

## General Terms of Purchase of Everllence for Information Technology (IT) Contracts and / or Electronic Information and Communications (TK) Contracts

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## 1 Definitions

The following expressions used in these IT Terms of Purchase have the meanings listed below:

- 1.1 **Contractor** refers to the supplier / contractor.
- 1.2 **Order Placement** refers to a purchase order made by Everllence, a blanket purchase order, or an order being called off as a result of a blanket purchase order, or to an (individual or separate) contract that Everllence has entered into with the Contractor.
- 1.3 **Operating Performance** refers to the operation of hardware and / or software (systems), the hosting and management of data and / or of the datacenter headquarters.
- 1.4 **Copyleft License** is a licensing and usage stipulation for open-source software that may cause software components that are integrated into or joined with the respective open-source software to be subject to the same terms and conditions of licensing and usage as those applied to the open-source software in question.
- 1.5 **Services** refers to information and communications services, as well as telecommunications and telecommunications-supported services.
- 1.6 **Own Use** refers to the use of results by the Group companies and the order-specific use by service providers who operate on behalf of Everllence or on behalf of Group companies.
- 1.7 **Work Products** refers to all work results that constitute the subject matter or the result of Contractual Performance, including know-how, hardware, and software supplied, and all content, access numbers, domains, subdomains, telephone numbers, and other identification numbers and symbols that the Contractor establishes or registers for Everllence or uses or provides to Everllence for use in the course of its Contractual Performance.
- 1.8 **Hardware Services** refers to the delivery / licensing of hardware (systems) and the adjustment / adaptation of hardware (systems).

- 1.9 **Infrastructure Services** refers to the entire portfolio of equipment, system software, and network components which are necessary for the integrated provision and operation of the EVERLLENCE IT systems and applications. Infrastructure includes all preparatory services that are necessary for the provision of Contractual Performance, such as planning, constructing, setting up, or installing systems, e.g. the building services required in each case (power supply, air conditioning, etc.).
- 1.10 **IT Purchase Terms or Terms of Purchase** refers to these "General Terms of Purchase of Everllence for Information Technology (IT) Contracts and / or Electronic Information and Communications (TK) Contracts".
- 1.11 **Deliverables** refers to any object to be delivered to Everllence by the Contractor pursuant to the Order Placement (hardware, data carriers, documents, documentation, concepts, etc.).
- 1.12 **Monitoring Services** refers to the recording of performance and other data relating to systems and / or services, as well as the creation of reports and their transfer to Everllence in the context of operating the systems and / or in the context of the services.
- 1.13 **Blanket Purchase Orders** describe Contractual Performance (where appropriate based on our request for proposal (RFP)), stipulate the remuneration and other terms of supply as appropriate, and may contain a forecast regarding the volume of Contractual Performance Everllence will require. Even where they include a forecast, Blanket Purchase Orders do not give rise to any obligation on the part of Everllence to issue call-off orders for Contractual Performance unless otherwise expressly agreed in writing. A Blanket Purchase Order places the Contractor under the obligation to render Contractual Performance as specified in the Blanket Purchase Order upon receipt of our call-off order(s). No contractual obligation – in particular, no obligation to accept and / or pay for Contractual Performance – will arise on the part of Everllence until it issues a call-off order.
- 1.14 **Software Services** refers to the creation and

editing of software and software systems, the expansion and amendment of software (systems), the adjustment and adaptation of software (system), and the licensing of standard software.

- 1.15 **Support Services** refers to all accompanying services that are necessary in the context of the Hardware and Software Services and / or Infrastructure Services, such as training, advice, optimization, and maintenance / care.
- 1.16 **Systems** encompasses IT systems, IT networks, and IT equipment and / or data and telecommunications systems, equipment, networks, lines, and communication paths, including hardware and software.
- 1.17 **Processing** refers to any and all operations or series of operations, whether accomplished with or without the aid of automated processes, that are performed in connection with personal data, including collecting, recording, organizing, ordering, storing, adapting or modifying, reading, accessing, using, disclosing by transmitting, distributing or making otherwise available, comparing, linking, restricting or filtering, deleting, or destroying such data.
- 1.18 **Contractual Performance** refers to all services to be provided by the Contractor and agreed under the terms of the Order Placement.
- 1.19 **Everllence** refers to Everllence SE and all businesses under the direct or indirect control of Everllence, as defined in Sections 15 et seq. Aktiengesetz (German Stock Corporation Act).

## 2 **Applicability of these IT Purchase Terms and other Terms and Conditions**

- 2.1 Unless otherwise agreed in a specific case, all of our Order Placements are formed subject exclusively to these IT Purchase Terms in the version applicable at the time of concluding the contract. Should the Contractor have conflicting or differing terms and conditions, these will only be binding for Everllence if Everllence has expressly acknowledged them in writing. The IT Purchase Terms apply even where Everllence accepts deliveries without objection or reservation despite being aware of the Contractor's conflicting or differing terms

and conditions to which Everllence has not explicitly agreed in writing. Conflicting business terms and conditions shall not affect the contract's realization provided that the Parties have reached agreement on all significant issues. In such cases, the concordant provisions of both sets of business terms and conditions and the relevant statutory provisions shall apply as regards the contract's interpretation.

- 2.2 Unless otherwise expressly agreed in writing, the most current versions of the contractual conditions for the respective Order Placement which are valid at the time of contract conclusion, including the Service Product Specifications and the Everllence Code of Conduct for Suppliers and Business Partners, shall form part of the contract. If these have not been attached to the invitation to tender, or enclosed during the tender phase or when concluding the contract, they can be obtained via:

Contractual conditions: [Purchasing conditions](#)

Equipment regulations (*Betriebsmittelvorschriften*): can be obtained on request from the responsible authorized purchaser.

