General Terms & Conditions of Business of rexx systems GmbH
1. Scope of application and changes to the Terms & Conditions

1.1 These General Terms & Conditions of Business (hereinafter Terms & Conditions) apply to all services and products of rexx systems GmbH. Contractual conditions that deviate from these Terms & Conditions shall only apply if they have been expressly accepted in writing by rexx systems GmbH. In this case, they shall apply only to the specific transaction in question.

1.2 The Terms & Conditions shall also apply in their applicable version as a framework agreement for future contracts for the sale and/or delivery of services and products of rexx systems GmbH, without our having to make specific reference to them again in each individual case; if changes are made to our Terms & Conditions, we shall immediately notify customers accordingly in this case. The currently valid version is published online at www.rexx-systems.com.

1.3 Changes to the Terms & Conditions during the course of continuing obligations shall take effect provided the customer is notified of the amended Terms & Conditions in text form, at least six weeks before the change enters into force. If the change does not provide the customer with a legal advantage or if the nature of the changes is more than simply editorial (e.g. correction of obvious errors), the customer is entitled to reject the modified Terms & Conditions in text or written form, at any time prior to the point at which they enter into force.

1.4 Individual contractual agreements shall always take precedence over these Terms & Conditions in their applicable version. Requirement specifications and licence agreements shall likewise always take precedence over these Terms & Conditions.

2. Services of rexx systems GmbH

2.1 In order to fulfil its obligations, rexx systems GmbH may call upon third parties (in particular subcontractors) and employees of third parties.

2.2 Unless agreed otherwise, services shall be performed on the premises of rexx systems GmbH. Notwithstanding the previous clause, meetings, the implementation of software, and training courses may also take place on the customer's premises.

3. Obligations to cooperate on the part of the customer

3.1 Where software licences are purchased or leased, the customer's obligation to cooperate includes providing any information needed to commission and report any additional licences.

3.2 The customer shall provide rexx systems GmbH with all cooperation, information, data and documentation required by rexx systems GmbH for the fulfilment of its contractual obligations. The customer shall ensure that all necessary data, documents, and personnel are available to facilitate the contractual services of rexx systems GmbH or acceptance at the agreed time.

3.3 If the cooperation of the customer is required, rexx systems GmbH shall notify the customer in good time. If rexx systems GmbH is delayed in performing the contractual services or completing the acceptance test, or is entirely prevented from doing so, because the customer fails to cooperate, rexx systems GmbH may alter the project schedule at the customer's expense, and to the extent deemed absolutely necessary, were this to conflict with another order for the performance of services. The project schedule shall be modified with due consideration for the available resources of rexx systems GmbH and the legitimate interests of the customer. The customer's statutory rights of termination shall not be affected.

3.4 If tasks must be completed twice as a result of the customer failing to cooperate or failing to do so in due time, rexx systems GmbH is entitled to make additional charges for this work following advance notification of the anticipated additional costs.

3.5 At the request of rexx systems GmbH, the customer shall nominate to rexx systems GmbH a representative and a deputy authorised to take binding decisions and to issue instructions.

3.6 The customer is obliged to immediately report any additional licences used. Rexx systems GmbH is entitled, at any time, to check the licences in order to verify, for example, that there is a sufficient number of the same, or that there are sufficient rights in place.

3.7 The customer shall make timely payment of the remunerations agreed in the individual contracts for the services performed by rexx systems GmbH. All amounts are understood to be net. Services required by the customer, the prices of which have not been specifically agreed, shall be charged at cost at the standard applicable rates of rexx systems GmbH, details of which can be provided to the customer on request. The settlement or offsetting against claims on the part of rexx systems GmbH by the customer is permitted only if the claim is uncontested or legally established, or has the consent of rexx systems GmbH. The foregoing clause applies accordingly to rights of retention and other rights to withhold performance, in particular in the event of a dispute over the effectiveness of termination.

3.8 The customer undertakes to pay the amount charged by no later than the payment deadline specified in 7.13. If the customer fails to meet its payment obligation within the payment period, it shall be in default when that period elapses without further reminder. Default shall apply separately to each invoice and – if several services are covered by one invoice – to each service separately.

4. Prices

4.1 The binding prices valid at the time the order is placed shall apply to orders for which prices have not already been agreed. The current binding prices are available from rexx systems GmbH.

