Terms and Conditions

Part 1: General provisions

1. Scope of application

1.1 These Terms and Conditions (hereinafter "T&Cs") apply to all our (MobiMedia AG, Dr.-Bachl-Str. 2, 84347 Pfarrkirchen) business relationships with our customers (hereinafter "Customer").

1.2 These T&Cs apply only if the Customer is a trader (Sec. 14 BGB (German Civil Code)), a legal person under public law, or a public-law special fund.

1.3 We offer standard software for sale (Part 2 of these T&Cs), customisation of standard software (Part 3 of these T&Cs), software maintenance (Part 4 of these T&Cs), and cloud services (Part 5 of these T&Cs). Contracts concerning these products and services are independent of one another and may be concluded by the Customer individually or jointly, whereby this shall not affect the independence of such. Part 1 (General provisions) and Part 6 (Final provisions) of these T&Cs apply to all contracts. Parts 2 to 5 of these T&Cs apply only to the contracts named therein respectively.

1.4 Our T&Cs apply exclusively. Terms and conditions of the Customer which deviate from, run contrary to or supplement these T&Cs shall constitute an integral contract component only if and insofar as we have explicitly consented to the validity of such. This requirement for consent applies in all cases, e.g. including in the event that we render our service to the buyer without reservation, in the knowledge of the latter's T&Cs.

2. Conclusion of contract

2.1 Our proposals are subject to change unless they are explicitly indicated as binding or contain explicitly binding commitments or were otherwise agreed to constitute an obligation. They constitute invitations to place orders. The Customer is bound to his order as an offer to enter into a contract for 14 calendar days – or 5 calendar days in the case of an electronic order – after submitting his order, unless the Customer must regularly anticipate that the order will be accepted by us at a later time (Sec. 147 BGB). This also does not apply to repeat orders of the Customer.

2.2 A contract shall be established – including in the course of regular business – only once the Customer's order has been confirmed in writing or in text form by means of an order confirmation given within the acceptance period pursuant to Sec. 2.1. Where delivery or performance is made within the acceptance period, our order confirmation may be replaced by our delivery or performance, whereby the sending of the delivery or rendering of the performance shall be authoritative.

3. Liability

3.1 Unless otherwise governed in these T&Cs or in an individual contract with the Customer, we are not liable for claims of the Customer, in particular claims to damages or compensation for expenses – on whatever legal grounds – notwithstanding the exemptions below.

3.2 The exclusion of liability governed under Sec. 3.1 does not apply: (i) to our own wilful or grossly negligent breaches of duty and to wilful or grossly negligent breaches of duty on the part of our legal representatives or agents; (ii) to breaches of material contractual obligations, i.e. such obligations, the fulfilment of which is required for the proper execution of the contract and the adherence to which the Customer may regularly rely on; (ii) in the event of physical injury, harm to health or loss of life, including such caused by legal representatives or agents; (iv) in the event that we have assumed a guarantee; and (v) in the case of compelling statutory provisions for liability.

3.3 The exclusion of liability governed under Sec. 3.1 and Sec. 3.2 also applies to breaches of duty committed prior to conclusion of contract. Our liability for such pre-contractual breaches of duty is excluded or limited to the same extent as our liability would be excluded or limited if the breach of duty had been committed after conclusion of contract. The Customer therefore waives any claims to compensation that he may be due now or in future to this extent and we accept this waiver.

3.4 Should we or our legal representatives or agents be culpable of only slight negligence, we shall be liable only for foreseeable damages typical of the contract and not for indirect damages, lost profits, or loss of production and use, except in the cases covered under Sec. 3.2 (iii), (iv) and (v).

3.5 Liability is limited to the amount of the remuneration due according to the contract, except in the cases covered under Sec. 3.2 (i), (iii), (iv) and (v) and in cases where the law imposes a higher total liability. Further liability is excluded.

3.6 Except in the case covered under Sec. 3.2, the ordinary limitation period for claims of the Customer pursuant to Sec. 195 BGB is shortened to one year.

3.7 The exclusions or limitations of liability under Sec. 3.1 to Sec. 3.6 above apply to the same extent in favour of our organs, employees and other agents.

