

GTC

GTC 2.0 as of December 16, 2010

Virtual Forge GmbH General Terms and Conditions Licenses and Services (GTC, Version 2.0)

A. General terms and conditions (part 1)

1. Scope of application

1.1 These General Terms and Conditions apply to all agreements between Virtual Forge GmbH ("Virtual Forge") and its Customer ("Customer") in the relation to the licensing of Virtual Forge's

- software, software upgrades and software modifications for new SAP releases, including their documentation (if any), as defined in specific agreements, in particular, but not limited to, in software license agreements ("Software") - **Chapter B**;
- coding specifications and/or developer guidelines, including guidelines updates (if any), as defined in specific agreements, ("Guidelines") - **Chapter C**;

and the providing of Virtual Forge's

- maintenance services, including software updates (if any), as defined in specific agreements, in particular, but not limited to, in software maintenance agreements ("Maintenance Services") - **Chapter D**;
- professional services as defined in specific agreements ("Professional Services") - **Chapter E**;

(these General Terms and Conditions and the specific agreements collectively "Agreement"). In the event of any conflict between these General Terms and Conditions and the specific agreements, the specific agreements shall prevail.

1.2 This Agreement hereby incorporates by reference the "**Virtual Forge GmbH - End User License Agreement**" in the current version ("EULA"). The EULA is published on the website of Virtual Forge (<https://virtualforge.de> or codeprofilers.com). Upon request of the Customer, Virtual Forge will also provide the EULA via email to the Customer.

1.3 Customer acknowledges that the Software may be delivered and used with certain libraries and other code that are not licensed under this Agreement, but rather are provided to Customer pursuant to the terms and conditions of separate open source license agreements ("Open Source Code"). Such separate License terms may be provided in connection with the delivery of the Software. Any warranty or indemnification Virtual Forge provides for the Software does not extend the Open Source Code.

1.4 No other general terms and conditions, including Customer's general terms and conditions, form any part of the agreements, even if Virtual Forge has performed an agreement without rejecting such general terms and conditions.

2. Offers, agreement conclusion, notices

2.1 Offers from Virtual Forge are only binding if agreed in writing. In cases of conflict, the contract terms and details that apply are those in the Virtual Forge offer or order confirmation.

2.2 Neither the conclusion nor any subsequent change of any agreement is effective unless it is in written form. This also applies to any waiver of the written-form requirement.

2.3 Any notice by the Customer (e.g. termination notice or reminder notice) is only valid in written form.

3. Operating environment and contact person

3.1 It is the responsibility of the Customer to provide the proper operating environment of the Software in accordance with the specifications in the product description of the Software.

3.2 The Customer will name a contact person to Virtual Forge and provide Virtual Forge with the contact details of such person to ensure the fulfilment of the Agreement. The person shall be in a position to make all decisions for the Customer necessary in such respect.

3.3 The Customer shall inspect all software, documentation, guidelines and services delivered or provided by Virtual Forge in due course and notify Virtual Forge without undue delay of all defects by giving a description of the defect in reasonable detail.

B. Software License

4. Product description and Software specifics

4.1 Virtual Forge will deliver the Software in accordance with the product description defining the specifics of the Software and provided to the Customer on its request. Such product descriptions are specifications, but not warranties.

4.2 The Customer undertakes that it knows the product description. Virtual Forge does not owe any further duty with regard to the quality of the Software.

5. Rights in and to the Software

5.1 **Ownership; Retention of Rights.** Virtual Forge has the sole and exclusive ownership of all right, title and interest in and to the Software and all modifications and enhancements thereof (including ownership of all trade or business secrets, patents, copyrights, trademarks and any other intellectual property rights pertaining thereto), and all other items provided or made available to the Customer in connection with pre-contractual discussions or agreement performance, subject only to the rights expressly granted by Virtual Forge.

