General Terms & Conditions

A.	Scope

1. These General Terms and Conditions ("**Conditions**") shall apply to all supplies, services and licenses of any kind provided by ASCon Systems Holding GmbH Stuttgart ("**ASCon**") to its customers ("**Customer(s)**"). These Conditions presuppose that the Customer orders the products, rights or licenses, or tangible or intangible works to be delivered by ASCon ("**Deliverable(s)**") or services to be provided by ASCon ("**Service(s)**") for purposes within the scope of its trade, business or profession. ASCon does not provide Services to consumers.

2. Any quotations which ASCon may provide shall not be binding on ASCon and considered an invitation to submit an order only.

3. If ASCon and the Customer have entered into a contract of sale or a service, license or other agreement (hereafter referred to as "**Contract**"), these Conditions shall apply only except if and to the extent that the Contract provides otherwise.

4. These Conditions apply in particular, without limitation, to Contracts with respect to (a) licenses for software, models or data solutions (including related documentation, collectively the "**AsCon Solution(s)**"), whether perpetual or for a fixed term ("**License(s)**"), (b) Services with respect to error resolution, helpdesk support and delivery of new versions of such AsCon Solution ("**Support**"), (c) hosting AsCon Solution on one or more servers operated by, or on behalf of, ASCon and making it available to the Customer for remote access, ("**Cloud Services**", which term shall include the operation of the AsCon Solution and Servers for remote use, together with any other licenses, supplies or services which ASCon may agree to provide in connection therewith), and / or (d) consultancy, customization, development, data management or similar Services other than Support and Cloud Services.

Licenses may either be granted as one-time Licenses with a perpetual term or as fixed term Licenses ("**Fixed Term License(s)**"). Fixed-Term Licenses, Contracts for Support and / or Cloud Services and other Contracts for constant or recurring performance over a fixed term ("**Term**") are herein collectively also referred to as "**Term Contract(s)**".

For Term Contracts, ASCon shall receive - as may be agreed in the Contract - one time set up fees ("**Set Up Fee(s)**") and / or monthly, quarterly or annual recurring fees ("**Recurring Fee(s)**"). Unless otherwise agreed therein, (a) Set Up Fees shall be payable immediately after Contract signature, and (b) Recurring Fees shall be payable in advance for the reference periods agreed.

5. ASCon does not accept any terms and conditions which deviate from these Conditions, except if such terms and conditions have been expressly accepted by ASCon.

6. If Customer requests a change to the scope agreed in the Contract, ASCon will reasonably attempt to accommodate this request provided that the Customer will bear all extra cost and effort caused by the change. Any change to the scope requires mutual agreement. Neither § 650b par. 2 of the German Civil Code (*Bürgerliches Gesetzbuch* – "**BGB**") nor § 648a par. 2 BGB shall apply to any Contract.

7. An obligation to update digital AsCon Solutions or other Deliverables that have been provided on a one-time basis or to ensure a supply of spare parts for any Deliverables after expiry of the warranty shall only exist if and to the extent that such an obligation has been expressly agreed in the Contract.

B.	Licenses, Reference Customer

1. ASCon grants to the Customer the limited non-exclusive rights defined in the Contract with respect to the AsCon Solution and other Deliverables. Software licenses encompass only the right to use object code. The source code of software will not be delivered.

2. The functionality and technical conditions of use of the AsCon Solutions are conclusively defined by the product description provided or published by ASCon.

3. Any use of an ASCon Solution beyond the agreed scope of use shall entitle ASCon to retroactively charge additional fees.