3.8 The regulations under this Sec. 3 do not entail any reversal of the burden of proof.

3.9 The Customer may withdraw from or terminate a contract on the grounds of a breach of duty which consists in a defect only if we are responsible for this breach of duty. A free right of the Customer to termination (in particular pursuant to Sec. 650, Sec. 648 BGB) is excluded.

3.10 We are not liable for loss of data or programs insofar as this damage results from a failure on the part of the Customer to conduct regular data back-ups, thus ensuring that lost data or programs can be restored with reasonable effort.

4. Sub-contractors

We are entitled to use sub-contractors (e.g. cloud providers, server centres) to render all services for the Customer. The use of sub-contractors shall not release us of our obligation to perform the contract in full for the Customer.

Part 2: Special provisions concerning the purchase of standard software

5. Subject of contract

5.1 The subject of the contract with the Customer is the provision of the software described in more detail in the respective proposal or contract for an indefinite period, including accompanying documentation.

5.2 Unless otherwise governed in the respective proposal or contract, the provisions of this Part 2 apply to the purchase of standard software.

6. Delivery of software

6.1 The Customer shall receive the following items:

- the software, including basic user documentation, as a download, unless it is agreed that the Customer shall receive the software on a data carrier;
- a digital licence certificate with a licence key; and
- installation guidance, unless the Customer is to install the software himself;
- a basic interface set-up service;
- access to the basic system.

6.2 In the case of a download, the risk of accidental loss, damage or modification of the software transfers to the Customer upon transfer of the software from our network to the public communication network.

6.3 The software shall be installed by the Customer, unless it has been agreed in the proposal or contract with the Customer that we shall perform installation. If it has been agreed that we shall perform installation, the prices for such indicated in the proposal or contract with the Customer shall apply, or failing this our price list as applicable upon conclusion of contract.

6.4 We shall be liable to provide an introductory session, training or consultation on use of the software only where this is agreed in the proposal or the contract with the Customer. Where such has been agreed, the prices for such indicated in the proposal or contract with the Customer shall apply, or failing this our price list as applicable upon conclusion of contract.

7. Remuneration

7.1 The purchase price for the software arises from the respective proposal or contract with the Customer and additionally from our price list as applicable upon conclusion of contract with the Customer.

7.2 The purchase price is due within 14 calendar days of receipt of invoice and delivery of the software. It is required that we receive payment within this period. However, we are at all times entitled to make either whole or partial delivery against advance payment only, including in the course of an on-going business relationship. We shall declare such a reservation in our proposal.

7.3 Upon the ending of the payment term stipulated under Sec. 7.2 or an alternative payment term agreed with the Customer, the Customer shall enter into default without the requirement for a written reminder. The price shall be subject to interest for the period of default at the statutory default interest rate applicable at any time. We reserve the right to enforce greater damages for default. Our right to enforce commercial default interest (Sec. 353 HGB (German Commercial Code)) against merchants is unaffected.

7.4 If it becomes clear after conclusion of contract (e.g. due to an application to initiate insolvency proceedings) that our claim to the purchase price is endangered due to a lack of solvency on the part of the Customer, then we shall be entitled to refuse performance and – after setting a grace period as applicable – to withdraw from the contract according to the statutory provisions (Sec. 321 BGB).

8. Condition of software

8.1 The functionality and technical conditions of use concerning the software shall conform first and foremost to the description in the user documentation, and additionally to the following provisions. The functionality of the software requires that it be run in a suitable technical environment; in particular, the software may only be used in connection with the ERP of the Customer which is indicated to us upon conclusion of contract.

8.2 Technical data, specifications and performance data provided in public statements outside of the user documentation, in particular in advertising media, do not constitute descriptions of the condition of the software.

8.3 Unless the agreement on condition under Sec. 8.1 indicates, limits or excludes a functionality, the software is suitable for ordinary use typical of software of the same type and such use which the Customer may expect according to the nature of the software.

8.4 Use of the software requires that a temporary connection be established between the software and the internet. The software will transfer data to us in order to verify the right of use. The software will provide a corresponding warning if this right of use does not exist. It is not possible to use the software in this case.

9. Rights of use

9.1 The Customer is authorised to use the software in perpetuity in accordance with the following provisions, to be used by the number of software users (Users) set out in the proposal or contract. This authorisation may be transferred to other persons as Users, provided the agreed total number of Users is not exceeded.