5.2 Grant of License. Virtual Forge grants the Customer a non-exclusive, non-transferable and non-assignable license to use the Software as specified in the specific software license agreement

- Either as **Customer License**,

i.e. as license for Customer's own internal business purposes, subject to the terms and conditions set forth herein and in the EULA (setting also forth, in form of an exhausting list, the available types of customer licenses);

Consultants. Under a customer license, the Software may also be used for Customer's own internal business purposes by one or more consultants or other IT service providers of Customer, subject to the terms and conditions set forth in the EULA; Customer remains liable for any and all breaches of this Agreement by its Consultants;

- Or as **Audit License**,

i.e. as license for Customer's sole business purpose of auditing (i.e. testing and analysing) software applications owned and/or used by a client of the Customer, in particular to detect and find defects and insecure coding practices in the client's software applications;

audit licenses are only available as evaluation license for the purpose of testing and evaluation of the Software (limited to a pure trial use; a productive use, in particular a use of findings and other results of the trial use is not permitted) and as productive license; audit licenses are subject to the terms and conditions set forth herein; the EULA does not apply to auditor licenses;

One named Client. By granting an audit license, Virtual Forge does not grant any right to the client of the Customer to use the Software, but rather to the auditor of the client to use the Software to audit the client's software applications and to use the findings and all other results in favor of the client;

under an audit license, the Software may only be used by the Customer in connection with the software applications of one client of the Customer; this client has to be named by the Customer in advance of the delivery of the Software;

without the right of granting sublicenses.

5.3 Limited License. The right to use the Software is limited as specified in the specific software license agreement and by the terms and conditions set forth herein and, except regarding audit licenses as set forth in sec. 5.2, in the EULA.

In addition, the right to use the Software is limited

- regarding the non-ABAP part of the Software, to the object code version of the Software, and, regarding the ABAP part of the Software, to the plain text format; and
may be limited

- in connection with certain characteristics of SAP systems and/or SAP software used by Licensee (e.g. SAP SystemID (SID) and Package Namespaces);
- to the amount of source lines of code (SLOC) which may be tested and analysed by the Software;
- to the amount of reported defects and/or insecure coding; and
- in time.

5.4 Personal License. If the Customer is affiliated with other enterprises or is to become a joint venture/partnership etc., each affiliate, partner, etc. shall acquire its own licence if it wishes to use the Software.

5.5 The Customer may make a reasonable number of copies of the Software solely for back up purposes. Such copies shall contain all copyright and proprietary notices and legends contained on the original copy. The Customer shall take steps to prevent unauthorised copying. Copyright notices may not be deleted, amended or covered.

5.6 The subject matter of agreements, documents, proposals, test programs etc. of Virtual Forge made available to the Customer either before or after execution of the Agreement constitute the intellectual property and trade or business secrets of Virtual Forge.

5.7 Customer is neither entitled to modify nor to decompile, disassemble or otherwise reverse engineer the Software. Notwithstanding the foregoing, sec. 69d and sec. 69e of the German Copyright Act apply; however before engaging any third parties pursuant to sec. 69e (2) no. 2 of the German Copyright Act, Customer shall procure for Virtual Forge a written declaration from such third parties, pursuant to which they make a direct commitment to Virtual Forge to keep all information obtained in the course of decompilation strictly confidential, and Customer may not engage software developers and other third parties which are in the reasonable opinion of Virtual Forge direct competitors of Virtual Forge.

6. Delivery of Software

6.1 The Software will be delivered by providing the Customer with a link to enable the Customer to download it from a network ("Electronic Delivery"). The Customer bears the costs of downloading the Software.

6.2 The duty to deliver the Software does not include any further duties (e.g. installation or (employee) training, maintenance services).

6.3 The Customer acknowledges that Virtual Forge has no obligation to provide any updates, upgrades or new releases of, or any enhancements to the Software, unless otherwise agreed in writing.

7. License Fees

Customer will pay to Virtual Forge the agreed upon License Fees.

8. Inspection of defects

The Customer shall inspect all Software delivered by Virtual Forge and give notice of all defects according to sec. 377 of the German Commercial Code. The notice shall be in writing to be effective.

9. Warranties and defects

9.1 If, according to the product description of the Software, a specific of the Software is to detect and find defects and insecure coding practices in other software applications, it is no defect of the Software, if the Software does not detect and find all insecure coding practices in the software applications tested and analysed. Virtual Forge does not warrant that the Software will detect and find all defects and all insecure coding practices in the tested and analysed software applications.

9.2 Virtual Forge warrants that it has all the right, title and interest to grant the licenses pertaining to the Software under this Agreement, and that the rights granted to the Customer under this Agreement do not infringe any third-party rights. If any third party claims that the exercise of the rights granted infringes its rights, the Customer shall fully inform Virtual Forge without delay in writing. Virtual Forge will remedy such infringement, at Virtual Forge's opinion, either by (i) procuring to Customer the right to continue using the Software, or (ii) replacing and/or modifying the Software so that it becomes non-infringing. Virtual Forge will indemnify and hold the Customer harmless in respect of all costs and damages resulting from such infringements.

