use of the application ("Analyses"). The data used for the Analyses is anonymized in such a manner that conclusions about individual natural persons are excluded. The analysis data may be used for the calculation of variable remuneration, for verifying security and data integrity, for product improvements, for improving product performance, for the development of new products, for marketing purposes and for benchmarking. The Analyses and the anonymization process shall be carried out in compliance with the provisions of the General Data Protection Regulation (GDPR).
- 4.6 Subject to the Customer's right to revoke such consent at any time in writing, Xentral shall be entitled to refer to the existing or former business relationship with the Customer by name and company logo as a reference in its own advertising materials, in particular on its website.

#### **5. Third-Party Usage Rights (Third Party Software)**

- 5.1 If the Software contains third-party components that are not sublicensed by Xentral, the following shall apply:
- 5.2 The scope of the grant of third-party usage rights to the Customer with respect to such components shall be governed exclusively by the license terms of the respective third parties, which are included in the functional description (Section 2.1) or otherwise made available to the Customer at least in text form (e.g. by email).
- 5.3 In this respect, Xentral is not the licensor of the Customer. Xentral merely provides the Customer with the relevant third-party license terms and acts solely as a messenger of the respective third party, but not as the Customer's contractual partner with respect to the third-party usage rights. In particular, Xentral assumes no warranty for defects in title with respect to such third-party usage rights.

- 5.4 The Software may contain open source software components. The use of such components shall be governed exclusively by the applicable license terms of the respective open source software components, which are provided and/or referenced as part of those components. In the event of any conflict or inconsistency between the license terms of the open source software and the provisions of these GTC, the license terms of the open source software shall prevail.

## **6. Support Services**

- 6.1 The scope of the support services depends on the package purchased by the Customer and is described in more detail in the applicable service description available on Xentral's website.

## **7. Customer's Duties of Cooperation and Information**

- 7.1 The Customer has informed itself about the essential functional features of the products and bears the risk of whether these meet its wishes and requirements; in case of doubt, the Customer has obtained advice from Xentral employees or qualified third parties prior to the conclusion of the Agreement or has resolved such doubts itself.
- 7.2 The Customer is obliged to check its data and information for viruses or other harmful components prior to input and to use state-of-the-art virus protection programs for this purpose.
- 7.3 The Customer undertakes not to store any unlawful content or any content that violates applicable laws, official requirements or third-party rights on the storage space provided.
- 7.4 For access to the Services, the Customer shall generate a "User ID" and a password required for further use of the Services. The Customer is obliged to keep the "User ID" and password confidential and not to make them accessible to any third parties.
- 7.5 Before asserting any claims against Xentral for defects, the Customer shall carefully examine, to the extent reasonably possible, whether the potential causes of the issue giving rise to the suspected defect lie within its own sphere of responsibility. The Customer shall provide Xentral with all information reasonably available to it that is useful for error analysis and remediation.

- 7.6 The Customer shall take appropriate precautions in the event that the products do not function properly in whole or in part (e.g. by performing daily data backups, fault diagnosis and regular review of data processing results).

- 7.7 The Customer shall bear any disadvantages and additional costs resulting from a breach of the obligations set out in Sections 7.1 to 7.6.

- 7.8 The Customer is solely responsible for compliance with statutory retention obligations (e.g. under tax law).

- 7.9 The content stored by the Customer in the storage space allocated to it may be protected by copyright and data protection laws. The Customer hereby grants Xentral the right to make such content accessible to the Customer via the internet upon request and, in particular, to reproduce and transmit such content for this purpose, as well as to reproduce it for data backup purposes.

## **8. Remuneration**

- 8.1 Unless otherwise agreed, the prices stated on Xentral's website at the time the order is placed shall apply. Such prices are exclusive of statutory value-added tax.

- 8.2 Depending on the selected pricing package, billing shall be carried out on a monthly or annual basis.

- 8.3 The remuneration shall be invoiced to the Customer in advance. Unless otherwise agreed, the Customer shall pay the invoiced amount in euros and without deduction immediately. Additional orders not included in the selected service package shall be invoiced at the end of the respective billing cycle in accordance with the agreed prices. If the volume of orders included in the service package is exceeded by 100% during the current contract period, partial billing shall be effected via the stored payment method.