9.2 Permitted use includes installation on data carriers and multiple transfers of the software, in parts or as a whole, from data carriers to the working memory and subsequently to the CPU and graphics card of the computer.

9.3 The licence key simplifies the process of verifying the Customer's authorisation. His simple possession or use of the software does not grant him any right of use. Such a right arises only from an agreement with us or a statutory regulation.

9.4 The authorisations granted apply to commercial use only. Private use is not permitted.

9.5 These rights are granted on the condition precedent that payment of the purchase price is made in full and on time pursuant to Sec. 7. We shall tolerate use of the software in the manner described above until payment is made in full. This toleration may be withdrawn if the Customer defaults on payment of the purchase price. We are entitled to block the Customer's use of the software, in part or in whole, if he fails to pay the purchase price in good time.

9.6 These rights are furthermore granted as a condition subsequent to installation of an executable version of the software within the context of supplementary performance, with the result that the Customer loses his rights of use to the original software granted according to the software purchase agreement. A regulation shall be agreed in a software maintenance contract (Part 4 of these T&Cs) concerning use of the software provided following provision of newer versions on the grounds of the software maintenance contract.

9.7 The Customer is not authorised to use the software as server software to be used by multiple Users, insofar as this causes the agreed total number of users to be exceeded and/or this makes the software available publicly.

9.8 The Customer is not authorised to remove or circumvent the protective mechanisms contained within the software to prevent unauthorised use, unless the Customer is authorised to do so on the grounds of a right for him to remedy defects.

9.9 The Customer may create a back-up copy according to Sec. 69(2) UrhG (German Copyright Act). This copy shall be indicated as such and protected against access by third parties. If the Customer has received the software on a data carrier as part of fulfilment of the software purchase agreement, the back-up copy shall replace the data carrier if such is no longer usable. If the Customer has received the software as a download, in fulfilment of the software purchase agreement, the back-up copy shall replace an original data carrier if the Customer legitimately passes on the back-up copy and has permanently erased all software components downloaded.

9.10 The copyright regulations contained under this Sec. 9 are also binding on the Parties under the law of obligations.

10. Reservation of title

10.1 We reserve the title to all physical items (data carriers etc.) provided to the Customer until receipt of all payments from the software purchase agreement.

10.2 If the Customer defaults on payment of the purchase price, we shall be entitled to take back the items purchased for as long as the default persists and provided the non-performance, on which the default is based, is not unreasonably insignificant. Where we take back items from the Customer, this shall not constitute any declaration of withdrawal from the contract.

11. Infringements of intellectual property rights

11.1 We shall indemnify the Customer at our own expense of all third-party claims arising from infringements of intellectual property rights which we are responsible for. The Customer shall notify us of the claims brought by third parties immediately.

11.2 Notwithstanding any claims to damages for the Customer, we may react to infringements of intellectual property rights concerning the service in question as follows, at our discretion and at our own expense:

- by making modifications to the software, subject to prior consultation with the Customer, in particular by replacing the software with a newer version, such that intellectual property rights are longer being infringed by the Customer's safeguarding of his interests; or
- by acquiring the necessary rights of use for the Customer.

12. Supplementary performance

12.1 We shall render supplementary performance pursuant to the statutory regulations, unless otherwise agreed below.

12.2 We shall choose how to render the supplementary performance. We may also render the supplementary performance as remote services pursuant to Sec. 13.

12.3 Claims to supplementary performance lapse after twelve months.

12.4 If we choose to remedy a defect by providing a software version that is free of defects, we may also provide a newer software version which at least satisfies the required condition in full and which does not impair the Customer's use of the software with respect to the condition due according to the contract. The Customer shall acquire rights of use to this new version according to Sec. 9, subject to the condition precedent that it is installed for operational use. He shall lose these rights of use as a condition subsequent to installation of a further new software version according to clause 1. If the software is only partially modified in the course of supplementary performance, the rights originally applicable to the entire software shall also apply to the modified parts.

12.5 The Customer shall assist us with the identification and remedying of defects and shall grant us immediate access to such documents which allow us to understand in more detail the circumstances, in which the defect occurred.