4.2 In the case of ongoing orders, the prices for future services may be increased. The same applies to services within the context of continuing obligations. rexx systems GmbH may implement a price adjustment according to its reasonable discretion, annually as at 1 January, if the producer price index for services established by the Federal Statistical Office changes: https://www.destatis.de/DE/Themen/Wirtschaft/Preise/Erzeugerpreisindex-Dienstleistungen/_inhalt.html
The calculation of the change will be based on the average value of the overall index for the previous four quarters. The price adjustment shall be communicated to the customer by rexx systems GmbH two months prior to the effective date, namely 1 January of the new year, in writing or in text form.

5. Rights of use and copyright

5.1 The customer shall be granted the non-exclusive, non-transferable right to use the services of rexx systems GmbH agreed in the individual contracts, for the contractually agreed term. The content and scope of this right are defined in the individual contracts.

5.2 For software as a service (SaaS), the customer shall be granted the non-exclusive, non-transferable right to access the application via telecommunications and to use the functions in accordance with the contract by means of a browser.

5.3 If use of the application in accordance with the contract is impaired by the proprietary rights of third parties, through no fault on the part of rexx systems GmbH, rexx systems GmbH is entitled to refuse the services affected in this way. rexx systems GmbH shall notify the customer of this immediately and shall provide the customer with access to its data in an appropriate way. rexx systems GmbH is entitled to publicise its copyright appropriately through free use of the copyright symbol, the linked company name, the company logo and the year date in the application and in documents that are generated by the application.

5.4 The rights to the stored data, in particular personal data, are held exclusively by the customer. An export of the stored data, particularly personal data, may be commissioned by the customer upon the termination of the contract, with a lead time of at least two months rexx systems GmbH shall provide the customer with this database, on suitable data carriers and in a standard data format. If no such commissioning occurs, the data will be irrevocably erased in accordance with the GDPR on the day after the termination of the contract.

5.5 All other rights not explicitly granted shall remain irrevocably held by rexx systems GmbH. In particular, the customer is not permitted to issue sub-licences or to transfer rights to third parties without the permission of rexx systems GmbH. In particular, the customer is not permitted to duplicate, sell, or temporarily transfer the application or parts thereof, nor, in particular, to lease or lend them out. rexx systems GmbH may only refuse its consent to the transfer of a purchased software licence to a third party in justified cases; in particular, rexx systems GmbH may require the customer to make a corresponding number of copies in their possession unusable.

5.6 Subsidiaries, office locations, agencies and other entities associated with the customer are not deemed to be third parties, provided that they do not breach the rights of use specified in the individual contracts.

5.7 The customer has no right to the source code of the software. The customer accepts the existence of the intellectual property rights of rexx systems GmbH and of any third parties, and shall not take any action that compromises the value of that property. As far as possible, the customer shall prevent unauthorised use. This also applies after the contracts have come to an end.

6. Confidentiality, data protection, and data security

6.1 Rexx systems GmbH guarantees that all facts that become known in conjunction with the work for the customer, in particular information regarding operating and business secrets and information about the customer's customers, shall be kept confidential in accordance with statutory provisions and shall be used exclusively to implement, operate, and support the software.

6.2 The customer also undertakes to treat all of the business, technical, and scientific knowledge obtained from rexx systems GmbH in conjunction with the fulfilment of the contract in confidence, and to only make it available to third parties with the express consent of rexx systems GmbH. The customer further undertakes to refrain from registering any proprietary rights to the expertise obtained from rexx systems GmbH in conjunction with the performance of the contract.

6.3 The obligation to maintain confidentiality does not apply if the information:

- was demonstrably known to the contracting partner before it was communicated

- was publicly known or generally accessible before it was communicated

- became publicly known or generally accessible after it was communicated, without any involvement or culpable action on the part of the contracting party receiving it

- is essentially information that could be made known or accessible to the contracting partner at any time by an authorised third party.

6.4 The obligation to maintain confidentiality shall end 10 years after termination of the contract, provided that statutory regulations do not prescribe a longer confidentiality obligation.

6.5 Both parties shall comply with the applicable data protection provisions, in particular those that apply in Germany, and shall oblige their employees who work in conjunction with the contract to maintain data privacy in accordance with the GDPR, insofar as they are not already obliged to do so in general.

6.6 The data protection and data security provisions shall be regulated in a separate set of agreements to be signed by the customer and rexx systems GmbH.

7. Payment conditions

7.1 These payment conditions shall apply to all agreements between rexx systems GmbH and the customer, irrespective of the form of the agreement (e.g. email).

