

# General Terms and Conditions of Nexus Group

Stand: May 2022

## 1 General - Scope of Application

- 1.1 These General Terms and Conditions (hereinafter referred to as "**Conditions**") shall apply to all contracts of a company of the Nexus Group (hereinafter referred to as "**NEXUS**"), including a sale, lease, licensing or other granting of use of the NEXUS Software to the Customer or the individual adaptation of the NEXUS Software on source code level, as well as to all services and work performances of NEXUS and sale and rental of Hardware. Together with the Performance Contract and the documentation, they form the legal framework for licensing, maintenance and servicing of the NEXUS Software and insofar regulate the contractual relationship between NEXUS and the Customer. They shall not apply insofar as something different has been agreed between the parties in individual contracts.
- 1.2 These Conditions shall apply only to Customers who, at the time of conclusion of the contract, are acting in the exercise of their commercial or independent professional activity (entrepreneurs pursuant to section 14 German Civil Code), as well as to legal entities under public law or a special fund under public law.
- 1.3 Conflicting or deviating general terms and conditions of the Customer are hereby expressly contradicted. They shall only become part of the contract if NEXUS expressly agrees to them individually and in text form.
- 1.4 These Conditions shall also apply if NEXUS performs the services without reservation in the knowledge of conflicting or deviating terms and conditions of the Customer.
- 1.5 If special contractual conditions are agreed in the Performance Contract, these special contractual conditions shall take precedence over these Conditions in the event of contradictions.

## 2 Parts

These Conditions have several parts.

- 2.1 Part A contains common conditions for all contracts; in the event of contradictions, the provisions of Parts B to E shall take precedence over the provisions of Part A.
- 2.2 Part B applies to all contracts involving the sale, rental, licensing or other transfer of use of the NEXUS Software to the Customer or the individual Customizing of the NEXUS Software at source code level,
- 2.3 Part C applies to all Services and work performed by NEXUS.
- 2.4 Part D applies to the sale of Hardware by NEXUS.
- 2.5 Part E applies to the rental of Hardware by NEXUS.

## Part A - General Provisions

### 3 Definitions

The following definitions shall apply to these Conditions:

- 3.1 **Change Request** has the meaning defined in Clause 23.5.1.
- 3.2 **Customer** shall include the end Customers and sales partners of NEXUS, which conclude a contract directly with NEXUS.
- 3.3 **Customizing** means the adaptation of the NEXUS Software to the requirements of the Customer outside of the source code level.
- 3.4 **Documentation** means the User Manual, the Performance Description as well as further descriptions of the NEXUS Software and its operation in text form or in paper form. If available, the Documentation shall be in German or English.
- 3.5 **Hardware** means those items that, according to the Performance Contract, are handed over to the Customer for sale or rent. The license for any software included shall be governed by Part B.
- 3.6 **Hotfix** means the Customer-specific elimination/removal of a regularly critical defect and/or a critical malfunction of the NEXUS Software.
- 3.7 **IT Infrastructure** means the technical framework conditions, including application and operating conditions as well as the necessary system configurations of the Customer for the use of NEXUS Software, as described in the Performance Contract.
- 3.8 **Maintenance Service** shall be the collective term for the processing of Customer messages as well as the provision of Hotfix, Patch, Release and Update - excluding additional functions of the NEXUS

Software - which are subject to a charge and which NEXUS provides on the basis of a Performance Contract.

- 3.9 **Module** means a component of the licensed NEXUS Software according to the Performance Contract, its functions, sub-functions and specifications as described in the Documentation.
- 3.10 **NEXUS** is the contracting company of the NEXUS Group that refers to these Conditions.
- 3.11 **NEXUS Software** is the software program adapted to the Customer according to these Conditions, licensed or maintained for the Customer with the specifications listed in the Performance Contract; it also includes Third-Party Software. The licensed NEXUS Software includes the associated Documentation.
- 3.12 **Patch** means the elimination of one or more defects and/or malfunctions of the NEXUS Software.
- 3.13 **Performance Contract** means the contract in text form between NEXUS and the Customer together with its attachments. Components of the Performance Contract are these Conditions as well as the Performance Description, the Documentation and further specifications of the NEXUS Software. The Performance Contract does not have to be designated as such.
- 3.14 **Performance Description** means the description of the functions, sub-functions, specifications as well as the adaptation of the NEXUS Software on the source code level, if necessary. The Performance Description shall be made in the Performance Contract.
- 3.15 **Release** means a periodic release of program parts and associated Documentation, which includes functional enhancements and changes, e.g., to increase security, as well as the elimination of known application problems in the NEXUS Software.
- 3.16 **Service** means any performance of service or work which NEXUS provides for, or in connection with, the already existing NEXUS Software on the basis of a Performance Contract. This can include, in particular, Maintenance Services, Customizing and Training Services.
- 3.17 **Software Customization** has the meaning defined in Clause 21.1.1.
- 3.18 **Software Lease** has the meaning defined in Clause 21.1.1.
- 3.19 **Software Purchase** has the meaning defined in Clause 21.1.1.
- 3.20 **Supplement Contract** has the meaning defined in Clause 30.3.
- 3.21 **Supplement Services** means services which are not agreed in a Performance Contract and which are additionally ordered by the Customer.
- 3.22 **Third-Party Software** has the meaning defined in Clause 24.1.
- 3.23 **Update** means an extension, substantial modification or redesign of the NEXUS Software and/or one or more modules of the NEXUS Software.
- 3.24 **User Manual** means the description of the intended operation and use of the NEXUS Software. The User Manual is provided with a separate document in text form.

#### **4 Formation of Contract**

- 4.1 All agreements between NEXUS and the Customer must be in text form.
- 4.2 Any offer from NEXUS is non-binding if it is not expressly designated as binding.
- 4.3 The Customer shall carefully examine the offer from NEXUS and ensure that the performance offered or selected by the Customer, in particular the relevant software and Hardware, are suitable for the intended purpose before placing the order.
- 4.4 The Customer shall be bound to an order for a fortnight from receipt by NEXUS.
- 4.5 The Performance Contract shall be concluded by sending an order confirmation in text form (e.g., by e-mail or in writing). The content of the contract shall be based on the order confirmation or the documents expressly referred to in the order confirmation.
- 4.6 If the parties conclude a Performance Contract signed by both parties and transmitted at least in text form, the date of the second signature shall be decisive for the conclusion of the contract. Clause 4.3 shall apply accordingly to the first signatory.
- 4.7 The documents belonging to the offer or Performance Contract as well as the information in the Online Shop do not constitute a guarantee of quality or durability.