12.6 We must be given immediate written notice if a defect is evident upon delivery, inspection or at any later time. In any case, obvious defects must be notified in writing within 3 working days of delivery and defects not identified during the inspection within the same period of time starting from time of their discovery. If the customer fails to perform the proper inspection and/or to give proper notice of defects, our liability for defects which are not notified or which are not notified properly or in good time is excluded according to the statutory regulations.

12.7 The Customer shall assess with due diligence whether there exists a defect that is subject to supplementary performance before enforcing claims to supplementary performance. Insofar as a defect that is claimed does not fall under the obligation to render supplementary performance (minor defect), we may charge the Customer for services rendered in order to verify and resolve the error according to our rates as applicable at any time, plus necessary expenditure, unless the Customer could not have identified the minor defect even if he had applied due diligence.

12.8 The Customer shall immediately uninstall any replacement software installed in the course of the supplementary performance and return any data carriers containing such to us.

12.9 In the event of a withdrawal from the purchase contract, the Customer shall return all items received from us for fulfilment of this contract. Moreover, the software shall be immediately uninstalled with permanent effect. This duty to uninstall applies to all software provided on the grounds of the contract with the Customer (including software that was provided in the context of a supplementary performance, e.g. as updates or a new version).

12.10 The Customer shall give written confirmation that he has fulfilled his duty to uninstall the software.

12.11 Place of performance for the supplementary performance is our registered office.

13. Remote service

13.1 If the Customer agrees and provided he establishes the necessary technical conditions for such, we may resolve defects by providing updates.

13.2 The Parties shall agree on a point of delivery, up to which the Customer shall guarantee internal communication for the updates. Neither Party is responsible for the successful transfer of data outside of this point of delivery.

13.3 Should it not be possible to remedy a defect by means of an update because the Customer has not established a connection, despite agreeing to do so, and if this resulted in a call-out, the Customer shall bear the additional expenditure required for this.

Part 3: Special provisions concerning modification of standard software (customising)

14. Subject of contract

14.1 The subject of the contract with the Customer is the modification of the software acquired by the Customer to suit the needs of the same as identified in cooperation with him.

14.2 Unless otherwise governed in the respective proposal or contract, the provisions of this Part 3 apply to customising.

15. Services

15.1 We shall render the following services within the context of customising:

- Determine the intended use of the software in the course of a workshop (Service part 1);
- Identify the need for customisation of the software and/or of the operational processes in order to achieve the intended use, and compiling a product backlog (Service part 2);
- Customise the software (Service part 3);
- Implement the software in the IT environment of the customer, plus configuration (Service part 4);

- Software parametrisation (Service part 5);
- Software testing (Service part 6);
- Introduce and train selected users in the software (Service part 7).

15.2 In individual cases, we may also agree with the Customer that the aforementioned service parts be rendered in parallel and that our performance shall be defined in so-called sprints. In such case, these sprints shall apply in all points in these T&Cs where service parts are mentioned, unless otherwise agreed in each case.

15.3 Each service part or sprint constitutes a partial performance.

15.4 We shall advise the Customer within the context of the services to be rendered of how the intended aim may be achieved, taking into account the agreed budget. Adapting the software to existing and, where applicable, modified business processes shall be prioritised in this regard. Should it instead be possible to also achieve the intended use of the software by modifying these business processes, instead of customising the software, then it shall be incumbent on the Customer to modify these processes within his business as far as reasonable. If he fails to make such modifications, then non-fulfilment of the services described under Sec. 15.1 shall not constitute a breach of our obligations in this respect.

15.5 All our services shall be documented such that the Customer is able to identify the nature and scope of these services and their effects on the use of the software. Unless otherwise agreed in the proposal or contract with the Customer, the service parts or sprints shall be documented as follows:

- Service parts 1 to 4 and 6: The Customer shall receive access to our customer system where the product backlog is documented;
- Service part 5: In the case of complex modifications, the Customer shall be provided with password-protected documentation websites, in addition to the product backlog;
- Service part 7: The Customer shall be provided with a user manual;
- Sprints: Where our services are rendered as sprints, the documentation obligations agreed individually for the sprints in each case shall apply.

