General terms and conditions for the delivery of software and the provision of services

These general terms and conditions for the delivery of software and the provision of services (hereinafter “Contractual Conditions”) govern all related details which are necessary and relevant for the legal relations between the contracting parties. All designations of persons apply equally to both genders.

In these Contractual Conditions, “**EPLAN**” means the EPLAN entity named in the relevant order confirmation, on the basis of which such entity concludes a contract with the customer (hereinafter “EPLAN”).

In these Contractual Conditions, “**Customer**” means the company, the merchant, the legal entity under private law or public law, or the special fund under public law, named in the order confirmation as EPLAN’s contracting party (hereinafter the “Customer”).

In these Contractual Conditions, “**Affiliates**” means legally independent business enterprises which a) hold the majority of the shares or voting rights in another business enterprise (majority shareholding) and business enterprises subject to any such majority shareholding, or b) are able to exert a direct or indirect controlling influence on another business enterprise (control relationship) and business enterprises subject to such control relationship, or c) are subject to a common management or have another dependent relation among each other (group relationship) (hereinafter “Affiliates”).

A. Principles of the cooperation between the Customer and EPLAN

1. Subject matter of the contract

1.1 The subject matter of the contract is specified in the respective order confirmation by EPLAN, together with the documents and agreements referred to therein, including these Contractual Conditions.

1.2 Any offers which deviate from the order confirmation, as well as any other draft agreements which serve the evaluation of the cooperation which were exchanged between the contracting parties in the course of the negotiations are non-binding, including in relation to prices, quantities, delivery dates, delivery options, technical, data, specifications and quality descriptions.

2. Applicability of these Contractual Conditions

2.1 In addition to the order confirmation, these Contractual Conditions form the basis of all legal transactions between EPLAN and the respective Customer and, therefore, governs the legal relationship.

2.2 Any deviating and/or conflicting contractual terms and conditions of the Customer will not be accepted, regardless of whether or not they constitute a material modification of the order confirmation and regardless of the acceptance and payment of the deliveries and services of EPLAN by the Customer.

2.3 Notwithstanding the above, these Contractual Conditions will always prevail, unless the contracting parties agree otherwise.

3. Prices, remuneration and other costs

3.1 All prices and licence fees stated and agreed in the offer upon the conclusion of the contract (hereinafter “Prices”) are “EXW“ (INCOTERMS 2010) and do not include costs of packaging and insurance.

3.2 The remuneration for installation, trainings, software maintenance and consulting is stated separately on the basis of the Prices of EPLAN in force upon the conclusion of the contract (hereinafter “Remuneration”) and is based, unless agreed otherwise, on a time and material basis, i.e., charged per hour and/or day.

3.3 If applicable, all Prices and the Remuneration are net of VAT and other applicable taxes, duties, charges and fees.

3.4 In providing services and work performances in accordance with chapter B., part II. below, one daily rate includes eight (8) hours of work. Any times in excess thereof are charged at 1/8 of the daily rate per hour. Travel times are charged as working hours. The basis of the calculation of travel times and travel expenses is the office location of the employees used by EPLAN from time to time.

3.5 Any travel expenses and other necessary expenses (e.g., accommodation expenses, courier and translation services) incurred by EPLAN in connection with the provision of the contractual performances will be charged in the amount actually incurred against proof. If EPLAN offers a lump sum as compensation, the respective lump-sum amount will replace the settlement on the basis of the costs actually incurred.

4. Payment, set-off and right of retention

4.1 Unless agreed otherwise, the invoiced amounts of the Prices and the Remuneration owed to EPLAN will be due and payable a) within thirty (30) days from the receipt by the Customer of the invoice without any deductions and b) by way of a transfer to EPLAN's bank account. Unless the Customer can prove the opposite, an invoice will be deemed to be received three (3) days from the invoicing. After the expiry of that time limit for payment, the Customer will be in default.

4.2 The Customer may only make a set-off of payment claims of EPLAN against claims which are undisputed or have become final and conclusive. The Customer only has rights of retention to the extent that these are based on the same legal transaction.

5. Type, scope and place of deliveries and services

5.1 Software will be delivered by EPLAN, at its option, either:

a) in physical form on a machine-readable data carrier "EXW or Supply Centre" (INCOTERMS 2010), with EPLAN choosing the type of shipment, the transport route and the carrier, or

b) in intangible form, i.e., through the Internet, retrievable via a download by a link provided by EPLAN which allows the access to systems provided by EPLAN for the download of a copy of the relevant software. The respective link, as well as related retrieval information, will be transmitted to the Customer directly after the conclusion of the contract. The quality of the deliveries and services is governed exclusively by the specification of services or technical specifications in force upon the conclusion of the contract and which are available to the Customer, as well as the related documentation, which is provided to the Customer together with the deliveries and services.

