

ads-tec Energy Service GmbH

# General Terms and Conditions on Services of ads-tec Energy Service GmbH

## Service GTC



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Unless otherwise agreed, these Service GTC shall apply if they are referred to in an Agreement entered into between ads-tec Energy Service GmbH (hereinafter "**ADS-TEC**") and another business entity or corporate entity under public law (hereinafter "**Service Customer**"). Its provisions shall apply accordingly to transactions preceding any such Agreement.

## 1 Definitions

- 1.1. **„ADS-TEC Materials“** means any materials (including statistical reports) provided or made available by ADS-TEC in the course of performance under the Agreement, including any materials provided in the supply of any support to the Service Customer. ADS-TEC Materials include materials developed with Service Customer's assistance, but do not include Customer Data, Service Customer's Confidential Information or the Service performance itself.
- 1.2. **„Affiliate“** (Affiliated Company) means any business entity which in accordance with Section 15 German Stock Corporation Act (*AktG*) is considered "affiliated" to ADS-TEC and/or the Manufacturer or to the Service Customer. Any such business entity shall be considered an Affiliate for only such time as such affiliation is maintained.
- 1.3. **„Agreement“** means the Master Agreement or Standalone Agreement. Unless agreed otherwise, the Agreement shall always incorporate the Supplemental Terms of Service, the Big-LinX Terms of Use and the Supplemental Terms of Support, which provide for terms and conditions supplemental to the Service GTC and which in relation to the order of precedence shall prevail over the Service GTC.
- 1.4. **„Big-LinX“** means the cloud-based platform Big-LinX® Energy made available by ADS-TEC, the Manufacturer, its Affiliates or their respective licensors.
- 1.5. **„Confidential Information“** means all information which the disclosing party protects against unrestricted disclosure to others and that the disclosing party designates as confidential or intern at the time of disclosure or that should reasonably be understood to be confidential given the nature of the information and the circumstances surrounding its disclosure. Without limitation to the foregoing, the following information shall be considered Confidential Information of the Service Customer: the Customer Data, marketing and business requirements and installation and rollout plans of the Service Customer and/or information about its financial state; and Confidential Information of ADS-TEC: the Services, the Documentation, ADS-TEC Materials and information about research and development, service quotations, pricing and availability of Services and the Agreement.
- 1.6. **„Contract Year“** means any 12-months period during the Term, calculated from the Master Agreement Effective Date.

- 1.7. **„Customer Data“** means any content, materials, machine data and personal data which are recorded in the applications and the operating system of a Serviced Item's system computer or which are derived from its operation and are stored in ADS-TEC's systems (e.g. customer-specific reports, machine data in Big-LinX). The Customer Data and the data derived from them do not incorporate any Confidential Information of ADS-TEC.
- 1.8. **„Customs Duty“** means irrespective of the date they are first levied, any customs tariffs, duties and similar charges (and any related interest and penalties) incurred on export deliveries in connection with the export and import of goods, including the expenses for export license and the costs of all approvals, permits or other documents required in connection with the import into the country of use and any carriage via third countries.
- 1.9. **„Documentation“** means the then-current technical and functional documentation relating to the Services and Big-LinX, including technical and functional specifications as updated from time to time in accordance with the Agreement.
- 1.10. **„End Customer“** means a business entity that requires performance of a Service in connection with Service Customer's and its Affiliates' contracted service performance. These may include customers, service providers and/or suppliers of Service Customer and its Affiliates.
- 1.11. **„EoL Test“** means, in relation to a Serviced Item, the end-of-line test internally performed by the Manufacturer to complete manufacturing, the date of which will be communicated to the Service Customer or End Customer accordingly by the Manufacturer; unless otherwise agreed, its date (**„Date of EoL Test“**) shall also determine commencement of the Service Period for a Subscribed Service.
- 1.12. **„Export Laws“** means all applicable import, export control and sanctions laws, including without limitation, the laws of the United States, the EU, and Germany.
- 1.13. **„IP Rights“** (Intellectual Property Rights) means without limitation all patents and other intangible property rights in inventions, copyrights, trademarks, design rights and other similar industrial property rights and any rights of exploitation and use relating thereto.
- 1.14. **„Manufacturer“** means ads-tec Energy GmbH, a parent company of ADS-TEC and, in relation to a Serviced Item, also supplier of the Service Customer or End Customer.
- 1.15. **„Master Agreement“** means the Agreement on Services entered into between ADS-TEC and the Service Customer, which as a master document refers to and incorporates these Service GTC (and other documents).
- 1.16. **„Service performance“** means any specific Service (including support) which ADS-TEC undertakes to perform under an Agreement.