4. Insofar as the Customer has separately permitted ASCon to identify the Customer as a user of ASCon's products and services in ASCon's public relations communications and to use the Customer's company name and logo for this purpose, the following shall apply in the absence of any more specific agreement: ASCon's right of use shall also extend to corporate affiliates of ASCon. The permitted use includes the use of the company name and logo and a brief description of the service provided (a) in a public reference list on the website as well as online and offline in other company presentations and (b) in other forms that may be agreed separately. Permission is freely revocable, provided that (a) revocation may not take place prior to the expiration of a period of 12 months from the date of the grant or permission and only upon reasonable notice, and (b) upon revocation, ASCon (i) shall remove the name and logo from all online media within a reasonable period of time and cease to use them in electronic documents, but (ii) shall remain entitled to continue to use printed materials already produced and (iii) shall not be obligated to destroy archival copies. The permission gives ASCon a simple right of use and no ownership rights in the Customer's logos. ASCon will comply with the trademark guidelines communicated by Customer from time to time with respect to the use of the logo and name and agrees not to modify Customer's logo without Customer's consent. The Customer represents that it is entitled to grant the right of use in question, but shall not otherwise be liable for any damage or loss that may result from ASCon's use.

5. In addition, and without limitation, Sec. H shall apply.

C.	Support

1. Support will comprise the following Services and Deliverables as further detailed in the Contract and / or individual Customer-specific certificate ("**Solution Certificate**"), which will be considered an integral part of the Contract:

Error Support - ASCon will support the Customer in the analysis and solution of incidents where the AsCon Solution, although correctly used, is not available ("**Problem**") or does not perform as agreed or fails to produce the agreed work results ("**Error(s)**"). ASCon will employ reasonable efforts to solve Errors but, unless expressly otherwise provided in the Contract, does not represent that all Errors and Problems can be solved or worked around successfully.

Helpdesk - The Customer has the opportunity to report Errors, and ASCon will be available to Customer's Dedicated Representative to provide consultancy with regard to technical issues or application of the AsCon Solution during Business Hours.

Improvements - Customer may receive, in accordance with the terms of the Solution Certificate, Updates (Sec. H.3), Upgrades (Sec. H.3), and other new versions ("**Release(s)**") of the AsCon Solution with error corrections or added functionality ("**Improvements**") which are generally released by ASCon during the Term. Individual customizations, including the individual adaptation to the Customer's hardware or software operating systems or environments, do not constitute Improvements, are always out of scope of Support and will be provided only subject to separate agreement and consideration.

2. The Error Support and Helpdesk Services will be provided during the Business Hours from ASCon's premises by phone or remote access. The Error Support and Helpdesk Services will be provided solely to the Customer's Dedicated Representative (Sec. G.11).

3. Support does not include:

- individual customization,
- support for Problems caused by force majeure or abuse or incorrect use of the AsCon Solution by Customer,
- support for problems related to third party software.

4. Customer is responsible for:

- Providing to ASCon a regulated remote access by ISDN, VPN etc. with defined access rights for the Support Services,
- promptly reporting all Problems, Errors and damage through the Helpdesk system provided by ASCon,
- promptly acting on advice provided by ASCon,
- providing to ASCon all information and documentation reasonably necessary for the Support,
- regularly backing up data and software and reviewing the work products of the AsCon Solution.

Where Customer fails to comply with the responsibilities hereunder and as a result ASCon's costs for the Support Services increase or can reasonably be expected to increase, ASCon may withhold its Support Services until Customer has indemnified ASCon for such increase.

5. ASCon is released from the obligation to provide Support to the extent that (a) Support is requested by persons other than the Dedicated Representatives or (b) a reported Problem is not due to a reproducible Error in the ASCon Solution or other breach imputable to ASCon, in particular if it is caused by hardware, network or system issues or by third party software applications that have not been certified by ASCon for use with the ASCon Solution.

6. All other provisions with respect to Services and Deliverables, including, without limitation, Secs. G.1 through G.12, H, and I, shall also apply to Support.

D. Cloud Services and Fixed Term Licenses

1. Where the Contract provides that ASCon will provide Cloud Services or provides for a Fixed-Term License, this Sec. D shall apply.