5.2 Partial deliveries will be admissible to the extent that they are reasonable for the Customer.

5.3 Software will exclusively be delivered in machine-readable object code or, in an SAP environment, in ABAP form, and only for the contractually agreed use. The Customer has no claim to a disclosure or use of the source code. Unless expressly agreed otherwise in writing, the source code does not form part of the contract.

5.4 The provision of services and work performances such as installation, implementation, customising, adaptation, consulting, training and other support is based on the more detailed provisions of chapter B., part II. et. seq. below.

5.5 In the case of a physical delivery, the relevant time for the compliance with delivery dates and the passing of risk is the point in time when EPLAN surrenders the data medium and the documentation to the carrier and, otherwise, the time when the software is ready for retrieval in accordance with chapter A., section 5.1 above and EPLAN has transmitted the retrieval information to the Customer.

5.6 Unless expressly agreed otherwise in the contract, delivery dates will always be non-binding and only an approximation. They will be subject to the timely delivery to EPLAN by its own suppliers (if applicable).

5.7 If an expressly agreed delivery date is exceeded for reasons for which EPLAN is responsible, the Customer shall set to EPLAN in writing a time limit of at least one (1) week.

5.8 So long as a) EPLAN waits for the cooperation or information by the Customer or b) the rendering of EPLAN's performances is impaired as a result of strikes or lock-outs in third-party enterprises or within EPLAN's own enterprise (in the latter case, however, only if the industrial dispute is lawful), official intervention, statutory prohibitions or other circumstances for which EPLAN is not responsible ("force majeure"), any time limits for deliveries and services will be deemed to be extended by the duration of the impairment and a reasonable start-up period after the end of the impairment ("downtime"), and no breach of duty by EPLAN will exist for the duration of the downtime. EPLAN shall notify the Customer of any such impairments and their expected duration without undue delay. If force majeure persists for an uninterrupted period of more than three (3) months, both contracting parties will be released from their duties to perform.

5.9 The performance of the contract by EPLAN will be subject to EPLAN's neither violating any regulations of national and international export and foreign trade law nor breaching any sanctions or embargos.

6. Customer's duties to cooperate and provide information

6.1 The Customer is alone of responsible for the necessary hardware and software environment in relation to the deliveries and services to be provided by EPLAN. This also applies in respect of the system requirements and the handling of the software by the Customer's employees and other staff.

6.2 The Customer is responsible for the establishment of an adequately dimensioned hardware and software environment, also in consideration of the additional burden by the deliveries and services.

6.3 Before using them, the Customer shall thoroughly test the deliveries and services for their freedom from defects and their usability in the existing hardware and software configuration. This applies also to deliveries and services provided to the Customer within the scope of warranty and maintenance.

6.4 The Customer shall observe the notes and minimum requirements provided by EPLAN in relation to the installation and use of the deliveries and services.

6.5 The Customer shall, free of charge and to the required extent, provide any requirements and parameters as are necessary for a contractual use of the deliveries and services, for example, staff, workspaces and access to them, as well as hardware and software, data and telecommunications systems.

6.6 To enable EPLAN to remedy any faults in the best possible manner and as quickly as possible, the Customer shall, in connection with the troubleshooting and rectification of the fault, grant to EPLAN access to EPLAN's deliveries and services, in particular, software and components thereof. If necessary, the contracting parties shall enter into any agreements and take security measures to preserve data protection.

6.7 The Customer hereby warrants that the Customer backs up its data regularly at reasonable and application-adequate intervals within the scope of the general legal, business-management and organisational principles, in particular, IT security and compliance principles. Before EPLAN is granted access as specified above for the aforementioned purposes, the Customer shall back up the data affected thereby (for example, project files) in the aforementioned manner. A regular data backup will be deemed "application-adequate" if it warrants - subject to the sensitivity and relevance of the data - an immediate or short-term restoration of the condition which existed before the access at reasonable expense.