Code of Conduct for Suppliers and Business Partners: [Code of Conduct for suppliers and business partners](#)

- 2.3 If the Contractor renders Contractual Performance in or on our premises or grounds, the applicable house rules and accident prevention and safety regulations will form an integral part of the terms of the Order Placement in question. If these have not already been included in the tendering process, the quotation phase or upon conclusion of the contract, the Contractor shall familiarize itself with these provisions as follows:

- i) For the Augsburg site, all safety and accident-prevention regulations and all house rules can be found in the document "Instructions for external companies at the AUG plant" available from this link: [Specifications for external companies on factory premises](#). Acceptance of these safety rules shall be confirmed using the "Declaration of consent by external

- company” which can be found at: [Declaration of consent for external companies](#).
- ii) For all the remaining sites, the Contractor will not find the above regulations on a website. If the aforementioned regulations have not been provided, the Contractor shall contact the site concerned so that the regulations can be sent by e-mail beforehand.
- 2.4 If contractual services are intended for series production (production materials), the provisions in Section 3.1 second paragraph, 11 and Section 20 of the General Terms of Purchase for Supplies, Services and Works shall additionally apply to patents and, if these terms have not already been included during the tendering process, quotation phase or upon conclusion of the contract, the Contractor can view, save and print them from [Purchasing conditions](#).
- 2.5 Unless otherwise expressly agreed in writing, the confidentiality declaration concluded pursuant to section 31 below is an integral part of the terms of the respective Order Placement.
- 2.6 Should Everllence, in a specific and justified case, agree to the applicability of the Contractor's or any third party's terms and conditions of licensing and use, which must be explicitly stated in writing in order to be valid, **only** the provisions that define **the nature and scope of the rights of use and exploitation** shall apply. Provisions dealing with all other matters, including, in particular, rights arising from product defects, liability for damages, applicable law, and / or place of jurisdiction, shall **not** apply.
- 2.7 Click Wrap / Shrink Wrap licensing conditions do not apply to Everllence under any circumstances.
- 2.8 With respect to enterprises and legal persons under public law, the IT Purchase Terms shall also apply to all future Order Placements for IT and / or telecommunications contracts. Furthermore, these shall apply to contracts and legal relationships with an entrepreneur in which Everllence acts on behalf of a third party by proxy.
- ### 3 Tenders, Contract Formation
- 3.1 Tenders to Everllence must be effected in writing in accordance with sections 126 and 126a of the German Civil Code (*Bürgerliches Gesetzbuch – BGB*) and must be free of charge. These tenders must always be prepared in German. However, a data exchange procedure which deviates from the above may be specified in the invitation to tender.
- 3.2 Unless otherwise agreed, the pre-printed forms sent by Everllence should be used for the submission of tenders, and these should contain all the information required by Everllence.
- 3.3 In the event that the tender is submitted on the basis of an inquiry or request for proposal from Everllence, the tendering party shall be obliged to comply with the guidelines issued by Everllence. If there are deviations nonetheless, they must be expressly pointed out in the tender in writing. The tendering party shall be free to submit alternative tenders and specific proposals.
- 3.4 Only complete tenders encompassing all the requested services should be submitted.
- 3.5 All prices should be stated in the tendering party's national currency (if this is not euros, they should also be stated in euros, and, if applicable, include currency hedging shown separately). Unless otherwise agreed, all prices shall be fixed prices. In the event that the prices quoted do not specify whether the prices include VAT, these should be interpreted as gross prices.
- 3.6 Tenders should generally be addressed to the purchasing office specified in the documentation relating to inquiries / requests for proposal.
- 3.7 In the case of an inquiry or request for proposal by Everllence, the tendering party shall be bound by its tender for the duration of the period named therein, or else for the duration specified by the tendering party. In the event that neither party expressly states a validity period, this shall be deemed to be 12 weeks from the time Everllence receives the tender.

- 3.8 In the event that the tendering party fails to comply with the aforementioned regulations, Everllence reserves the right to disregard the tender in question.
- 3.9 An Order Placement only becomes effective when issued in writing and on the basis of these terms and conditions. The Order Placement and, where applicable, our documents relating to the request for proposal, and, where applicable, our request to submit a tender and / or our specifications shall be the determining factor for the content and scope of Contractual Performance, unless otherwise expressly agreed in writing. If, by way of exception, a contract is entered into verbally, it must be confirmed in writing by both Parties without delay.
- 4 Execution of Contractual Performance**
- 4.1 The Contractor shall render Contractual Performance in its entirety in a due and proper manner in accordance with the latest technological standards, including current programming standards, and shall produce the Work Product agreed in the Order Placement. In so doing, the Contractor shall comply with our currently applicable (quality) standards and working practices as brought to its attention.
- 4.2 Achievement of the agreed, or standard and generally accepted, quality standards shall be verified and documented by the Contractor using code scanning tools. Detailed code scanning documentation (scan findings reports agreed with Everllence) shall be delivered with the respective Contractual Performance.
- 4.3 When performing the service, the Contractor shall observe and comply with the content of the document "Information security guidelines for suppliers", which can be found at [Information Security Guidelines for Suppliers](#). If this Appendix has not already been included in the tendering process, the quotation phase or upon conclusion of the contract, the Contractor shall request it from Everllence. The Contractor shall be obliged to inform Everllence without delay of any non-compliance or breach of the requirements listed here and to put in place effective countermeasures promptly and with no reduction in the provision of the contractual services.
- 4.4 The most up-to-date level of IT security shall be employed for the contractual services. The Contractor shall conduct security testing at regular intervals before and – in the case of continuous obligations – during provision of the contractual services, and shall document the results. The Contractor shall inform Everllence in writing without delay as soon as any threat to information security becomes apparent and, in close consultation with Everllence and at its own expense, shall introduce effective countermeasures without delay and with no reduction in the provision of the contractual services.
- 4.5 The Contractor shall consult with Everllence before making any public announcement concerning IT security weaknesses which may affect the products and/or services of Everllence.
- 4.6 All the latest technological precautions and measures shall be taken when Everllence data is backed up so that datasets can be archived and restored at any time without risk of loss and in a legally-compliant manner.
- 4.7 If the Contractor requires access to our systems in order to provide the contractual services, this shall be possible only if our technology is used and shall require our express written consent in advance. The Contractor shall bear any costs associated with such use. The Contractor shall be obliged to familiarize itself with the applicable security policies and plans in accordance with Section 4.3 of the "Guidelines for service providers".
- 4.8 Before providing software and / or data carriers to Everllence, the Contractor shall scan these using a state-of-the-art virus detection software and ensure that such software and / or data carriers contain neither malware (software programmed to do damage) nor any computer viruses, worms, Trojan horses (Trojans), or similar. Before providing software to Everllence, the Contractor shall run state-of-the-art software security tests and ensure that the software contains no critical vulnerabilities that could compromise the integrity and confidentiality of our systems and data or the systems and data of third parties linked to our systems. The



Contractor shall furnish Everllence with proof of its compliance with the foregoing before providing software to Everllence.