#### **5 Online Shop**

- 5.1 Orders in the Online Shop require prior registration of the Customer via the form at <https://shop.nexus-ag.de/konto/> and confirmation of the registration by NEXUS in text form.
- 5.2 The Customer places his order by placing the selected items in the shopping cart and sending the order to NEXUS by selecting the button "Order with obligation to pay". The obligation to check by the Customer in accordance with Clause 4.3 shall apply accordingly.
- 5.3 NEXUS confirms receipt of the order with an order receipt confirmation by e-mail.

- 5.4 The Performance Contract shall be concluded with the NEXUS company which offers the selected item. It is concluded either by sending an order confirmation in text form (e.g. by e-mail or in writing) or with the fulfilment of the order, whichever occurs first.
- 5.5 Contracts for items to be configured are concluded via direct contact in accordance with Clause 4 above.

## **6 Duty of the Customer to Cooperate**

- 6.1 The Customer shall assist the successful performance of the Performance Contract in every phase by active and appropriate cooperation free of charge. In particular, the Customer shall provide NEXUS with the information, documents and data, computer programs and other means necessary for proper performance of the Performance Contract - including remote access or access to the premises and the IT Infrastructure, if necessary - in accordance with the Performance Contract in a timely manner. If the Customer does not fulfill its obligations to cooperate and NEXUS cannot complete its performance or parts thereof within the agreed time as a result, the performance period shall be extended appropriately. NEXUS can assert a right to reasonable compensation (e.g., unplanned additional expenditure).
- 6.2 If required, the Customer shall also ensure the provision of functional workstations free of charge for the employees of NEXUS or for third parties commissioned by NEXUS.

## **7 Performance Deadlines and Non-Availability of Performance**

- 7.1 The performance period shall be agreed individually.
- 7.2 If the Customer is obligated to procure certain documents, such as permits, approval, etc., himself or to make a payment in advance, the performance period shall begin not before the time when NEXUS has received all documents to be procured by the Customer or a payment to be made has been received by NEXUS.
- 7.3 If NEXUS cannot meet binding performance deadlines for reasons not culpably caused by NEXUS (non-availability of the performance), NEXUS shall inform the Customer of this immediately and at the same time inform the Customer of the expected new performance deadline. If the performance is also not available within the new performance period, NEXUS shall be entitled to withdraw from the contract in whole or in part; NEXUS shall immediately refund any consideration already paid by the Customer. The following in particular are considered to be cases of non-availability of the performance in this sense
  - a) delayed self-delivery if NEXUS has concluded a congruent covering transaction, neither NEXUS nor its supplier is at fault or NEXUS is not obligated to procure in the individual case.
  - b) Force Majeure according to Clause 15 as well as administrative orders or supply shortages based on such Force Majeure.
  - c) virus and other attacks by third parties on the IT system of NEXUS, insofar as these occurred despite compliance with the usual care for appropriate protective measures.
- 7.4 The occurrence of default (*Verzug*) shall be determined in accordance with the statutory provisions. In any case, however, a reminder with an appropriate deadline must be sent by the Customer.
- 7.5 Liability for default in performance shall be limited in accordance with Clause 9. Otherwise, the statutory rights of the Customer and of NEXUS shall remain unaffected, in particular in the case of an exclusion of the obligation to perform (e.g., due to impossibility or unreasonableness of performance and/or subsequent performance).

## **8 Partial Performance, Partial Delay, Partial Impossibility of Performance**

- 8.1 Partial performance is permissible and can be invoiced independently, provided that this is reasonable for the Customer and the Customer has an objective interest in the partial performance.
- 8.2 In the event of partial default or partial impossibility, the Customer may only withdraw from the entire contract or claim damages for non-performance of the entire obligation if the partial performance of the contract is of no interest to it.
- 8.3 In all other respects, the provisions of Clause 7 above shall apply mutatis mutandis to partial default.

## **9 Limitation of Liability**

- 9.1 NEXUS shall be liable without limitation for damages resulting from injury to life, body or health, which are based on a negligent breach of duty by NEXUS or on an intentional or negligent breach of duty by its legal representatives or vicarious agents, and in the case of liability without fault prescribed by law, in particular according to the Product Liability Act and in the case of a guarantee (*Garantie*).

- 9.2 NEXUS shall be liable for other damages which are based on an intentional or grossly negligent breach of duty by NEXUS or on an intentional or grossly negligent breach of duty by its legal representatives or vicarious agents.
- 9.3 NEXUS shall be liable in the case of intentional or negligent violation of an essential contractual obligation only for the typically occurring damage foreseeable at the time of conclusion of the contract subject to the limitation in Clause 9.5 below. An essential contractual obligation is such an obligation which makes the proper fulfillment of the contract concluded with the Customer possible in the first place and on which the Customer relied and could rely and whose culpable non-fulfillment endangers the achievement of the purpose of the contract.
- 9.4 NEXUS shall not be liable in all other cases.
- 9.5 Limitation of Liability to Insurance Coverage. If NEXUS is liable for damages according to Clause 9.3, the liability of NEXUS shall be limited to EUR 5 million. NEXUS shall increase the insurance coverage upon request and at the expense of the Customer; upon request of the Customer, NEXUS shall inform the Customer of the costs incurred after consultation with its insurance company.
- 9.6 Insofar as the liability of NEXUS is excluded or limited, this shall also apply to the personal liability of its employees, representatives and vicarious agents.
- 9.7 Information Obligation of the Customer. The Customer is obligated to inform NEXUS of all damages immediately and comprehensively after becoming aware of them. In particular, in cases of claims against the Customer by third parties, the Customer shall inform NEXUS immediately and comprehensively and grant NEXUS the opportunity to influence the development of the damage.
- 9.8 Exclusions of Liability Due to the Customer's Conduct.
- 9.8.1 NEXUS shall not be liable for the consequences of improper modification or handling of the NEXUS Software or the consequences of defective interventions on the part of the Customer.
- 9.8.2 NEXUS shall not be liable for the loss of data and programs and their restoration if and insofar as the damage is based on the fact that the Customer did not take appropriate precautions against data loss, in particular by making backup copies of all programs and data.