2. During the Term, ASCon shall (a) maintain the AsCon Solution in accordance with the Specifications and (b) promptly correct Problems and Errors of the AsCon Solution by providing (and in the case of Cloud Services) installing Updates. Critical Non-Conformities will be promptly remedied, with respect to all other Problems and Errors, ASCon may refer the Customer to the next regular Update. "**Critical Non-Conformity**" as used herein shall exclusively comprise Problems and Errors which effect that the AsCon Solution is completely inactive, or cannot be productively used at all for other reasons.

3. ASCon's obligations under Sec. D.2 with respect to the AsCon Solution shall prevail for the complete Term irrespective of issuance of any Non-Conformity Notices. Only Sec. I.4 of Sec. I shall apply to such obligations, and such obligations shall lapse in accordance with Sec. I.5 provided that the 12 month period mentioned therein shall not commence before the respective Non-Conformity has been reported. With respect to any other Deliverables provided in connection with the AsCon Solution, all clauses of Sec. I shall apply without amendment.

4. The Contract for Cloud Services and Fixed-Term Licenses includes Support in accordance with Sec. C without additional cost to the Customer. However, Upgrade(s) will be made available to the Customer only against separate agreement and compensation unless otherwise stated in the Contract. The same shall apply to individual adaptation to changed use environments.

5. ASCon does not warrant that availability of the AsCon Solution will be uninterrupted or error-free. ASCon only warrants compliance with the service levels agreed in the Contract.

6. Not limiting claims in damages in accordance with Sec. I.4, the remedies agreed in this Sec. D are exclusive with respect to Non-Conformities of the AsCon Solution and any further statutory or implied warranties or remedies of similar effect are expressly waived and excluded.

7. All other provisions with respect to Services and Deliverables, including, without limitation, Secs. G.1 through G.12, H, and I, shall also apply to the Cloud Services and Fixed Term Licenses.

E. Contract Term

1. Term Contracts shall be deemed made for the minimum term set out in such Contract. Unless otherwise agreed, the Term of Term Contracts shall renew upon expiry of the minimum term for an unlimited number of additional 12 month renewal terms unless either party has given notice of termination of such Term Contracts observing a notice period of three months effective on the end of the minimum term or thereafter any renewal term. Either party's right to terminate the Term Contract for cause shall remain unaffected.

2. ASCon shall be entitled to amend these Conditions or any Recurring Fees with respect to any Term Contract by unilateral notice with proactive effect, observing three months' notice with effect to the end of an agreed minimum term or any other date on which ASCon could alternatively terminate the Term Contract in accordance with its terms. In such case the Customer shall have the right to withdraw from the Term Contract by unilateral notice, observing one month's notice with effect to the effective date of the proposed amendment. Where Customer does not exercise this right, the amendment shall become effective. The amendment shall apply to future supplies and services under Term Contracts only, pre-existing perpetual licenses shall *not* be affected by such amendment.

3. Neither § 627 BGB nor § 648 BGB shall apply to any Term Contracts. The statutory right to terminate for cause shall remain unaffected.

F. Invoicing and Payments

1. All invoices shall be paid upon receipt without any deduction, unless otherwise agreed. Customer will be deemed in default with a payment at the latest after expiry of two weeks from the due date and receipt of ASCon's invoice. Value Added Tax shall not be deemed included in the prices quoted by ASCon. If applicable, it will be charged and shown separately in the invoice at the rate prevailing on the date of the invoice.

2. Any supplies and services, expenses, cost, labor and travel time provided outside of the scope of the Contract, including, without limitation, any extra labor or expense of ASCon caused by Customer's failure to consummate obligations or responsibilities under the Contract, are to be compensated on a time and material basis at the rates agreed in the Contract or otherwise set forth in ASCon's general price list, as amended.

3. The Customer shall not be entitled to set off any of its claims against claims of ASCon, except where the Customer's claims are undisputed or have been confirmed by a final court judgment. The foregoing shall also apply to any right of retention under civil or commercial law. The foregoing exclusions shall not apply where claim and counterclaim are legally connected in such way that each obligation must only be fulfilled in consideration of fulfillment of the other. The Customer may not make any deductions from Recurring

Fees based on supposed defects. This shall, however, not limit Customer's claim for repayment of any amounts paid but not owed to ASCon after such payment to ASCon. A right of retention may, in any event, only be exercised with respect to counterclaims arising from the same Contract.