- 4.9 The Contractor shall carefully select the employees on whom it relies to perform the contract (both initially and / or where employees are replaced or require training) to ensure that they possess the necessary personal aptitude and technical knowledge to render Contractual Performance to the agreed level of quality.
- 4.10 Both Parties shall name a point of contact for all information to be shared. Discussions to coordinate the content and performance of the contract, as well as for sharing all information required for the performance of the contract, shall take place at regular intervals.
- 4.11 The Contractor agrees that one of its principal contractual obligations shall be to maintain clear technical documentation on Contractual Performance rendered that is easy to understand and, upon request, to inform Everllence of the status of Contractual Performance with a reasonable degree of detail. Everllence may require the delivery of Work Products in their draft or interim state at any time; the exercise of this right shall in no way release the Contractor from its obligations under this section.
- 4.12 Software shall in all cases be delivered to Everllence together with user documentation and, except for standard software, with the source code and programming documentation.
- 4.13 Contractual Performance effected by the Contractor in or on our premises or grounds shall be carried out by the Contractor independently and on its own responsibility, in compliance with our technical and organizational specifications, and under the supervision and exclusive direction of the responsible personnel appointed by the Contractor.
- 4.14 The Contractor shall obtain information about the house rules and accident prevention and safety regulations applicable in each case at the respective place of performance (in particular, in or on our premises or grounds). In this respect, please see Section 2.3.

In addition, the provisions of Sections 16.1 to 16.7 of the General Terms of Purchase for Supplies, Services and Works shall apply accordingly. These can be viewed at [Purchasing conditions](#).

- 4.15 Everllence is only obligated to provide resources (hardware, software, office space, etc.) where this has been expressly agreed in writing. Any use, in particular for system operation purposes, of our premises, office space, or other facilities by the Contractor requires a separate written contract to be concluded with Everllence regulating such use, in particular specifying the duration thereof and the consideration to be paid by the Contractor therefor. An obligation on the part of Everllence to provide resources does not result merely from the fact that Contractual Performance is effected in or on our premises or grounds. Any resources that Everllence provides may be used by the Contractor, its employees, and / or its subcontractors solely to render Contractual Performance. Passwords may not be stored or provided to other persons and must be changed at least every 90 days.
- 4.16 Everllence reserves all rights to technical requirement profiles, illustrations, drawings, calculations, samples, models, and other documents that Everllence makes available to the Contractor, especially ownership rights and copyrights. Third parties may be given access to such materials only with our express prior written consent. Such materials and information shall be used solely to effect Contractual Performance and must be automatically returned to Everllence upon contract completion, without any request to do so.
- 4.17 Unless there is express written agreement to the contrary, the Contractor shall render all necessary Infrastructure Services without additional costs to Everllence.
- 4.18 On request, the Contractor may offer Support Services subject to conditions that are standard for the market.
- 4.19 The Contractor shall notify Everllence immediately in writing if it believes the information that has been provided by Everllence and that it requires in order to

perform the contract to be incomplete or incorrect.

- 4.20 The Contractor undertakes to give Everllence precautionary warnings of any risks, and to protect against disruptive influences, including those of third-party origin.
- 4.21 Every delivery shall be accompanied by a delivery note containing our order data (in particular, the number and date of the Purchase Order, cost center).
- 4.22 Before permitting its personnel and any subcontractors used to commence work, the Contractor shall brief them in writing on the requirements of this section 4 and place them under the obligation to comply with same.

## **5 Change to Performance**

- 5.1 If, after the contract has been concluded, Everllence requests a change to the agreed Performance, the Contractor is required to take into account the requested change in the provision of its Performance, unless this is not reasonable with respect to its operational capacity and it immediately informs Everllence of this in writing, at the latest within 5 working days of receipt of the change request.
- 5.2 Within 5 working days of receipt of the change request, the Contractor must communicate in writing whether the change requested by Everllence affects the agreed remuneration and performance deadline; if there is an impact, justification must be provided.
- 5.3 If an extensive review is necessary in order to determine whether a requested change or its impact is feasible, particularly with respect to the agreed remuneration and performance deadline, the Contractor must communicate this in writing by the deadline set in section 5.2, stating the reasons and the expected duration of the review. The performance of a review of this type requires a separate agreement.
- 5.4 Until an agreement is in place regarding the performance of review pursuant to section 5.3, or regarding the change requested by Everllence, Performance must be rendered in accordance with the contractual agreements that applied before the change request, unless Everllence has requested interruption

pursuant to section 6.

## **6 Interruption of Contract Performance**

- 6.1 In the event of communication from the Contractor pursuant to section 4.19 or a change request from Everllence pursuant to section 5.1, Everllence may request interruption of the performance of all or individual services at any time. If Everllence does not request interruption, and if the Contractor recognizes that continuing the work on the basis of the existing specifications would result in unusable results, it must inform Everllence of this immediately in writing.
- 6.2 An appropriate agreement must be made between the Parties regarding the impact of the interruption. The agreed performance deadlines change in accordance with the scope of the part of Performance that is delayed by the interruption, at the most by the number of working days not used for contract performance as a result of the interruption.

## **7 Settlement in the event of Termination as a result of Contractual Breach**

- 7.1 In the event of extraordinary termination by Everllence, the Contractor shall only be entitled to invoice for the services it has verifiably provided up to the day of the termination, based on the proportion of the completed part to the overall value of the respective individual order, insofar as Everllence has a use for it. In addition, Everllence may also request partially completed services in return for the reimbursement of the verifiably incurred costs; however, no more than an amount that corresponds to the value of the partially completed services in proportion to the overall value of the respective individual order.
- 7.2 If the Contractor ceases payments or if insolvency proceedings regarding its assets or extrajudicial settlement proceedings are initiated, Everllence shall be entitled to terminate the contract with immediate effect. In this case, section 7.1 above applies accordingly.