The foregoing states Customer's sole remedy with respect to claims of infringements of third party rights.

9.3 If the Software shows any defects Virtual Forge will remedy such defects, at Virtual Forge's option, either by (i) providing to Customer Software that is free of defects, or (ii) eliminating the defects. Upon detection of any defect in the Software, Customer will provide Virtual Forge with all information and materials necessary, or required by Virtual Forge, for the purpose of investigation, diagnosis and correction of such defects, in particular a listing of output and any other data, including databases and backup systems, that Virtual Forge reasonably may request in order to reproduce operating conditions similar to those present when the defect occurred. Sec. 13 applies mutatis mutandis.

9.4 If Customer sets a reasonably limited additional time period for Virtual Forge to remedy the defect and Virtual Forge fails to do so in that time, and if Virtual Forge also finally fails to remedy the defect within a second reasonably limited additional time period, the Customer has the right to reduce the License Fees appropriately.

9.5 Unless in the case of intent or gross negligence, of fraudulent concealment of a defect and of personal injury, any claims by the Customer against Virtual Forge are time barred one year after the Software was delivered to the Customer. The one

year period is suspended during the period in which Virtual Forge is checking the existence or is remedying a defect, until Virtual Forge informs Customer of the result of its check, gives notice that the remedy is complete, or refuses to remedy the defect.

10. End of license

At the end of licensed use for whatever reason (e.g. rescission, expiration of term, termination for cause, revocation of license), Customer shall return or destroy, at Virtual Forge's option, all Software and copies thereof in its possession. If requested by Virtual Forge, Customer shall certify in writing that the Software has been returned or destroyed.

C. Guidelines

11. Guidelines License and Guidelines Updates

11.1 Guidelines License. Chapter B. applies mutatis mutandis to Guidelines, except the following sections: 5.7, 7 and 9.1. The designation "Software" will be deemed to mean "Guidelines".

11.2 Guidelines Updates. So far as Virtual Forge offers Guidelines Updates and the Customer orders such updates, Virtual Forge will make accessible to the Customer any enhancements and supplements to or any other update of the Guidelines ("Guidelines Updates"), which Virtual Forge releases generally to its customers. Following the release of Guidelines Updates, Virtual Forge will notify the Customer and provide the Guidelines Updates by Electronical Delivery.

Regarding Guidelines Updates, sec. 5, except sec. 5.7, applies mutatis mutandis.

11.3 Fees. Customer will pay to Virtual Forge the agreed upon Guidelines License Fees and Guidelines Updates Fees.

11.4 Defects; Limited Warranty. If, according to the product description of the Guidelines, the Guidelines contain specifications and guidelines for secure software development, being state of the art and in accordance with best practices, it is no defect of the Guidelines, if the software developed in accordance with the Guidelines is not free from defects and insecure coding practices. Virtual Forge does not warrant that software developed in accordance with the Guidelines is free from defects and insecure coding practices.

D. Maintenance Services

So far as Virtual Forge offers Maintenance Services and the Customer orders such services, all of Customer's Virtual Forge software and its documentation shall be covered by the Maintenance Services. Customer will always have all of its installations of Virtual Forge software and its documentation fully maintained.

If the Customer and Virtual Forge do not agree on Maintenance Services as of the Electronic Delivery

of the Software, and if the Customer orders the Maintenance Services later on, the Customer may obtain the Maintenance Services only upon payment of the maintenance fees that it would have had to pay if the Customer and Virtual Forge had agreed on Maintenance Services as of the Electronic Delivery of the Software; in case of termination of the Maintenance Services, this term applies mutatis mutandis.

12. Maintenance Services

Maintenance Services include Updates, Technical Support and Information.

12.1 Updates. Virtual Forge will make accessible to the Customer any updates of the Software, which Virtual Forge releases generally to its customers. Updates will be indicated by the addition of one to the second digit of the release number (e.g. X.2 would be the update of X.1) ("Update"). Updates may include corrections of defects and/or fixes of any minor software bugs (also known as patches) as well as minor new content (e.g. new or improved security test patterns).

Following the release of an Update, Virtual Forge will notify the Customer and provide the Update by Electronical Delivery.

