



# Einkaufs- und Beschaffungsbedingungen

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General Purchase and Procurement Terms and Conditions of ADAC SE

Last updated: 1 February 2022

## **A. GENERAL PROVISIONS**

### **1. Scope; General**

- 1.1. These General Purchase and Procurement Terms and Conditions of ADAC SE (public limited company under European law) shall govern any and all business relations between ADAC SE, Hansastrasse 19, 80686 München/Germany or any other organisation within the ADAC SE group (the contracting organisation within the ADAC SE group is hereinafter referred to as "ADAC") and the other parties to sales or work or service agreements (business persons in the sense of Section 14, German Civil Code (BGB), legal entities under public law or special funds under public law – hereinafter each referred to as "business partner").
- 1.2. Organisations within the ADAC SE group shall include ADAC SE and any direct and/or indirect subsidiaries and affiliates ADAC SE may have now and/or in the future.
- 1.3. While this Part A. includes the general provisions applicable to all business relationships, Parts B. through D. contain the additional specific provisions applicable to sales, work and service agreements. In the event of a conflict, the specific provisions shall prevail over the general provisions.
- 1.4. For the avoidance of doubt, the terms and conditions of the business partner shall not apply. Any provisions deviating from these General Purchase and Procurement Terms and Conditions of ADAC SE and any conflicting general terms and conditions of the business partner shall only apply where specifically agreed. This shall apply also if they have not been expressly rejected or if the business partner declares the intent to conclude the agreement on their own terms and conditions only or attaches them to the acceptance letter and/or the delivery slip and/or the order form. Taking delivery of any goods and services supplied by the business partner or making any payment for such goods and services shall not imply acceptance of the business partner's general terms and conditions.
- 1.5. Unless otherwise agreed or otherwise specified in B. through D., legally relevant declarations (including, without limitation, reminders, notices allowing a certain period of time, notices of revocation, defence of voidability, etc.) and modifications of or amendments to agreements (e.g. addenda or side letters) shall be made in writing.

### **2. Documents; Drafts; Drawings**

- 2.1. Any and all items and documents supplied to the business partner in the framework of a contractual relationship or produced and separately invoiced to ADAC by the business partner, including, without limitation, resources, drawings, figures, drafts, calculations, descriptions, plans, models, samples, technical specifications, data carriers, other documents, tools, devices, parts and materials, shall remain or become the property of ADAC and shall be returned to ADAC or destroyed without delay and free of charge either upon ADAC's request or promptly after performance of the agreement.
- 2.2. The business partner shall mark the items and documents listed

in Clause 2.1 above as ADAC property, store them carefully and in a way that they do not get damaged, and use them only for the purposes of the agreement. Unless otherwise agreed, either party shall pay 50% of the cost of the items'/documents' maintenance and repair. Any cost incurred as a result of defects in the items produced by the business partner or as a result of inappropriate use by the business partner, their staff or any other vicarious agents shall be borne by the business partner alone. Unless the damage is only minor, the business partner shall report any damage to the items to ADAC without delay.

### **3. Services of the business partner**

- 3.1. The business partner shall, in performing the deliveries and services hereunder (hereinafter also only referred to as "services"), always comply with the applicable legal and technical requirements. This shall include but not be limited to the generally accepted technical standards and relevant public legal requirements applicable at the time of the service provision. Where services are handed over or accepted, the business partner shall comply with the rules and requirements applicable at the time of the hand-over/acceptance.
- 3.2. None of the services the business partner is under the obligation to provide, and no part thereof, shall be provided by third parties, unless with ADAC's consent.
- 3.3. The business partner shall, in performing the services hereunder, avoid to the greatest extent possible any disruption to the business operations of ADAC or the other organisations within the ADAC SE group, or keep such disruption to a minimum. The provisions of Clause A.7 shall apply without limitation.
- 3.4. Unless otherwise agreed, the business partner shall provide all resources required for providing the services requested at their own cost (e.g. tools, measurement devices, etc. or such to secure the relevant rooms).
- 3.5. The business partner shall check all information, requirements, plans and documents made available to the business partner for providing the services requested as well as any other contribution of ADAC for their correctness and completeness. Mistakes, if any, shall be reported to ADAC without delay together with any information on their impact.

### **4. Dates of performance; Delays**

- 4.1. The business partner shall meet the agreed dates and deadlines including intermediate dates and deadlines, if any. Unless otherwise agreed, deadlines shall be deemed to be binding and time is of the essence.
- 4.2. For the purpose of compliance with the date of performance, the relevant point in time shall be that of the service provision at the place specified by ADAC or, in the case of deliveries, the delivery of the goods at such place.
- 4.3. Where the date on which the delivery shall take place at the latest derives from the agreement, the business partner shall be automatically considered in arrears after this date and no notice of default shall be required.
- 4.4. The business partner shall promptly inform ADAC of any circumstances that may delay the service provision or delivery.

## 5. Deliveries

- 5.1. ADAC shall have the right to change the time and place of the delivery as well as the type of packaging by written notice no later than 5 calendar days before the agreed date of delivery. The same shall apply to changes to the product specifications if the business partner is capable of implementing such changes as part of their standard production process at no significant additional work load and/or cost; in such case, notice as defined in the previous sentence shall be given no later than 30 calendar days in advance. ADAC shall reimburse the business partner for the proven and reasonable added cost incurred for the changes. If the changes result in a delay in the delivery which the business partner cannot avoid by making a reasonable effort as part of their standard production and business operations, the original delivery date shall be postponed. The business partner shall inform ADAC in writing of any duly estimated added cost or delays in the deliveries in due time before the delivery date, in any case no later than 2 working days after receipt of the notice as defined in sentence 1 above.
- 5.2. Each delivery shall be accompanied by a delivery slip containing all information about the items delivered as ordered, including, without limitation, the number of items, the ADAC article number and the order or agreement number. The delivery slip shall be attached in a way that it is immediately and directly accessible for ADAC upon delivery.
- 5.3. Where the items delivered need to be assembled in full or in part, the business partner agrees to provide suitable mounting and operating instructions together with the items.
- 5.4. Deliveries and shipments shall be at the cost and risk of the business partner and be made to the place indicated by ADAC. This shall also apply to deliveries/shipments to an ADAC-designated third-party recipient. The place indicated from time to time shall be the place of performance.
- 5.5. The business partner shall provide partial services only if such partial service provision was agreed separately. The business partner shall expressly indicate and label partial deliveries.
- 5.6. Accepting or approving ADAC's acceptance or approval of any specimen or samples provided to ADAC shall not imply any waiver of liability for defects.

