

## SPECIAL PURCHASING CONDITIONS FOR IT

### – SOFTWARE –

#### 1. SCOPE

These special provisions of GPC-IT ("**GPC-IT SW**") apply to the temporary or permanent transfer of standard Software "**Software**") as well as the provision of Software as a service by the Supplier in the respective current version applicable at the time the contract was concluded. The general provisions of GPC are considered a standard contractual component.

The current valid version is available on the DEKRA procurement website [www.dekra.com/en/general-purchasing-conditions-and-it](http://www.dekra.com/en/general-purchasing-conditions-and-it)

#### 2. GENERAL PERFORMANCE REQUIREMENTS, QUALITY AND ORGANIZATION OF SERVICES

2.1 **Documentation.** Unless otherwise agreed, documentation and instructions must be delivered in German if the Software is intended for German-speaking countries, or otherwise in English.

2.2 **Quality and certification** The Software is certified to the required extent and it must represent the current state of the art. The Software has been reviewed by the Supplier in advance to ensure it is free from viruses, Trojan horses, and other malware. The Supplier hereby guarantees that the review did not show any evidence of such malware. The Software does not contain any blockers to prevent copying or usage.

2.3 **Integration and trial operation.** The Supplier shall instruct and support DEKRA, insofar as this is necessary to carry out testing and trial operation, or in order to use the Software. If contractually agreed, the Software shall be supplied and transferred to DEKRA ready for use. In order to ensure it is ready for use, the Supplier shall install, configure and integrate the Software. DEKRA shall then carry out approval testing. Approval shall be granted in accordance with the statutory regulations on acceptance and the conditions below, unless expressly agreed otherwise:

2.3.1 Software defects identified during the approval testing shall be divided into the following error classes:

- (a) Error class 1: The defect causes the Software or an important part thereof to not be usable for DEKRA
- (b) Error class 2: The defect causes considerable restrictions to important functions

(c) Error class 3: Other defects

2.3.2 DEKRA shall only be required to confer its approval if the Software has been installed, configured and integrated in accordance with the contract. DEKRA shall be granted a testing period of at least 10 business days from the time it receives the Software for this purpose.

2.4 **Delivery date and location.** The Software shall be supplied at the agreed location on the agreed date in object code and in ready to implement condition, or, at the discretion of DEKRA, shall be provided for download in a suitable manner.

2.5 If the purpose of the contract is the provision of Software as a service, DEKRA shall be granted use of the Software in the form and manner agreed upon on the agreed date. Agreed deadlines and terms are binding unless agreed otherwise.

2.6 Unless otherwise regulated by the parties, DEKRA shall be granted unrestricted rights of use to the Software.

### 3. RIGHTS OF USE

3.1 Unless agreed otherwise, the Supplier shall grant DEKRA and DEKRA companies a non-exclusive, irrevocable, and transferable right of use to the Software, unrestricted in terms of time, location and content upon delivery or provision of the Software. This shall also apply respectively to patches, updates, upgrades and new versions of the Software and the accompanying documentation provided by the Supplier.

3.2 DEKRA is entitled to copy the Software at least to the extent necessary for the intended use, and to use the Software and allow its use by and for DEKRA companies. DEKRA reserves the right to make copies of the Software for backup purposes.

3.3 If the Software is transferred on a temporary basis, the above rights shall apply for the duration of the contractual term. If the Supplier provides Software as a service, DEKRA is entitled to access the Software for the duration of the contractual term by means of telecommunication equipment in the scope indicated above, and to use or allow the use of the functions associated with the Software.

3.4 The Supplier is obligated to immediately inform DEKRA in writing, citing the specific applicable licenses and transfer of licensing conditions, if so-called "free software" or "open-source software" ("**OSS**") is to be used when performing its services. The Supplier is not entitled to use OSS in the fulfillment of the contract without prior written consent from DEKRA. The use of OSS without the prior written consent of DEKRA is deemed a significant breach of contract and represents a defect in the provision of services.

- 3.5 DEKRA shall be entitled, even after the rights of use expire, to retain and use a copy of the Software and the accompanying documentation for testing and archiving purposes.

#### 4. CHANGES TO SOFTWARE

- 4.1 **General information.** If the Supplier makes changes to the Software used by DEKRA, the Supplier shall immediately inform DEKRA of these changes in writing.
- 4.1.1 DEKRA is not required to accept updates, upgrades or new versions of the Software from the Supplier if doing so would be unreasonable for DEKRA, in particular due to the costs to be incurred by DEKRA or due to resulting risks associated with the conversion.
- 4.1.2 DEKRA is entitled to reject the installation of updates, upgrades or new versions of the Software if these have significantly different functions and compatibilities compared to the part of the Software to be replaced.
- 4.2 DEKRA reserves the right to edit the Software or have it edited in order to adjust the Software to modified technical and legal requirements. Edits by third parties which are not DEKRA companies shall require the approval of the Supplier; the Supplier shall grant approval if it does not offer the required edits itself at standard market rates. DEKRA's statutory editing rights shall remain unaffected; this shall apply in particular to the rights in sections 69d no. 2 and 69e UrhG (Copyright Act).
- 4.3 **Additional conditions relating to the temporary transfer of Software and the provision of Software as service.** The Supplier shall be responsible for the ongoing further development of the Software and shall provide DEKRA with updates, upgrades and new versions of the Software. It shall provide DEKRA with an update, upgrade or a new version of the Software at regular intervals, for at least once a year.
- 4.4 The Supplier shall adjust the Software to changing statutory conditions, insofar as the Software cannot be used or can only be used with restrictions under the changed statutory conditions.