15.6 The schedule agreed in the proposal or contract with the Customer shall apply to the services to be rendered.

16. Acceptance

16.1 The services indicated under Sec. 15 shall be rendered and accepted in parts. We shall notify the Customer upon completion of the services described for the individual part or sprint, whereupon the Customer shall assess whether the service was essentially rendered as contractually agreed. The services we have rendered in each respective service part or sprint shall be recorded in the DoD (Definitions of Done) and the DoD provided to the Customer for review.

16.2 If the services have essentially been rendered as contractually agreed, the Customer shall accept the partial services within one week of receipt of our DoD according to Sec. 16.1. If the Customer does not consider that the services have essentially been rendered as contractually agreed, he shall notify us of his complaints within one week. In the absence of an acceptance or complaint, indicating in the least the defect, made within one week, the service shall be considered accepted.

16.3 If the Customer complains of the services in good time, we shall provide an opinion on the matter without delay.

16.4 Full acceptance shall be made after performance of service part 7 or the last agreed sprint, whereby this may not be refused on the grounds of defects which could have been identified during the partial acceptances.

17. Cooperation

17.1 The Parties shall cooperate in good faith. If one Party discovers that information and requirements, whether their own or those of the other Party, are inaccurate, incomplete, unclear or unenforceable, he shall notify the other Party of this immediately, stating the consequences he has identified. The Parties shall then seek to find a solution that serves their interests and shall strive to achieve such solution, according to the provisions on changes to services as applicable.

17.2 The Customer shall assist us in our fulfilment of the contractually agreed services. This includes, in particular, timely provision of information, qualified employees, communication media and ports, hardware and software, and granting of access to premises as far as necessary. The Customer shall provide us with an initial briefing regarding circumstances which we must observe when working in his premises and on his technical equipment. The Customer shall undertake this cooperation at his own expense.

17.3 The Customer shall furthermore take appropriate precautions to maintain his business operations for the event that the services which we are to render are temporarily unavailable.

17.4 The Customer undertakes to render the cooperation agreed in the proposal or the contract with him as an independent duty.

18. Project management

18.1 Management of and responsibility for the project lies with us.

18.2 The Parties shall designate for one another contact partners and their deputies who shall manage the fulfilment of the contractual obligations for the designating Party responsibly and expertly.

18.3 Our contact partner is the project manager who is consequently responsible for all questions arising during the project and for requesting and taking receipt of all information and other cooperation due from the Customer. The project manager shall provide the Customer with all information relating to the project at all times and without delay and shall make decisions. The project manager shall regularly review whether the project is on schedule, and shall review the content of the project assignment and the quality of the work performed.

18.4 The Parties shall notify one another immediately of any changes to the designated persons. Until receipt of such notice, the contact partners and/or their deputies as indicated above shall be authorised to issue and take receipt of declarations within the limits of their power of representation up until this time.

18.5 The contact partners shall communicate on the progress of and obstacles to execution of the contract at regular intervals in order that they can intervene in and guide execution of the contract as applicable.

18.6 Agreed changes to the services shall be documented by the project manager and confirmed by the Customer. This documentation shall be made in writing.

19. Deadlines

19.1 Deadlines for performance may only be committed to on our part by the contact partner or the management.

19.2 Deadlines shall be set in text form. Deviation from this obligation is permitted only if the text form is guaranteed.

19.3 We shall notify the Customer of delays in performance. We shall not be liable for delays in performance due to force majeure (e.g. pandemics, epidemics, civil unrest, war, mobilisation, strike, lockout, government orders, general disruptions in telecommunications or utilities) or due to circumstances which fall under the responsibility of the Customer (e.g. non-timely rendering of cooperation, delays on the part of third parties attributable to the Customer), and such delays shall entitle us to postpone rendering of the services affected for the duration of the impediment, plus a reasonable lead time.

20. Changes to services

20.1 If the Customer wishes to change the contractually defined scope of the services which we are to render, he must express this to us in text form. The procedure describes in the following provisions shall then apply. For requested changes which can be reviewed quickly and foreseeably implemented within 8 working hours, we may deviate from the procedure according to Sec. 20.2 to Sec. 20.5 and render the service directly. The Customer is entitled to withdraw his change request at any time, whereupon the change procedure initiated shall end.