## 10 Statute of Limitations.

- 10.1 In the case of intent or gross negligence on the part of NEXUS or its legal representatives or vicarious agents as well as injury to life, body or health, which are based on a negligent breach of duty by NEXUS or on an intentional or negligent breach of duty by its legal representatives or vicarious agents, and in the case of statutory strict liability, in particular according to the Product Liability Act and in the case of a guarantee (*Garantie*), the statutory limitation period shall apply.
- 10.2 For Hardware rental, the statutory limitation period shall apply.
- 10.3 In all other cases the limitation period for warranty or liability claims shall be one year starting
- a) in the case of Software Purchase, at the declaration of operational readiness of the NEXUS Software,
  - b) in the case of Software Adaptation or other work performance (*Werkleistung*) by NEXUS, from acceptance,
  - c) in the case of services (*Dienstleistung*), from the completion of the respective service or
  - d) in the case of Software Lease and long-term service relationships, from the time at which the Customer knew or should have known of the breach of duty by NEXUS, or
  - e) in case of Hardware purchase, at delivery.

## 11 Remuneration

- 11.1 Purchase prices, License fees, remuneration for Software Adaptation, Maintenance, Service and Supplement Services, rent as well as other payment obligations of the Customer ("**Remuneration**") as well as the due dates for the Remuneration are specified in the Performance Contract or the Supplement Contract. If the due date is not stipulated, the Remuneration shall be due upon provision of the performance or, in the case of installation by NEXUS, upon declaration of readiness for operation, in the case of work performances (*Werkleistung*) upon acceptance.
- 11.2 Remuneration for time and material. Insofar as no package remuneration is agreed in the Performance Contract, NEXUS shall charge for Services and work performances (including Software Adaptation) on a time and material basis, whereby working hours and travel times incurred shall be invoiced at the hourly rates, and the materials used shall be invoiced at the prices, valid at the time of the performance; other expenses, in particular travel, accommodation and overnight costs, shall be invoiced additionally. Cost estimates for Services and work performances stated in the Performance Contract on a time and material basis are non-binding.
- 11.3 The remuneration shall apply plus the statutory value-added tax.

- 11.4 NEXUS shall be entitled to change the regularly recurring remuneration (e.g., license fees or rent) unilaterally by written notification to the Customer with a notice period of three months to the end of the current invoicing period for the new invoicing period. If the Customer does not agree to the new remuneration, it shall be entitled to terminate the Performance Contract with respect to the affected service within 4 weeks after receipt of the notification as of the end of the current invoicing period.

## 12 Payment Terms

- 12.1 All invoices are payable net within 30 days of the invoice date. Deviating terms of payment may be stipulated in the Performance Contract. No cash discount shall be granted.
- 12.2 NEXUS reserves the right to use payments to settle the oldest due claims plus the default interest and costs accrued thereon, in the order of costs, interest, claim, unless the Customer has made an express stipulation for the allocation of the payment.
- 12.3 The Customer can only offset claims of NEXUS by written declaration to NEXUS if its counterclaim is based on the same contractual relationship, is undisputed or a legally binding title exists.
- 12.4 The assertion of a right of retention due to counterclaims which are not recognized or not legally established shall be excluded if these claims are not based on the same contractual relationship.

## 13 Lack of Financial Solvency

- 13.1 NEXUS shall have the right to prohibit the Customer from using the NEXUS Software if it becomes apparent after conclusion of the contract that the claim for payment is endangered by the Customer's lack of financial solvency.
- 13.2 The right to prohibit shall not apply if payment is made within a reasonable period to be set by NEXUS or the Customer provides reasonable security.
- 13.3 After unsuccessful expiration of the deadline, NEXUS shall have the right to terminate the Performance Contract without further notice.
- 13.4 NEXUS shall have the same right if the Customer is overdue with two consecutive payments for Maintenance Services, rental or license fees.

## 14 Data Protection

The protection of personal data is important to NEXUS. NEXUS therefore processes personal data only to the extent permitted by law. The data protection declaration can be viewed at <https://de-de.nexus-ag.de/unternehmen/datenschutzerklaerung> or requested from NEXUS free of charge. The responsibility of the Customer for the processing of data for which it is the controller in the sense of Art. 4 No. 7 GDPR remains unaffected by this.

## 15 Force Majeure, Contractual Impediments

- 15.1 "**Force Majeure**" means the occurrence of an event or circumstance that prevents a Party from performing a contractual obligation if and to the extent that the Party affected by the hindrance ("**Affected Party**") proves (a) that such hindrance is beyond its reasonable control and (b) that the effects of the hindrance could not reasonably have been avoided or overcome by the Affected Party. An obstacle within the meaning of lit. (a) shall be deemed to include, but not be limited to, wars, civil wars, insurrections, acts of terrorism, piracy, currency and trade restrictions, embargoes, sanctions, governmental measures and orders, expropriation, epidemic, pandemic, natural disasters, fire, as well as legal or regulatory measures enacted in connection with such events, unless the unaffected party proves that the Affected Party could nevertheless have avoided its inability to perform.
- 15.2 If a Party fails to perform its contractual obligation due to the failure of a third party which the Party has commissioned to perform the whole or part of a contract (including subcontractors), the Party may invoke Force Majeure only to the extent that the conditions set forth in Clause 15.1 are met for the third party and the occurrence of the Force Majeure could not have been foreseen by the Affected Party when it commissioned the third party.
- 15.3 Insofar as Clause 15.1 or 15.2 is fulfilled, the Affected Party shall be released from the contractual obligation and from any liability for its breach from the time when the impediment causes the inability to perform and to the extent that the impediment prevents performance, provided that it notifies the other Party thereof without undue delay. If the notification is not made immediately, the exemption shall not take effect until the date on which the notification is received by the other party. The other Party may suspend the performance of its obligations, if any, as of the date of such notice. This Clause 15.3 shall apply even if the impediment arises during an already existing default of the Affected Party.

- 15.4 If the effect of the asserted impediment or event is temporary, Clause 15.3 shall apply only for as long as the asserted impediment prevents the Affected Party from performing its contractual obligation. The Affected Party shall notify the other Party as soon as the relevant obstacle no longer exists.
- 15.5 The Affected Party is obliged to remedy the Force Majeure as far as possible and to limit its effects as far as possible.

## **16 Term**

- 16.1 Principle. Unless a different term is specified in the Performance Contract, the following shall apply
- a) a Software Lease shall have a term of five years;
  - b) a License under a Software Purchase shall have an indefinite term;
  - c) a Service Agreement (including Maintenance Service Agreements) shall have a term of three years.
- 16.2 The right of either party to terminate the License without notice for good cause shall remain unaffected.
- 16.2.1 Good cause for a party shall be deemed to exist in particular if the other party has breached a material obligation under the Performance Contract and fails to remedy the breach of obligation within 15 calendar days after receipt of a written warning.
- 16.2.2 NEXUS shall have good cause for termination in particular if the Customer is in default with two payments from the same Performance Contract and has not made the payment within 30 days after receipt of a written warning.
- 16.3 Each termination must be in text form to be effective.