7.2 Licence costs are fixed prices and apply to the contractually agreed rights of use. Licence costs shall be charged upon placement of the order. No adjustment of the licence costs in accordance with 4.2 shall be made.

7.3 Services (such as project management, consulting, training, standard set-up, and customisation) with an order volume over EUR 40,000 shall be due for payment in two instalments: 50% upon conclusion of the contract and 50% upon completion of the implementation of the system; the second instalment shall be

invoiced no later than 12 months, and under a contract volume of EUR 100,000 no later than six months, from the conclusion of the contract. Services with an order volume up to EUR 40,000 shall be invoiced in full upon placement of the order.

7.4 Fees for maintenance and support for the application shall be charged annually in advance, from the date of installation on the server provided by the customer and, in the case of interfaces, from provision within the customer's system – in both cases, however, no later than six months from commissioning – and shall be deemed a continuing obligation as defined by these Terms & Conditions.

7.5 The SaaS fee shall be charged annually in advance, from the date of provision of the URL or, in the case of subsequent sales, from the activation of the commissioned additional module within the customer's system, and is deemed a continuing obligation as defined by these Terms & Conditions.

7.6 The financial year of rexx systems GmbH shall apply for the purposes of invoicing. If a contract is concluded during the course of a year, the first invoice for the period from the start of the contract shall be issued on 31 December of the year in question. Payments shall then be made for the full financial year of rexx systems GmbH on 1 January of each year.

7.7 An order is usually deemed to have been placed at the time the contract is signed or the order submitted. If, with the agreement of the customer, the work on the part of rexx systems GmbH is to begin before the contract is signed, the date of written submission of the order by the customer shall be deemed to be the date of placement of the order when the contract is signed.

7.8 rexx systems GmbH is entitled to charge the customer for contractually commissioned services with prior notification and an appropriate notice period if the customer delays or refuses provision or performance of the services by rexx systems GmbH.

7.9 Notification of provisioning is deemed to have been given when the software is made available for acceptance testing in accordance with the project specification or requirement specification. Upon notification of provisioning, the customer shall draw up an acceptance report and the final partial invoice shall be issued.

7.10 rexx systems GmbH is entitled to declare that provisioning has been completed and to issue the final partial invoice in the event of a failure to cooperate or another delay in the drawing up of the acceptance report for which the customer is culpable.

7.11 Irrespective of the order value, requests for changes by the customer after acceptance shall be charged in full and payment shall be due upon notification of the provisioning of the requested changes. 7.8 and 7.19 apply accordingly.

7.12 Additional licences to extend use and their ongoing costs shall be charged upon notification by the customer in accordance with 7.5.

7.13 Invoice amounts shall be credited to the account of rexx systems GmbH specified on the invoice, without discount, by no later than the fourteenth day from receipt of the invoice.

8 Default

8.1 If the customer is in default of payment of a significant proportion of the remuneration, over a period covering more than two months, rexx systems GmbH is entitled to block or cancel all services provided to the customer after an appropriate notice period. Fees that do not depend on usage, such as the full fees for the operation of the system, are due even if the services are blocked or cancelled.

8.2 Furthermore, rexx systems GmbH is entitled to terminate the contract without prior announcement, after observing an appropriate notice period, that period having elapsed without success, and demand lump-sum compensation, immediately due in one instalment, amounting to one quarter of the remaining annual price up to the expiration of the normal term of the contract.

8.3 The compensation amount shall be set higher or lower if rexx systems GmbH can demonstrate that its losses are higher or if the customer can demonstrate that they are lower.

8.4 rexx systems GmbH reserves the right to pursue further claims for default of payment.

9 Liability and limitation of liability

9.1 rexx systems GmbH is liable in cases in which it or its vicarious agents are at fault.

9.2 Liability for minor and normal negligence is limited to foreseeable losses; liability cannot be accepted for unforeseeable, excessive risks. If there is no breach of material contractual obligations – i.e. those obligations that put the purpose of the contract at risk if they are breached – liability for minor negligence is excluded.

9.3 Unless a compensation claim on the part of the customer is subject to a shorter expiry period under law, it shall expire

9.3.1 in one year from the time the claim is raised and the customer became aware of the circumstances on which the claim is based and the identity of the liable party, or should have become aware of this in the absence of gross negligence,

9.3.2 in three years from the time of its emergence irrespective of awareness or grossly negligent lack of awareness, and

9.3.3 in ten years from the time of commission of the action, the breach of obligation or other event leading to the losses, irrespective of its emergence and awareness or grossly negligent lack of awareness. The period that expires first shall apply.