- 1.17. **“Service Period”** means the term of a Subscribed Service including its Minimum Service Period and, if applicable, any Extended Service Period.
- 1.18. **„Service Year“** means any 12-months period during the Service Period, calculated as from the Date of EoL Test.
- 1.19. **„Serviced Item“** means any unit supplied by the Manufacturer, of the charging systems pertaining to the ChargeBox and ChargePost product series and/or of the storage systems pertaining to the GSS and SRS product series and/or of an industrial large-scale storage system (each including the battery modules and accessories included or supplied separately in each case), for which ADS-TEC undertakes to perform Services under the Agreement.
- 1.20. **„Standalone Agreement“** means an Agreement on Services entered into between ADS-TEC and the Service Customer which refers to these Service GTC (and other documents), provided it is executed under non-application of a Master Agreement, including Standalone Orders.
- 1.21. **„Taxes“** means all transactional taxes, levies and similar charges (and any related interest and penalties) such as federal, state or local sales tax, value added tax, goods and services tax, use tax, or similar taxes.
- 1.22. **„Term“** means the Minimum Term and, if applicable, any Extended Term of a Master Agreement.

## 2 ADS-TEC Responsibilities and Obligations

- 2.1 ADS-TEC shall execute the Service performances as described in the Agreement. ADS-TEC provides support for the Services as referenced in the Agreement. The properties and functionality of the performances undertaken by ADS-TEC are exhaustively agreed to in the Agreement and the documents referred to therein. No additional performances or performance properties shall be owed by ADS-TEC.
- 2.2 Provided any Service is made available to the Service Customer free of charge, ADS-TEC does not provide any support for such Service and does not provide any service level undertakings. ADS-TEC may discontinue any Services provided free of charge at any time. This Clause 2.2 shall take precedence over any deviating, conflicting terms and conditions in these Service GTC.
- 2.3 In accordance with applicable data privacy and protection laws, ADS-TEC shall take and maintain appropriate technical and organizational measures to protect the personal data processed by ADS-TEC in the context of the Services, as described in the Data Processing Agreement referred to in the Agreement.

### 3 Customer Data and Personal Data; Service Customer Responsibilities and Obligations

- 3.1 Service Customer is responsible for the Customer Data and their recording within the Serviced Item's system computer. In accordance with Clause 10, Service Customer grants to ADS-TEC (including the Manufacturer, its Affiliates and subcontractors) a non-exclusive right to process and use Customer Data to provide and support the Service performances and as set out in the Agreement (including without limitation for analysis purposes).
- 3.2 Service Customer will collect, maintain and process all personal data contained in the Customer Data in compliance with applicable data privacy and protection laws.
- 3.3 Service Customer is solely responsible for assessing the fitness of the Services for its business requirements and for complying with all applicable laws with respect to Customer Data and the receipt of the Services. Service Customer undertakes to assist at no charge to the extent required by ADS-TEC in executing the Service performances and in providing support, including without limitation by providing infrastructure and telecommunication facilities for access to the Serviced Items. Service Customer accepts that all of the dependency and facilitating performances set forth in the Agreement and the documents referred to therein are deemed material own undertakings of Service Customer. It accepts to bear any detriments and additional costs arising from the breach of its own undertakings.
- 3.4 During the Term, Service Customer may at any time access, retrieve and export in a standard format the Customer Data displayed in its customer account set up for Big-LinX. If retrieval and export of other Customer Data is subject to technical restrictions and requirements (e.g. as described in the Big-LinX Documentation), ADS-TEC and the Service Customer shall, upon request, agree on a reasonable method to enable the Service Customer to retrieve and export other Customer Data stored in Big-LinX. Upon termination of the Agreement, ADS-TEC shall delete the Customer Data remaining on the servers used to host Big-LinX, unless their retention is required by mandatory law or permitted in the Agreement. The retained data shall be subject to the confidentiality provisions stipulated herein.
- 3.5 Deadlines/Emergency Planning/Rescission
  - 3.5.1 If the Service Customer has set a deadline for ADS-TEC to perform an obligation, the Service Customer shall, at ADS-TEC's request, immediately after expiry of the deadline declare whether, in its opinion, the deadline has expired to no avail and, furthermore, state which rights it will assert against ADS-TEC as a result of the failure to meet the deadline, if not already stated.
  - 3.5.2 For the purpose of mitigating any detriment, the Service Customer shall prepare and maintain a planning for the event that the Service Objects are not deployed for the intended operation

(business continuity planning) and after the occurrence of such an event can resume operation (disaster recovery planning). ADS-TEC shall assist the Service Customer in the preparation of such planning at the Service Customer's request and for separate remuneration.