## **17 Consequences of Termination**

- 17.1 Termination of a Software Lease or Hardware rental agreement shall not affect other Performance Contracts existing between the parties, in particular Service Agreements concluded for the same NEXUS Software and vice versa, unless the Service cannot be provided without the licensed NEXUS Software or rented Hardware.

## **18 Export and Import Control**

- 18.1 Software and Hardware may be subject to export and import restrictions. In particular, there may be licensing obligations or the use of NEXUS Software or associated technologies may be subject to restrictions abroad.
- 18.2 The contractual obligation of NEXUS shall be subject to the proviso that national and international regulations of export and import law as well as other legal regulations do not oppose the performance of the particular obligation.
- 18.3 The Customer shall observe the applicable export and import control regulations, in particular of the Federal Republic of Germany and the European Union, in case of export or resale across national borders.

## **19 Place of Performance, Venue, Applicable Law**

- 19.1 The place of performance shall be the registered office of the NEXUS company concluding the contract.
- 19.2 The exclusive place of jurisdiction for all disputes between the contracting parties arising from or in connection with service contracts, individual orders or their business relationship shall be the registered office of the contracting NEXUS company.
- 19.3 The legal relationships of the contracting parties from or in connection with Performance, Supplement or Service Contracts shall be subject to the law of the Federal Republic of Germany excluding the UN Convention on Contracts for the International Sale of Goods (CISG).

## **20 Miscellaneous**

- 20.1 The claims and other rights of the Customer from the Performance Contract are not assignable without the prior consent of NEXUS.
- 20.2 Should individual provisions of the Performance Contract or these Conditions be or become invalid or void in whole or in part, this shall not affect the validity of the remaining provisions.
- 20.3 In place of an omission in the contract, the legally effective provision that comes closest to the economic purpose of the agreement shall apply.

# Abschnitt B – Software, Licenses

## 21 Delivery of NEXUS Software

### 21.1 Scope of Performance.

21.1.1 The subject of the Performance Contract regarding the NEXUS Software is, depending on the agreement in the Performance Contract and without prejudice to Section 30.1, the adaptation of the NEXUS Software on the source code level for the Customer (“**Software Adaptation**”) and/or the granting of the rights to use the NEXUS Software described in Clause 22 for a limited period of time (“**Software Lease**”) or for an unlimited period of time (“**Software Purchase**”) against payment.

21.1.2 NEXUS shall ensure with the care customary in the industry that the NEXUS Software is in compliance with the respective current legal situation and the respective current industry standards at the time of conclusion of the contract at the seat of the contracting NEXUS company.

21.1.3 The Customer shall inform NEXUS in text form of relevant specific legal framework conditions as well as any changes to them upon becoming aware of them. NEXUS shall carry out an adaptation of the NEXUS Software to (changed) legal framework conditions and generally recognized industry standards within the framework of a separately agreed Service Contract or a Supplement Contract.

21.2 Supporting Services. Supporting Services of NEXUS, such as installation and configuration services as well as support of the Customer in testing and training, are to be expressly agreed upon as Services.

## 22 License to the NEXUS Software

22.1 License. Against complete payment of the license fees due, NEXUS grants the Customer a non-exclusive, non-licensable right to use the NEXUS Software defined in the Performance Contract on its IT Infrastructure for the number of licenses defined in the Performance Contract within the framework described in the Performance Contract (e.g. location, scope or area of application)  
a) in the case of Software Purchase, for an unlimited period of time;  
b) in the case of Software Lease, limited to the term of the contract.  
 (“**License**”).

22.2 Restrictions of Use. Subject to and without prejudice to Clause 22.4, the Customer shall not be entitled to:

a) make copies of the Documentation delivered on paper or in electronic form if such copies are not intended exclusively for use by the Customer;

b) to load, install, or use the NEXUS Software on any IT infrastructure not listed in the Performance Contract;

c) to lease the NEXUS Software and the Documentation to third parties or to sublicense them in any other way, to reproduce them publicly or to make them accessible or to make them available to third parties against payment or free of charge;

d) to decompile, disassemble, translate, reverse engineer, or otherwise modify the NEXUS Software unless mandatory copyright provisions permit such actions;

e) remove or modify copy protection, copyright notices, serial numbers or other features serving to identify the program.

22.3 Changes. Any change intended by the Customer to the licensed Scope of Performance, which is not covered by the Performance Contract, requires notification by the Customer to NEXUS as well as approval by NEXUS. If the total license price increases compared to the last license price, the increase shall be charged to the Customer. A reduction of the total license price shall be taken into account for the next contract renewal or in consideration of the agreed notice period of NEXUS.

22.4 Use of Additional Functions. If the Customer uses modules, sites, parts of modules, functions or sub-functions which are not covered by the License, additional licenses must be purchased. The NEXUS standard license fees shall be paid for any use not covered by the License.

22.5 License Audit. If there are indications that the Customer is using the NEXUS Software beyond the scope agreed in the Performance Contract, NEXUS shall be entitled to demand information about the actual scope of use from the Customer in text form within a reasonable period of time. If this information is not provided or if it is not suitable for eliminating the suspicion, NEXUS is entitled to verify by means of actual or electronic access to the IT Infrastructure whether the Customer complies with the obligations under licensing law (“**License Audit**”). The results of the License Audit shall be treated confidentially, but may be presented by both parties in the event of a formal legal dispute.

22.6 Resale. In the case of Software Purchase, the Customer is entitled to permanently transfer the acquired copy of the NEXUS Software to a third party under transfer of the Performance Contract and the Documentation, provided that the Customer expressly agrees with the third party to observe the scope of the License granted in accordance with this Clause 22 and informs NEXUS about the sale and the purchaser. Splitting of acquired Licenses is not permitted.

- 22.6.1 In this case, the Customer shall completely stop using the NEXUS Software, remove all installed copies of the NEXUS Software from its IT Infrastructure and delete all copies located on other data carriers or hand them over to NEXUS unless it is legally obligated to retain them for a longer period.
- 22.6.2 At the request of NEXUS, the Customer shall confirm the complete implementation of the above measures in writing or, if necessary, explain the reasons for longer retention to NEXUS.
- 22.7 Reservation of Rights. NEXUS or, in the case of Third-Party Software, the respective third-party shall be exclusively entitled to all rights to the NEXUS Software exceeding the licensed Scope of Performance.