## 6. Delivery requirements

- 6.1. Deliveries to the ADAC head office at Hansastrasse 19, 80686 Munich/Germany, shall be made Monday through Thursday between 07:00 and 15:00 hours or Friday between 07:00 and 12:00 hours.
- 6.2. The access ramp to the ADAC head office loading/unloading area has a gradient of approx. 11%. Items shall be secured appropriately taking this gradient into account.
- 6.3. Items shall generally be delivered on standardised Euro pallets (max. height incl. pallet: 1.30m, no overhang). In justified exceptional cases, non-compliance with the above shall be accepted but shall require the prior written consent of ADAC's goods receiving department (tel. +49 89 76 76 65 13). Empty pallets are usually available in return for delivered pallets.
- 6.4. Where a delivery comprises more than 5 Euro pallets or does not comply with the requirements defined in Clauses 6.1 through 6.3, the delivery shall be announced in writing no later than 3 working days before the date of delivery (a fax shall be sufficient: +49 89

76 76 49 06). Subsequently, the carrier or business partner shall promptly receive a written communication containing the instructions to be followed.

- 6.5. Any cost incurred for non-compliance with the delivery requirements, such as the cost for reloading and forwarding, shall be borne by the business partner.

## 7. Service provision at ADAC premises

- 7.1. The business partner shall comply with the workplace safety regulations, the accident prevention regulations of the competent workers' compensation board as well as the generally accepted safety and occupational health regulations. The business partner shall give the names of their staff to ADAC and instruct them to adopt ADAC's corporate practices during their work.
- 7.2. The business partner shall read, comply with and, if required, sign the ADAC contractors' directive and procure that their staff comply with the directive. ADAC shall make its contractors' directive available to the business partner at request.
- 7.3. Where works/building works are concerned, the business partner shall, for the entire duration of the works until the final acceptance of the object of the agreement as defined in Clause C.2, meet their legal duty of care at the construction site and the surroundings affected by the (building) project to the extent that services are performed or areas are used for construction works/works.

## 8. Force Majeure

- 8.1. A party affected by a force majeure event shall be released from its contractual obligations for as long as such force majeure event continues and to the extent of its impact. Force majeure shall mean any event that is beyond the respective party's control and that the party cannot avoid even by exercising the utmost care that can be reasonably expected from the party and that prevents the party from performing its obligations in full or in part, including, without limitation, fire damage, floods, strikes and legitimate lockouts as well as disruptions to business operations that are not self-inflicted or government/administrative orders. Supply problems and other defaults in performance including on part of partners in the business partner's upstream supply chain, such as suppliers, shall be deemed force majeure events only if an event as defined in this Clause 8.1 prevents such partner from providing their contractual services.
- 8.2. The affected party shall notify the other party without delay if a Force Majeure event occurs or ceases to exist and use their best endeavours to remedy the Force Majeure event and to limit its impact to the greatest extent possible.
- 8.3. If a force majeure event occurs, the parties shall liaise on the next steps and determine whether or not any services outstanding while the force majeure event exists will be provided afterwards. Notwithstanding the above, the business partner may rescind the relevant service agreements (e.g. orders), provided the force majeure event considerably impairs or prevents the delivery or service provision and if such disturbance is not only temporary. In the case of temporary disturbance, the deadlines for the delivery or performance shall be extended or the dates of delivery or performance shall be postponed for a period that equals the duration of the disturbance plus an adequate lead time. Where

accepting the delivery or service is unreasonable for ADAC as a result of the delay, ADAC may rescind the agreement by giving written notice without delay. This shall not affect either party's right to terminate the agreement for good cause if the force majeure event continues for a longer period of time.

## 9. Prices

- 9.1. Unless otherwise expressly agreed in writing, the agreed prices shall be fixed prices and cover any and all additional expenses including insurance, taxes and customs duties plus applicable value added tax.
- 9.2. In line with Clauses C.4 and D.2 other types of compensation may be agreed for works and services.
- 9.3. Unless expressly agreed, no compensation shall be paid for the cost of travel/transport, freight and packaging.
- 9.4. The reimbursement of any other proven and properly invoiced expenses for consumables and similar shall require an express prior written agreement or ADAC's prior consent to the expenses.

## 10. Travel expenses

- 10.1. Unless expressly contractually agreed, ADAC shall not reimburse travel expenses. Reimbursement, if any, shall be limited to travel expenses actually incurred and supported by receipts and be subject to the proved expenses not exceeding the expenses for which prior consent was obtained.
- 10.2. Travel and waiting times shall not be considered as working hours.

## 11. Invoice and payment

- 11.1. The invoice shall contain the mandatory information (cf. Section 14 of the German VAT Act (UStG)). Mandatory information shall include, but not be limited to, the ADAC SAP order number, delivery slip or proof-of-performance reference, quantity, unit, unit price of the individual article/service and total price of the delivery/service.
- 11.2. All invoices shall comply with the tax requirements; specifically, the value added tax shall be itemised. Invoices showing only some or none of the above information shall not be due for payment.
- 11.3. Invoices – with the ADAC SAP order number, the order reference and the ordering ADAC department on it – shall exclusively be e-mailed as a \*.pdf file to:  
[rechnungen.kreditoren@adac.de](mailto:rechnungen.kreditoren@adac.de)
- 11.4. Payments by ADAC shall not imply that ADAC accepted proper performance.