- 3.5.3 Service Customer may not dissolve the Order or Standalone Agreement due to a breach of contract for which ADS-TEC cannot be held accountable and which does not constitute a defect in the Services. Once the performances have commenced, any rescission (*Rücktritt*) of the Order or Standalone Agreement is excluded. The right of rescission shall be substituted by the right to serve termination for good cause.

## 4 Remuneration and Taxes

- 4.1 Service Customer shall pay ADS-TEC the remuneration as stated in the Agreement. The Annual Fee and Non-Recurring Fee for Subscribed Services as stated in the Master Agreement shall apply during the first (1<sup>st</sup>) Contract Year. The Annual Fee and Non-Recurring Fee applying during the second (2<sup>nd</sup>) and all subsequent Contract Years shall be the same as for the previous Contract Year, unless ADS-TEC increases them in accordance with the following terms:

- 4.1.1 ADS-TEC may adjust the Annual Fee with effect from the beginning of a Contract Year at its discretion, subject to the following principles:

- 4.1.2 ADS-TEC may not adjust the Annual Fee in excess of the extent that the index referred to in Clause 4.1.3. below has changed (adjustment range). For the first remuneration adjustment, the index development between the index level published on the offer date of the Master Agreement and the index level last published at the date of the adjustment notice shall determine the adjustment range. If a remuneration adjustment has already become effective for a previous Contract Year, the adjustment range shall be determined by the index development between the index level last published at the date of the previous adjustment notice and the index level last published at the date of the new adjustment notice.

- 4.1.3 For the purposes of determining the adjustment range hereunder, the Index of monthly earnings including extra payments collectively bargained for Germany in the economic sector of manufacture of electrical equipment shall serve as the basis (currently published in quarterly figures by the Federal Statistical Office in the GENESIS online database with the key 62221-002: Quarterly index of collectively bargained earnings and working hours (Germany, quarters, economic sectors) and the code WZ08-27 manufacture of electrical equipment). If this index is no longer published, the index published by the Federal Statistical Office that most closely reflects the development of average gross monthly earnings in the aforementioned economic sector shall serve as the basis of determining the adjustment range.

- 4.1.4 ADS-TEC may adjust the Non-Recurring Fee with effect from the beginning of a Contract Year at its reasonable discretion (Section 315 German Civil Code – *BGB*), independent of any adjustment range.
- 4.1.5 Unless the Service Customer terminates the Master Agreement on expiry of the previous Contract Year by notice served no later than 14 days prior to such expiry (extraordinary termination), the adjusted remuneration shall be deemed agreed for the remaining (possibly automatically extended) Term. ADS-TEC shall advise of such in the written adjustment notice.
- 4.2 Cash discounts (*Skonto*) will not be granted. Payments shall be due within 14 days of the invoice date. ADS-TEC may issue invoices in electronic format. ADS-TEC may charge interest on arrears at the applicable statutory default interest rate from the due date. On Service Customer's payment default, ADS-TEC may suspend performance of the Service, in whole or in part until payment is made, provided that a reasonable grace period has expired to no avail. ADS-TEC shall provide Service Customer with prior notice before any such suspension. Service Customer may not withhold, reduce or set-off any remuneration owed, except for any offset with amounts receivable that are uncontested or established by final adjudication and except for any withholding resulting from claims that are uncontested or established by final adjudication. Service Customer's claims and amounts receivable that are reciprocal to the remuneration owed by it shall however not be affected.
- 4.3 All fees and other charges are subject to applicable Taxes and, for export deliveries, to applicable Customs Duty, which will be charged in addition to remunerations under the Agreement.

## 5 Term and Termination

- 5.1 The Term is as stated in the Master Agreement. Each Master Agreement shall initially be in effect for the minimum term stated therein ("**Minimum Term**"). Upon expiry of the Minimum Term it shall remain in effect for the extended term stated therein ("**Extended Term**"), unless the Master Agreement is terminated by a party in accordance with the provisions on ordinary termination stated in the Master Agreement.
- 5.2 Ordinary termination of the Master Agreement shall be excluded during the Minimum Term and any Extended Term. Extraordinary termination and termination served for good cause shall remain unaffected.
- 5.3 Upon receipt of a notice of termination served by the other party until the effective date of expiration or termination of the Master Agreement:
- a) The current Service Period applicable to any Active Service shall only be extended by one (1) Extended Service Period if so approved by ADS-TEC; and



- b) Any (initial) activation of Subscribed Services shall only become effective if so approved by ADS-TEC.