9.4 The regulations under 9.1 to 9.3 shall also apply in respect of persons other than the customer insofar as, in the exceptional individual case, there are also grounds for contractual or non-contractual relationships between rexx systems GmbH and those persons.

9.5 Compensation claims resulting from loss of life, physical, injury or damage to health are excluded from the above regulations under 9.1 to 9.4.

10. Acceptance, approval, checking, and complaints

10.1 At the specific request of rexx systems GmbH, the customer must accept all services provided by rexx systems GmbH, in particular individual software adaptations, as soon as they are provided and must check them for defects. All obvious defects shall be reported immediately in written or text form, all concealed defects immediately on discovery, and at the latest 14 days from the specific request or their discovery by the customer. Upon expiry of the aforementioned period, the (partial) service shall be deemed to have been accepted, provided that express reference is made to this condition in the specific request. rexx systems GmbH has a right to a written declaration of acceptance, provided that this can be reasonably expected of the customer.

10.2 The acceptance test (approval) shall take place after completion of the (partial) service and usually after receipt of notification of provisioning by rexx systems GmbH. The customer is obliged to check the services provided by rexx systems GmbH, in particular the software supplied, to confirm that the system provided corresponds to the functions defined in the specification. If the software passes the acceptance tests, the customer is obliged, upon request, to issue a written declaration of acceptance immediately. All discrepancies or faults identified shall be immediately recorded as defects in a test report, taking account of any changes subsequently agreed. The test report shall be drawn up jointly and consensually by representatives of the two contracting parties.

10.3 Acceptance may not be refused on the grounds of minor defects. rexx systems GmbH may set an appropriate time limit for completion of acceptance, upon expiry of which the service or software shall be deemed to have been accepted. The parties shall agree in the acceptance report as to how and within what period the defects must be rectified. Unless agreed otherwise, rectification of these defects shall begin as soon as possible. 10.1 and 10.2 shall apply in this context accordingly.

10.4 The service shall be deemed to have been readily accepted as soon as the customer uses or makes arrangements for the use of the software operationally or commercially. Commissioning shall be deemed to have been completed if no significant defects have been reported within 14 days of notification of the provisioning of the respective services for acceptance.

10.5 The software services shall also be deemed to have been accepted after a period of 14 days from notification of provisioning for acceptance if, during the course of the acceptance process and following receipt of refusal of acceptance, agreement has been reached that no significant defects are present. Otherwise, the service shall be deemed to have been accepted from the time at which rexx systems GmbH has demonstrated that it has rectified all of the defects listed.

10.6 rexx systems GmbH has the right to demand acceptance of definable partial results that are suitable for acceptance if they serve as the basis for further project work and deliverables.

11. Guarantee

11.1 rexx systems GmbH guarantees that the services agreed in the individual contracts shall be fulfilled.

11.2 These contractual guarantees shall not apply in the event of incidents or circumstances that are the fault of the customer, or in the event of force majeure. Circumstances involving force majeure include, for example, war, strikes, unrest, substantial changes in the law (in particular data protection legislation), interventions by authorities, storms, floods, and other natural catastrophes, in addition to other circumstances for which rexx systems GmbH is not responsible. Each of the contracting parties shall notify the other contracting party of the occurrence of an incident involving *force majeure* immediately and in written form.

11.3 rexx systems GmbH cannot provide a guarantee that the software created or supplied by it can be used continuously and without fault in all combinations required by the customer, or with any data, infrastructures or programs, with the exception of those combinations, data, infrastructures and programs that are specifically mentioned in the contract or are commonly used (in particular, the operating system in widest use upon placement of the order).

11.4 rexx systems GmbH guarantees that its services correspond to the contractually agreed specifications, assurances, and characteristics.

11.5 If a defect exists that is covered by the guarantee, the customer has a right to its rectification in accordance with
the process described under 10.3 and 10.4. In all cases, the customer shall first demand remedial action. If the defect in question cannot be rectified after two attempts at remedy, the customer may demand reimbursement of the amounts paid for the defective service or a proportional reduction of the total amount. The right to substitute performance of the entire service is excluded. Claims for compensation in accordance with 9 remain unaffected.

11.6 Complaints concerning defects made by the customer shall be submitted no later than 14 days from when the customer becomes aware of such defects. The guarantee period shall begin upon acceptance by the customer. Claims under the guarantee shall expire within twelve months.