## 23 Software Adaptation

- 23.1 If agreed in the Performance Contract, NEXUS shall adapt the NEXUS Software on the source code level for the Customer in accordance with the Performance Description.
- 23.2 The Software Adaptation is subject to the law on contracts for works (*Werkvertragsrecht*) and shall be accepted by the Customer. The parties can agree on partial acceptances at certain milestones in the Performance Contract or the Specification.
- 23.3 The granting of Licenses for the adapted NEXUS Software shall be governed by Clause 22. Otherwise, NEXUS shall remain the owner of all rights to the results achieved within the framework of the Software Adaptation, in particular the industrial property rights and copyrights created in this context.
- 23.4 Performance Description. NEXUS shall adapt the NEXUS Software on the basis of a Performance Description agreed upon with the Customer (see Clause 3.14).
- 23.4.1 The Customer shall fulfill its cooperation obligations in accordance with Clause 6 as well as Clause 25 free of charge in due time before performance and, if necessary, during performance of the order.
- 23.4.2 The fulfillment of the requirements for the NEXUS Software agreed in the Performance Description as well as the adherence to an agreed schedule, if applicable, shall be subject to the condition that the Customer fulfills his necessary cooperation obligations in accordance with Clause. 23.4.1.
- 23.5 Changes in Performance.
- 23.5.1 The Customer can request changes and additions to the performance at any time ("**Change Request**").
- 23.5.2 NEXUS shall examine the Change Request within a reasonable period of time and shall inform the Customer of the result together with the resulting costs, if any, postponements of the time schedule and, if necessary, the separate commissioning in the form of a binding draft of a Performance Description.
- 23.5.3 The services of NEXUS within the framework of this change request procedure according to Clause 23.5.2 shall be performed for the Customer at the agreed hourly rate or - if no hourly rate has been agreed - against usual remuneration.
- 23.5.4 The Customer shall review the draft Performance Description within 10 working days of its receipt. If the Customer accepts the new Performance Description in text form, the changes shall become part of the contract. If the Customer does not accept the new Performance Description or does not accept it in due time, the Performance Contract shall be continued unchanged.
- 23.5.5 NEXUS shall continue the contractual performance as agreed during an ongoing change request procedure. The Customer shall bear the costs for this in accordance with the original Performance Contract regardless of the decision of the change request procedure.
- 23.6 Acceptance.
- 23.6.1 The Customer shall inspect the NEXUS Software adapted by NEXUS on the basis of the acceptance criteria defined in the respective Performance Description within a reasonable period of time, which shall be set by NEXUS in the notification of readiness for acceptance, and declare or refuse acceptance in text form. If the Customer allows the above deadline to elapse without granting or refusing acceptance, the adapted NEXUS Software is deemed to be accepted.
- 23.6.2 "**Defect**" (*Mangel*) means any deviation of the customized NEXUS Software from the requirements of the Performance Description. Unless otherwise expressly stated in the Performance Description, the intended use of the NEXUS Software pursued by the Customer with the Software Adaptation shall not be part of the requirements to be warranted (*gewährleistet*) by NEXUS.
- 23.6.3 The Customer may not refuse acceptance due to insignificant defects. However, this shall be subject to the immediate rectification of these defects by NEXUS.
- 23.6.4 If the Customer refuses acceptance due to not insignificant defects, it shall notify NEXUS of this in text form within the period set by NEXUS in accordance with Clause 23.6.1, stating the defects. The Customer shall set NEXUS a reasonable deadline for the elimination of these defects. If the elimination of the defects fails and if further elimination attempts are unreasonable for the Customer, the



Customer can assert the rights to which it is entitled by law in accordance with the limitation of liability regulated in Clause 9. There shall be no right of withdrawal in the case of insignificant defects.

## **24 Third-Party Software**

- 24.1 The Customer shall acquire a right of use for third-party software provided to the Customer together with the NEXUS Software (“**Third-Party Software**”) insofar as this is necessary for the use of such Third-Party Software in connection with the NEXUS Software in accordance with the Performance Contract.
- 24.2 Insofar as this is included in the Scope of Performance, NEXUS can arrange for or sublicense the necessary licenses to the Third-Party Software to the Customer.
- 24.3 The conditions of the right of use result from the respective conditions and performance descriptions of the third-party providers.

## **25 Obligations of the Customer**

- 25.1 IT Infrastructure. The Customer shall ensure that the IT Infrastructure on which the NEXUS Software is installed is functional and capable of operating the NEXUS Software safely and that only Third-Party Software coordinated with NEXUS is operated on these computers.
- 25.2 Testing of the NEXUS Software. The Customer is obligated to test the NEXUS Software on a test system prior to real use before releasing the NEXUS Software for the agreed use unless this would be unreasonable (*unzumutbar*) for the Customer.
- 25.3 Information about Software Version. The Customer is obligated to provide NEXUS with information about the software version in use so to enable information about any Releases or Updates.
- 25.4 Data.
  - 25.4.1 The Customer shall provide all master data.
  - 25.4.2 The Customer shall take care of the data maintenance and thus the backup and integrity of the data as well as the operation and maintenance of the hardware on which the NEXUS Software is operated.
- 25.5 Security.
  - 25.5.1 The Customer shall provide for all necessary security measures in connection with the protection of the NEXUS Software against destruction, theft or misuse. In particular, the Customer shall be responsible for making backup copies of the NEXUS Software and storing them appropriately.
  - 25.5.2 The Customer shall take appropriate precautions for the event that the NEXUS Software does not work properly in whole or in part (e.g., through data backup, fault diagnosis, regular testing of results, emergency planning).
  - 25.5.3 Backup copies or data backup shall be made at the usual intervals in the Customer's field of activity, but shall be made at least once a day.