## 12. Taxes

- 12.1. Unless otherwise agreed, both parties shall pay their own taxes and charges of any kind arising from the order.
- 12.2. Any compensations indicated in the order shall be net amounts, i.e. the applicable value added tax shall be paid in addition as specified.
- 12.3. If as a result of an act of any government or governmental authority the value added tax burden of a party increases or the

input tax is reduced, both parties undertake to correct the affected invoice accordingly.

- 12.4. Direct taxes levied in ADAC's country of residence because of the payments hereunder shall be borne by the business partner. Any and all amounts payable hereunder shall be paid after the deduction of all taxes, duties or administrative charges withheld at source which ADAC is obliged to pay to the relevant tax office or any other authority on the basis of a legal requirement. If the applicable double taxation agreement provides tax reductions or exemptions, ADAC shall pay the amount concerned in full only after the business partner has submitted a valid exemption certificate no later than one day before the payment.
- 12.5. The business partner shall be responsible for complying with any other obligations imposed by law. The business partner shall hold ADAC harmless from and against any and all claims or disadvantages the latter may suffer due to any non-compliance with the above obligations on part of the business partner.
- 12.6. The business partner shall be liable for any and all customs duties, charges and taxes of any kind, including, but not limited to taxes and duties on wages and salaries or any other compensation of their own or third-party staff related to the performance hereunder.

## 13. Payment terms

- 13.1. Subject to Clause 13.2 below, ADAC shall pay all correct and uncontested invoices within 14 days of receipt by applying a 3% discount or after 30 days in full either by sending a crossed cheque or by paying the amount into a bank account.
- 13.2. The payment deadline shall not begin to run until ADAC takes delivery of the goods or the business partner provides the service or ADAC accepts the service.
- 13.3. Any delivery or service provision by the business partner ahead of schedule to which ADAC has not consented shall not affect a payment deadline that relates to a scheduled date of delivery/service provision.
- 13.4. If ADAC has fallen in arrears with payments, ADAC shall pay late payment interest at a base rate plus 5% as set out in Section 247, BGB.

## 14. Offsetting; Withholding; Assignment

- 14.1. Unless with ADAC's prior written consent, the business partner shall neither pledge nor assign their claims against ADAC in whole or in part. The provisions of Section 354 a of the German Commercial Code (HGB) shall not be affected. If the business partner assigns a claim against ADAC to a third party without ADAC's consent, ADAC shall be at liberty to make the payment to the business partner or to such third party, in either case being released from its contractual obligations, or to inform the business partner that payments will be offset with a binding effect also on the assignee.

If a third party initiates the seizure of the business partner's compensation/payment claims arising from and in connection with the business relationship with ADAC, ADAC shall have the right to offset payments already made to the business partner against the pledged claim within 14 days of receipt of the seizure notice (redemption provision – Section 366 (1), BGB).

14.2. The business partner shall not be entitled to any withholding, unless the business partner's counter-claim has been recognised by final and enforceable judgement or is undisputed or else has been acknowledged by ADAC.

14.3. The business partner shall not be entitled to any offsetting, unless the business partner's counter-claim has been recognised by final and enforceable judgement or is undisputed or else has been acknowledged by ADAC.

## 15. Termination of agreement for the performance of a continuing obligation

15.1. ADAC may terminate the agreement at any time by giving written notice and specifying the reason if any circumstances arising after conclusion of the agreement and being beyond ADAC's control make the use of the ordered products in ADAC's business operations redundant. In such case, the business partner shall be compensated for partial service provision (cf. Part C. for work agreement provisions).

15.2. Where an agreement for the performance of a continuing obligation does not specify a term, the business partner and ADAC may terminate the agreement – unless it is a work agreement – by giving three months' notice and one month's notice, respectively, to the end of the quarter. The provisions set out in Clause A.1.5 shall apply.

15.3. ADAC and the business partner may prematurely terminate an agreement between them with immediate effect for good cause. Good cause shall include but not be limited to:

- a) the other party's continued failure to comply with its contractual obligations and to provide the services agreed despite prior written notice of default allowing a reasonable time limit;
- b) the rejection of a petition filed by or against the other party under the applicable insolvency act or any amendment thereof because the assets were insufficient to cover the expenses; the validity of Sections 103 to 119 of the German Insolvency Act shall not be affected;
- c) the other party's financial situation deteriorating to the point that there is the risk of such party not being able to meet its liabilities, or the other party's permit to carry on business has been withdrawn;
- d) the performance of the agreement becoming legally and/or actually impossible for reasons beyond the terminating party's control.

15.4. This shall not affect the parties' right to terminate for good cause for other reasons (specifically refer to Clause 26 – Code of Conduct for Suppliers and Supplementary Sheet to Clause 22).

## 16. Confidentiality

16.1. The business partner shall treat all information

- ❖ which ADAC expressly classified as confidential by written communication, or
- ❖ which is proprietary as defined in Section 23 of the German Act on the Protection of Trade Secrets (GeschGehG) including, without limitation, know-how, or
- ❖ which is protected by industrial and other property rights, e.g. draft material for software (cf. Section 69 a (1) of the

German Copyright Act (UrhG)), or

- ❖ which is governed by the bank secrecy or a similar confidentiality requirement or is of similar nature as information protected by the bank secrecy requirement, or
- ❖ whose nature suggests that ADAC has an interest in keeping such information confidential

and which the business partner becomes aware of in the framework of the business relationship with ADAC, including, without limitation, the content and terms of conditions of agreements, as a trade secret (within the meaning of Section 23, GeschGehG) and/or confidential and not to disclose such information to third parties for a period of three years after the termination of the agreement. In addition, Clause A.16 shall refer to any information that was disclosed by any other company of the ADAC SE group.