Virtual Forge's obligations with respect to Maintenance Services are expressly conditioned upon the installation and use by Customer of either: (i) the most current version of the Software; or (ii) the immediately preceding release, for a period of twelve months after the most current Update is made available to Customer or the most current Upgrade is generally available to customers.

12.2 Excluded Services (part 1): Upgrades and Modifications for new SAP releases.

Maintenance Services do not include, inter alia, Upgrades and/or Modifications.

Upgrades will be indicated by the addition of one to the first digit of the release number (e.g. 2.X would be the upgrade to 1.X) ("Upgrades"). Upgrades usually provide new software features (e.g. new functionalities allowing performance optimization of ABAP program codes).

Virtual Forge may, but is not obligated to, develop and/or provide modifications to the Software for new SAP releases and make these available to the Customer ("Modifications"). Modifications shall only be provided for SAP retrospective releases supported by SAP in that year.

The Customer requesting modifications will notify Virtual Forge at least 12 weeks before using a new SAP release, indicating the version number of the new SAP release.

12.3 Technical Support. Virtual Forge shall provide technical support to Customer by providing

(i) **First level support** (if agreed upon in the Agreement), i.e.

- answers to technical questions and solutions for technical problems which are known and can be answered by the use of the FAQ list;
- information on the latest features;
- operational advice and assistance (e.g. assistance in troubleshooting problems and solving configuration parameters);
- access to certain software-related electronic and Web-based tools and services, as applicable; and

(ii) **Second and Third Level Support**, i.e.

- answers to technical questions and solutions for technical problems which are not yet known and/or can not be answered by the use of the FAQ list;
- solutions for technical problems which are known and require a Customer specific solution;
- all other questions and problems forwarded by the First Level Support in connection with the Software, Updates and/or Modifications as well as Upgrades;

((i) and (ii) collectively herein referred to as "Technical Support").

Virtual Forge will use its reasonable efforts to correct any reproducible errors in the Software notified to it by the Customer in reasonable detail, which prevents the Software from functioning in accordance with its specifications as set out or referred to in the product description of the Software. Virtual Forge cannot guarantee that corrections will be provided within any specific time scale but where Virtual Forge estimates that any correction will take more than 14 days it will, where reasonably practicable, provide a workaround or patch.

Technical Support is rendered on workdays from 9 a.m. to 5 p.m. (CET/MEZ) only. Technical Support may take the form of support via email, telephone or an online web-based support desk where questions can be posted for response. Where a question cannot be resolved immediately, such requests for support shall be logged by the Customer with Virtual Forge via the trouble ticket system of the Service Site provided by Virtual Forge or by email, phone or fax so that a support ticket can be created by Virtual Forge.

12.4 Information. Virtual Forge may, but is not obligated to, provide the Customer with information regarding scheduled releases, updates and upgrades as well as program enhancements regarding the Software in the form of a product newsletter and/or a 'Required Action' update ("Information") from time to time. The Customer undertakes to effect all actions required by any 'Required Action' updates as regards Software changes or updates.

12.5 Excluded Services (part 2). Maintenance Services do not include, inter alia, the following services:

- Charged-for-enhancements that are offered, at Virtual Forge's sole discretion, to customers upon payment of an additional fee;
- installation services;
- custom programming services;

- consulting for mitigation projects (fixing of issues identified by Software, design reviews, penetration testing, etc.);
- on-site support;
- training; and
- hardware and related supplies.

13. Disclaimer for Services

Virtual Forge will not be responsible for and will not render any Maintenance Services regarding:

- correction of any bugs or errors in the Software resulting from misuse, negligence, revision, modification or improper use or operation or modifications to the Software (or the media on which the Software is embedded) by Customer or any person/entity other than Virtual Forge;
- maintenance of software other than the Software in the version as set forth in the Agreement;
- maintenance of any hardware;
- software
 - improperly installed and/or implemented (e.g. not installed on the proper operating environment in accordance with the specifications in the product description and/or the documentation provided by Virtual Forge);
 - the replacement of which by an Update remedying the respective defect, which is offered to the Customer as Maintenance Service under this Agreement, but the Update is not being used by the Customer;
 - used and/or operated in any manner other than authorised under the EULA;
 - not used and/or operated in accordance with the specifications in the product description and/or the documentation provided by Virtual Forge;
 - used in conjunction with other software not specified in the specific license and/or maintenance agreement in respect of the Software;
 - where the Customer subjects the Software (or the media on which the Software is embedded) to improper use, non-conforming environment or infrastructure;
- defects that occur by reason of
 - insufficient availability, functionality or performance of hardware or software used by Customer to process the Software ("IT Environment") or
 - lack of interoperability of the Software with components of the IT Environment except where such interoperability is part of the specifications of the Software; or
- where Customer is in breach of the Agreement.