## **8 Cooperation Services on the part of Everllence**

The cooperation services required must be coordinated and agreed between the Contractor and Everllence at the start of the contract (hereinafter referred to as



“Cooperation Services on the part of Everllence”). The Contractor shall inform Everllence, in writing and promptly, about any necessary rendering of “Cooperation Services on the part of Everllence”. If Everllence has not, or has not promptly, rendered one of the “Cooperation Services on the part of Everllence”, despite prior written information by the Contractor, the Contractor shall

- i) request in writing that Everllence provide fulfilment, setting a reasonable deadline (at least one week), quoting the “Cooperation Services on the part of Everllence”, and
- ii) undertake all reasonable efforts to provide the service, even without the (prompt) provision of the “Cooperation Services on the part of Everllence”.

Only after two requests pursuant to section (i) above have been made to no avail can the Contractor demand any applicable additional costs that may have been incurred for the time after the second request was made to Everllence to no avail; these additional costs must be individually verified.

## **9 Performance Deadlines, Consequences of Default**

- 9.1 Any agreed dates and deadlines shall be binding. If the Contractor realizes that the agreed dates cannot be met, it shall inform the customer in writing without delay, specifying any appropriate remedy. The obligation to meet the agreed deadline shall remain unaffected. The customer's consent shall be required for any early delivery or service and any partial delivery or service.
- 9.2 The customer shall have the right to rescind the contract, in whole or in part, before performance becomes due if it is apparent that the Contractor will not complete work on schedule even if the customer were to set a reasonable extension.
- 9.3 Statutory provisions shall apply to the legal consequences in the event that the Contractor fails to meet the agreed dates or deadlines.
- 9.4 Should records or items possessed by the Contractor be required in the event of termination or rescission or execution by a third party, then the Contractor shall deliver them to the customer without delay. If property rights hamper performance by a third party, the Contractor shall be obliged to obtain

appropriate exemption from these rights without delay.

- 9.5 If the Contractor fails to meet the performance date then, at its own option and without setting any further extension, the customer shall be entitled to demand subsequent performance or compensation in lieu of performance because of non-performance or defective performance, or to rescind the contract. In the case of default, a contractual penalty of 0.3% of the agreed net fee per working day exceeding the deadline, but with a maximum of 5% of the agreed net fee, shall be payable. Furthermore, if an interim deadline is exceeded, the percentage rates shall apply only to the net fee pertaining to the contractual services to be provided by the interim deadline. To the extent that Swiss law applies to this contract pursuant to Section 41.2, the maximum contractual penalty shall be 10% of the net fee. The contractual penalty for delayed services shall be demanded in combination with performance of the contract in all cases. The contractual penalty shall be offset against any claims for damages pertaining to losses actually suffered due to delayed performance. The customer's claim regarding a contractual penalty shall also remain unchanged if, after the claim has arisen, the customer rescinds the contract or has a third party provide the contractual services. This shall not affect any further claims and rights on the part of the customer due to a missed deadline.

- 9.6 The unconditional acceptance of delayed services shall not constitute any waiver of the claims the customer is entitled to assert because of the delayed services, and this shall apply until the final account is settled in full.

## **10 Circumstances Interfering With Contractual Performance**

Should the Contractor believe that circumstances have arisen that may interfere with its ability to render Contractual Performance, irrespective of the reason, or have reason to suppose that such circumstances may arise, the Contractor shall immediately notify Everllence thereof in writing and agree on appropriate countermeasures with Everllence.

## **11 Open-Source Software**

11.1 The use of Open-Source Software that is subject to a Copyleft License is prohibited in connection with Contractual Performance; the use of other Open-Source Software requires the prior written consent of Everllence. Should the Contractor intend to use Open-Source Software in connection with Contractual Performance, the Contractor agrees that the following shall be incumbent upon it as cardinal contractual obligations:

- i) notifying Everllence which Open-Source Software components it proposes to use,
- ii) notifying Everllence of the license terms and conditions applicable thereto and providing Everllence with a copy thereof; and
- iii) confirming that no “copyleft effect” will be triggered that would cause the software performance as a whole to be considered Open-Source Software.

To the extent that the use of Open-Source Software is permissible under this section, the Contractor is obliged to ensure that the use of Open-Source Software does not restrict or limit the contractual or intended use of Contractual Performance by the Everllence or by Volkswagen Group Companies.

11.2 In the event that the Contractor uses Open-Source Software in connection with Contractual Performance without our prior consent or with consent that was based on information within the meaning of the preceding paragraph that was culpably incomplete or inaccurate, Everllence may, at its discretion, withdraw from the contract or require that the Contractor replace the Open-Source Software with equivalent proprietary software; section 25.1, sentences 3 and 4 shall apply accordingly.

11.3 During the limitation period for legal defects provided for under section 29.1, the Contractor shall indemnify Everllence against any and all third-party claims and associated costs, regardless of the amount, arising as a result of the use of Open-Source Software. Section 25.1 shall apply accordingly.

11.4 If required under the respective terms and conditions of licensing and use, the Contractor shall deliver the source code of the Open-Source Software to Everllence on the agreed date of delivery at the latest.

## 12 Rights of Use and Exploitation

12.1 Where standard software (software developed for the needs of the majority of customers on the market and not developed specifically for our needs by the Contractor) is provided to Everllence by the Contractor by any means, including download, the Contractor shall grant Everllence non-exclusive, irrevocable, and sub-licensable rights of use and exploitation with respect thereto, without restrictions as to their geographic, temporal, or material scope; such rights are moreover transferable to Volkswagen Group Companies and other companies deemed as equivalent thereof by the Parties' mutual agreement. Where the Contractor grants Everllence rights of use and exploitation of software by a specified number of users, the software / systems may be used simultaneously by this number of users unless otherwise clearly specified (concurrent user license). Within the meaning of this section, the term “user” refers to employees of Volkswagen Group Companies or to third parties that have a business relationship with Volkswagen Group Companies or have been commissioned by such companies.

12.2 With respect to all other Work Products and Deliverables (e.g. custom-made software, customized software, documentation, source code, concepts, etc.), Everllence acquires exclusive, irrevocable, transferable, and sub-licensable rights of use and exploitation, without limitation as to their geographic, temporal, or material scope, that comprise any known type of use, including the right to adaptation, duplication, amendment, and expansion.

12.3 The Contractor shall ensure that all employee inventions arising in the course of Contractual Performance are transferred to Everllence free of charge.

12.4 All rights referred to in this section may be exercised by Everllence or by third parties commissioned by the latter, provided any third parties commissioned by Everllence exercise these solely for our business purposes.