7. Warranty; Limitation of actions

7.1 Only the performance characteristics agreed in writing, as well as the scope of the services, including the declaration that the contractual use of those services does not conflict with any third-party rights, form the basis of the deliveries and services. The Customer must inspect the deliveries and services immediately upon receipt and notify EPLAN without undue delay of any obvious defects and any hidden defects immediately after their discovery. If he fails to do so, the deliveries and services shall be deemed to have been approved free of defects. Any defects must be documented in comprehensible form and be notified to EPLAN such that EPLAN is able to rectify the defect without undue delay after becoming aware of it and the provision of any necessary and useful information. The Customer shall take all reasonable measures which facilitate a discovery of defects and their causes.

7.2 In relation to deliveries and services, EPLAN warrants in accordance with the provisions below that the performance characteristics agreed in the contract are met and conform to the agreed scope of performance, and that no third-party rights conflict with the use of those performances to the extent contractually agreed. Any agreements regarding the quality of the deliveries and services constitute performance specifications; they do not constitute a quality or durability guarantee. The Customer may only assert any warranty claims in relation to defects which are reproducible or can be identified otherwise. The Customer shall document any such defects in a comprehensible form and submit the notification of the defect, as well as the documentation, to EPLAN, including any useful information known to the Customer, without undue delay after becoming aware of the defect. The Customer shall take all reasonable measures which facilitate an identification of the defects and their causes.

7.3 If EPLAN is obliged to rectify defects, EPLAN may, at its option, rectify physical defects by way of subsequent performance, a new delivery of the software, or the deliveries and services, respectively, or by demonstrating or providing a reasonable workaround solution suitable of avoiding the impacts of the defect.

7.4 In the event of defects in title, EPLAN will render subsequent performance. To this end, EPLAN will, at its own option, procure for the Customer a legally unobjectionable possibility to use the deliveries and services.

7.5 The warranty relates to the latest version of the software published by EPLAN from time to time (hereinafter “new version”). A new version (i.e., any new software version in relation to deliveries and services, in particular, updates, hotfixes, patches, service packs etc., but excluding other modules, products, add-ins and add-ons) shall be accepted by the Customer provided that it serves the purpose of avoiding or rectifying defects, the contractual functional scope is preserved, and the acceptance does not result in substantial disadvantages to the Customer.

7.6 EPLAN may make subsequent performance subject to the Customer having paid at least a reasonable portion of the Price or Remuneration.

7.7 If subsequent performance fails within a reasonable time limit, the Customer may rescind the contract or reduce the Price or the Remuneration provided that the Customer has set to EPLAN before a written time limit for the rectification of the defect and such time limit has expired without results. EPLAN will pay damages or compensation for futile expenses on account of a defect within the limits of the damages specified in the contract.

7.8 The Customer’s warranty claims do not extend to any deliveries and services which are modified by the Customer or which are used in a system environment other than the intended or contractually agreed system environment. The Customer will be free to prove that the defect was not caused as a result of any such different use.

7.9 The limitation period for any claims under this section 7 is one (1) year from the conclusion of the contract.

8. Liability

8.1 To the exclusion of any additional liability, EPLAN will be liable for any damage caused by EPLAN or its agents with intent, gross negligence or by a negligent breach of material contractual duties. “cardinal duties” means duties which render the proper performance of the contract possible in the first place and on the compliance with which the other contracting party may regularly rely.

8.2 The liability under mandatory statutory provisions, as well as for violations of life, body or health and in relation to claims arising from product liability, insofar as there are special legal regulations in the legal system applicable in accordance with chapter A., section 10.4, or guarantees, remains unaffected by the above limitations of liability.

8.3 In the event of a breach of non-cardinal duties, EPLAN will be liable for the resultant property and pecuniary damage which could typically, and reasonably, be expected to occur upon the conclusion of the contract. The relevant standard therefore is the total sum of the Prices and/or Remuneration for EPLAN agreed in the respective contract, if such total sum can be determined or, if such total sum cannot be determined (for example, because of an indefinite term), the total Remuneration or average monthly Remuneration paid to EPLAN within the twelve (12) months preceding the occurrence of the damage. The Customer will be free to prove that EPLAN had to expect higher damage.

8.4 In all other cases, a liability will be excluded. This applies also in relation to indirect damage, consequential damage or loss of profit.

8.5 EPLAN reserves the right to plead contributory fault.

9. Confidentiality and data protection

9.1 The contracting parties shall maintain secrecy regarding any information of a technical, financial or other commercial or confidential nature received by them directly or indirectly in connection with the respective contract and its performance and shall not disclose the same to third-parties; Affiliates of a contracting party are not deemed to be third-parties. In addition, the contracting parties shall not use any information obtained for any purpose other than the purpose expressly stated in the contract.