G. Deliveries, Acceptance, Responsibilities of the Customer

1. The prices quoted by ASCon shall be deemed agreed on ex works basis.

2. Time shall not be regarded to be of the essence except if expressly agreed in the Contract document. The obligation to deliver any Deliverables shall be subject to the condition precedent that ASCon shall have been supplied correctly and in due time by its suppliers.

3. Until payment in full of the purchase price by the Customer, ASCon shall retain title to all tangible Deliverables.

4. ASCon may at any time deviate from specifications for Deliverables and Services agreed in the Contract ("**Specifications**") to the extent that the quality and functionality is at least equal to what has been agreed in the Contract and fit for the Customer's individual requirements as contemplated in the Contract. Any other material deviations from Specifications must be agreed.

5. Promptly after delivery, the Customer shall inspect Deliverables which require acceptance under the Contract or statutory law, for defects, deviations from Specifications or other non-conformities such as deviations in quantity, quality or kind and infringement of third party rights (all collectively referred to in these Conditions as a "**Non-Conformity**", which term also includes Errors and/or Problems). Such Deliverables shall be deemed accepted (and the Customer shall be deemed to have waived any remedies in respect of such Non-Conformities as could have been detected upon proper testing and inspection) if the Customer has either confirmed acceptance in writing without reservation, or failed to issue a Non-Conformity Notice (as defined in Sec. I.1) within 2 weeks of receipt of the Deliverable, or, if the Deliverable requires installation, completion of installation. Only Non-Conformities which materially limit the functionality and / or usability of the Deliverable for the agreed purpose ("**Material Non-Conformity**") shall prevent acceptance, and only if no adequate work-around is available which mitigates effects so that they are no longer material. Other (non-material) Non-Conformities shall be remedied within the scope of Sec. I.2 after acceptance.

6. Lack of final Documentation or Non-Conformities of Documentation shall not prevent acceptance unless they prevent acceptance testing or productive use of the Deliverable. The Customer shall confirm acceptance in writing (Sec. J.4) after an adequate acceptance testing period not to exceed two weeks. Prior to issuance of written confirmation of acceptance, the Customer shall refrain from using the Deliverable. In the event that the Customer uses the Deliverable prior to written confirmation of acceptance, such use shall be regarded as acceptance. Deliverables shall also be regarded as accepted where ASCon, after the Deliverable has been completed, requests the Customer to confirm acceptance within a reasonable period set by ASCon, and the Customer fails to expressly refuse to accept the Deliverable stating all Non-Conformities which it alleges of which at least one Non-Conformity preventing acceptance must actually be present. If the Customer refuses to accept the Deliverable, ASCon may revoke any license granted to use the Deliverable and require the Customer to refrain from any use of the Deliverable, pending acceptance of the Deliverable.

7. ASCon is entitled to submit individual self-contained components or phases of Deliverables for separate, independent acceptance (acceptance in part). The complete Deliverable will then be deemed accepted after the last acceptance in part has taken place. In that case, no additional final acceptance for the complete Deliverable is required.

8. Where acceptance is legitimately withheld due to Non-Conformities preventing acceptance, ASCon shall remedy the Non-Conformities at its own cost and once again submit the Deliverable for acceptance. The Customer shall support error resolution and additional acceptance testing by providing contributions and cooperation as reasonably requested free of cost. Where the third acceptance attempt within a reasonable grace period has failed, the Customer may finally refuse to accept the Deliverable and reclaim or reduce the agreed compensation in accordance with statutory law and / or claim damages within the limits of the Contract. Customer may alternatively remedy the issue itself and charge cost to ASCon in accordance with statutory law. Customer's right to remedy Non-Conformities by itself and charge cost to ASCon before or after acceptance shall, however, be excluded to the extent that this would require that Customer modifies AsCon Solution contrary to the limitations of Sec. H.8. Claims in damages will be subject to Sec. I.