## 13 Ownership

13.1 The Contractor shall grant the title to all (physical) Deliverables to be permanently provided to Everllence to same, effective

when these are created and in their respective evolving state(s) of development.

- 13.2 The title to Deliverables which the Contractor grants to Everllence shall be free from all third-party rights.

## 14 Place of Performance, Transfer of Risk

- 14.1 The place of performance for all supplies of goods, work, and services shall be, of our various places of business, the one for which Contractual Performance is intended. Where the Contractor makes software available to Everllence to download, its performance obligation will not be discharged until the software has been successfully downloaded.

- 14.2 The risk of accidental destruction or accidental deterioration of Work Products or Deliverables is not transferred until handover to Everllence or, where applicable, acceptance by Everllence, at the destination Everllence has designated in each particular case. Risk regarding goods partially delivered and work or services partially performed shall not be transferred until performance is completed.

## 15 Copyright-Related Rights

To the extent that the contract requires the Contractor to deliver or make available content / information that it owns or is required to provide (content providing), the Contractor shall acquire, from the holders of the respective rights / copyrights or from the collection associations that administer such rights, all rights of use and exploitation, copyrights, and related rights necessary to effect Contractual Performance at its own expense. The Contractor shall indemnify Everllence against any and all third-party claims asserted as a result of the Contractor's failure to comply with the foregoing obligation or failure to do so to a sufficient extent, unless such failure is without fault on the Contractor's part.

## 16 Acceptance

The following shall apply if the contractual services concern a contract for work and services or if acceptance of the contractual services has been agreed:

- 16.1 Complete fulfilment of the requirements set forth in section 4 and, in particular, submission of the documentation required by section 4.2,

is required before notice may be given under section 16.2 that Contractual Performance is ready for acceptance.

- 16.2 The Contractor shall give written notice that Contractual Performance is ready for acceptance. The Parties shall then agree a time and a place for our receipt of Contractual Performance. Unless waived by Everllence in writing in a specific instance, acceptance testing shall be carried out on at least fifteen (15) consecutive working days under simulated and / or real operating conditions. The precise details and, in particular, the time period for this acceptance testing shall be specified by Everllence in consultation with the Contractor. Everllence may also carry out the acceptance testing itself or require the Contractor to carry out the acceptance testing in our presence. In relation to these matters, Everllence is entitled to verify the fulfilment of all requirements, in particular those described in sections 4 and 11 above, using code scanning tools, or to have the Contractor perform such verification. Everllence shall make a written record of any defects identified during the acceptance testing.

- 16.3 In the event of no or only insignificant defects as defined in Section 640 para. 1 sentence 2 BGB (German Civil Code) or immaterial defects as defined in Article 197 OR (Swiss Code of Obligations), Everllence shall declare acceptance in writing, within fifteen (15) working days of our receipt of Contractual Performance where acceptance is to take place without acceptance testing, and within fifteen (15) working days of the conclusion of acceptance testing where acceptance is to be preceded by such testing, unless a longer period has been mutually agreed. Any acceptance by Everllence requires an explicit, written declaration of acceptance from Everllence; tacit or implied acceptance is ruled out, as is deemed acceptance. Everllence is not obliged to partial acceptance. During overall acceptance, the acceptance of partial Performance does not restrict Everllence from asserting claims based on shortcomings in already accepted partial Performance, insofar as these only become apparent through the interaction of system parts. The foregoing provision does not affect Section 640 para. 2 sentence 1 BGB under German law. In addition, the above acceptance cannot take

place if, in particular, the originals of the following documents have not been delivered to Everllence:

- i) All testing and acceptance certificates required for the use and commissioning of the Contractor's services;
- ii) Inventory documentation to be produced by the Contractor under the terms of the contract;
- iii) If agreed, a list of all subcontractors employed by the Contractor and the subcontractors employed by them;
- iv) Directions for use and operating and maintenance instructions, if required for use of the services provided by the Contractor;
- v) All the necessary official licensing and acceptance documents to be obtained by the Contractor, to the extent required.

16.4 The Contractor shall correct defects that preclude acceptance and resubmit its performance for acceptance without delay. The provisions of sections 16.1 to 16.3 above apply accordingly with regard to such resubmission.

## 17 Handover

To the extent that Contractual Performance involves the sale of goods under a purchase contract and / or the Parties have agreed on handover to Everllence, the Contractor shall give written notice that Contractual Performance is ready for handover at least ten (10) working days prior to the intended handover date and agree with Everllence on the place and exact time of the handover.

## 18 Duty to Inspect, Notification of Defects

Insofar as Everllence has a legal obligation to inspect for and notify of defects, such notice is deemed timely if given within two (2) weeks of delivery / handover in the case of obvious defects and within two (2) weeks of discovery in the case of other defects.

## 19 Remuneration

19.1 The remuneration provided for in the Order Placement is binding. Unless otherwise expressly agreed in writing, the prices for free delivery to the delivery address include packaging and insurance. There is no obligation to return the packaging unless specifically agreed otherwise. However, the Contractor shall, at our request and at its own

expense, take the packaging back to the place of performance specified in section 14.1 of these IT Purchase Terms. The remuneration specified in the Order Placement constitutes payment in full for Contractual Performance in its entirety.

19.2 If a fee based on the number of hours worked is agreed during assignment, the Contractor shall provide proof of its performance by means of entry documents provided and countersigned by Everllence. A template entry document showing the required information shall be provided to the Contractor by Everllence upon request. The Contractor shall submit the entry documents weekly to Everllence for countersignature.

## 20 Travel and Accommodation Expenses

Expenses for travel and accommodation will be reimbursed only to the extent that this is expressly provided for in the respective Order Placement, and where Everllence has approved in advance, in writing, both the specific business travel and the costs incurred.

## 21 Invoices

21.1 Invoices must be sent in accordance with the terms specified in the Appendix entitled Invoicing.

21.2 Invoices shall comply with the requirements of the German VAT Act.

21.3 If a bonus has been agreed, the note "fee reduction agreed in advance" must be included on every invoice.

## 22 Terms of Payment, Taxes

22.1 Unless otherwise individually agreed in writing in a specific instance, the agreed remuneration shall be payable within thirty (30) days of the responsible office as stated in section 21 receiving an invoice from the Contractor that shows any applicable value added tax separately. However, the invoice is due and payable only if the Contractor has rendered its Contractual Performance in full and the latter has been accepted by Everllence or completely handed over to Everllence.