9.2 These duties of confidentiality do not apply to any information which is in the public domain, which had already been known to a party, which was lawfully obtained by a party from a third-party, or which a party has developed itself in the absence of a breach of duties of confidentiality. The party invoking the above bears the burden of proof.

9.3 These duties regarding comprehensive secrecy and confidentiality survive the termination of the respective contract.

9.4 EPLAN may collect, process and store personal data of the Customer in compliance with the regulations of the applicable data protection laws, directive and other regulations.

9.5 Should EPLAN analyse Customer data, EPLAN shall do so exclusively within the admissible scope under data protection law.

9.6 EPLAN further warrants that all employees of EPLAN all employees of EPLAN have undertaken in writing to comply with data secrecy and observe special confidentiality in accordance with applicable data protection, telecommunications and other applicable laws.

10. Final provisions

10.1 EPLAN may, at its own discretion and in consideration of the Customer's legitimate interests, assign performances to subcontractors selected by EPLAN. EPLAN will be liable for the performances of its subcontractors as if they were EPLAN's own performances.

10.2 Any amendments and supplements to these Contractual Conditions must be in writing (including fax and email) to be effective and must expressly be referred to as such. This also applies to any modifications of this clause. No oral side agreements were made.

10.3 Should any of the provisions of these Contractual Conditions be or become ineffective, contain an inadmissible time limit or a gap, the validity of the remaining provisions will not be affected thereby. In such case, the contracting parties shall replace the ineffective provision by an effective provision which comes closest to the contracting parties' economic and legal intentions.

10.4 These Contractual Conditions and the entire legal relationships between the contracting parties are governed by the law of the Czech Republic, to the exclusion of the UN Sales Convention and private international law, as well as its provisions regarding choices of law and conflicts of law.

10.5 The exclusive place of jurisdiction for all disputes out of, or in connection with, these Contractual Conditions is the corporate seat of EPLAN. EPLAN may also sue at the contracting party's place of registered office.

10.6 The respective contract may not be transferred or assigned to a third-party without EPLAN's prior written consent (which may not be unreasonably withheld), unless the transferee or assignee is a legal successor of the transferor or transferee as a result of a merger, a transfer, a consolidation, an acquisition, a legal restructuring, a sale of assets or a purchase of substantially all assets to which the subject matter of these Contractual Conditions relates.

B. Special provisions regarding the cooperation between the Customer and EPLAN

I. Standard Software; Third-party Software

1. Bases

1.1 In these Contractual Conditions, "Standard Software" means - including the related application documentation - any software and software products, i.e., programmes, programme modules, applications, tools, add-ins and other prefabricated solutions etc., which were developed for, and/or provided to, a variety of customers and their needs in the respective market. Basically, "Standard Software" includes, in particular, all products which are offered, or intended to be offered, by EPLAN in the market at EPLAN's Prices or which otherwise are not exclusively developed for, and provided to, an individual customer (hereinafter "Standard Software").

1.2 In these Contractual Conditions, "software of other manufacturers" means any software and/or software components which were not developed by EPLAN and/or in relation to which EPLAN is no author or co-author and/or owner (hereinafter "Third-Party Software").

1.3 "Third-Party Software" as defined in chapter B., part II., section 1.2 above includes, in particular, any open-source software (hereinafter "OSS").

1.4 If the software has defined namespaces, the namespace of the manufacturer or EPLAN, as applicable, will be deemed to be Standard Software; any development outside the scope of such namespace will not be deemed to be Standard Software.

2. Granting of rights of use and licence rights

2.1 EPLAN will grant to the Customer the relevant rights of use ("Licence") in relation to the Standard Software in accordance with the provisions of these Contractual Conditions and EPLAN's licence model in force upon the conclusion of the contract. Any use of the Standard Software in excess of that scope is prohibited and will always require EPLAN's express written consent.

2.2 Exclusively limited to internal application purposes in each case, EPLAN will grant to the Customer upon the conclusion of the contract, in accordance with the respective licensing stated in the contract and subject to the condition precedent of the payment of the respective full invoice amount, the following Licences:

a) **Single-user licence:** A non-exclusive right of use unlimited in time, which is, however, limited in terms of content and space to one single installation on single-user hardware; or

b) **Net licence:** A non-exclusive right of use unlimited in time, which is, however, limited in terms of content and space to the installation on several computers within the internal network and exclusively for the country in which the Customer has its corporate seat as stated in the contract; in that respect, the maximum number of parallel uses will be governed by the number of the acquired and activated Licences administered by licence management software provided by EPLAN. If that corporate seat is within the European Economic Area (EEA), the Licence will be valid in the entire EEA; or

c) **WAN licence:** If the Customer acquires a "WAN net licence", while the provisions of paragraph b) above will apply, a use will be permitted all over the world; or

d) **Named user licence:** The software may only be used by registered named users. Any additional or other restrictions resulting from that type of Licence, in particular, the inclusion of products in product families, result from the related documentation.