9. If a Deliverable requires validation for Customer's use due to industry-specific requirements, the Customer shall be solely responsible to carry out this validation properly and successfully and - in particular - for ensuring the observance / fulfilment of all requirements for a successful validation process.

10. It shall be the Customer's responsibility, at its own cost and risk, (a) to provide and maintain all infrastructure, software, data or information which ASCon has not expressly undertaken to provide in the Contract and which are reasonably required for the use, or provision, of ASCon's Services or Deliverables, such as telecommunications connection to and through a public network as required for remote Services; (b) to comply with any technical guidelines, such as installation requirements, and (c) to provide ASCon with any other information and assistance which ASCon may reasonably require.

11. ASCon may limit Contract related communication (e.g. through the Helpdesk) to a limited number (up to two unless otherwise agreed) of duly trained and qualified "**Dedicated Representatives**" appointed by the Customer for communication with ASCon. Each Dedicated Representative shall be presumed to have authority to legally represent Customer in all matters relating to the Contract.

12. The Customer shall hold ASCon harmless, irrespective of Customer's negligence, from any claim asserted or alleged by a third party (including public authorities) whether or not such claim is substantiated, and any damages, liabilities, costs, fines, penalties and / or expenses payable in connection therewith, in connection with any information or data contributed or instruction issued by the Customer in connection with the Contract. In the event that ASCon has contributed to such a claim, the Customer shall be required to indemnify ASCon only pro rata in accordance with the respective contributions to the claim. ASCon's entitlement to be indemnified shall not lapse before the third-party claim has been settled or has itself expired.

H. Intellectual Property, Confidentiality

1. All right and title worldwide, including any right of use or exploitation, in or to any Deliverable or other works or results discovered, developed or created by ASCon or ASCon's agents in connection with the Contract shall exclusively be owned by ASCon. Where such development is part of ASCon's Services to the Customer, Customer shall receive a simple non-exclusive license in such works or results in accordance with the Contract and / or these Conditions. ASCon may use and exploit all improvements, alterations or amendments made by the Customer to any Deliverables. Customer grants to ASCon a non-exclusive, perpetual, worldwide, unlimited, royalty-free, sublicensable license to use and exploit such improvements, alterations or amendments for all methods and purposes.

2. The Customer's right to use any Deliverables which are protected by intellectual property rights shall be strictly limited to use for internal business purposes in accordance with the License terms in the Contract and in these Conditions. The foregoing shall in particular apply to any AsCon Solution as well as any development or user documentation ("**Documentation**"), files, quotations, drawings, and calculations which the Customer may receive from ASCon, in particular in connection with the negotiation or the performance of the Contract. Licenses granted for a fixed Term automatically expire at the end of such Term and the Customer must then refrain from further use and return or destroy all copies.

3. Where ASCon provides new Releases of AsCon Solution, such as (a) versions limited to error-corrections, patches, work arounds and / or minor enhancements ("**Update(s)**"), or (b) versions with substantial new functionality, or adaptations to new hardware or software operating systems or environments ("**Upgrade(s)**"), they shall be considered part of the original AsCon Solution and subject to the same License terms. The same shall apply to customizations or add-ons developed for the Customer.

4. The Customer shall refrain from selling any AsCon Solution or generally making any AsCon Solution available to any third party, except with ASCon's prior written consent. Unless ASCon has reasonable cause to withhold the consent, it shall be granted if the third-party acquirer assumes all obligations regarding the AsCon Solution under the Contract and these Conditions and the Customer destroys all copies of the AsCon Solution in its possession. For the purpose of its consent, ASCon may require the identity of the acquirer to be disclosed. Lending the AsCon Solution for other than commercial purposes shall not require ASCon's consent to the extent that the recipient submits to the terms of this Section and the lending does not constitute simultaneous use of more than one copy of the AsCon Solution.