22.2 The stipulated remuneration is exclusive of value added tax which, if applicable, shall be



added thereto at the appropriate statutory rate.

22.3 Due to fully automated processing, Everllence pays its invoices only on the 5th, 15<sup>th</sup>, and 25th of each month. Should these days fall on a Saturday, Sunday, or a public holiday, the payment is made on the next working day. The dispatch date of the payment funds is deemed to be the date of payment. The payment is subject to invoice auditing. In the event of acceptance of early deliveries, the due date shall depend on the agreed delivery date.

22.4 Payments shall be made exclusively by credit transfer.

22.5 In the event of an incorrect delivery, Everllence shall be entitled to retain payment on a pro rata basis until proper fulfilment.

22.6 The Contractor shall be responsible for all direct taxes (e.g. withholding tax) imposed or deducted in Germany as a result of the remuneration paid to the Contractor. To the extent that Everllence is required by law to deduct tax (such as withholding tax) from any portion of the remuneration, only the balance remaining will be disbursed. Any applicable withholding tax will be paid on a quarterly basis to the tax authorities responsible for Everllence. Where contractual payments are exempt from withholding tax or subject to a reduced rate of withholding tax under the terms of a double taxation treaty applicable to the remuneration, the resulting increased payment will only be disbursed if a valid certificate entitling Everllence to reduce the withholding amount has been provided to Everllence no later than the time of payment in all cases in which the applicable law requires such a certificate. Everllence will provide the Contractor with the original of an appropriate tax certificate showing any tax withheld. Any tax amounts withheld shall not constitute default in payment as set out under section 23 of these IT Purchase Terms.

## 23 Default in Payment

23.1 No payment on the part of Everllence becomes delayed until it has fallen due and the Contractor has delivered a written demand for payment of the overdue amount to Everllence.

23.2 The Contractor is entitled to suspend Contractual Performance due to our default in payment only where the default amount is not insubstantial and Everllence has failed to make payment despite receipt of a written demand for payment, the assertion of the right of retention, and the setting of a reasonable specified new deadline of no less than four (4) weeks.

## 24 Claims for Defects, Warranty

24.1 Where Contractual Performance is defective, Everllence may, except where an ongoing service (*Dienstleistung*) is being provided, set a reasonable deadline for substitute performance by the Contractor, within which it shall, at our option, either remedy the defects in the Contractual Performance as rendered, or render new Contractual Performance. The Contractor shall bear all costs arising in connection with the substitute performance. If the Contractor fails to provide substitute performance as requested or fail to do so within the deadline set, or if two substitute performance attempts are unsuccessful, Everllence is entitled:

- i) to remedy the defect itself or have a third party do so, and to require the Contractor to bear the costs necessary for this purpose, or
- ii) to reduce the agreed remuneration by an appropriate amount, or
- iii) to withdraw from the contract, either in part or in full, and require reimbursement of any remuneration already paid and
- iv) claim compensation for the damage Everllence suffers as a result of the defect and reimbursement of the expenses Everllence incurred in reliance on receipt of defect-free Contractual Performance.

In the event of termination or partial withdrawal from the contract, the Contractor shall receive remuneration only for Contractual Performance that has been accepted as free of defects, that is not covered by the partial withdrawal, or that was rendered after termination and is of significant economic utility to Everllence. The foregoing is without prejudice to our right to claim damages and reimbursement of expenses. Everllence furthermore remains entitled to its statutory claims for defects in full.

24.2 Where the Contractor provides software

components to Everllence as part of software maintenance, defects therein and defects arising from the interaction of the software (components) with the software being maintained shall be remedied in accordance with the terms of the maintenance contract. With respect to such defects Everllence shall, however, be entitled to all rights described in section 24.1 in full in the event that the maintenance contract ends before expiration of the limitation period for warranty claims.

- 24.3 To the extent that Contractual Performance is intended for use in mass production (production material), however, any related claims for material defects become time-barred, by way of derogation from the preceding provision, within two (2) years of the acceptance of the Contractual Performance in question, with the compensation for the vehicle when used in trucks, with the FAT when used in marine engines, and upon acceptance or from installation of a replacement part when used in power plant engines and other types of machinery delivery, however no later than three (3) years after delivery to Everllence.

## **25 Infringement of Intellectual Property Rights**

- 25.1 In the event that Contractual Performance infringes third-party rights (including industrial property rights and copyrights), the Contractor shall make every reasonable effort to remedy these defects by acquiring the necessary rights. If the Contractor is unable to obtain such rights, the Contractor shall provide Everllence with substitute Contractual Performance and Deliverables (especially documentation) that are of equal value to Everllence but do not infringe third-party rights (circumvention solution). The circumvention solution is only deemed of equal value if it does not limit our agreed use of the Contractual Performance and Deliverables, or does so only to an insignificant extent. The Contractor shall bear the cost of the circumvention solution and of any necessary adjustment to the environment of the Contractual Performance unless it is not responsible for the infringement of the third-party rights.
- 25.2 The Contractor shall indemnify Everllence against any and all third-party claims and the

costs associated with the infringement of third-party rights, regardless of the amount, unless it is not responsible for the infringement of third-party rights, for instance because the infringement results solely from Everllence using the Contractual Performance in a manner that is not permissible under the Contractor's terms and conditions of use (e.g. connecting software to third-party software without being permitted to do so).

- 25.3 In the event that claims alleging the infringement of third-party rights as a result of Contractual Performance are asserted against Everllence, the Contractor is required to independently conduct the legal defense for Everllence, at its own expense. Where necessary and at the Contractor's expense, Everllence will assist the Contractor to a reasonable extent in its defense against third-party claims. Everllence is entitled to take control of the defense itself, but shall, if that is the case, coordinate its actions with the Contractor. In this case, the Contractor is still required to bear all necessary costs.

- 25.4 Claims on behalf of Everllence pursuant to this section 25 become time-barred within two years, starting from the point in time at which the third party asserts the claim in question against Everllence for the first time.

## **26 Other Copyright Holder Involvement**

During the limitation period for legal defects under section 29.1, the Contractor shall indemnify Everllence against any claims that are raised against Everllence by copyright holders who are involved in creating the contractual Work Product.