2.3 "Internal application purposes" includes the settlement of the Customer's own business transactions and the business transactions of the Customer's Affiliates. EPLAN's prior written consent will be required, in particular, for (i) the operation

of a computer centre for third-parties or (ii) the temporary provision of the Standard Software (e.g., in the form of Application Service Providing) to persons or entities other than Affiliates or (iii) the use of the Standard Software to train persons other than employees or other staff of the Customer or its Affiliates. The operation by a commissioned third-party under the control by, and exclusively for the purposes of, the Customer (IT outsourcing, hosting) is permitted. The use by the Customer of technical solutions by which the Customer intends to obtain a use in excess of the scope of the acquired licensing, i.e., in particular, through dongle servers and remote maintenance software, is not permitted.

2.4 A transmission of the Standard Software and a transfer of the rights of use to third-parties will only be permitted if the Customer has been granted permanent rights of use, unlimited in time, in relation to the Standard Software before and if the rights of use are passed to the third-party with the scope, and in the composition, which has been acquired by the Customer before. In so doing, the Standard Software may only be surrendered to the third-party in a uniform manner and completely, including any documentation and all other related materials. Any temporary surrender, leasing or letting is not permitted. Any partial surrender of the Standard Software, or components thereof, to third-parties, or the surrender of the same Standard Software to several third-parties, is prohibited, except in the cases where this is expressly permitted by operation of law.

In the event of an admissible transfer, the Customer shall ensure, and shall furnish written evidence thereof upon EPLAN's request, that:

- the third-party has undertaken to comply with these Contractual Conditions and the rights of use, or restrictions thereof, granted herein;
- the Standard Software, dongles, serial numbers (if any), the documentation and other materials delivered together with the Standard Software, including all copies, updates and earlier versions, were transferred to the third-party;
- the Customer has not retained any copies, including backup copies;
- EPLAN was informed of the transfer and the third-party, while stating the related serial numbers and licence keys of the respective Standard Software; and
- the re-registration of the serial numbers and licence keys to the third-party by EPLAN was applied for.

Upon the transfer, all rights of use of the Customer in relation to the Standard Software will expire.

A transfer of the Standard Software which is permitted under the aforementioned requirements will not automatically result in a transfer or assignment of warranty claims or a maintenance contract for the Standard Software which may exist in the relation between the Customer and EPLAN.

2.5 Copies of the Standard Software may only be made in a number which is necessary for the contractual use. The Customer may prepare the necessary number of backup copies of the Standard Software in line with the state of technology. Backup copies on removable data carriers must be marked as such, be provided with the copyright notice of the original data carrier, adequately documented in terms of the number and whereabouts of any such copies and submitted to EPLAN upon EPLAN's request. If the Customer has acquired the Standard Software by way of an online download, the Customer may copy the Standard Software to a data carrier. The rights to, and in connection with, any such online copies are also governed by these Contractual Conditions.

2.6 The Customer may only make those modifications, extensions and other adaptations of the Standard Software which are permitted within the limits of applicable law and prevailing case law, i.e.,

a) in particular, decompilations in order to create interoperability with other hardware and software, or

b) which are necessary for the intended use and the rectification of faults, or

c) which have been expressly contractually agreed. In other respects, the Customer has no adaptation right.

2.7 If EPLAN provides the Customer with a new version in connection with rectifications or maintenance which replaces the contractual objects provided earlier ("Old Version"), such new version will be subject to the provisions of these Contractual Conditions.

2.8 If EPLAN provides a new version of the Standard Software, the Customer's rights under the respective contract in relation to the Old Version will also expire in the absence of an express request for a return by EPLAN. The Customer may, however, continue to use the Old Version for reasons of compatibility to the extent that the Customer's customers or suppliers use older versions; the total number of the acquired licences will not thereby increase. The Customer will not, however, have any claims to software services, in particular, the maintenance of such Old Version. If the Customer uses the new version with a file originally stored under an Old Version, such file can no longer be edited with the Old Version.