5. ASCon shall be entitled to analyze, with respect to the Deliverables and/or Services of ASCon, (a) the Customer's feedback, (b) the Customer's usage, and (c) any data transmitted or generated by the Customer in connection with such usage, and to use the result of such analysis for the improvement and/or (further) development of its own products or services (e.g. by training AI algorithms), if and to the extent such use does not (i) lead to a disclosure of Customer's confidential information contrary to the provisions of the Contract, or (ii) infringe Customer's intellectual property rights.

6. The Customer shall refrain from any Reverse Engineering of AsCon Solution or other Deliverables whereby "**Reverse Engineering**" includes all actions with the goal of acquiring the know-how contained in a Deliverable, including observation, study, disassembly/decompilation, and testing.

7. ASCon reserves the exclusive right to conduct Text And Data Mining on Deliverables or other content of ASCon. "**Text And Data Mining**" is the automated analysis of single or multiple digital or digitized works to extract information therefrom, in particular about patterns, trends and correlations.

8. The Customer shall refrain from modifying, adapting or translating the AsCon Solution, or creating derivative works of the AsCon Solution, except in each case to the extent expressly permitted in the Contract or by mandatory law. Any copies of the AsCon Solution shall contain all of the copyright notices shown on the original.

9. Neither the Customer's right (a) to observe, study or test the functioning of software in order to determine the ideas and principles underlying a program element, if this is done by loading, displaying, running, transmitting or storing such software without infringement of ASCon 's rights and/or (b) to copy and modify the software to the extent expressly permitted by applicable mandatory legislation regarding back up or the elimination of errors nor the Customer's rights under applicable mandatory legislation regarding reverse engineering shall be deemed restricted by the foregoing provisions.

10. The Customer shall ensure and guarantees to ASCon that all internal and external users to whom it makes available the AsCon Solution ("**User(s)**"), comply with all terms of, and obligations under, the Contract with respect to use thereof. All uses, acts or omissions of such users shall be imputed to the Customer as its own uses, acts or omissions.

11. At any time upon ASCon's request, the Customer will account for its use of AsCon Solution or other Deliverables provided subject to a License and in particular create and provide license reports using the tools provided, or formats requested, by ASCon. ASCon may, at any time, verify the actual scope of such use by appointing a third-party auditor to audit use of the AsCon Solution or Deliverable as well as the offices, IT equipment, and the books and records of the Customer. Such auditor shall be under an obligation not to disclose confidential information of Customer to ASCon and to report to ASCon only on issues relevant to the scope of use. The Customer shall reasonably cooperate in such audits. ASCon shall pay the fees and expenses of the auditor, unless such audit establishes that the agreed scope of use has been exceeded, in which case the Customer shall pay the fees and expenses of the auditor for such audit. ASCon will exercise its rights under this Sec. H.11 with reasonable discretion taking into account the Customer's interests.

12. The parties mutually agree to keep all reasonably confidential commercial and technical information disclosed by the respective other party strictly confidential and to refrain from using any such confidential information except as strictly required to perform the Contract. The parties represent and warrant that their respective employees, consultants, and subcontractors are bound by a secrecy obligation corresponding to or exceeding the standard set by this clause. This confidentiality obligation shall remain in force even after termination of the Contract for as long as the respective information is reasonably confidential.

I. Warranty and Liability

1. The Customer shall inspect (a) promptly after delivery all Deliverables; and (b) regularly the work products of any AsCon Solution, Deliverable or Service. The Customer shall notify ASCon of any Non-Conformity which can be detected upon proper inspection promptly after such inspection and any other Non-Conformity promptly after it has been detected ("**Non-Conformity Notice**"). Any Non-Conformity Notice not issued within 2 weeks after the Non-Conformity has or should have been detected shall not be considered prompt for this purpose. Non-Conformities shall be considered approved (and respective remedies under the following Sections and statutory laws waived) if the Customer (a) fails to promptly issue a Non-Conformity Notice; or (b) they can be detected upon proper acceptance testing and Customer has confirmed acceptance without reservation. With respect to Deliverables requiring acceptance, Sec. G.5 shall apply.