## **26 Liability for Defects in Software Purchase, Software Lease and Software Adaptation**

- 26.1 Notice of Defects. The Customer shall inform NEXUS immediately in text form upon discovery of defects in the (adapted) NEXUS Software. If the Customer fails to do this, NEXUS shall not be liable for the damage caused by the delay in notification.
- 26.2 Existence of Defects.
  - 26.2.1 All asserted defects must be reproducible by Nexus and documented in detail by the Customer.
  - 26.2.2 NEXUS warrants (*gewährleistet*) that the NEXUS Software is properly functioning. Proper functioning shall be deemed to exist if the NEXUS Software can be used in accordance with the Performance Contract, deployed on the agreed IT Infrastructure and function in accordance with the Performance Description.
  - 26.2.3 A defect of the NEXUS Software shall exist if it does not provide the agreed applications, functions and services in accordance with Clause 26.2.2 when used as agreed in the Performance Contract.
  - 26.2.4 No defect shall exist if the IT Infrastructure on which the NEXUS Software is installed cannot operate it or cannot operate it without malfunctions unless this is expressly included in the Scope of Performance. The same shall apply if and insofar as software from third parties affects the security and performance of the NEXUS Software.
  - 26.2.5 Furthermore, there shall be no defect if the Customer interferes with the databases connected to the NEXUS Software, in particular their structure, or data models. This shall not apply to changes and processing of databases which are made during contractual use of the NEXUS Software, e.g., in the case of the database containing patient data.
- 26.3 Remedy of Defects. In the event of a defect, the Customer's claim is initially limited to the elimination of the defect or provision of defect-free NEXUS Software at the discretion of NEXUS. Elimination of the defect can also be carried out by providing Maintenance Services free of charge in the sense of

Clause 31. NEXUS has the right to refuse to eliminate the defect if the elimination of the defect is not possible with reasonable effort (severity of the defect in relation to the effort to eliminate the defect).

#### 26.4 Subordinate Rights.

26.4.1 In the case of Software Purchase and Software Adaptation, the Customer shall be entitled to demand a reduction or to withdraw from the contract if the elimination of the defect within the meaning of Clause 26.3 has failed twice, has been seriously and finally refused on the part of NEXUS, is unreasonable (*unzumutbar*) for the Customer or if the Customer has unsuccessfully set NEXUS reasonable deadlines for subsequent performance or such setting of a deadline is dispensable (*entbehrlich*) in view of the circumstances.

26.4.2 In the case of Software Lease, the Customer shall be entitled to demand a reduction of the license fee or to terminate the contract if the elimination of defects within the meaning of Clause 26.3 has failed twice, has been seriously and finally refused, is unreasonable for the Customer or if the Customer has unsuccessfully set NEXUS reasonable deadlines for subsequent performance.

26.4.3 The right of the Customer to demand compensation for damages within the scope of liability according to Clause 9 of these Conditions shall remain unaffected.

26.5 Exclusion. A warranty obligation for a defect shall not apply if (a) the NEXUS Software has been changed or processed by the Customer or third parties and the defect has been caused by this or (b) defects are caused by the installation or connection of components (hardware or software) which do neither originate from, nor have been tested nor released by, NEXUS.

26.6 Reimbursement of expenses in case of non-existence of a defect. If it becomes apparent during or after the elimination of a malfunction - regardless of whether at the particular request of the Customer or in assumed fulfillment of warranty obligations - that a defect did not exist or that there is no warranty obligation for any other reason, the elimination of the defect shall be treated as a Supplement Service subject to remuneration.

### 27 Infringement of Third-Party Intellectual Property Rights

27.1 NEXUS warrants that the NEXUS Software does not infringe any intellectual property rights of third parties in Germany (“**Third-Party Rights**”).

27.2 In the event of infringement of Third-Party Rights, NEXUS shall be entitled to modify the NEXUS Software at its own expense in order to avoid or eliminate an infringement or alleged infringement of Third-Party Rights.

### 28 Defects in Third-Party Software

28.1 Liability for defects in Third-Party Software provided to the Customer together with the NEXUS Software shall be governed by the respective License Terms and, if applicable, the Performance Descriptions of the respective third-party provider.

28.2 NEXUS can, at its own discretion, assign its own claims against the respective third-party provider to the Customer or take responsibility for the elimination of the defect itself without acknowledging a legal obligation. NEXUS shall be entitled to use third parties to remedy defects.

### 29 Consequences of Termination of a Software Lease Agreement

29.1 Upon effectiveness of the termination, the granted rights of use shall revert to NEXUS and the Customer shall be obligated to destroy or delete the original of the NEXUS Software as well as the Documentation, including all copies or partial copies and copies connected with other programs of the NEXUS Software in question, or to return them to NEXUS within 14 calendar days after effectiveness of the termination. Upon request of NEXUS, the Customer shall confirm the destruction of the NEXUS Software as well as the Documentation in writing.

29.2 No right of retention can be asserted with respect to the NEXUS Software and the Documentation.

## Part B - Services

### 30 Services

30.1 General. If agreed in the Performance Contract, NEXUS shall provide Services in accordance with the provisions of these Conditions against payment of the agreed remuneration.

30.2 Scope of Performance. The scope and content of the Services shall be determined in the respective Performance Contract, if applicable, the associated Performance Description and these Conditions.

- 30.3 Supplement Services. Services not covered by the Performance Contract (“**Supplement Services**”) shall only be provided by NEXUS if they are agreed upon between NEXUS and the Customer (“**Supplement Contract**”). These Conditions shall apply to the Supplement Contract.
- 30.3.1 The scope and content of Supplement Services shall be determined solely by the Supplement Contract. Unless expressly agreed otherwise, Supplement Services are subject to a fee.
- 30.3.2 Unless otherwise agreed with the Customer in text form, the following services in particular shall be deemed Supplement Services:
- a) Elimination of malfunctions which have occurred due to Force Majeure, negligent or intentional behavior of the Customer or third parties, in particular due to use of the NEXUS Software which is not in accordance with the system description and operating instructions;
  - b) Activities in which the Customer has been instructed as evidenced by a training protocol and with regard to which it is reasonable for the Customer to perform them himself;
  - c) familiarization and training;
  - d) services for fault elimination if the cause of the fault is based on unauthorized changes to the NEXUS Software by the Customer or a third party or on other circumstances not culpably caused by NEXUS.
- 30.4 Changes. Clause 22.3 shall apply accordingly to changes to the Scope of Performance of Services.