2.9 EPLAN will not assert any rights in relation to the files, documentation and other data of the Customer created as a result of the use of the Standard Software as intended and contractually agreed.

3. Third-Party Software

3.1 In relation to Third-Party Software, the terms of use, or licensing terms and conditions, of the respective manufacturer apply exclusively. Any Third-Party Software is specified in the respective offer with the name and/or product name of the respective manufacturer (e.g., SAP, Autodesk) and normally also refers to its terms of use there,

3.2 Third-Party Software does not form part of the Software Service or other software maintenance services, and the provisions of these Contractual Conditions regarding Software Service or software maintenance services do not apply to Third-Party Software. Third-Party Software is governed exclusively by the terms and conditions of its respective manufacturer.

3.3 The information and documentation required in relation to OSS form part of the documentation relating to the Standard Software in accordance with chapter A., section 5.1 b) of these Contractual Conditions.

4. Protection against the unauthorised reproduction of the software (measures and mechanisms)

4.1 To protect its intellectual property, EPLAN may include hardware or software copy protection in all its deliveries and services.

4.2 The Customer shall use the Software and all its components exclusively as intended and contractually agreed and shall, in particular, keep the surrendered hardware copy protection or hardlock, respectively (dongle), carefully and safe from access by

third-parties. “Third-parties” for the purposes of this provision do not include the Customer’s employees or other persons who stay with the Customer for the contractual use of the contractual objects.

4.3 The Customer may not modify or remove copyrights notices, marks and/or control numbers or characters of EPLAN or the respective licensor/manufacturer.

4.4 EPLAN may, at reasonable intervals, audit whether the deliveries and services are used in accordance with these Contractual Conditions. To this end, EPLAN may request information from the Customer, in particular, regarding the period and scope of the use of deliveries and services, and may inspect the Customer’s books and records, as well as the Customer’s hardware and software. For that purpose, EPLAN shall be granted access to the Customer’s business premises during usual business hours and be allowed to use software of EPLAN in that respect. EPLAN shall notify the Customer of any such audit in writing in good time in advance.

4.5 If the Customer provides third-parties with data carriers, memories or other hardware on which software or other related components of EPLAN are stored (in whole or in part, unchanged or adapted) or gives up direct possession thereof, the Customer shall ensure that the stored software or other related components of EPLAN are completely and permanently deleted before.

II. Services and work performances

1. Provision of services and work performances

1.1 In relation to work performances, EPLAN will be responsible for the control, management and monitoring of the performances rendered and their results (hereinafter “Work Performances”). Performances under service contracts (hereinafter “Provisions of Services”) serve the purpose of advising and supporting the Customer. EPLAN will provide services on its own responsibility, and the Customer itself remains responsible for the results sought for, and achieved, by the Customer. Any estimated Prices for services and Work Performances on a time and materials basis are non-binding. The quantities on which an estimate is based result from an evaluation of the foreseeable scope of performance made to the best of EPLAN’s knowledge on the basis of EPLAN’s experience.

1.2 In rendering the performances (hereinafter “Performance”), EPLAN depends on the Customer’s complying with the necessary duties of cooperation which result from the type of the performance, in particular, the duties specified in chapter A., section 6 of these Contractual Conditions. If the Customer fails to comply with its duties of cooperation, or if its compliance with those duties is inadequate or late, and if this results in delays and/or damage, EPLAN will not be responsible for any such damage or resultant consequential damage, and the agreed deadlines will be postponed accordingly by the duration of the delay which results from the non-compliance, or inadequate compliance, on the Customer’s part. If additional expense is incurred as a result of the Customer’s failure to comply with duties of cooperation, EPLAN may charge any such additional expense on its usual conditions, notwithstanding any additional statutory rights.

1.3 The “description of the performances” in relation to Work Performances, in particular, adaptation programming, customising and the like, will be prepared and laid down by the Customer and EPLAN jointly - depending on the type of the Work Performance - in performance specifications, technical specifications, or another overview of such kind (hereinafter “Performance Specifications”) before and/or during the Performance in relation to its acceptance.