#### 5. REMUNERATION

- 5.1 The agreed remuneration shall apply for the term of the contract. An automatic increase in the remuneration or a unilateral increase in remuneration by the Supplier is not permitted.
- 5.2 All services according to no. 2 to 4 of this GPC-IT SW are included in the agreed remuneration and shall not be compensated separately. The remuneration shall be

divided based on the individual programs contained in the performance specification. The remuneration shall also include the costs for data storage media and shipping.

- 5.3 If the obligation to pay starts or ends during a calendar month, the remuneration shall be one thirtieth of the monthly remuneration per calendar day.

## 6. WARRANTY AND LIABILITY

- 6.1 **General information.** The statutory provisions and the conditions of this GPC- IT SW shall apply without restriction to the rights and claims of DEKRA in the case of material defects or defects of title relating to the services, and to any other breaches of obligation by the Supplier.
- 6.2 As a short-term measure, a replacement or a workaround solution can be provided in order to temporarily correct or avoid the effects of a defect. However, this does not represent a final remedy.
- 6.3 The Supplier shall immediately correct defects during the warranty period – and during the contractual term in the case of a temporary transfer of the Software or if it is provided as Software as a service – taking into account the interests of DEKRA.
- 6.4 **Defects of title.** If third parties assert claims against DEKRA due to a violation of industrial property rights or copyrights (jointly referred to as: "**third-party rights**") resulting from the use of the Software, and/or if this prevents or restricts DEKRA's use of the Software, the Supplier shall be liable as follows:
- 6.4.1 At its discretion, the Supplier shall either procure the required rights of use, or shall change or replace the Software so that it no longer violates the third-party rights but still corresponds to the Software it is required to provide under the contract. If it is not possible for the Supplier to do so, upon request by DEKRA it shall take back the Software and refund the remuneration paid, less the amount pro-rated to the time the Software was in use.
- 6.4.2 Conditions for the liability of the Supplier shall be, that DEKRA
- (a) must inform the Supplier of third-party claims
  - (b) shall not acknowledge the asserted violation of third-party rights, and
  - (c) shall leave any dispute, including any out-of-court settlements, to the responsibility of the Supplier or shall handle such disputes and settlements only in cooperation with the Supplier.
- 6.4.3 Court and legal costs incurred by DEKRA as a result of the legal defense shall be charged to the Supplier.

6.4.4 If DEKRA itself is responsible for the breach of property rights, then no claims may be asserted against the Supplier.

## **7. EXPORTS**

- 7.1 The Supplier shall comply with all applicable export provisions in conjunction with a delivery of Software and in particular, shall independently obtain all authorizations required under export regulations at its own cost and shall provide DEKRA with all required information.
- 7.2 Insofar as the Supplier procures the Software in whole or in part from third parties, it shall ensure that it comes from secure sources and has been exported, imported and supplied subject to and in compliance with all applicable export regulations provisions of the country of manufacture / shipping.

## **8. MISCELLANEOUS**

- 8.1 The Supplier shall correct defects in the Software within the terms and deadlines agreed in a Service Level Agreement. Unless expressly agreed otherwise by the parties, warranty claims by DEKRA shall remain unaffected by the conclusion of a Service Level Agreement.
- 8.2 If the Supplier provides Software as a service, it shall ensure the availability level agreed in a Service Level Agreement. If no availability level is agreed upon, the Software shall be provided at all times and without interruption.
- 8.3 Upon request from DEKRA, the Supplier shall assume management of the Software to which DEKRA has an unrestricted right of use in return for payment of a standard remuneration according to the conditions of a standard agreement to be concluded between the parties.
- 8.4 If DEKRA no longer has a usable version of the Software as a result of an inadvertent deletion or similar incidents, the Supplier shall provide DEKRA with a replacement free of charge.
- 8.5 The transfer of data or other information by DEKRA to the Supplier as part of using the Software as service shall not result in any right of use being granted to the Supplier or third parties. Unless agreed otherwise between the parties, DEKRA's data may only be processed and used in the territory of the Federal Republic of Germany, even in the case of Software as a service data.
- 8.6 If the Supplier provides Software as a service, the Supplier shall provide any saved data free of charge in a standard electronic format selected by DEKRA upon request.