2. Promptly after receipt of a Non-Conformity Notice, ASCon shall, unless remedies are excluded under Sec. I.1, at its option and cost, either repair or replace the Deliverable to remedy any Non-Conformity. Where ASCon replaces a defective Deliverable, the Customer shall return the defective Deliverable to ASCon and compensate prior use of such Deliverable. Where two attempts to repair or replace the Deliverable have failed to remedy the Non-Conformity within a reasonable grace period, the Customer may refuse to accept the Deliverable and claim repayment of the respective compensation and / or damages in accordance with Sec. I.4.

3. ASCon does not guarantee that AsCon Solutions or other Deliverables provided under a Term Contract (Fixed-Term Licenses, Cloud Services) are free of Non-Conformities (§ 536a BGB shall not apply). ASCon shall not be deemed to have guaranteed certain properties of the Deliverables within the scope of § 444 BGB except if such a "guarantee of properties" has expressly been agreed in a Contract document in accordance with Subsection (e) of Sec. I.4. Where Deliverables are sold or distributed to third parties, ASCon shall be liable for third party claims against the Customer and / or Customer's cost or efforts for providing warranty services to its own customers in the event of a Non-Conformity only if and to the extent that ASCon cannot establish that such Non-Conformity was not due to negligence imputable to ASCon and only within the limits of Sec. I.4. The foregoing shall not limit ASCon's obligation to repair or replace the Deliverable in accordance with Sec. I.2. All of the foregoing claims shall be subject to the limitation periods agreed in Sec. I.5. More extensive claims under §§ 439, 445a/b, 478 or 635 BGB are disclaimed.

4. ASCon's liability in damages, whether based on contract or any other legal theory, for any property damage, personal injury, financial loss or other loss in connection with the initiation, preparation and performance of the Contract shall arise only in accordance with the following provisions and shall otherwise be excluded:

(a) ASCon shall only be liable for wilful misconduct and gross negligence of the officers, executive employees and vicarious agents of ASCon as well as for culpable breach of Fundamental Obligations, i.e. all obligations which must be fulfilled by ASCon in order to enable consummation of the Contract and the achievement of its purposes and fulfillment of which the Customer may reasonably expect in view of the content and purposes of the Contract (hereinafter: "**Fundamental Obligation(s)**"). The liability of ASCon for the slightly negligent breach of obligations that are not Fundamental Obligations is excluded subject to Subsection (e) of this Sec. I.4.

(b) In the event of a slightly negligent violation of a Fundamental Obligation under the Contract, the following shall apply: ASCon's liability shall be limited to the loss which ASCon should have foreseen as a possible consequence of the violation at the time of the conclusion of the Contract, but limited to a maximum amount of EUR 500,000 per Event, unless the twofold contract value (sum at the conclusion of the Contract) exceeds EUR 500,000; in that case, ASCon shall instead be liable up to the amount of the twofold contract value. An "**Event**" shall be deemed to be the sum of all loss and claims for damages of all claimants resulting from a single, temporally contiguous, delimitable and in such manner uniform service, action or omission. For damages in connection with the loss of data, ASCon is liable only insofar as these could not have been avoided by an appropriate regular data backup. This limitation of liability does not apply if ASCon itself has assumed the obligation to backup data as part of the contractual services. Claims due to a slightly negligent breach of a Fundamental Obligation shall become time-barred, irrespective of knowledge, upon expiry of one year after the delivery, service, action or omission causing the damage.

(c) Limitations on ASCon's liability agreed in the Contract or these terms shall apply also to the personal liability of ASCon's officers, employees, or agents.