### **31 Maintenance Services**

- 31.1 Hotline. NEXUS maintains a central hotline service, which supports the Customer during normal business hours. Additional service hours can be agreed upon. NEXUS shall charge an appropriate fee for use of the hotline service by Customers who have not concluded a Service Contract or Supplement Contract or outside the agreed hours.
- 31.2 Remote Service. NEXUS will perform remote diagnosis, remote control and remote maintenance as required on request of the Customer in order to eliminate system malfunctions and restore the availability of the system.
- 31.3 On-Site Service. If, in the opinion of NEXUS, an on-site visit is necessary in exceptional cases, the date shall be coordinated with the Customer. Remuneration shall be based on the Service or Supplement Contract.
- 31.4 Software Maintenance. The Maintenance Services of NEXUS include regular improvements and extensions of the NEXUS Software. NEXUS reserves the right to decide at its reasonable discretion in which case a Hotfix, Patch, Release or Update is more appropriate.
- 31.4.1 Software Maintenance requires that the Customer operates the NEXUS Software in a version containing all Updates, Patches, and Releases made available by NEXUS up to the time of availability of the Maintenance Services.
- 31.4.2 Releases or Updates may necessitate an adjustment of the requirements for the IT Infrastructure specified in the Performance Contract. Insofar as Releases or Updates require amendments to the IT Infrastructure, NEXUS shall notify the Customer of this. If the Customer does not adapt the IT Infrastructure, restrictions in the Scope of Performance of the NEXUS Software may occur for which NEXUS is not liable.

### **32 Liability for Service and Supplement Service.**

- 32.1 Services. Insofar as Services or Supplement Services represent a service in the statutory sense (*Dienstleistungen*), NEXUS shall fulfill these with care customary in the industry. There is no liability for defects in this respect. The claim for damages within the framework of Clause 9 remains unaffected.
- 32.2 Works. Insofar as Services or Supplement Services, in particular Maintenance Services, constitute work performances (*Werkleistungen*), Clause 26 of these Conditions shall apply accordingly to the liability for defects.

## **Part D – Hardware Purchase**

### **33 Prices, Delivery and Transfer of Risk**

- 33.1 All prices for Hardware are quoted in EURO FCA (Incoterms 2020) at the place of delivery specified in the Performance Contract plus applicable VAT and packaging.
- 33.2 Delivery and transfer of risk shall also be governed by FCA (Incoterms 2020) from the place of delivery specified in the Performance Contract.

- 33.3 If another delivery clause has been agreed and if the shipment is delayed as a result of circumstances for which the Customer is responsible, in particular at the request of the Customer, risk shall pass to the Customer from the day of notification of readiness for shipment; however, NEXUS shall be obliged to effect the insurance requested by the Customer at the Customer's request and expense. The Customer's payment obligations shall remain unaffected by this.
- 33.4 If dispatch is delayed at the Customer's request, the Customer shall be charged the monthly storage costs at 0.1% of the price of the item sold, starting one month after notification of readiness for dispatch.

#### **34 Retention of Title**

- 34.1 NEXUS shall retain ownership of the Hardware until complete fulfilment of the purchase price claim ("**Reserved Goods**").
- 34.2 The Customer shall treat the Reserved Goods with care, in particular to insure them at its own expense against damage by fire, water and theft at their replacement value.
- 34.3 In the event of seizure, confiscation, damage and/or loss of the Reserved Goods, the Customer shall inform NEXUS immediately; a violation of this obligation shall give NEXUS the right to withdraw from the contract. The Customer shall bear all costs which had to be incurred in particular within the framework of a third-party action to successfully lift a seizure and, if applicable, to successfully recover the Reserved Goods, insofar as they cannot be collected from third parties.
- 34.4 If NEXUS has effectively withdrawn from the contract, NEXUS shall be entitled to take back the Reserved Goods if the taking back was threatened with a reasonable notice period. The Customer shall bear the costs incurred by exercising the right to take back the Reserved Goods, in particular for transport. NEXUS shall be entitled to realise the Reserved Goods taken back and to satisfy NEXUS from the proceeds thereof, provided the realisation was previously threatened with a reasonable notice period. If the proceeds exceed the outstanding claims from the contractual relationship, this surplus shall be issued to the Customer.

#### **35 Notice of Defects, Warranty for Defects (*Sachmangelhaftung*)**

- 35.1 The Customer shall inspect the Hardware immediately upon receipt and notify NEXUS in text form of all identifiable defects immediately, but no later than within 3 working days (Saturday does not count as a working day); otherwise the Hardware shall be deemed to have been approved. Hidden defects must be notified in text form immediately after discovery, at the latest after the expiry of 3 working days (Saturday does not count as a working day); otherwise the Hardware shall also be deemed to have been approved with regard to these hidden defects.
- 35.2 If the Hardware has a defect, NEXUS may, at NEXUS's discretion, either remedy the defect (rectification) or deliver a defect-free item (replacement) as subsequent performance.
- 35.3 Claims from supplier recourse of consumer purchases shall be governed by law. Such claims are excluded if the defective Hardware has been further processed by the Customer or another entrepreneur, e.g. by installation into another product.
- 35.4 The Customer shall give NEXUS the time and opportunity required for the subsequent performance owed, in particular to hand over the Hardware complained about for examination purposes. In the event of a replacement delivery, the Customer shall return the defective Hardware to NEXUS in accordance with the statutory provisions.
- 35.5 In all other respects, the Customer shall be entitled to the statutory warranty rights.
- 35.6 Complaints about partial performances shall not entitle the Customer to reject the remaining performances unless the Customer is entitled to withdraw from the entire contract due to the defective partial performance.
- 35.7 Insofar as the manufacturer offers a guarantee exceeding the contractual liability of NEXUS, this can only be asserted directly against the manufacturer and shall not justify any claims against NEXUS.

## **Part E – Hardware Rent**

#### **36 General**

- 36.1 The properties of the rented Hardware as well as its period of use shall be governed by the Performance Contract.
- 36.2 NEXUS shall hand over the rented item to the Customer in a flawless, operational condition (in the case of used rented items, generally overhauled) with the necessary documents and rent it to the

Customer on a rental basis for the agreed rental period. The Customer shall bear the costs of operation (e.g. for electricity).

- 36.3 The rental period begins on the day on which the Hardware arrives at the Customer's place of receipt, but not before the time specified in the Performance Contract.
- 36.4 The Hardware shall be provided for the Customer's exclusive use. The transfer of rights to use existing software shall be governed by Parts B and D of these Conditions.
- 36.5 Unless otherwise stipulated in the Performance Contract, the Customer shall be responsible for
- a) the installation of the rented item and making it ready for operation,
  - b) the assembly, installation, set-up or commissioning of the Hardware or
  - c) the instruction of the operating personnel
- and shall provide for the technical requirements for the operation of the Hardware, such as in particular power, telephone and network connections.
- 36.6 Any granting of use to third parties requires prior consent by NEXUS in text form (e.g. by fax, e-mail, EDI or in writing) in order to be permissible. In the event that NEXUS should grant such consent, the Customer shall be obligated to inform NEXUS of the name and address of the third party as well as the place of installation of the Hardware and to conclude a contract with the third party incorporating these Conditions.