20.2 We shall review what effects the desired change will have, in particular with regards to remuneration, additional expenditure and deadlines. If we identify that the services currently to be performed should not be performed or should only be performed with a delay on account of this review, we shall notify the Customer and instruct him that the change request can henceforth only be assessed if the affected services are postponed by an initially indefinite period. If the Customer agrees to this postponement, we shall conduct a review of the change request.

20.3 Following our review of the change request, we shall present to the Customer the effects this change will have on the agreements made. This presentation shall contain either a detailed suggestion of how to implement the change request or details of why the request cannot be implemented.

20.4 The Parties shall coordinate on the content of a suggestion for implementation of the change request immediately and shall enclose the outcome of a successful coordination with the text of the agreement which the change relates to as an addendum.

20.5 If no agreement can be reached or the change process ends for another reason, the scope of performance shall remain as it was. The same applies for the event that the Customer does not agree to postpone the services in order to continue with the review according to Sec. 20.2. Under no circumstances are we obliged to render services not originally agreed in the contract.

20.6 The deadlines affected by the change process shall be postponed as far as necessary, taking into account the duration of the review, the duration of the coordination process concerning the proposed change, and, where applicable, the duration of the requested changes to be carried out, plus a reasonable lead time. We shall notify the Customer of these new deadlines.

20.7 The Customer shall bear any expenditure incurred as a result of the changes demanded. This includes, in particular, reviewing the request change, preparing a proposal for the change, any downtimes, and any increase in the scope of performance compared to what was originally agreed in the contract. This expenditure shall be charged according to our day rates, in the event that the Parties have reached an agreement on these rates, or failing this according to our standard remuneration.

20.8 We are entitled to change the services to be rendered according to the contract or to deviate from such if the change or deviation is reasonable for the Customer, taking into account our interests.

21. Handover

We shall hand over the results of the individual service parts or sprints to the Customer. This shall include, in particular, the DoD for the individual service parts or sprints and, where agreed, the user manual.

22. Remuneration

22.1 The regulation stipulated in the proposal or contract with the Customer applies regarding remuneration for the services which we are to render. Unless otherwise agreed therein, services shall be rendered at cost pursuant to the price list applicable upon conclusion of contract with the Customer. Cost estimates or budget plans which we prepare are non-binding. If services are committed to at fixed prices, increases or decreases in expenditure shall not entitle either Party to demand an adjustment.

22.2 When selecting from the options available for rendering the services according to Sec. 15, we shall select the most cost-effective option. The procedure described under Sec. 15 shall be observed at all times in this regard.

22.3 Unless otherwise agreed in the proposal or contract with the Customer, the remuneration payable for the individual service parts or sprints shall be made as instalments and is due as follows:

- 20% of the total price stated in our proposal for customising upon conclusion of contract; and
- 80%, equally divided among the individual service parts or sprints, upon rendering and acceptance of each respective service part or sprint.

22.4 The Customer shall bear all outlay such as travel and accommodation costs, expenses, and payments due to third parties in the context for performance of contract, subject to demonstration of such costs. Travel time shall be compensated.

22.5 Payments shall be made within 14 days of receipt of invoice. All contractually agreed remuneration is stated ex. statutory VAT. Upon the ending of this payment term or an alternative payment term agreed with the Customer, the Customer shall enter into default without the requirement for a written reminder. The price shall be subject to interest for the period of default at the statutory default interest rate applicable at any time. We reserve the right to enforce greater damages for default. Our right to enforce commercial default interest (Sec. 353 HGB (German Commercial Code)) against merchants is unaffected.

22.6 We are entitled to block the Customer's use of the software, in part or in whole, if he fails to pay the remuneration in good time.

23. Rights of use

23.1 We shall grant the Customer those rights of use which we have granted him according to the software licence agreement to those software customisation services rendered for him according to the contract and prepared by him or under instruction from him.

23.2 The above granting of rights does not give rise to any claim to provision of the source code, on which the licensed and customised software is based. The provision of source codes shall be governed in a separate agreement.

23.3 The rights of use shall only be provided at such time as the Customer has paid the remuneration in full. We shall tolerate use of the customisation services by the Customer until payment is made in full. We may revoke use of such customisation services, for which the Customer has defaulted, for the duration of this default.

24. Infringements of intellectual property rights

24.1 We assure that we possess the authorisation necessary for working on the software. We shall indemnify the Customer at our own expense of all legitimate third-party claims.