#### 5.4 Termination Served for Good Cause

5.4.1 ADS-TEC may serve a termination for good cause (the parties agreeing there is no requirement to obtain a court order to exercise such right) including without limitation upon (i) Service Customer being in delay with paying any money due hereunder for more than 60 days and (ii) Service Customer being in persistent or material breach of any material own undertaking under the Agreement (in particular those stated in Clauses 3, 10 and 11.2). Service Customer may only serve a termination for good cause (the parties agreeing there is no requirement to obtain a court order to exercise such right) arising from ADS-TEC's breach of any undertaking under the Agreement, provided that ADS-TEC continues such breach by culpably failing to comply with two prior written admonishments (*Abmahnungen*) after expiry of a reasonable deadline set therein respectively.

5.4.2 Terminations served for good cause shall be limited in mutual fairness and good faith to that part of the Master Agreement in which the breach justifying good cause for termination has occurred or is found or expected to be of detriment to the party serving termination. If this purpose will be achieved through Conversion of Active Services into another Subscribed Service not including the undertaking which justified good cause for termination, then the party serving the termination undertakes to request such Conversion in writing and the other party undertakes to agree to such Conversion in writing. The Conversion shall take effect at the end of the calendar month in which the notice of termination was received by the other party. The mutual obligation relating to Conversion shall not affect any termination served for good cause under circumstances relating the other party's breach of its undertakings which make it unreasonable for the party serving termination to continue the Master Agreement, even in part, during the current Term.

#### 5.5 Upon the effective date of expiration or termination of the Master Agreement:

- a) No current Service Period applicable to any Active Service shall be subject to any further extension and no (initial) activation of Subscribed Services shall become effective anymore;
- b) Service Customer's right to have non-recurring Service performances executed and to exercise the rights of use granted to it in this respect, including without limitation to use ADS-TEC Confidential Information and its access to Big-LinX, will end; and
- c) Confidential Information of the disclosing party will be retained, returned, or destroyed as required by the Agreement and in compliance with applicable law.

5.6 Any Active Services shall continue to be performed by both parties following the end of the Term for as long as their respective Minimum Service Period or Extended Service Period

expires or terminates. For this sole purpose, the agreements contained in the Master Agreement shall survive the expiration or termination of the Master Agreement for as long as the Service Period of the last Active Service expires or terminates. Provided that the Term ends due to termination served by ADS-TEC for good cause or due to termination served by Service Customer for good cause under circumstances for which ADS-TEC cannot be held accountable, ADS-TEC may determine a reasonable run-off period upon the expiry of which the Service Periods of all Active Services will end pre-term.

## 6 ADS-TEC Warranties

### 6.1 General Provisions

- 6.1.1 Subject to the statutory provisions, the Supplemental Terms of Service and Clause 6 of these Service GTC, ADS-TEC warrants that the Service performances undertaken under the Agreement will be executed with the due care of a prudent businessman and will, when used in conformance with the Agreement, not violate any third-party rights.
- 6.1.2 ADS-TEC's performance shall not be subject to any specific result undertaking, except as otherwise provided for in the Supplemental Terms of Service. Where thereafter, in exceptional cases, the provisions on contracted performances (*Werkvertrag*) apply after all, ADS-TEC warrants that it will provide the contracted performance upon acceptance in conformance with the agreed performance description. Service Customer's remedy to request Cure (*Nacherfüllung*) will be subject to Clauses 6.2 through 6.7 in the case of defects in substance (*Sachmängel*) and subject to Clause 7.2 in the case of defects in title (*Rechtsmängel*).
- 6.1.3 If ADS-TEC fails to execute or deficiently executes Service performances which are not subject to acceptance, or if ADS-TEC breaches any other undertakings which are not subject to its warranty for defects in substance or in title, the Service Customer shall notify ADS-TEC thereof in writing and shall grant ADS-TEC a grace period of sufficient extension, allowing ADS-TEC the option to duly complete the performance or to provide remedy in any other manner. Any of Service Customer's claims for damages and reimbursement of expenses arising from such breaches of undertaking shall be subject to Clause 8 (Limitation of Liability).

### 6.2 Remedy of Cure for Sale and Delivery of Spare and Wear Parts and Materials

- 6.2.1 In case of defects in substance of any delivered Spare and Wear Parts or other materials like lubricants and consumables, ADS-TEC shall first be allowed to and be obliged to rectify the defect (*Nachbesserung*) or to provide replacement delivery (*Ersatzlieferung*), as determined within a reasonable deadline at its sole option ("Cure").