16.2. The business partner shall use the information obtained exclusively for the purpose of performing the assignment and/or agreement and make it available exclusively to staff, contractors and/or subcontractors who require such information for the performance of the agreement. In addition, the provisions set out in Clause A.2 shall apply.

16.3. The business partner undertakes to ensure that their staff, contractors and/or subcontractors and the staff of such contractors and/or subcontractors who have access to the information comply with the above confidentiality requirements, and shall take reasonable steps to enforce such compliance.

16.4. At ADAC's request, the business partner shall – as instructed by ADAC – destroy without delay all information which the business partner obtained in whatever form (digital or analogue) from ADAC or from third parties on behalf of ADAC in the framework of the cooperation or recorded in writing or saved and which is subject to the confidentiality requirement under Clause A. 16.1 above and confirm – at ADAC's request – such destruction to ADAC in writing, or return such information to ADAC. This shall also apply to copies in whatever form. The business partner shall have no right of retention, for whatever legal reason. This shall not affect the business partner's legal record-keeping requirement. This shall also apply to the replacement of IT system components which shall be processed in a manner to ensure that any information still contained on such components is not readable. Where agreed with ADAC, the business partner shall destroy such components under supervision in compliance with the relevant data protection requirements.

16.5. The business partner acknowledges that their information related to the respective contractual relationship will be exchanged between the ADAC SE group as well as within ADAC e.V. (registered association) and its affiliated companies (ADAC e.V. group).

16.6. The confidentiality requirement hereunder shall not apply to information

- ❖ which the business partner legally obtained from any other source authorised to disclose such information;
- ❖ which was in the public domain at the time the agreement was concluded or became public subsequently without any breach of the business partner's obligations;
- ❖ which has to be disclosed and made public as required by law or following a court order or requirement of any

governmental agency or authority. To the extent this is permitted and possible, the business partner shall inform ADAC before any such disclosure to allow ADAC to take action against the disclosure. The business partner shall in any case inform ADAC after any such disclosure.

The business partner shall be under obligation to provide proof for the exclusion from confidentiality as set forth above.

## 17. Data protection

17.1. In the processing of personal data, the business partner undertakes to ensure compliance with the relevant data protection provisions, including but not limited to, the European Union General Data Protection Regulation (GDPR). For this purpose, the business partner and ADAC will separately conclude the required agreements. In addition, the business partner shall cause all their employees and agents to comply with the confidentiality requirement.

17.2. The business partner shall ensure that the personal data of their staff that are related to the respective contractual relationship may be processed within the ADAC SE group.

## 18. Liquidated damages for breach of the provisions set out in Clauses 16 and 17

For any breach of the legal data protection provisions and the confidentiality requirements hereunder, the business partner shall pay a fair and reasonable amount of liquidated damages to be quantified by ADAC from time to time and to be verified by a competent court in the event of a dispute. This shall not affect ADAC's right to claim any further damages. The liquidated damages shall be deducted from such further claims for damages.

## 19. Liability; Insurance

19.1. The business partner shall be liable without limitation for any damage caused by any culpable violation on part of the business partner and/or their employees or agents. The business partner shall indemnify ADAC against any third-party claims resulting from wilful breach of duty.

19.2. ADAC shall be liable for any damage in respect of personal injury to life or limb or injury to health if such damage was caused by a wilful act or the negligence of ADAC or any of its legal representatives or employees and as provided in the German Product Liability Act.

19.3. ADAC shall not be liable for any other damage, unless such damage was caused by a wilful act or by gross negligence of ADAC or any of its legal representatives or employees or agents.

This limitation of liability shall not apply in the event of violation of a material obligation. Material obligations are obligations central to the performance of the agreement, compliance with which the business partner can rely on.

19.4. In the event of negligent material breach by ADAC and/or any of its employees or agents as set out in Clause A.19.3, the liability for any financial loss and damage to property shall be limited to the extent of such typical damage as was reasonably foreseeable.

19.5. For protection against ADAC claims for liquidated damages, the business partner shall take out adequate third-party liability insurance that covers all individual services requested during the entire term of the agreement and after expiry of the liability for

defects, and provide proof of such insurance.

## 20. Rights of use and property rights

20.1. The business partner shall transfer to ADAC the irrevocable, exclusive, worldwide, perpetual and otherwise unlimited, transferable and sub-licensable right to use and exploit all tangible services, including, without limitation, drafts and design ideas (together "deliverables"), which the business partner individually provided to ADAC. The above shall include, but not be limited to, ADAC's right to reproduce and distribute and publicly display deliverables and to make them accessible; this shall include rental, processing and modernisation after completion without the business partner's involvement and/or any other adaptation to the current requirements.

20.2. Where services and deliverables not individually provided to ADAC are concerned, the business partner shall transfer to ADAC the irrevocable, non-exclusive, worldwide, perpetual and otherwise unlimited and transferable right of use to the extent set out in Clause A. 20.1.

20.3. Where rights are granted to ADAC pursuant to Clauses A.20.1 and A.20.2 above, this shall also extend to any other company of the ADAC SE group as well as to ADAC e.V. and the ADAC foundation and their affiliated companies.

20.4. If the business partner has appointed third-party service providers, the business partner shall ensure that ADAC is granted the unlimited, transferable and exclusive right to use the (possibly proprietary) deliverables to the extent described above; the business partner shall further conclude pertinent agreements with such third-party providers to that effect.

20.5. The business partner shall have no right of retention with a view to the deliverables produced for ADAC and any other documents.