(d) The limitations and/or exclusions of liability in this Sec. I.4 and in particular the maximum liability amount according to Subsection (b) of this Sec. I.4 shall also apply to any obligation to reimburse futile expenses, whereby the Customer may in any case only demand reimbursement of expenses up to the value of its interest in performance of the Contract and more extensive claims according to § 284 BGB are excluded. The limitations and/or exclusions of liability in this Sec. I.4 shall also apply from the conclusion of the Contract to damages caused by ASCon in the course of preparing or initiating the Contract. More extensive claims that may have arisen before the conclusion of the Contract shall be deemed to be waived by mutual agreement upon conclusion of the Contract.

(e) The limitations and/or exclusions of liability in this Sec. I.4 shall not apply to liability arising from culpable injury to life, limb or health, from fraudulent concealment of defects, for liability based on the Product Liability Act, or from the assumption of a guarantee or a procurement risk. Guarantees in the sense of §§ 276 para. 1, 443, 444 or 639 BGB with the consequence of a strict, unlimited liability require in any case an explicit declaration by ASCon. Use of terms such as "warrant", "guarantee", or "represent" shall in case of doubt only constitute agreements as to quality but no unlimited guarantees in this sense.

(f) This Sec. I.4 shall not be construed to shift the statutory burden of proof in any way. Any mandatory liability under the Product Liability Act and / or arising from a guarantee of properties shall remain unaffected.

5. Customer's remedies for Non-Conformities, including but not limited to the right to withdraw from the Contract, shall be subject to a limitation period of twelve months. The foregoing limitation period shall also apply to claims for indemnification or damages, in particular incidental or consequential damages, based on Non-Conformity. However, all remedies based on fraudulent concealment of defects or Deliverables designed to be incorporated into a building, so incorporated and having caused such building to be defective, or gross negligence, willful misconduct or the death of a natural person or personal injury to the latter, caused by negligence or willful misconduct based on guarantees of properties and / or the statutory recourse and the right to withdraw from the Contract based on a breach imputable to ASCon other than a Non-Conformity shall be subject to the applicable statutory limitation periods. The limitation periods shall begin on the date specified by the statute.

Where ASCon repairs or replaces a Deliverable or attempts to do so, such repair or replacement shall not affect a renewal of the limitation period for the Customer's warranty claims with respect to the repaired Deliverable (including spare parts or units used for the repair) or a replacement product. Notwithstanding the repair or replacement, such warranty claims shall be subject to a limitation period equivalent to the remaining limitation period applicable to the original Deliverable, except that such limitation period shall not expire earlier than three months after the conclusion of the repair or replacement or ASCon's refusal to undertake further attempts at such repair or replacement.

J. General Provisions

1. ASCon may make use of subcontractors to perform any of its obligations under the Contract or these Conditions, provided that the use of any such subcontractors shall not limit or restrict ASCon's obligations towards the Customer.

2. The Customer shall not be entitled to assign its rights under the Contract - except for claims for payment - to any third party without ASCon's prior written consent, which consent shall not be unreasonably withheld.

3. Once concluded, the Contract shall substitute and supersede any prior negotiations, agreements, and understandings, oral or written, made between the parties with respect to the subject matter of the Contract.

4. Any notices in connection with the Contract shall be valid only if made in written form. Not limiting the validity of individual agreements within the scope of § 305b BGB, any amendment, supplement, termination, or waiver of any provisions of the Contract shall be agreed or confirmed in written form. Communication by fax or e-mail or in other text form within the scope of § 126b BGB shall be considered sufficient for compliance with any requirement of written form in connection with the Contract.

5. Should one or more of the provisions of the Contract or these Conditions be or become invalid or unenforceable, the validity and enforceability of the other provisions hereof shall not be affected.

6. The Contract and these Conditions shall be governed by, and construed in accordance with, the laws of the Federal Republic of Germany without regard to conflict of law principles. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

7. All disputes arising under or in connection with the Contract or these Conditions shall be submitted exclusively to the courts of Stuttgart to the extent that the Customer is a commercial entity or a legal entity under public law. The Customer hereby submits expressly to the jurisdiction of the Stuttgart courts. ASCon shall be entitled, at its discretion, to take legal action against the Customer in the courts having jurisdiction over the Customer.

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