- 6.2.2 Cure shall be provided at no charge. Any delivery of used Spare Parts (except Refurbished Spare Parts) agreed with the Service Customer in individual cases shall be subject to exclusion of any warranty rights for defects in substance, except for intentional conduct.
- 6.2.3 Defects of delivered Wear Parts as well as lubricants and consumables shall be notified in writing by means of a precise and detailed description of the storage and operating conditions under which such occur and a comprehensible description of their symptoms, as far as possible proven by written records or other documents illustrating the defects. The notice of defects should enable the reproduction of their appearance of wear, tear and ageing. The Service Customer's obligations to examine and notify defects shall remain unaffected.
- 6.2.4 Claims for Cure shall be subject to a limitation period (*Verjährungsfrist*) of twelve (12) months, except for intentional conduct. The period shall commence upon transfer of risk to the Service Customer.

### 6.3 Remedy of Cure for Supplied Software

- 6.3.1 Where ADS-TEC makes Software available to the Service Customer in the course of performance, the warranty remedies relating those improvements incorporated therein, which do not merely remove errors, shall be subject to the provisions of this Clause 6.3.
- 6.3.2 The Software supplied by ADS-TEC will be in substantial conformance with the performance description. Warranty remedies shall not arise in the case of minor or immaterial deviations from the agreed or assumed characteristics and in the case of just slight impairment of use. Performance descriptions shall not be deemed guaranteed unless separately agreed in writing.
- 6.3.3 Defects of the Software supplied shall be notified in writing by means of a precise and detailed description of the conditions under which such occur and a comprehensible description of the error symptoms, as far as possible proven by written recordings, hard copies or other documents demonstrating the defects. The notice of defects should enable the reproduction of the error. The Service Customer's obligations to examine and notify defects shall remain unaffected.
- 6.3.4 If the Service Customers requests Cure due to a defect of the Software supplied, ADS-TEC may determine at its sole option whether to rectify the defect (*Nachbesserung*), to provide replacement supply (*Ersatzlieferung*) or to execute replacement performance (*Ersatzleistung*). Curing the defect may also be effected through the supply or installation of a new program version or a work-around. If the defect does not or does not substantially impair the functionality, then ADS-TEC is entitled, to the exclusion of further warranty remedies, to correct the defect by supplying a new version or an update as part of its version, update and upgrade planning.

- 6.3.5 Claims for Cure shall be subject to a limitation period (*Verjährungsfrist*) of twelve (12) months, except for intentional conduct. The period shall commence upon supply, but no later than upon installation of the Software.

## 6.4 Remedy of Cure for Service Performances subject to Acceptance

- 6.4.1 For defects in Service performances that are subject to acceptance, ADS-TEC will provide Cure at its sole option by providing a corrected version of the Service performance or by rectifying the defect. Rectifying the defect may also include ADS-TEC demonstrating to the Service Customer appropriate ways of circumventing the effects of the defect.
- 6.4.2 Cure shall be provided at no charge. The place of performance for Cure shall be the registered office of ADS-TEC, unless the provision of Cure at the registered office of ADS-TEC is impossible or requires an effort, in particular with regard to transportation costs, which is grossly disproportionate to the Service Customer's interest in Cure. Substitute the place of performance for Cure shall be the place where the Serviced Item was located when the Service to which Cure relates was performed.
- 6.4.3 Claims for Cure shall be subject to a limitation period (*Verjährungsfrist*) of twelve (12) months, except for intentional conduct. The period shall commence upon acceptance.

## 6.5 Failure of Cure

- 6.5.1 Provided that Cure fails, i.e. only if it is impossible or unreasonable, is ultimately denied or if after a first deadline has expired to no avail and the Service Customer has set ADS-TEC a second reasonable deadline which again expired to no avail, or if a reasonable number of attempts to rectify, to provide replacement supply or to execute replacement performance are unsuccessful, then the Service Customer may reduce that price under the Order or Standalone Agreement which is payable for the performance concerned or may in such respect rescind the Order or Standalone Agreement.
- 6.5.2 For performances that involve a continuing obligation, termination without notice shall substitute rescission.
- 6.5.3 If ADS-TEC is held culpably accountable for a defect or the failure of Cure, the Service Customer may claim damages or reimbursement of expenses in accordance with the provisions applicable thereto pursuant to Clause 8 (Limitation of Liability)

## 6.6 Mock Defects and Exclusion of Cure

- 6.6.1 Prior to requesting any remedy of Cure, the Service Customer shall assess with due diligence whether a defect which is subject to Cure is given. If an alleged defect is not covered by the

obligation to provide Cure (mock defect), ADS-TEC may charge the Service Customer for the performances executed by ADS-TEC in connection with the verification and correction of the defect at the remuneration rates of ADS-TEC's Price List effective from time to time increased by any disbursements and other expenses incurred to a reasonable extent, except in the event that the mock defect was not detectable by the Service Customer even by exercising due diligence.