20.6. The business partner represents and warrants that there are no conflicting third-party property rights. The business partner shall indemnify ADAC and every company of the ADAC SE group against any third-party claims resulting from a violation of industrial or any other property rights in connection with the use, alteration and/or exploitation of the business partner's services. In this context, the business partner shall bear any legal cost incurred by ADAC in court or out of court.

20.7. The business partner – without prejudice to any other rights of ADAC – shall, at their own expense, make the required changes to the delivery/service items following any property right infringements or third-party property right claims which result in a limitation of the use by a company as defined in Clause 20.6 and/or replace such infringing parts of the delivery/service item with equivalent parts of basically identical functionality and/or obtain the required rights.

## 21. Trademark protection; Reference

21.1. ADAC and ADAC e.V. each own several marks (with/without the element "ADAC"). In the case of ADAC e.V., this shall include but not be limited to the German work mark "ADAC" (DE39826729) and the German combined word/figurative mark "ADAC-Logo" (DE2009578). The designation "ADAC" enjoys the increased protection of a well-known trademark. Moreover, the designation "ADAC" is protected as the name of a registered association under German law.

21.2. The business partner agrees not to infringe the rights of ADAC and ADAC e.V. regarding their marks in any way, including, without limitation, by refraining from registering, or causing to be registered, any marks that include the element "ADAC", nor any marks that may be mistaken for the marks of ADAC or ADAC e.V., as a trademark or any other mark of ADAC or ADAC e.V., including, without limitation, domain names, titles, etc.

21.3. The business partner undertakes to refrain from engaging in any sales support activities making reference to an ADAC company and/or from using any type of ADAC or ADAC e.V. marks, including, without limitation, in a digital context (e.g. incorporation into the source text of an Internet page, search engine optimisation, digital advertising programmes).

21.4. The above obligations shall survive the termination of the Agreement.

21.5. As a matter of principle, no ADAC company shall be named in connection with any customer reference marketing. Unless upon approval granted as an exception by ADAC e.V. after termination hereof (e-mail contact: marke@adac.de).

## **22. Subcontractors; Minimum wage legislation**

The parties agree that the Supplementary Sheet on Minimum Wage Legislation attached to these General Purchase and Procurement Terms and Conditions of ADAC SE (Attachment 1) shall be an integral part of the agreements between the parties. The business partner expressly acknowledges that the provisions therein contain important rules and obligations for the parties which they shall consider as binding.

## **23. Compliance**

23.1. In relation to the performance of the agreement, the business partner and any of their staff, co-shareholders, auxiliary persons or any third party acting (directly or indirectly) on the business partner's behalf undertake to comply with any and all laws applying to the business partner or to ADAC in the context of the agreement, including, without limitation, any and all anti-corruption, competition and antitrust laws.

23.2. Neither the business partner nor any of their staff, co-shareholders, auxiliary persons or any other third party acting (directly or indirectly) on the business partner's behalf have been subjected to governmental investigations or lawsuits for alleged non-compliance with criminal or antitrust provisions, which might affect the proper performance of the agreement.

23.3. In relation to the agreement, neither the business partner nor any of their staff nor co-shareholders, auxiliary persons or any other third party acting (directly or indirectly) on the business partner's behalf shall offer any gifts, hospitality, discounts or favours that by their nature may be construed as an inappropriate attempt to influence a person, corporation or organisation.

23.4. The business partner shall promptly inform ADAC of any change of circumstances occurring during the term of the agreement that might result in any of the representations set forth in this Clause 23 turning out to be inaccurate or incomplete and/or prevent compliance therewith.

## **24. Language of the agreement; Correspondence**

The language of the agreement shall be German. Any correspondence and any other papers and documents shall be in the German language. If the parties also use another language, the German wording shall take precedence.

## **25. Applicable law; Jurisdiction**

25.1. The parties submit to the exclusive jurisdiction of the courts in Munich with respect to any disputes arising from or in connection with the agreement.

25.2. The relationship between ADAC and the business partner shall be exclusively governed by the laws of the Federal Republic of Germany. The United Nations Convention for the International Sale of Goods dated 11 April 1980 (CISG) shall not apply.

## **26. Code of Conduct for Suppliers; Rights of termination and withdrawal**

26.1. ADAC expects its business partner to commit themselves to the objective of social responsibility. This shall include but not be limited to the business partner's compliance with the applicable rules on dealing with staff, environmental protection and workplace safety. The business partner represents and warrants to abstain from corruption and forced or child labour as well as to respect and comply with the applicable laws for the protection and promotion of competition, including, without limitation, the antitrust laws. The business partner shall respect and support compliance with the internationally recognised human rights. The business partner shall do their best to promote and request their suppliers' commitment to these principles.

26.2. If the business partner violates Clause 26.1 above and fails to stop such violation promptly upon having been notified nor proves to have taken adequate measures to prevent any such violations in the future, ADAC reserves the right to withdraw from the agreement or terminate the agreement with immediate effect. This shall not affect the right to lodge any other claims.

## **B. SPECIAL PROVISIONS FOR SALES AND FOR WORK DELIVERY AGREEMENTS**

### **1. Passing of risk; Retention of title**

1.1 The risk of accidental destruction and accidental deterioration shall not pass to ADAC before hand-over. If the parties have agreed acceptance, such acceptance shall replace the hand-over. In this case, the provisions on work agreements as well as the provisions of Clause C.2 below shall apply accordingly.

1.2 The item purchased shall become the unconditional and unlimited property of ADAC no later than when the risk passes to ADAC. The business partner shall have no right to retain title of any kind.

### **2. Liability for defects**

2.1 Unless otherwise agreed, the legal provisions on material and legal defects and, without limitation, on a business person's right of recourse, shall apply.