24.2 Notwithstanding any claims to damages for the Customer, we may react to infringements of intellectual property rights concerning the service in question as follows, at our discretion and at our own expense:

- by making modifications, subject to prior consultation with the Customer, which guarantee that intellectual property rights are longer being infringed; or
- by acquiring the necessary rights of use for the Customer.

25. Duty to report defects

25.1 The Customer shall inspect the customisation services, including documentation, immediately upon our delivery, insofar as this is feasible within the ordinary course of business, and notify us immediately if he discovers any defects.

25.2 If the Customer fails to give such notice, the customisation services, including documentation, shall be considered accepted, except in the case of such a defect which could not be identified during the inspection.

25.3 If such a defect becomes apparent at a later time, notice of such defect must be made immediately upon discovery; failing this, the customisation services, including documentation, shall be considered accepted, even in consideration of this defect.

25.4 Timely dispatch of the notification suffices to preserve the rights of the Customer.

25.5 We may not invoke the above regulations if we have fraudulently concealed the defect.

26. Interruptions in service

26.1 The Customer may withdraw from a contract on the grounds of a breach of duty which does not consist in a defect only if we are responsible for this breach of duty.

26.2 If the Customer withdraws on the grounds of a breach of duty which relates to a definable service which can be rendered independently of the other services to be rendered, taking into account the legitimate interests of the Customer, then these other services shall not be affected by this withdrawal.

26.3 If the contract regarding the provision of the software to be customised is rescinded, the contract regarding the customisation shall also end. If we are not responsible for this rescission, we may demand the agreed remuneration, including for service parts or sprints which have not yet been rendered or completed. However, we must offset any expenditure we save as a result of the premature ending of the contract or anything we acquire or wilfully omit to acquire by engaging our labour for other purposes.

27. Supplementary performance

27.1 We shall render supplementary performance pursuant to the statutory regulations, unless otherwise agreed below.

27.2 Claims to supplementary performance lapse after twelve months. The limitation period begins upon full acceptance or upon such being refused with final effect.

27.3 The supplementary performance shall be made within a reasonable period of time, regardless of the number of attempts.

27.4 The enforcement of claims to supplementary performance is contingent on defects being notified in writing within two weeks of first being discovered and on such being reproducible.

27.5 We may refuse to make supplementary performance until such time as the Customer pays the remuneration due for the customisation services in full, and insofar as the Customer does not have any legitimate interest in withholding the outstanding remuneration.

27.6 We are not liable in cases where the Customer has undertaken modifications to the services we have rendered, unless these modifications had no impact on the occurrence of the defect.

27.7 The Customer shall assist us with the identification and remedying of defects and shall grant us immediate access to such documents which allow us to understand in more detail the circumstances, in which the defect occurred.

27.8 The Customer shall assess with due diligence whether there exists a defect that is subject to supplementary performance before enforcing claims to supplementary performance. Insofar as a defect that is claimed does not fall under the obligation to render supplementary performance (minor defect), we may charge the Customer for services rendered in order to verify and resolve the error according to our rates as applicable at any time, plus necessary expenditure, unless the Customer could not have identified the minor defect even if he had applied due diligence.

<u>Part 4: Special provisions concerning software maintenance</u>

28. Definitions

The terms used in this Part 4 have the following meanings:

- Software is the computer program which we provide to the Customer for an indefinite period on the grounds of the software licence agreement in accordance with Part 2 of these T&Cs. The term software also includes software which the Customer uses which has been modified as a result of software customisations according to Part 3 of these T&Cs;
- Software customisations are services relating to the software according to Sec. 30 and Sec. 31, unless these are excluded according to Sec. 33. They may also include the provision of a newer version of the software, whereupon a new installation may be necessary;
- An error occurs when the software does not exhibit the functionality due according to the licence agreement when used properly and in the contractually stipulated system environment, provided the effect of this is not insignificant and the Customer has no permanently enforceable right from the licence agreement to remedying of this error (in particular pursuant to Sec. 12);
- A service or performance is any action which we are due to undertake according to the software maintenance contract subject to a fee, in particular the remedying of errors according to Sec. 30, the development of the software according to Sec. 31, and the rendering of hotline services pursuant to Sec. 32;
- A defect relates to a service. In accordance with the statutory provisions, a defect exists when a service rendered according to the software maintenance contract does not exhibit the agreed condition or, if such condition has not been agreed, if the service is not suitable for the use stipulated according to the software maintenance contract. Otherwise, the service is defective if it lacks a quality which is standard for services of the same type and which the Customer may expect according to the nature of the service. If we render a service other than the one that was ordered or if we fail to render a service to the correct quantity, this shall also constitute a defect;
- Supplementary performance means the remedying of defects according to the software maintenance contract free of charge. Remedying may also take the form of provision of a modified software version.