1.4 In relation to Work Performances, EPLAN shall (where agreed) demonstrate to the Customer as at the final deadline that the performances were rendered, and an acceptance will be carried out by way of a functional test or trial operations in accordance with the parameters agreed in the contract in accordance with the following basic procedure:

a) The results of the acceptance shall be laid down in minutes to be prepared and signed by EPLAN and the Customer jointly, which minutes will also include a fault list with the faults categorised by the contracting parties; this applies also in the event of the non-existence of defects.

b) If the Customer fails to carry out an acceptance without undue delay, EPLAN may set to the Customer in writing a reasonable time limit for acceptance of at least one (1) week. After the expiry of that time limit, acceptance will be deemed to be tacitly declared, if the setting of the time limit has been expressly pointed out to the Customer and the Customer has not provided a written notification of defects which prevent an acceptance up to the expiry of the set time limit for acceptance. Acceptance will also be deemed to be declared if the Customer uses the deliveries and services in productive use, i.e., not merely for test purposes, unless trial operations under production conditions were expressly agreed as part of the acceptance procedure.

c) Immaterial defects, i.e., faults of Category 2 or Category 3, which do not impair the functionality of the product, give not rise to a right to refuse acceptance. Any faults of Category 2 or Category 3 shall be rectified in accordance with a timetable to be prepared by the contracting parties jointly.

d) If the performance owed by EPLAN can be split into closed subsystems which can be accepted separately, the Customer shall accept the same if they are capable of being accepted. Any components or subsystems used by the Customer in productive use will be deemed to be accepted.

e) The procedure set out in this section 1.4 will apply *mutatis mutandis* if it is planned to substitute an acceptance by approvals or functional tests, even if they should not have the effect of an acceptance.

1.5 Any faults in relation to the acceptance are categorised in the following fault categories:

C**ategory 1:** The software cannot be used. The fault cannot be bypassed by organisational or other means in an economically justifiable manner.

C**ategory 2:** The use of the software is impaired but the software can still be used. The fault can be bypassed by organisational or other means in an economically justifiable manner.

C**ategory 3:** No material impacts on the functionality and usability. The use of the software is not impaired, or impaired to an immaterial extent only.

2. Changes to the scope of performance

2.1 Either contracting party may request changes to the agreed scope of performance by a written notice to the other contracting party. After the receipt of a change request, the recipient shall review whether, and on what conditions, the

change can be implemented and shall notify the requesting contracting party of its consent, or rejection, without undue delay and in writing, while stating reasons (if applicable).

If a change request by the Customer requires a substantial review, EPLAN shall inform the Customer thereof before commencing the review. If the Customer agrees to a review by EPLAN, EPLAN will invoice to the Customer the expense necessary to conduct the review after the prior written consent by the Customer.

2.2 Changes to the agreed scope of performance will not take effect before the conclusion of the relevant amendment agreement in accordance with the principles laid down in these Contractual Conditions. Until then, EPLAN will be entitled, and obliged, to continue the work on the basis of the existing contract.

3. Project manager

The Customer shall name a responsible person who is able to, and shall, provide EPLAN with the necessary information at short notice, takes decisions or arranges for decisions to be taken. EPLAN shall also name a project manager who has the necessary expertise, is adequately able to provide information and to bring about decisions at short notice.

4. Ownership rights, copyrights and rights of use

Unless provided otherwise in the respective contract, the Customer will be granted an irrevocable, non-exclusive and non-transferable right of use, unlimited in terms of time and territory, in relation to the contractual performances; the granting of those rights of use is subject to the condition precedent of the full and complete satisfaction of all claims to remuneration of EPLAN under the respective contract. Unless agreed otherwise, all ownership rights, copyrights and other rights of use will remain with EPLAN.

5. Third-party materials

The Customer will be liable to EPLAN that all materials provided by the Customer to EPLAN in connection with the order are free from any third-party rights which conflict with the processing by EPLAN. The Customer shall indemnify EPLAN from and against any and all resultant third-party claims, except in the event of intent or gross negligence on the part of EPLAN or EPLAN's agents.

III. Software Service

1. Software Service for Standard Software

EPLAN will provide software services only for the Standard Software created by EPLAN which is marked accordingly.

2. Subject matter of the Software Service

2.1 In these Contractual Conditions, "Software Service" means performances in relation to the maintenance of Standard Software in accordance with the provisions of these Contractual Conditions; the type and scope of the deliveries and services to be provided are governed by the Software Service level stated in detail in the respective contract based on the related Performance Specifications (hereinafter, collectively, "Software Service").

2.2 Any changes to the scope of services must be agreed in writing to be effective.

2.3 In connection with the Software Service, the Customer will be provided with the standard version of the new software versions from time to time.