2.2 The business partner represents and warrants that the purchased item is unencumbered by third-party rights which might prohibit or otherwise impair the intended use of the purchased item by

ADAC or on the grounds of which ADAC might have to pay compensation in addition to the agreed sales price in order to use the purchased item for the intended purpose. If such rights exist, the business partner accepts to hold ADAC harmless from and against any and all claims arising therefrom including claims enforcement and legal defence costs, if any.

- 2.3 Section 442 (1), second sentence, BGB, shall be waived insofar as ADAC shall have the right to assert a claim arising from a defect also in cases where ADAC, due to gross negligence, was unaware of such defect at the time the agreement was concluded.
- 2.4 If the business partner fails to meet their obligation of corrective performance – rectification of defect or replacement – within a reasonable period of time, ADAC may rectify the defect itself (or have it rectified) and claim reimbursement of the expenses incurred from the business partner.
- 2.5 If Clause B.2.4 above applies, ADAC may request from the business partner an advance payment to cover the estimated expenses.
- 2.6 The business partner shall be liable for any third-party claims arising from any personal or property damage that was caused by a defective product supplied by the business partner, and shall release ADAC from any and all liability. If ADAC is required to recall a product supplied by the business partner from third parties on the grounds of a defect, all cost incurred for such recall shall be borne by the business partner.

The business partner shall, at their own cost, maintain product liability insurance of at least €2 million for personal injury, €1 million for property damage and €100,000.00 for financial loss; unless otherwise agreed on a case-by-case basis, such insurance need not cover the risk of product recalls nor criminal or similar damage. At ADAC's first request, the business partner shall submit a copy of the liability insurance policy.

- 2.7 As to a business person's obligations of inspection and notification under Sections 377 and 381, HGB, the obligation of inspection for defects shall be limited to defects that are evident upon checking the delivery papers when the purchased item is delivered and/or upon inspecting the purchased item from the outside and/or upon performing a random inspection.
- 2.8 Unless otherwise agreed, the legal provisions shall apply to the limitation of claims. Notwithstanding Section 438 (1), no. 3, BGB, claims for defects shall become statute-barred 3 years after passing of the risk.

### **3. Spare parts, updates**

- 3.1 After delivery, the business partner shall make available spare parts for the supplied products for a period that covers at least the products' life cycle. The same shall apply to the provision of updates of digital products or services that were delivered or made available; the business partner undertakes to provide such updates on a regular basis and in the scope required by law so that ADAC as re-seller shall be able to deal with potential pertinent claims by consumers/end customers of these products and services.
- 3.2 The business partner shall promptly notify ADAC of any plans to discontinue the production of spare parts or updates for the products or services supplied to ADAC. Subject to Clause 3.1, the

business partner shall make such decision with a lead time of at least 3 months before discontinuing the production or updates.

## **C. SPECIAL PROVISIONS FOR WORK**

### **1. Deployment of staff; Subcontractors**

The business partner shall provide all of their services using their own staff only. For the performance of their services, the business partner undertakes to employ a sufficient number of qualified staff.

### **2. Acceptance**

- 2.1. Unless otherwise agreed herein, the legal provisions in line with Section 640, BGB, shall apply to the acceptance of the contractual services.
- 2.2. In addition to the legal provisions, upon completion of the services, the business partner shall request ADAC to officially accept the services by giving at least 7 days' notice. Acceptance shall be formally conducted and require both parties to sign an acceptance protocol.
- 2.3. Fictitious and implied acceptance (for instance, by use of the object of the agreement) shall be excluded. The same shall apply to the acceptance of partial performance.
- 2.4. The business partner shall obtain in time the required documents, including, without limitation, documentation as well as required type approval, administrative scrutineering and scrutineering certificates; any formal acceptance by ADAC shall be subject to the presentation of such documents.
- 2.5. Prior to acceptance of the work, the business partner shall adequately instruct the staff appointed by ADAC as to the operation of the work as well as the operation of all technical facilities and other devices. On the occasion of such acceptance, ADAC shall be presented with a protocol on such instruction.

### **3. Liability for defects and limitation of claims**

- 3.1. Unless otherwise agreed, ADAC's right to claim for defects shall be governed by the legal provisions.
- 3.2. Section 634a, BGB, shall apply to the limitation of claims.

### **4. Compensation; Termination**

- 4.1. Unless otherwise agreed, works shall be compensated on the basis of the agreed unit prices and the services that were actually performed and proved by joint measurement.
- 4.2. Agreed deductions, rebates or discounts shall also refer to the agreed unit prices, to specific and supplementary requests, including, without limitation, to additional and/or altered services, as well as to maintenance agreements, if any.
- 4.3. The agreed prices shall be fixed prices. Unless expressly otherwise agreed, any escalator clauses for the cost of wages, materials, devices and operating resources shall be excluded.
- 4.4. Works paid by the hour and the compensation thereof shall require an agreement with ADAC to that effect. Payslips for hourly pay shall be submitted for signature for each work day.



Third parties shall not be authorised to effect/conclude agreements on behalf of ADAC.

- 4.5. Clause A.15.1 shall not apply to works. Unless otherwise agreed between the parties, the legal provisions shall apply to any termination.

## 5. Exemption certificate

The business partner shall submit with each invoice a valid exemption certificate in compliance with Section 48b of the German Income Tax Act (EStG). If the business partner fails to submit such certificate, ADAC shall be entitled to retain 15% of the gross amount to be compensated to the business partner and pay this sum to the competent tax office, and such payment shall discharge ADAC from any further liability to the business partner.