- 6.6.2 Any obligation to provide Cure shall be excluded if the Service Customer modifies or amends the delivery item, the Software supplied or another Service performed or has them modified or amended by third parties without prior approval given by ADS-TEC or the Manufacturer, and provided that as a result the correction of the defect becomes impossible or unreasonably aggravated. In any case, the Service Customer shall bear any additional costs of correcting the defect that result from the modification or amendment. No liability shall be incurred by ADS-TEC for defects resulting from improper operation or operating conditions or from the employment of unsuitable consumables by the Service Customer or a third party.

## 6.7 Defects of Tird-Party Products Passed On

- 6.7.1 If a defect which is subject to Cure is caused by the defective product (software and/or hardware) of the Manufacturer or of its sub-suppliers and provided that they do not act as an assistant in performance of ADS-TEC, rather ADS-TEC is merely passing on a third-party product to the Service Customer, without the defect being caused by improper handling of the product so passed on which ADS-TEC may be held culpably accountable for, then ADS-TEC may determine at its sole option whether to assert its warranty claims vis-à-vis the Manufacturer and its sub-suppliers on behalf of the Service Customer or to assign them to the Service Customer.
- 6.7.2 Warranty claims vis-à-vis ADS-TEC resulting from such defects shall then only be admissible under all other prerequisites and subject to the Supplemental Terms of Service and these Service GTC, provided that judicial enforcement of the aforementioned claims against the Manufacturer and its sub-suppliers was to no avail or is out of prospect, e.g. due to insolvency. For the duration of such litigation, the limitation period for the relevant warranty claims by the Service Customer vis-à-vis ADS-TEC shall be inhibited.
- 6.8 Warranty claims for Service performances shall apply accordingly for support services within the meaning of the Supplemental Terms of Support.

## 7 Third Party Claims

### 7.1 Notification and Reservation of Rights

7.1.1 If a third party brings a claim under IP Rights or other right, title or interest, alleging that the exercise of transferred property rights or granted rights of use relating to:

- a) delivered Spare and Ware Parts and other materials;
- b) supplied Software with respect to those improvements incorporated therein, which do not merely remove errors;
- c) Service performances which are subject to acceptance; and/or
- d) ADS-TEC Materials;

is precluded (defects in title), then the Service Customer shall without culpable delay notify ADS-TEC thereof in writing and comprehensively.

7.1.2 If the Service Customer decides to discontinue the use of the items referred to in Clause 7.1.1. for reasons of mitigation or other important reasons, it undertakes to advise the third party that the discontinuation of use does not imply any acknowledgement of the alleged infringement of IP Rights or other right, title or interest. Service Customer shall conduct any legal proceedings with the third party only by mutual consultation with ADS-TEC or shall grant ADS-TEC all required authorizations to conduct the legal proceedings.

7.1.3 The provisions of this Clause 7.1. shall apply accordingly if a third party brings a claim under IP Rights against ADS-TEC which is attributable to the conduct of the Service Customer or an End Customer.

### 7.2 Remedy of Cure for Defects in Title

7.2.1 Upon defects in title ADS-TEC may at its sole option: (i) procure for Service Customer the right to continue using the item referred to in Clause 7.1.1. under the terms of the Agreement; or (ii) replace or modify it to be non-infringing without an unreasonable decrease in usability as agreed; or (iii) terminate the Order or Standalone Agreement in relation thereto and pay the Service Customer a pro-rata refund in the amount of the unused portion of prepaid remunerations for the terminated part calculated as of the effective date of termination and pay damages and/or reimbursement of expenses as provided for under Clause 8 (Limitation of Liability).

7.2.2 If a defect in title which is subject to Cure is caused by the product (software and/or hardware) of the Manufacturer or of its sub-suppliers which is infringing third party IP Rights and provided that they do not act as an assistant in performance of ADS-TEC, rather ADS-TEC is merely passing on a third-party product to the Service Customer, without the infringement of

rights being caused due to ADS-TEC modifying or amending the product so passed on, then ADS-TEC may determine at its sole option whether to assert its claims vis-à-vis the Manufacturer and its sub-suppliers on behalf of the Service Customer or to assign them to the Service Customer.

- 7.2.3 Claims vis-à-vis ADS-TEC resulting from such infringement shall then only be admissible subject to this Clause 7.2., provided that judicial enforcement of the aforementioned claims against the Manufacturer and its sub-suppliers was to no avail or is out of prospect, e.g. due to insolvency. For the duration of such litigation, the limitation period for the relevant warranty claims by the Service Customer vis-à-vis ADS-TEC shall be inhibited.