## **27 Rights to Information, Presentation, Inspection**

The Contractor shall be entitled to rights to information, presentation, and inspection solely as provided for in sections 101 to 101b of the German Copyright Act (*Urhebergesetz – UrhG*) and only after making an advance payment in the amount of our anticipated reasonable internal and external costs and after providing collateral in a reasonable amount to cover the risk and to cover the damage Everllence may suffer as a result of the measure, such collateral may take the form of money placed in escrow or delivery of an unconditional bank guarantee. Within the



meaning of this section 27, the term “costs” includes, in particular, expenses to verify whether the requested measure is legal, expenses for planning and structuring the requested measure so that it is proportionate and, in particular, consistent with data protection and confidentiality considerations, and expenses for carrying out the requested measure including detriment resulting from limitations on and / or loss of functionality due to the requested measure; such costs may be reimbursed in accordance with section 101a (5) UrhG. The amount of the advance cost payment, the amount of collateral, and the place at which the information, presentation, or inspection will be carried out shall all be fixed by Everllence as it reasonably sees fit; section 315 BGB applies accordingly.

## 28 Liability

Everllence may require compensation from the Contractor for all damage (including defects in and consequential damage to the goods, economic damage, economic consequential damage, and expenditure in vain) caused by the Contractor and / or its governing bodies, employees and other personnel, representatives, vicarious agents, or other third parties acting at its request, provided the damage is due to the Contractor's breach of warranty, guarantee, or duty. The Contractor shall, however, not be liable for breaches of duties to the extent that it is able to furnish proof that the breach was not due to fault on its part. Furthermore, Everllence remains entitled to all statutory claims for damages.

## 29 Limitation of Claims

29.1 Warranty claims for defects become time-barred after two (2) years in the case of material defects and, in the absence of any provisions to the contrary, after three (3) years in the case of legal defects; should the applicable statute of limitations for such claims be longer, it shall apply instead. The limitation period begins upon our acceptance of Contractual Performance that is subject to acceptance, upon our confirmation of handover of Contractual Performance that is subject to handover, and as provided by law in all other cases. The foregoing also applies to software components provided to Everllence as part of software maintenance.

29.2 The statutory limitation periods apply to liability claims and other claims.

## 30 Data Protection

30.1 If, upon conclusion of the contract or in connection with the provision of the contractual services, the Contractor gains access to personal data for which the customer is responsible, the Contractor shall ensure compliance with the applicable statutory data protection provisions, particularly the obligations arising from the European General Data Protection Regulation (GDPR). In particular, the following provisions shall apply, partly in addition to the statutory obligations:

- i) Personal data shall be processed solely for the purpose of fulfilling the contractual duties arising from the relevant order (intended purpose).
- ii) The Contractor shall ensure that its staff are given access to personal data only to the extent necessary for fulfilling the contractual duties arising from the relevant order. All staff shall have been compelled in writing to comply with the applicable data protection provisions. Proof thereof shall be provided to the customer upon request.
- iii) The Contractor shall undertake to put in place the most up-to-date technical and organizational measures to ensure and maintain a level of security appropriate to the risk. If Everllence requests, the Contractor shall provide with the proof of the implementation of the specified technical and organizational measures.
- iv) The transfer of personal data to third countries shall be permitted only if the transfer is subject to the conditions defined in Article 44 et seq. of the GDPR.
- v) The Contractor shall delete the data without undue delay as soon as the data is no longer required for the performance of the contract or pursuant to statutory retention periods.

30.2 In the case where personal data is processed by the Contractor on behalf of Everllence pursuant to Article 28 of the GDPR, a suitable data processing agreement shall be

concluded between Everllence and the Contractor.

## **31 Nondisclosure**

31.1 The Contractor agrees to maintain strict secrecy regarding both the existence of the business relationship with Everllence and all information exchanged in the context of this business relationship.

31.2 The obligation to maintain secrecy remains in force for a period of nine (9) years after the end or complete performance of the respective Order Placement.

31.3 This obligation to secrecy shall also apply, irrespective of the formation of a contract, to all knowledge and expertise obtained during the tender phase.

31.4 In addition, the provisions of the separate confidentiality undertaking, as provided by Everllence prior to conclusion of the contract, shall apply. The Contractor shall sign this document and return it to Everllence if this has not already been done.

31.5 Should a nondisclosure agreement for these services be concluded in advance during the tender phase, said agreement will also apply to this contract and replace the provisions set out under sections 31.1, 31.3, and 31.4 during its term.

## **32 Subcontractors**

Any delegation of Contractual Performance to third parties by the Contractor requires our express prior written consent; such consent shall not be unreasonably withheld. All obligations to which the Contractor is bound hereunder must also be imposed by the Contractor in writing on any third party on which it relies; the Contractor shall furnish proof of its compliance herewith to Everllence on request. The Contractor is not permitted to delegate Contractual Performance to independently employed (freelance) individuals (natural persons). The Contractor shall indemnify Everllence against all third-party claims asserted as a result of the Contractor's failure to respect this prohibition, unless such failure is without fault on the Contractor's part. Within the meaning of this section 32, the terms "third party" and "third

parties" also include companies affiliated with the Contractor within the meaning of subsections 15 ff. AktG (or any similar statutory provisions).

## **33 Reference, Advertising**

The Contractor shall make no reference to the business relationship with Everllence in advertising or otherwise without our prior written consent. The same applies to the use of our trademarks, trade names, and other insignia.

## **34 Business Liability Insurance**

The Contractor is required to take out and maintain business liability insurance with a limit of indemnity that is appropriate for the level of risk associated with the respective Order Placement and to immediately verify this to Everllence on request.

## **35 Right to Audit the Contractor**

The Contractor shall grant Everllence the right, exercisable at any time following prior notice, to enter the Contractor's premises to inspect and audit all data pertaining to business transactions between Everllence and the Contractor, and to audit its IT and data security measures; Everllence or third parties commissioned by Everllence may enter the Contractor's premises during normal business hours for this purpose. If these audits result in the discovery of violations of the provisions of the respective Order Placement and / or of these IT Purchase Terms, the cost of such audits shall be borne by the Contractor unless the violation involves no fault on the Contractor's part.