14. Maintenance Fees

14.1 Customer will pay to Virtual Forge the agreed upon Maintenance Fees.

14.2 If the agreements setting out the Maintenance Fees do not cover all of Customer's Virtual Forge software and its documentation licensed to Customer, the Customer has to pay additional maintenance fees for the Customer's Virtual Forge software and its documentation not covered by the said Maintenance Fees; for such additional fees, the price list of

Virtual Forge applies and sec. 14.1 applies mutatis mutandis.

15. Rights in and to Updates

Regarding Updates, sec. 5 applies mutatis mutandis.

16. Responsibilities of the Customer

In order for Virtual Forge to fulfil its obligations hereunder the Customer will fulfil its responsibilities as set forth in this Agreement within the agreed time limits and to the full extent agreed. Virtual Forge will not be liable for failure to provide, or any delay or error in providing, the Maintenance Services resulting from the Customer's failure or delay in complying with its responsibilities set forth in this Agreement.

16.1 Installation. Customer agrees to install all corrections of substantial defects, minor bug fixes, Updates, Modifications and other updates, including any enhancements, for the Software in accordance with Virtual Forge's instructions and in the order specified by Virtual Forge. In the event that the Customer does not do so, Virtual Forge at its option may:

- suspend (without refund of the Maintenance Fees) provision of services under this Agreement until the Customer has done so; or
- subject to prior notice charge Customer an additional fee to carry out such work for Customer.

Prior to the installation, Customer shall ensure that its IT systems are in an adequate state to receive the installation by maintaining its IT systems in accordance with good industry practice, including without limitation, virus scanning and regular data backup.

16.2 Facility and Personnel Access. Customer agrees to grant Virtual Forge access to Customer's facilities, systems and where required by Virtual Forge, to its premises and access to, and assistance from, appropriately skilled Customer personnel concerned with the operation of the Software, to enable Virtual Forge to provide the services.

16.3 Error Documentation. Upon detection of any error in the Software for which it requires services, Customer will provide Virtual Forge with all information and materials necessary, or required by Virtual Forge, for the purpose of investigation, diagnosis and correction of any reported error, in particular a listing of output and any other data, including databases and backup systems, that Virtual Forge reasonably may request in order to reproduce operating conditions similar to those present when the error occurred.

E. Professional Services

Virtual Forge shall provide the Professional Services as defined in specific agreements in writing. Customer will pay to Virtual Forge the agreed upon Professional Fees.

F. General terms and conditions (part 2)

17. Term and Termination

17.1 Term. This Agreement shall become effective upon the Effective Date as defined in the Agreement (if any), or, alternatively, on the date of signature of the Agreement.

This Agreement shall remain in force for the initial term and the renewal terms (if any) as follows:

The beginning of the initial term shall be as set out in the specific Agreement or, alternatively, on the date of signature of the Agreement. The initial term ends on December 31 of the second calendar year following the calendar year in which the initial term begins.

Unless either party gives at least 3 months prior written notice before the end of the then current term, the Agreement shall automatically be renewed for a successive period of one calendar year, starting January 1 and ending December 31 (the "Renewal Term").

The ordinary termination of license agreements on Software and/or Guidelines licenses granted according to sec. 5 and sec. 11.1 is excluded. The revocation right of Virtual Forge (if any) and the right of extraordinary termination for cause remains unaffected.

17.2 Termination for Cause. This Agreement may be terminated by either party on 30 days written notice if the other party breaches any material obligation hereunder (which shall include failure to pay the Maintenance Fees or the Professional Fees when due) and such breach is not cured within such 30 day period, unless such breach cannot be cured, in which case this Agreement shall immediately terminate upon notice of termination.

Either party may terminate this Agreement forthwith by written notice if the other party is declared bankrupt, is put into liquidation (other than solely for solvent amalgamation or reconstruction), or has a receiver appointed or is unable to meet its financial obligations when they become due.