## 8 Limitation of Liability

- 8.1 For all events of liability arising out of breach of contract or otherwise (whether the nature of the claim results from the Agreement or representations or a conduct separate from the same), provided that such liability relies on fault (including but not limited to negligence) attributable to the liable party (*Verschulden*), ADS-TEC shall compensate damages or reimburse wasted expenses not in excess of the scope specified below:
- 8.2 ADS-TEC shall not be liable in the event of slight negligence (*einfache Fahrlässigkeit*) on the part of its corporate bodies, statutory representatives, employees or other assistants in performance, except in relation to a breach of essential obligations under the Agreement. Obligations under the Agreement which are "essential" (*wesentlich*), shall for the purposes hereunder include the undertaking to comply with agreed SLA, to timely execute and supply contracted performances, the absence of defects in title in contracted performances and in other Service performances as well as the absence of defects in substance that impair their functionality or usability more than insignificantly, and such obligations to provide advice, protection and custody that are intended to enable the Service Customer to make use of the contracted performance or other Service performance under the terms of the Agreement or to protect life and limb of Service Customer's personnel or Service Customer's property from considerable damage.
- 8.3 Any liability of ADS-TEC assumed in substance by ADS-TEC pursuant to Clause 8.2 shall be limited to damages and wasted expenses which ADS-TEC anticipated as a possible consequence of a breach of contract upon entering into the Agreement or which it should have anticipated by exercising due diligence. Any indirect damage and consequential damage resulting from defects in the contracted performance or other Service performance shall furthermore only be recoverable provided that such damage must typically be anticipated under the intended use of the contracted performance or other Service performance. None of the above provisions in

this Clause 8.3 shall apply in the event of intentional or grossly negligent conduct by members of ADS-TEC's corporate bodies (*Organe*) or senior executives (*leitende Angestellte*).

- 8.4 In the event of liability for slight negligence, under no circumstances and regardless of whether or not arising out of breach of essential obligations under the Agreement shall ADS-TEC's obligation to provide compensation for property damage and to reimburse any further financial losses and wasted expenses resulting therefrom in any event arising under or in relation to the Agreement exceed the amount of EUR 25,000 nor shall the maximum aggregate liability for all events (or series of connected events) in any Minimum Term or Extended Term of the Master Agreement exceed the amount of EUR 250,000.
- 8.5 The above exclusions and limitations of liability shall apply to the same extent in favor of ADS-TEC's corporate bodies, statutory representatives, employees and other assistants in performance.
- 8.6 Whenever ADS-TEC provides technical information or advisory and provided such information or advice is not covered by the scope of performances undertaken under the Agreement, the provision thereof shall be for no fee and to the exclusion of any liability.
- 8.7 The exclusions and limitations of liability in this Section 8 shall not apply to ADS-TEC's liability for damages resulting from intentional conduct, for properties of guaranteed characteristics, for damages resulting from death or personal injury arising from negligence nor for its liability pursuant to product liability law.

## 9 Limitation Period

- 9.1 Any claim brought by either party requesting the other to compensate damages or reimburse wasted expenses arising under or in relation the Agreement and regardless of the nature of the claim shall be subject to a limitation period (*Verjährungsfrist*) of twelve (12) months.
- 9.2 The above provision shall not apply to claims for damages or reimbursement of expenses in the event of intentional or grossly negligent conduct of ADS-TEC or of its assistants in performance, damages resulting from death or personal injury arising from negligence, fraud or fraudulent misrepresentation and in the event of product liability. In these events the statutory periods shall apply.

## 10 IP Rights

- 10.1 No use by the Service Customer of the Service performances, the Documentation and ADS-TEC Materials shall be in excess of what is permitted under the terms of the Agreement. Except for any rights thereto expressly granted to Service Customer under the Agreement, in relation to the Service Customer solely ADS-TEC, the Manufacturer, their Affiliates or licensors own all IP



Rights in and derivative works of these items, whether or not derived pursuant to specifications of the Service Customer or through its contribution.

- 10.2 Unless agreed to the contrary, in relation to ADS-TEC solely the Service Customer owns all title in and relating to the Customer Data. No use by ADS-TEC of the trademarks made available by the Service Customer shall be in excess of the purpose of executing the Service performances and providing support.

## 11 Confidentiality

- 11.1 In relation to any Confidential Information of the disclosing party received prior to and in the course of completing the Agreement, the receiving party undertakes, in addition to any separate Non-Disclosure Agreement (NDA) that may be in effect between the parties, to:

- a) maintain these Confidential Information in strict confidence for an indefinite period, taking steps to protect them substantially similar to those steps that the receiving party takes to protect its own Confidential Information, which shall not be less than a reasonable standard of care;
- b) not disclose or reveal these Confidential Information to any person other than to persons whose access is necessary to enable it to exercise its rights or perform its obligations under the Agreement and who are under obligations of confidentiality substantially similar to those in Section 11;
- c) not use or reproduce these Confidential Information for any purpose outside the scope of the Agreement; and
- d) to the extent technically possible retain any and all confidential, internal, or proprietary notices or legends which appear on the original and on any reproductions.