11.7 The obligation incumbent upon rexx systems GmbH to rectify a defect includes making corrections if the service provided is not of the quality considered standard within the industry or does not correspond to the scope of the service agreed in writing between the parties, and, in either case, provided the cost of rectification is proportionate.

11.8 If, after appropriate investigation, it cannot be established that a fault or a defective service is the result of intentional action, negligence, or omissions on the part of rexx systems GmbH, the customer shall compensate rexx systems GmbH for the time spent and the costs incurred in rectifying the fault or providing the service. The prices specified under 4.1 shall apply.

11.9 The rights under the guarantee specified here are definitive. Compensation claims resulting from loss of life, physical injury or damage to health are excluded.

12. General daily rates and expenses

12.1 The current, generally applicable daily rates apply to all services that are charged individually according to the time spent on them. The daily rates are based on an eight-hour day. Individual hours are charged as proportions of days. For project work on weekends or general public holidays that is expressly requested by the customer and agreed to by the contractor, a surcharge of 50% shall be applied.

12.2 Training and consulting days and workshops conducted on site shall be charged according to a breakdown of costs with a maximum of eight hours per day, chargeable in blocks of four hours, plus travel costs and travel time.

12.3 Travel costs refers to all additional expenses incurred directly as

a result of the business trip and as recognised under the German Income Tax Act (EStG) and the associated memorandum from the Federal Finance Ministry. They include the costs of the actual travel, the additional meal allowance, costs of overnight accommodation and documented or credible ancillary costs, in each case in the amount recognised in the latest version of the German Income Tax Act (EStG) and the associated memorandum from the Federal Finance Ministry. Settlement of travel costs such as: Flight costs, rail travel costs (1st class), and rental car and taxi costs and overnight accommodation and expenses shall be completed upon submission of receipts. Distances travelled by private vehicle shall be reimbursed at a rate of EUR 0.50 per kilometre covered. Travel times shall be remunerated at 50% of the actual duration at the agreed daily rate.

12.4 If, as a result of cancellation by the customer at short notice (seven days in the case of on-site training courses and workshops or two days for online training courses/workshops) of a workshop or training course already arranged, cancellation fees shall be payable in the amount of 50% of the originally agreed price and travel costs for already booked and non-cancellable travel; rexx systems GmbH shall be reimbursed upon submission of documentation.

13. Start and term of the contract, termination

13.1 The contract shall come into force on signature by both contracting parties. The term of a continuing obligation shall end, at the latest, on 31 December of the year following conclusion of the contract.

13.2 Continuing obligations may be terminated by either contracting party at the earliest upon expiry of the term, with a notice period of six calendar months to the end of the year. Otherwise the contract shall be extended automatically by 12 months in each case and may then be terminated at the end of the contract term with a notice period of six calendar months.

13.3 The right to terminate for cause remains unaffected.

13.4 All terminations must be submitted in writing.

14. Consequences of termination

14.1 If the customer withdraws from an individual contract or terminates such a contract extraordinarily, this shall not automatically result in the withdrawal from or termination of other individual contracts, unless these depend on the individual contract that has been dissolved.

14.2 In the case of the temporary right of use for hosting, the customer has the right to obtain all of the data on the server operated by rexx systems GmbH that is owned by the customer, in a standard database format, upon termination of the agreement.

15. Further provisions

15.1 The contracts (including these Terms & Conditions) shall replace all earlier arrangements, correspondence, declarations, negotiations, and agreements between the parties in relation to the subject of the respective contracts, unless express reference is made to these in the contracts in question. This also applies to quotations, calls for tender, and specifications.

15.2 Changes and additions to agreements must be in text or written form in order to be considered valid. This applies, in particular, to changes to the requirement of written form itself. The options to make changes to the Terms & Conditions in accordance with 1.2 and 1.3 and to the prices under 4.2 remain unaffected.

15.3 Should individual or multiple provisions of the respective contracts (including these Terms & Conditions) be or become ineffective or invalid or should a loophole emerge, the validity of the remaining provisions shall remain unaffected. The invalid or ineffective provisions shall be redrafted or replaced in such a way that they correspond as closely as possible to the intended purpose of the agreement. The same applies in the event of contractual loopholes. This contract is governed by German law. The exclusive place of jurisdiction is Hamburg if the customer has no general place of jurisdiction in Germany, is a trader, legal person under public law, or a special fund under public law.