The Customer alone will be responsible to make customer-specific adaptations. Individual programmes and customer-specific adaptations of the software based on customising technologies such as API programming, scripting, individualisation of master data, batch routines etc. are excluded from the Software Service. Any related work required to maintain the operability after the delivery of new versions of the Standard Software must be commissioned and paid separately.

Software, or components thereof, with namespaces:
In the case of software with namespaces, the relevant namespace for the differentiation between Standard Software and customer-specific adaptations is the namespace of the manufacturer, or of EPLAN. Standard developments will be made in the namespace of the manufacturer, or of EPLAN, while customer-specific adaptations will be made in the Customer's namespace.

3. Scope of Software Service

3.1 EPLAN will, during the term of the respective contract, render the performances specified therein in accordance with the Performance Specifications applicable at the date of the contract.

3.2 Unless expressly agreed otherwise, the following performances do not form part of the contract and require a separate agreement:

- services for programmes not used under the operating conditions specified by EPLAN;
- adaptations of the software to new operating system releases or conversions of the software to operating systems for which the software of EPLAN is not generally approved;
- services which become necessary as a result of the non-compliance by the Customer with the operating instructions, other forms of operating errors, negligent or intentional damage or modification of the software or its data carriers;
- services at the place of installation;
- training services via the hotline.

Any such services must be ordered separately on the basis of a relevant order.

4. Service fees

4.1 The fees will be calculated in the form of an annual lump sum in accordance with the respective contract and will be charged in advance for the respective year.

4.2 The lump-sum fee provided in the contract may be increased by a written notification subject to three (3) months' notice to the end of a contract year (and for the first time after the expiry of the first (1st) contract year). In the event of an increase by more than 10%, the Customer may terminate the Software Service subject to one (1) month's notice to the entry into force of the increase.

5. Term of Software Service

5.1 The Software Service is agreed for an initial fixed term of twenty-four (24) months from the commencement of the contract. After the expiry of the initial fixed term, the Software Service will automatically be extended continuously by an additional twelve (12) months, unless it is terminated by either contracting party in writing subject to three (3) months' notice to the end of its term from time to time. During its respective term, the Software Service may only be terminated for good cause.

5.2 The Customer's right to terminate in the event of Price increases in accordance with section 4.2 above remains unaffected.

IV. Trainings

1. Registration and confirmation

1.1 Owing to the space capacities of EPLAN and the effectiveness in relation to the transfer of the training contents, the number of participants per training is limited. The relevant registrations will, therefore, be considered in the order of their entry in EPLAN's system.

1.2 Each registration will be confirmed by EPLAN in writing. Together with the confirmation of participation, the Customer will be provided with a link, through which the Customer can inspect the route descriptions to the respective training location provided by EPLAN online.

2. Training fees

The training fees will be charged before the commencement of the seminar and become due and payable within the payment period stated on the invoice. Withdrawals from seminars must be received by EPLAN in writing fourteen (14) days before the commencement of the seminar, at the latest. Any withdrawals after that time, or any non-attendance, will be charged as a lump sum of 25% of the seminar Price as cancellation fees. In the event of inability to attend - provided that justifiable reasons are substantiated -, EPLAN may allow the re-booking to the next seminar also after the aforementioned time. In such case, the full invoice amount will be due and payable immediately. In the event of inability to attend, the Customer may also replace participants.

3. Training sessions/Training packages

The individual training sessions/training packages must be used within a maximum period of twelve (12) months from the issue of the confirmation of participation; otherwise, the claim to the organisation of the outstanding training sessions/training packages will expire; no claims exist to a reimbursement or set-off of any payments already made after the expiry of the aforementioned period of twelve (12) months.

4. Performances

The training fees include the costs of the training, training materials and meals during the training. Any interim further developments of the software, and thereby the contents, as well as other minor adaptations to the seminar programme, are reserved. Unless agreed otherwise, in the case of trainings on the Customer's premises, the costs of the training materials and meals will not be included.

5. Cancellation of a seminar

In the event of the cancellation of a seminar as a result of an absence of a trainer at short notice (e.g., illness), an insufficient number of participants, or force majeure, there will be no claim to the organisation of the seminar at the confirmed date. A replacement date will be notified to the Customer promptly, and any desired dates of the Customer will be considered accordingly. In those cases, EPLAN will not be obliged to reimburse any travel and accommodation expenses or loss of working hours.

6. Copyrights

The surrendered training documents are protected by copyright and may only be used by the participants in the trainings personally. They may neither be copied nor utilised and published in another manner without EPLAN's prior written consent.

(as of December 2017)