- 11.2 The receiving party may disclose the disclosing party's Confidential Information to the extent required by law, regulation, court order or regulatory agency; provided, that the receiving party required to make such a disclosure uses reasonable efforts to give the disclosing party reasonable prior notice of such required disclosure (to the extent legally permitted) and provides reasonable assistance in contesting the required disclosure, at the request and cost of the disclosing party. The receiving party shall use commercially reasonable efforts to disclose only that portion of the Confidential Information which is legally requested to be disclosed and shall request that all Confidential Information that is so disclosed is accorded confidential treatment.

- 11.3 The restrictions on use or disclosure of Confidential Information will not apply to any Confidential Information that:

- a) is independently developed by the receiving party without reference to the disclosing party's Confidential Information;
- b) has become generally known or available to the public through no act or omission by the receiving party;
- c) at the time of disclosure, was known to the receiving party free of confidentiality restrictions;
- d) is lawfully acquired free of restriction by the receiving party from a third party having the right to furnish such Confidential Information; or
- e) the disclosing party agrees in writing is free of confidentiality restrictions.

11.4 Upon the disclosing party's request, the receiving party shall promptly destroy or return the disclosing party's Confidential Information, including copies and reproductions of it, except any Confidential Information the receiving party is required to retain by applicable law. The Confidential Information so retained shall continue to be subject to the provisions of this Clause 11.

11.5 Neither party shall use the others name in any publicity, advertising or similar activities without the prior written consent of the other party. ADS-TEC may disclose information about the Service Customer to the Manufacturer and its Affiliates for marketing and other business purposes. Where this includes the disclosure and use of contact details of the Service Customer's representatives, the Service Customer shall obtain any required consents.

## 12 Miscellaneous

12.1 Modifications of and amendments to the Agreement as well as all representations and statements relating to the exercise of formative rights, in particular any notices of termination (*Kündigungen*), admonishments (*Mahnungen*) or the setting of deadlines (*Fristsetzungen*), must be executed in writing. Any waiver of this execution requirement shall likewise be subject hereto. For the purposes hereunder, the execution in writing shall be deemed complied with by letter correspondence or by any of the following electronic forms: Fax, email with scanned signature or DocuSign™ and Adobe Sign™. However, Section 127 (2) and (3) BGB shall in all other respects be inapplicable.

12.2 Trade Law Compliance

**12.3** ADS-TEC and Service Customer shall comply with Export Laws in the performance of the Agreement. ADS-TEC Confidential Information is subject to Export Laws. Service Customer and its Affiliates shall not directly or indirectly export, re-export, release, or transfer any units of

the Serviced Items (parts, assemblies and complete products), any Spare and Wear Parts designated for them, and any ADS-TEC Confidential Information in violation of Export Laws. Service Customer is solely responsible for compliance with Export Laws related to Customer Data, including obtaining any required export authorizations for Customer Data.

- 12.3.1 Upon ADS-TEC's request, Service Customer shall provide information and documents to support obtaining an export authorization. Upon written notice served to Service Customer ADS-TEC may immediately terminate the affected Service (or parts thereof) if
- a) the competent authority does not grant such export authorization within eight (8) months; or
  - b) Export Laws prohibit ADS-TEC from providing the Service or parts thereof to Service Customer.
- 12.4 Without ADS-TEC's prior written consent, Service Customer may not assign, delegate or otherwise transfer the Agreement or any of its rights or obligations to any third party, notwithstanding the provisions of Section 354a German Commercial Code – *HGB*. ADS-TEC may assign the Agreement to the Manufacturer or any of its Affiliates.
- 12.5 The Agreement and any claims including any non-contractual claims arising out of or in connection with the Agreement and its subject matter will be governed by and construed under the laws of Germany. The United Nations Convention on Contracts for the International Sale of Goods and any conflicts of law provisions will not apply to the Agreement.
- 12.6 Any dispute or claim arising out of or in connection with the Agreement shall be subject to the exclusive jurisdiction of the competent courts in Stuttgart (Centre / *Mitte*), Germany, provided that the Service Customer is a merchant (*Kaufmann*), a corporate entity under public law or a separate trust under public law.
- 12.7 Wherever the Agreement (and other documents referred to and incorporated therein, including these Service GTC) includes English terms after which either in the same provision or elsewhere in the Agreement German terms have been inserted in brackets and/or italics, the respective German terms alone and not the English terms shall be authoritative for the interpretation of the respective provisions.