## **36 Changes in Ownership**

The Contractor is required to notify Everllence in writing, without delay and without prior request on our part, of any change in the composition of its shareholders or other owners that takes place during the term of an Order Placement by Everllence and which the Contractor is obliged to disclose to the public (such as by entry in the commercial register). Everllence is entitled to terminate the contractual relationship without the need to observe a notice period if any such change results in a change in control with respect to the Contractor (for instance, because a majority stake in its shares has been sold or third parties have acquired a controlling

influence) and this change in control is potentially detrimental to our interests.

## 37 Prohibition on Assignment

The assignment of contractual rights or delegation of contractual obligations by the Contractor is ineffective without our prior written consent. The Contractor is not entitled to assign its receivables from Everllence or have them collected by third parties without our prior written consent, which shall not be unreasonably withheld. The assignment of a receivable from Everllence without our consent is nonetheless effective; Everllence may, however, at its option, discharge our liability by making payment to either the Contractor or the third party.

## 38 Divergent agreements

Any amendments to the contract shall only be valid if they have been agreed in writing. This also applies to the requirement of the written form itself.

## 39 Continued Validity in the event of Partial Invalidity

39.1 In the event that one or more of the provisions in or referenced by the present contractual provisions is or becomes null and void, this shall not affect the validity of the remaining clauses and the validity of the contract itself.

39.2 In the event that contractual gaps become apparent during the realization of the present contract, these must be remedied with replacement provisions that approximate the economic purpose of the contract as closely as possible.

## 40 Escalation procedures

40.1 If disputes arise based on this contract, the Parties shall endeavor to resolve these amicably by agreement and in accordance with the escalation procedure described below.

40.2 If there is a dispute between the Parties, each Party is entitled to initiate the escalation procedure by sending a notice to the other Party's project manager or the specified point of contact. This notice must be issued in writing and must contain sufficient information to give the other Party a complete picture of the subject of the dispute.

40.3 If the project managers or named points of

contact are not in a position to resolve the dispute within a period of fourteen (14) days after the initiation of the escalation procedure, or if one of the Parties is of the view that the dispute cannot be resolved in this way, it may submit a corresponding written notification to the other Party stating that the dispute will be passed on to the steering committee or to the next higher level of hierarchy so that a solution may be found by mutual agreement.

40.4 The deadlines for the escalation of a dispute specified in section 40.2 do not apply if one Party informs the other that a solution to the dispute is urgently required. In this case, escalation may take place immediately.

40.5 If the Parties resolve a dispute in the course of the escalation procedure, they shall set out in writing the agreement reached and attach the written agreement to this contract as an appendix.

40.6 Only once escalation has been taken to the final stage pursuant to this section to no avail can recourse be made to courts. In derogation of the above, recourse to courts may be made

- i) insofar as the Parties fail to reach an agreement within 45 days (incl. escalation period pursuant to section 40.3) following an enforcement letter and after an appropriate period of 10 working days has been set, or
- ii) by either Party immediately if claims are in danger of becoming time-barred.

## 41 Place of jurisdiction

41.1 If the customer is Everllence SE and the Contractor's place of business is located in the Federal Republic of Germany, the following clause concerning law and place of jurisdiction shall apply:

- i) The place of jurisdiction shall be Augsburg. However, the customer may, at its own discretion, also bring legal action against the Contractor at the latter's general place of jurisdiction.
- ii) The law of the Federal Republic of Germany shall apply. The rules on conflict of laws (private international law) and The United Nations Convention on the International Sale of Goods of 11th April 1980 (CISG) shall not apply.

41.2 If the customer is Everllence Schweiz AG or

the Contractor's place of business is located outside the Federal Republic of Germany, the following clause concerning law and place of jurisdiction shall apply:

- i) Any disputes arising from and/or in connection with the contract shall be referred to a court of arbitration for final settlement in accordance with the Rules of Arbitration of the International Chamber of Commerce (ICC) without recourse to the ordinary courts of law. The place of arbitration shall be Zurich, Switzerland. The number of arbitrators shall be three. The language of the arbitration proceedings shall be German. The provisions for expedited proceedings and the provisions for expedited arbitration proceedings shall not apply. The parties shall keep the existence of arbitration proceedings confidential. The same shall apply to information and documents which are made accessible to, or are otherwise associated with, such proceedings.
- ii) Swiss law shall apply. The rules on conflict of laws (private international law) and The United Nations Convention on the

International Sale of Goods of 11th April 1980 (CISG) shall not apply.

#### **42 Binding Version**

The English version of these IT Purchase Terms is a non-binding translation of the original German version, which is the sole authentic and binding document.

#### **43 Order of precedence of documents**

These IT General Terms of Purchase include the generally applicable provisions for every contract which falls within the scope of the IT General Terms of Purchase. In the event of any conflicts, the following shall apply in succession:

- a) The individual contract;
- b) The IT General Terms of Purchase;
- c) The provisions of the (other) Appendices to the individual contract, such as information security instructions for Everllence' service providers;
- d) General Terms of Purchase for Supplies, Services and Works;
- e) Code of Conduct for Suppliers and Business Partners.

## Appendix – Invoicing

### III Invoicing Everllence SE

1) Invoices are to be sent in electronic form as follows:

- In PDF format
- One invoice per PDF file
- No more than one invoice per PDF file
- No attachments, such as timesheets, invoice accompanying documents etc., in separate files.
- One e-mail may contain any number of invoices in separate PDF files, as long as the following criteria are met:
  - Overall size maximum 50 MB
  - No single file bigger than 10 MB
  - File name must not use characters that are incompatible with MS Windows
  - No nested e-mails containing attachments
  - No password protected PDF files
  - No digitally signed e-mails
- The PDF file should ideally meet the ZUGFeRD standard Further information can also be found at:  
[www.ferd-net.de](http://www.ferd-net.de)

For invoices to Everllence - Augsburg, Hamburg (Rossweg / Baumwall), or Rostock, please use the following e-mail address:  
[incoming-invoice-aug@everllence.com](mailto:incoming-invoice-aug@everllence.com)

For invoices to Everllence - Oberhausen, Berlin, Ravensburg, and Hamburg (Hermann-Blohm-Straße), please use the following e-mail address:  
[Incoming-invoice-obh@everllence.com](mailto:Incoming-invoice-obh@everllence.com)

For invoices to Everllence Switzerland AG please use the following e-mail address:  
[Incoming-invoice-zrh@everllence.com](mailto:Incoming-invoice-zrh@everllence.com)