- 8.4 During the current contract period, the Customer may upgrade to a higher service package at any time. For the remaining term of the current billing cycle, the additional fee shall become due at the time the service package is changed.

- 8.5 Xentral shall be entitled to block the Customer's access to the Software if the Customer is in default of payment of a

non-insignificant amount, whereby a payment default in the amount of one monthly remuneration shall be deemed non-insignificant. Prior to blocking access, Xentral shall inform the Customer in due time by email.

## **9. Warranty for Defects**

### **9.1 Definition of a Defect**

9.1.1 A defect in the Software exists if the actual functionality of the Software deviates from the agreed functional description (Section 2.2) or if third-party rights conflict with the granting of rights (Section 4). In all other respects, the determination of a defect depends on whether the products are suitable for the contractually intended use or, alternatively, for ordinary use, and whether they have the quality customary for products of this type and which the Customer may reasonably expect for products of this type.

9.1.2 No defect exists in the event of errors or problems,

- a. if the Customer does not use the Software as intended (Section 4.2) or uses it improperly; or
- b. if the Customer edits, modifies, translates or otherwise alters the Software beyond the scope of its rights of use (Section 4) without Xentral's prior written consent; or
- c. if errors or problems result from the use of the Software in conjunction with programs that are incompatible with the Software.

9.1.3 With respect to defects in quality, Xentral shall assume warranty obligations only to the extent that such defects can be demonstrated or reproduced ("Defect in Quality").

9.1.4 The warranty for freedom from third-party rights (Section 9.1.1) applies only to the destination country agreed between the parties in which the Software is to be used. Unless expressly agreed otherwise, such warranty shall apply only to the country in which the Customer has its registered office.

### **9.2 Remedy of Defects by Xentral**

9.2.1 At its sole discretion, Xentral shall decide whether, after receipt of a defect notice, defect remediation shall be effected by

remediating the defect or by re-providing the Service free of defects (in particular pursuant to Sections 9.2.2 to 9.2.3).

9.2.2 In the case of defects in quality, Xentral may, at its discretion, either provide the Customer with a new, defect-free version of the Software for use or remedy the defect; defect remediation shall also be deemed to have occurred if Xentral demonstrates to the Customer reasonable means of avoiding the effects of the defect. The Customer shall be obliged to accept a new software version provided that the contractually agreed functional scope is maintained.

9.2.3 In the case of defects in title, Xentral may, at its discretion, procure for the Customer a legally unobjectionable right of use to the Software or provide exchanged or modified equivalent Software. The Customer shall be obliged to accept a new version of the Software if the contractually agreed functional scope is maintained and such acceptance is reasonable. If claims are asserted by third parties, Section 9.3 shall additionally apply.

9.2.4 Xentral shall be entitled to make defect remediation conditional upon the Customer having paid at least an appropriate portion of the remuneration.

9.2.5 If defect remediation pursuant to Section 9.2.1 finally fails after expiry of a reasonable grace period to be set by the Customer after Xentral has become aware of the defect, and if use of the Software is completely or materially restricted for the Customer, the Customer may terminate the contractual relationship without notice. The right to reduce remuneration shall be limited to the portion of the remuneration attributable to the defective part of the service. The setting of a grace period shall be dispensable if it is unreasonable for the Customer or if Xentral seriously and definitively refuses defect remediation. Xentral shall provide compensation for damages and futile expenses exclusively within the scope set out in Section 10.

9.2.6 The application of Section 536 a (2) of the German Civil Code (BGB) (right of the tenant to remedy defects itself) is excluded.

### **9.3 Special Provisions for Defects in Title and Alleged Third-Party Claims**

9.3.1 If third parties assert claims (in particular claims based on intellectual property rights)

that prevent the Customer from exercising the contractually granted rights of use to the products, the Customer shall immediately inform Xentral thereof in writing and in full.

- 9.3.2 If the Customer ceases use of the Software for the purpose of damage mitigation or for other important reasons, the Customer shall be obliged to inform the third party immediately that such cessation of use does not constitute an acknowledgment of the asserted claims.
- 9.3.3 The Customer hereby authorizes Xentral to conduct legal proceedings against such third parties, both in and out of court, solely in Xentral's own name. If the Customer is sued, the Customer shall coordinate with Xentral and shall undertake procedural actions, in particular acknowledgments or settlements, only with Xentral's prior consent.