## D. SPECIAL PROVISIONS FOR SPECIFIC SERVICES

### 1. Services and obligations

- 1.1. The business partner shall check the services to be provided for potential improvement on an ongoing basis, taking into account new findings and regularly reporting relevant opportunities and/or necessities to ADAC.
- 1.2. Where a need for additional services that have not yet been ordered arises, the business partner shall inform ADAC and, if required, submit a written quote on the basis of the existing agreements.
- 1.3. The business partner shall document the provided services (staff, time, scope, type, result). Such documentation shall also itemise any (consumable) materials, wearing parts and auxiliary materials used. Such documentation shall be submitted to ADAC in a well-structured manner together with a written report on the provided services at regular intervals, however no later than upon invoicing.

### 2. Compensation

If compensation is paid for the expenditure of time, the business partner shall provide time sheets to substantiate their claim. Compensation shall be paid for each full hour.

### 3. ADAC items; Resources

- 3.1. The business partner shall provide all resources required for providing the services requested (e.g. tools, measurement devices, etc.) at their own cost.
- 3.2. Items/tools received shall be returned to ADAC upon termination of the contractual relationship, unless they were used up during service provision.
- 3.3. ADAC shall make available to the business partner its existing water supply as well as electricity for small tools to the extent this is required to perform the services requested.

## E. SPECIAL PROVISIONS FOR SOFTWARE LICENSING

### 1. Software licensing

- 1.1. The license shall include the computer programme in object code including the pertinent user documentation as well as the

granting of the relevant rights described below.

- 1.2. For the perpetual licensing of standard software (software purchase), the business partner shall grant to ADAC the irrevocable, non-exclusive, worldwide, perpetual and otherwise unlimited, transferable and sub-licensable right to use the software in the scope agreed by ADAC itself and/or by third parties and to duplicate, edit and decompile the software. This shall include, without limitation, the right to permanently or temporarily save and install, load, display and execute the software, to adapt it using configuration tools and to link it with system components of other manufacturers, irrespective of any duplication the aforementioned actions may require.
- 1.3. For the temporary licensing of software (software rental), the business partner shall grant to ADAC the rights set out in Clause E.1.2 above. However, such rights shall be non-transferable and granted only for the term of the agreement.
- 1.4. To software produced by the business partner to meet ADAC's individual needs or including individual adaptations and customisation, the provisions of Clause A.20.1 above shall apply accordingly. Clause E.1.2 notwithstanding, the business partner shall also provide to ADAC the source code of the software.
- 1.5. ADAC may copy the software and documentation for backup and archiving purposes.

### 2. Hosting and ASP/SaaS

- 2.1. Where hosting services are concerned, the business partner shall grant access to contents via the Internet. For this purpose, the business partner shall make available to ADAC system resources in a defined storage space of a virtual server that ADAC can access via the Internet.
- 2.2. Where application service providing (ASP) or software as a service (SaaS) is concerned, ADAC's license shall include use of the software via the Internet and allocation of storage space on the business partner's servers. During the agreed term, the business partner shall make available to ADAC the version of software as is current from time to time via the Internet. For this purpose, the business partner shall install the software on a server pursuant to Clause 2.1.
- 2.3. For software supplied in the framework of ASP/SaaS, the business partner shall grant to ADAC the non-exclusive, temporary (for the term of the agreement), worldwide and otherwise unlimited and sub-licensable right to use the software to the agreed scope by ADAC itself and/or by third parties, to edit and adapt it using configuration tools and to duplicate it. Loading the software into the working memory on the business partner's server as well as displaying and running the software on this server shall qualify as necessary duplication.
- 2.4. The business partner shall ensure that ADAC can retrieve via the Internet the data stored by ADAC on the server. The business partner shall further ensure adequate protection of ADAC data against data loss and unauthorised third-party access. For this purpose, the business partner shall – unless otherwise agreed – make daily backups, scan the ADAC data for viruses and install state-of-the-art firewalls.
- 2.5. ADAC shall in any case have the sole right to the data and may request at any time the business partner to surrender individual or all data. Upon expiry of the agreement, the business partner shall surrender – promptly and in a structured, established and

machine-readable format – all data stored in the storage space that were allocated to ADAC. At ADAC's discretion, the business partner shall supply the data on data carriers or transfer them via a data network. To the extent this is technically feasible and legally permitted, ADAC shall have the right to request that the business partner transfers the data to third parties. The business partner shall have no right of retention of the ADAC data or any lessor's lien (Section 562, BGB).

- 2.6. ADAC shall be under obligation to take adequate precautions to prevent unauthorised third-party access to the private areas of the hosting system resources and the ASP/SaaS software as well as keep user IDs and passwords confidential and not to disclose them to third parties.
- 2.7. The business partner may block access to the storage space if the stored data are reasonably believed to be illegal and/or to infringe third-party rights. Reasonably believed to be illegal or infringe any rights shall include, but not be limited to, any circumstance of which the business partner is notified of by a court, authority and/or any other third party. The business partner shall promptly inform ADAC of such blocking and its reason. The blockage shall be removed as soon as the suspicion turns out to be groundless.

### **3. Warranty; Maintenance**

- 3.1. Unless otherwise agreed below, to perpetual licensing of software (software purchase), the provisions of Clause B.2 shall apply.
- 3.2. For the temporary licensing of software (software rental) and ASP/SaaS services, the business partner shall warrant that the software complies with the contractually agreed specifications during the term of the agreement and that no third-party rights hinder or prevent the use of the software in compliance with the agreement. The provisions of Clauses B.2.1 through 2.2 and B.2.4 through 2.6 shall apply accordingly. The business partner shall implement developments to offer high-quality and state-of-the-art software, adapt the software as requirements change, remove bugs to ensure the level of quality required and supply to ADAC any new software versions that are created in the process. The business partner shall support ADAC with information on how to use the software and to prevent, remove and work around bugs.
- 3.3. During the term of the agreement, the business partner shall operate an e-mail service and a phone hotline to accept and handle user requests and incident reports during the agreed service hours or, where no such agreement was concluded, during the usual business hours (working days 09:00 through 17:00 hours).
- 3.4. Where software is replaced and/or maintained, ADAC shall accept a later version of the software, if any, that exceeds the contractually agreed quality and does not unreasonably hinder ADAC from using the software. In the case of legal defects, the business partner shall, at their own expense, procure that ADAC can use the software free from any legal defects, or adapt the software to the point that there is no longer reason to claim any property right infringement.
- 3.5. Any adaptations, changes and supplements to hosting or ASP/SaaS services as well as any measures for the identification and removal of functional defects shall cause temporary unavailability or disruption only if this is absolutely necessary for

technical reasons.