### **37 Rent**

- 37.1 The rent shall be regulated in the Performance Contract and shall generally be payable monthly.
- 37.2 The first rent is due at the beginning of the rental period. Subsequent rents shall be due in advance for the agreed payment period.
- 37.3 Rent, fees and costs are exclusive of the statutory value added tax applicable to them at the time of performance.

### **38 Defects, Warranty**

- 38.1 The Hardware shall be provided in a usable condition.
- 38.2 The Customer shall inspect the Hardware for defects, operability and completeness upon delivery and confirm this by signature on the delivery note. In the event of defects or damage, the Customer shall report these immediately.
- 38.3 NEXUS shall remedy all defects existing at the time of delivery and notified to NEXUS in due time in accordance with Clause 38.2 of these Conditions. Instead, NEXUS may also provide the Customer with a functionally equivalent replacement item. During the repair of the rented item by NEXUS, the Customer shall be released from the rental charge.
- 38.4 The Customer can terminate the rental contract if NEXUS culpably allows a reasonable deadline set by the Customer for the elimination of a defect of the Hardware existing at the time of handover and notified by the Customer in due time to expire without success. This shall also apply if the elimination of such defect by NEXUS fails.
- 38.5 Any liability of NEXUS regardless of fault due to initial defects shall be excluded. In all other respects, the liability of NEXUS shall be governed by Clauses 9 and 10.

### **39 Ownership**

- 39.1 The Hardware shall remain the property of NEXUS or the supplier of the Hardware during the entire period of use. Any proprietary notices affixed may not be removed, falsified or made unrecognisable.
- 39.2 The Customer shall notify NEXUS immediately of any seizure of the Hardware, in particular by attachment, application for the opening of insolvency proceedings as well as the opening of insolvency proceedings itself and shall notify the insolvency administrator or other third parties of the ownership of NEXUS or the supplier of the Hardware.
- 39.3 The Customer shall inform NEXUS immediately in the event of damage to or loss of the Hardware.
- 39.4 In the event of violation of the obligations under Clauses 39.2 and 39.3, NEXUS shall have the right to terminate the contract for good cause. The Customer shall reimburse those costs which have to be incurred for the replacement of the Hardware.

### **40 Maintenance, Repair**

- 40.1 Maintenance and repair of the Hardware shall be carried out solely by NEXUS or by a third party commissioned by NEXUS during the time the Hardware remains with the Customer. This includes repairs and maintenance.
- 40.2 If the defect or the cause underlying the maintenance / repair is due to a technical defect, NEXUS shall bear the costs.

- 40.3 If the defect is due to the fault of the Customer (use contrary to the contract, operating errors, damage due to improper handling as well as other damage by third parties), the costs incurred shall be invoiced to the Customer by NEXUS or by the third parties commissioned by NEXUS. If the invoiced costs exceed the costs customary in the industry plus an emergency surcharge, the Customer shall be entitled to reduce the amount accordingly upon providing appropriate proof.
- 40.4 Necessary work for the restoration of an operational condition shall be carried out by NEXUS or a third party commissioned by NEXUS within 2 working days from notification of the damage. If a repair cannot be carried out within this period, a replacement delivery of the Hardware shall be made within a further 3 working days. The periods defined above shall apply only in relation to the agreed place of installation. Claims of the Customer due to downtimes according to sentence 1 shall not be given insofar as NEXUS complies with the aforementioned times.
- 40.5 Clause 35 shall apply accordingly in all other respects.

#### **41 Term, Termination**

- 41.1 In the event that a period of use has been agreed in the Performance Contract, ordinary termination shall be excluded.
- 41.2 If no period of use has been agreed, the contractual relationship shall end by termination in text form vis-à-vis the other party with the period of notice agreed in the Performance Contract.
- 41.3 The right to terminate without notice for good cause remains unaffected.
- 41.4 If the Customer continues to use the Hardware after expiry of the agreed rental period, the contractual relationship shall be extended for an indefinite period of time unless one party declares its intention to the contrary in writing to the other party within 2 weeks. The period shall begin for the Customer with the continuation of use and for NEXUS with the time at which NEXUS becomes aware of the continuation of use.

#### **42 Return upon Termination**

- 42.1 Upon termination of the Rental Agreement and without requiring a request by NEXUS, the Customer shall return the Hardware to NEXUS at its own expense and risk and insured for transport, or to take it to the other return location within Germany determined by NEXUS.
- 42.2 The Customer shall ensure that the packaging is safe for transport and shipping. Any existing general terms and conditions of the carrier shall be observed. The Customer shall bear the costs for any necessary preparation for transport by NEXUS.
- 42.3 The Customer shall return the Hardware to NEXUS in the condition which corresponds to the condition of the Hardware upon delivery, taking into account the reduction in value caused by the contractual use of the Hardware and the principles of Clause 40.
- 42.4 If NEXUS detects defects in the Hardware which contradict Clause 42.3, NEXUS may demand that they be remedied at the Customer's expense after setting a reasonable, unsuccessful deadline for the Customer.
- 42.5 If the Customer does not return the Hardware after termination of the rental agreement, the agreed rent shall be due and payable as compensation for the duration of the withholding for each month or part thereof. NEXUS reserves the right to claim further damages.

#### **43 Rights of Withdrawal and Termination of the Customer due to other Breaches of Duty**

- 43.1 The Customer may only withdraw from or terminate the contract due to a breach of duty which does not consist of a defect if NEXUS is culpably responsible for the breach of duty.
- 43.2 Otherwise, the statutory requirements and legal consequences shall apply.

#### **44 Insurance**

- 44.1 NEXUS shall not insure the Hardware against damage of material.
- 44.2 The Customer shall insure the Hardware at its own expense at replacement value against loss or damage insurable in the usual manner in the industry, in particular low voltage as well as lightning, fire, explosion, theft and water damage of all kinds, until the Hardware is actually returned. NEXUS shall be provided with evidence of the insurance coverage at any time upon request.
- 44.3 If the Customer does not comply with this obligation, it shall reimburse NEXUS for all damages resulting therefrom. NEXUS shall be entitled, but not obligated, to take out a corresponding liability insurance policy at the Customer's expense if the Customer does not prove the conclusion of a liability insurance policy to NEXUS in text form at the latest upon handover of the Hardware.
- 44.4 The Customer shall assign related claims of the Customer against the insurance company to NEXUS as a precaution. NEXUS accepts the assignment.