#### **10. Xentral's Liability for Damages Suffered by the Customer**

- 10.1 Xentral shall be liable for damages or reimbursement of futile expenses without limitation and in accordance with the statutory limitation periods in the following cases:
- a. intent and gross negligence on the part of Xentral,
  - b. fraudulent concealment of a defect by Xentral,
  - c. personal injury for which Xentral is responsible,
  - d. guarantees assumed by Xentral, and
  - e. claims against Xentral under the German Product Liability Act.
- 10.2 In cases of simple negligence, Xentral shall be liable only for foreseeable damage caused by the breach of essential contractual obligations by Xentral or one of its legal representatives or vicarious agents. An essential contractual obligation is an obligation whose fulfillment enables the proper performance of the contract in the first place or whose breach jeopardizes the achievement of the contract's purpose and on whose compliance the Customer may regularly rely.
- 10.3 Liability pursuant to Section 10.2 shall be limited to 100.000 Euro per damage event and, in total for all damage events arising

from the contractual relationship, to (i) 250,000 Euro or (ii) the amount of the remuneration paid by the Customer for one contract year, whichever amount is lower. This limitation of liability shall not apply in the cases set out in Section 10.1 (c) to (e).

- 10.4 Without prejudice to Sections 10.1 to 10.3, the liability of Xentral, its legal representatives and vicarious agents shall be excluded, in particular for events of force majeure (including strikes, natural disasters and pandemics) and for simple negligent breaches of non-essential contractual obligations. Strict liability for defects existing at the time of contract conclusion (Section 536 a (1) of the German Civil Code (BGB)) is excluded.
- 10.5 Xentral retains the right to assert contributory negligence on the part of the Customer (e.g. due to a breach of its duties of cooperation pursuant to Section 7). In particular, if the Customer fails to comply, or fails fully to comply, with its obligation to perform regular data backups (Section 7.6) and damage occurs as a result of a software defect for which Xentral is responsible that would not have occurred, or would not have occurred to the same extent, if the Customer had performed such backups, the Customer's failure to perform backups shall be taken into account as an appropriate share of contributory negligence when calculating damages. Xentral shall also assume no liability for damage arising from the Customer's disclosure of passwords or user IDs to third parties in breach of its obligation under Section 7.4.

#### **11. No Defect Remediation and Limited Liability for Free-of-Charge/Beta Services**

By way of deviation from Sections 9 and 10 above, the following shall apply in the case of services or version of the software provided by Xentral free-of-charge:

- 11.1 If Xentral provides a service free of charge, for example by making available parts of the Software that are expressly designated as beta or test versions, Xentral shall not be obliged to remedy defects.
- 11.2 If the Customer suffers damage due to a defect in a free-of-charge service, Xentral shall be obliged to pay damages only if Xentral fraudulently concealed the defect. In

all other cases, Xentral's liability shall be limited to intent and gross negligence.

## **12. Confidentiality and Data Protection**

- 12.1 The parties undertake to treat all knowledge of confidential information and trade secrets of the respective other party obtained in the course of contract initiation and performance ("Confidential Information") as strictly confidential for an unlimited period of time and to use such information solely for the purposes of performing this contract. Xentral's Confidential Information shall also include the services rendered under this contract.
- 12.2 The above obligations shall not apply to Confidential Information that:
- was already public knowledge or known to the receiving party at the time of disclosure;
  - became public knowledge after disclosure without fault of the receiving party;
  - was lawfully disclosed to the receiving party by a third party without any restriction regarding confidentiality or use;
  - was independently developed by one party without use of the other party's Confidential Information;
  - must be disclosed pursuant to applicable law, an official order or a court decision, provided that the parties inform each other immediately and support the other party in defending against such orders or decisions; or
  - to the extent the receiving party is permitted to use or disclose the Confidential Information due to mandatory statutory provisions or under this contract.
- 12.3 When using the Software, the Customer shall comply with applicable data protection laws. Xentral is not the controller within the meaning of Article 4(7) GDPR. In particular, the Customer is responsible for obtaining any required consents from its contractual partners. In the event of a violation, the Customer shall indemnify Xentral against all third-party claims.
- 12.4 The parties agree that the data processing agreement published on Xentral's website shall form an integral and binding part of the contractual relationship