17.3 No partial termination. In respect of services, the Agreement may be terminated completely only; partial termination by Customer is not permitted.

18. Fees; Retention of rights

18.1 All fees agreed upon, including License Fees, Guidelines Fees and Guidelines Updates Fees as well as all Maintenance Fees and Professional Fees, and all fees listed in the price lists of Virtual Forge are understood to be the fees without any applicable taxes (net fees), unless otherwise agreed in writing.

Customer undertakes to pay any applicable taxes, in particular all applicable statutory value-added taxes, unless otherwise agreed in writing.

18.2 Unless otherwise agreed in writing, all fees are due and payable in advance and within the payment period agreed upon (if any). An invoice will be submitted for each delivery and each provision of ser-

vice. Payment is due within 14 days after receipt of the invoice. Virtual Forge charges default interest at the statutory rate (5 percentage points above the basic interest rate as defined in Sec. 247 of the German Civil Code) beginning 14 days after the receipt of the invoice.

In the event that Guidelines Update Fees, Maintenance Fees and/or Professional Fees are not paid in accordance with the terms of this Agreement, Virtual Forge at its option may suspend provision of the respective services without any extension of the term and/or charge interest and collection costs on the outstanding sum until paid.

18.3 Where Virtual Forge wishes to increase the Guidelines Update Fees, the Maintenance Fees and/or the Professional Fees for a Renewal Term, it shall provide Customer with no less than 3 months advance notice before the end of the then current term informing the Customer and drawing its attention especially to the following which will apply:

(i) The Customer will have the right to terminate the Agreement to the end of the current term by giving Virtual Forge at least 30 days notice before the end of the current term. (ii) If the Customer does not terminate the Agreement, the increase will be deemed to be agreed for the Renewal Term(s) and the Guidelines Update Fees or Maintenance Fees or Professional Fees are adjusted accordingly.

18.4 The Customer is entitled to offset only claims that are uncontested or ordered by a court of law.

18.5 Virtual Forge retains all right, title and interest in and to the Software, including any Updates, Upgrades and Modifications, and the Guidelines, including Guidelines Updates, until full satisfaction of its claims under the respective Agreement.

In addition, Virtual Forge may configure the Software, including any Updates, Upgrades and Modifications, and the Guidelines, including Guidelines Updates, by means of technical safety features to effectively prevent any use exceeding the permitted use. Customer shall not be permitted to bypass or attempt to bypass this safety features.

19. Liability

19.1 Virtual Forge is liable for damages from injury to life, limb or health or for damages from such injuries from a legal representative or vicarious agent of Virtual Forge.

19.2 Virtual Forge is liable for other damages which are due to wilful or grossly negligent breach of duty of Virtual Forge or willful or grossly negligent breach of duty of a legal representative or vicarious agent of Virtual Forge, or which are caused by the lack of guaranteed product or service qualities.

19.3 If there is a violation of basic contractual duties, Virtual Forge is liable, as long as it is not a case as defined in subparagraph 19.1 or 19.2, to the damages typically foreseeable.

19.4 Any further liability for damages is excluded. Liability pursuant to the German Product Liability Act shall remain unaffected.

19.5 The Customer is responsible for ensuring the routine backup of its data. If there is a loss of data caused through the fault of Virtual Forge, Virtual Forge is, provided that a case as defined in subparagraph 19.1, 19.2, 19.3 or 19.4 is given, consequently liable only for the cost of replicating the data from the backup copies which are to be created by the Customer, and for restoring the data which also would have been lost in a properly conducted data backup procedure.

19.6 Virtual Forge is not liable for consequential damages, as long as it is not a case as defined in subparagraph 19.1 or 19.2.

19.7 If, according to the product description of the Software, a specific of the Software is to detect and find defects and insecure coding practices in other software applications, Virtual Forge is not liable for damages that occur due to defects and/or insecure coding practices in the tested and analysed software applications which were not detected or found by the Software.

19.8 For all claims against Virtual Forge in contract, tort, or otherwise for loss or wasted anticipatory expenditure the time bar comes into effect after a period of one year. This does not apply to liability for intent or gross negligence, liability for personal injury, or liability under the German Product Liability Act. Sec. 199 (1) of the German Civil Code applies. The foregoing provisions in this section notwithstanding, the time bar comes into effect not later than five years after the claim arises. The provisions in this section do not affect the other time bar for claims arising out of defects as regulated under sec. 9.