- 3.6. The basic functions of the ASP/SaaS services shall be monitored on a daily basis. Service maintenance shall in principle be ensured Monday through Friday, 09:00-18:00 hours. In the case of major defects, i.e. no or seriously disrupted service, maintenance shall be performed within 3 hours of becoming aware of such defects or being informed by ADAC. The business partner shall promptly notify ADAC of the maintenance works and perform such maintenance in the shortest time possible and in compliance with the technical requirements. If defects cannot be removed within 12 hours, the business partner shall notify ADAC within 24 hours by e-mail, indicating the reasons and the expected timeframe for the removal of the defect.
- 3.7. The annual average availability of the hosting and ASP/SaaS services, maintenance included, shall be 98.5%. Service unavailability or disruption must never exceed a period of two consecutive calendar days.
- 3.8. The business partner shall have the right to adapt the hardware and software used to provide the hosting and ASP/SaaS services to the relevant state of the art. If such adaption means that the contents stored by ADAC on the server have to meet additional requirements for the business partner to be able to provide the services, the business partner shall promptly inform ADAC of such additional requirements. Whether or not, and until when, such additional requirements will be met shall be at ADAC's discretion. Rejecting the additional requirements, ADAC may terminate the agreement. If ADAC does not agree to change its contents in due time for the adaption to the additional requirements four weeks before the date of the adaption at the latest, the business partner may terminate the agreement with effect from the date of the adaptation.
- 3.9. If the business partner made available to ADAC a static IP address, the business partner shall change the static IP address assigned to ADAC only if such change is necessary for technical or legal reasons. The business partner shall promptly inform ADAC about the upcoming change.

### **4. Authorised users**

- 4.1. Where rights are granted to ADAC as defined in Clauses E.1.2, E.1.3 and E.2.3 above, this shall also extend to any other company of the ADAC SE group as well as to ADAC e.V. and the ADAC foundation and their affiliated companies and to the ADAC regional clubs. This shall mean that any and all of them are authorised users of the services defined in Part E and to be provided by the business partner and that as users of these services they are entitled to claim the rights set out in Clauses E.1, E.2 and E.3 above.

**Supplementary Sheet on Minimum Wage Legislation**

1. The business partner undertakes to provide all of its services using its own staff only. The business partner shall not assign services to any third parties (including, without limitation, subcontractors) unless with the prior written approval of ADAC and after detailed verification of the relevant quotation for economic plausibility and feasibility. In this case, the business partner shall ensure that the relevant subcontractor commits (in writing) to obligations, albeit within the limits of the subcontractor's scope of contract, that are at least identical to the business partner's obligations under this Supplementary Sheet. This shall apply in particular to covenants in relation to the German Act on mandatory work conditions for workers deployed abroad and workers regularly deployed in Germany (AEntG) and the German Act regulating a general minimum wage (MiLoG).

If services are contracted out to subcontractors, the business partner shall identify the contracted companies in writing by name (including, without limitation, the company name, names of the general managers/directors, address, VAT ID number and company registration number).

2. The business partner warrants to ADAC, by giving an independent no fault-based guarantee (in line with Section 311 of the German Civil Code (BGB), to fully comply with the provisions of the MiLoG and the AEntG.

Without limitation to the generality of the foregoing, the business partner warrants to fully comply at all times with its duties of paying the minimum wages according to the MiLoG and its obligations under the tax and social security laws, as well as its duties relating to the posting and hiring out of staff.

The business partner shall ensure that the above obligations are also met by any third parties (for instance subcontractors or temp agencies).

3. The business partner shall indemnify ADAC against any claims, including, without limitation, by administrative authorities and collecting agencies, based on business partner's breach of any of the obligations set out in Clauses 1 and 2 above. In particular, the business partner shall indemnify ADAC against any and all claims resulting from the statutory suretyship liability in line with Sections 13, MiLoG, and 14, AEntG, as well as Sections 150(3) of the German Social Code (SGB), Book VII, and 28e(3a), Book IV. This shall also apply to claims by subcontractor staff.
4. In the event that the business partner within a reasonable time limit granted by ADAC fails to comply with its obligations pursuant to Clauses 1 through 3 above, including, without limitation to pay minimum wages pursuant to the MiLoG and minimum remuneration as well as or any other amounts pursuant to Section 14, AEntG, (that shall be agreed as the business partner's principal obligations), ADAC, without prejudice to any other rights or remedies, shall be entitled to terminate the agreement with immediate effect and claim damages.

ADAC shall in such a case have the additional right to retain the remuneration owed under Section 320 BGB. The business partner shall be obliged to disclose to ADAC the amounts of contributions owed and actually paid.

This shall also apply if the business partner fails to comply within a reasonable period of time with its duties to provide proof or information as set forth in Clause 5 below.

5. The business partner shall promptly upon request – also on a regular recurring basis – provide to ADAC comprehensive proof of its compliance with the obligations under the above provisions, including, without limitation, to duly pay the minimum wages under Section 20 read in conjunction with Sections 1 and 2, MiLoG, and of its compliance with the documentation and reporting duties as an employer.

ADAC shall be promptly notified in writing if the business partner or – as far as the business partner is aware – a commissioned third party fails or failed to comply with the obligations under the MiLoG, or if any employed persons make claims in this connection.