## **13. Term and Termination**

- 13.1 The contractual relationship shall commence upon signature of the order form by the Customer.
- 13.2 The contractual terms shall result from the offer. Monthly contracts shall be automatically extended by successive periods of one month each unless either party terminates the contract with thirty (30) days' notice to the end of the respective contract period.
- 13.3 Annual contracts (or two-year contracts) shall be automatically extended by successive renewal periods of one year each upon expiry of the initial minimum contract term unless either party terminates the contract with three (3) months' notice to the end of the respective contract period.
- 13.4 The right of either party to terminate the contract without notice for good cause shall remain unaffected. Good cause shall exist in particular if the Customer is in default of payment of fees or substantial parts thereof and fails to pay such fees within a reasonable period even after a reminder, or if an application for the opening of insolvency proceedings over the Customer's assets is filed and/or such insolvency proceedings are opened.
- 13.5 Upon termination of the contract, all rights of use granted to the Customer with respect to the Software shall immediately expire, and the Customer shall cease using the Software.
- 13.6 Terminations may be declared in writing, by email or – if termination via the subscription management platform is provided – via such platform.

## **14. Amendments to the GTC and Price Adjustments**

- 14.1 Xentral reserves the right to amend or supplement these GTC. The planned amendments or supplements shall be announced to the Customer by email or in writing with reasonable notice prior to the planned effective date. If the Customer does not object to the amended GTC in text form (e.g. letter, fax, email) within two weeks of receipt of the email, the amended GTC shall be deemed accepted.
- 14.2 Xentral may adjust remuneration rates once per calendar year by written adjustment

notice to the Customer, subject to a notice period of one (1) month, to a reasonable extent in order to compensate for cost increases and functional enhancements.

- 14.3 In case of doubt, an adjustment of remuneration rates shall be deemed reasonable if the remuneration rates agreed between Xentral and the Customer are increased by no more than five percent (5%).
- 14.4 If an adjustment is not reasonable within the meaning of Section 14.3, the Customer shall have a right of objection. If the Customer does not exercise this right of objection in writing within four (4) weeks of receipt of the adjustment notice, the new remuneration rates shall be deemed agreed. If the Customer timely exercises its right of objection, Xentral shall have the option to terminate the contract within four (4) weeks after receipt of the objection.
- 14.5 Furthermore, Xentral reserves the right to modify the Software or to offer or integrate deviating functionalities, provided that such changes or deviations are not unreasonable for the Customer. If the provision of a modified version of the Software or a change in functionalities results in a material change to the Customer's workflows supported by the Software and/or restrictions on the usability of previously generated data, Xentral shall notify the Customer thereof in text form at least four weeks prior to such change becoming effective. If the Customer does not object to the change in text form within two weeks of receipt of the change notice, the change shall become part of the contract. If the Customer timely objects to a change pursuant to this Section 14, the contractual relationship shall continue under the previous conditions. In this case, Xentral reserves the right to terminate the contractual relationship for cause with one month's notice to the end of the month within four weeks of receipt of the objection.

## **15. Final Provisions**

- 15.1 The Customer may only set off claims against Xentral with claims that are undisputed or have been finally adjudicated.
- 15.2 Any assignment or transfer of claims arising from this contract by the Customer shall require Xentral's prior consent.
- 15.3 The exclusive place of jurisdiction for all disputes arising out of or in connection with

this contract shall be Augsburg. The place of performance shall be Augsburg.

- 15.4 This contract shall be governed exclusively by the laws of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 15.5 Should any provision of this contract be or become invalid, contain an impermissible time limitation or a gap, the validity of the remaining provisions shall remain unaffected. Unless such invalidity results from a violation of Sections 305 et seq. of the German Civil Code (BGB) (law on general terms and conditions), a valid provision shall be deemed agreed in place of the invalid provision that comes closest to the economic intent of the parties. The same shall apply in the event of a gap.