20. Confidentiality and Reference

20.1 The Customer acknowledges and agrees that the Software and the Guidelines (including any Guidelines Updates) contains valuable and Confidential Information (as defined below). The Customer shall not during the term of nor after the end of the Agreement, directly or indirectly: (i) divulge, disclose or communicate to any person, entity, firm, corporation or any other third party, any Confidential Information, without prior written consent of Virtual Forge; or (ii) utilize Confidential Information for any purpose other than as permitted by this Agreement. The Customer shall disclose the Confidential Information solely to the Customer's employees (i) on a need-to-know-basis only, and (ii) only to such employees who have agreed in writing to comply with the foregoing obligations.

20.2 "Confidential Information" shall mean without limitation: (i) (a) any knowledge or information comprising or relating to any technical or non-technical data, algorithms, formulae, patterns, compilations devices, methods, trade secrets, know-how, techniques, drawings, designs, processes, procedures, improvements, models, manuals, financial data, business plans and the terms of this Agreement; (b) documents, manuals and data, whether written, machine reproducible, visual or oral, relating to the Software; (c) design, structure, logic and algorithms

of the Software, its interactions and the programming techniques employed therewith; or (d) information related to the business of Virtual Forge and (ii) information which has economic value and is not generally publicly known.

The ABAP part of the Software and all other parts of the Software, including any Updates, Upgrades and Modifications, being in plain text format, and the structure, organisation and source code of the Software, in whole and in part, in whatever form, as well as the Guidelines, including any Guidelines Updates, in whole and in part, in whatever form, are *per definitionem* "confidential information" of Virtual Forge.

20.3 The term "Confidential Information" shall not include information which: (i) is previously rightly known to the Customer without restriction on disclosure; (ii) is or becomes publicly known without any violation by the Customer hereunder; (iii) is disclosed without restrictions to the Customer by a third party authorized to make such disclosure; or (iv) is required to be disclosed by operation of law, court order or other governmental demand. Where disclosure is required by court order or other governmental demand (a) the Customer shall immediately notify Virtual Forge of such court order or other governmental demand; and (b) the Customer shall not produce or disclose Confidential Information unless Virtual Forge has: (a) requested protection from the legal or governmental authority requiring disclosure and such request has been denied, (β) consented in writing to the disclosure of the Confidential Information or (γ) taken no action to protect its interest in the Confidential Information within 15 days after receipt of notice according to (a).

20.4 In connection with the performance of Virtual Forge's obligations under the Agreement, Virtual Forge may request and collect data from the Customer regarding any circumstances which may be relevant for the providing of products and rendering of services, such as particulars regarding configurations and hardware used by the Customer to operate the Software. Customer agrees to provide such data to Virtual Forge without delay upon Virtual Forge's request.

In addition, Virtual Forge may collect and use any data regarding any defects and all insecure coding practices found in Customer's software applications in anonymised form.

20.5 In connection with the performance of Virtual Forge's obligations under the Agreement, Virtual Forge may process or have access to the Customer's third party data. The Customer is solely responsible for securing any third party consent which may be necessary in this context. The Customer agrees to hold Virtual Forge fully harmless for any cost and expenses arising in connection with claims from third parties alleging a breach by Virtual Forge or the Customer of sec. 5 of the German Data Protection Act.

20.6 Virtual Forge is authorized to include the Customer in Virtual Forge's list of reference customers. The Customer shall be entitled to object to such authorization at any time.

21. Final provisions

21.1 If the Customer is a business person in the meaning of the German Commercial Code, sec. 1 or a public-law body corporate or special fund, the sole place of jurisdiction for all differences arising out of or in connection with this Agreement is Heidelberg, Germany.

21.2 German law applies exclusively, with the exclusion of its conflicts of law principles. The UN convention on sales of goods is excluded.

21.3 Any provision of this Agreement that is held to be invalid, illegal, unenforceable, or void will in no way affect the validity of the remainder of this Agreement.

21.4 Virtual Forge reserves the right to use third parties for the rendering of any portion of services, and Customer hereby consents to such use.

21.5 Virtual Forge will be excused from failure to perform its obligations if such failure results from causes beyond its reasonable control (Force Majeure), including, without limitation, Acts of God, civil unrest, riots, war, boycott or economic sanctions.