29. Subject of contract

29.1 The subject of the software maintenance contract is our maintenance of the software described in more detail in the respective proposal or contract. In addition to our obligations to remedy defects according to the licence agreement (in particular pursuant to Sec. 12), we shall render the following services unless otherwise agreed in the respective proposal or contract with the Customer:

- remedying of errors (Sec. 30);
- development of software (Sec. 31); and
- provision of a hotline (Sec. 32).

29.2 We shall render our services after training the Customer's system managers in the software. Where system manager training is not provided, our services begin upon conclusion of the software maintenance contract, and no earlier than at such time as the Customer registers his operational deployment of the software.

30. Remedying errors

30.1 The aim of remedying errors is to restore the functionality of the software as agreed in the licence agreement and updated in addenda.

30.2 We shall remedy errors in the software which are reported by the Customer within an appropriate period of time in each case, in accordance with the following provisions. An appropriate period is one, in which we can analyse and resolve the errors reported without culpable delay, taking into account our workload and the availability of suitable employees.

30.3 We shall decide on how to remedy errors and shall regularly remedy errors by providing software modifications which change and/or supplement the software, including provision of documentation of the modified and/or supplemented functions in a form of our choosing, which may include online help.

30.4 We shall remedy errors within the limits of industry-standard diligence. We do not assume any guarantee to remedy errors within a certain timeframe or at all.

30.5 The Customer shall notify errors using the ticketing system we provide, stating his estimate of the priority of the error. The Customer shall notify us immediately if the error proceeds to a higher priority. In addition to an estimate of priority, the ticket shall also contain the following information (where not requested by the system):

- Customer:
- which module the error has occurred in;
- the steps, during which the error occurred or which caused the error;
- a description of the error in the form of screenshots, logs or similar information;
- the date and time when the error was identified; and
- information on reproducibility (yes/no).

30.6 Error symptoms are classified as follows:

Priority	I.
Classification	Urgent; business is interrupted
Description	Application cannot be run Program is crashing Printing and selection and/or transfer of data cannot be initiated Data are not being saved or read, or are not being saved and read correctly and in full
Response time (R)	R = 1 hour
Priority	II.
Classification	High; business is impaired
Description	Function of application is impaired or application is malfunctioning, in particular: Messages are incomprehensible or not correct in context of function requested Functionalities are not producing expected results Response time behaviour is preventing standard use of the software

Response time (R)	R = 24 hours
Priority	III.
Classification	Low; business is not impaired
Description	It is possible to work with the software, even if not entirely within the agreed parameters User-friendliness needs improving Malfunctions can be circumvented
Response time (R)	R = 2 days

30.7 The response time begins when we receive the ticket. Time of receipt is determined as the time indicated in the ticket system. The reaction time is applicable during our working hours of 8:00 to 17:00 and is satisfied if we initiate actions to remedy the error within the response time. It is not required that the error be remedied within the response time.

30.8 We are entitled, but not obliged, to also remedy errors outside of our working hours but only if the Customer commits to cooperate to a sufficient degree and bears all additional fees incurred for these services.

30.9 We may remedy errors that occur by taking any of the following actions at our discretion, taking into account the prioritisation indicated:

- Provide software modifications on data carriers or online which the Customer shall install himself. This regularly consists in the provision of software components ("patches");
- Remedy errors via remote access to the Customer system, such that the software itself or the settings can be changed;
- Suggest how the Customer can circumvent or remedy the error;
- Remedy errors on-site in the event that the actions outlined above are not possible or are unlikely to have effect.

30.10 The remedying of Priority III errors by means of providing a software modification may be postponed until the next appropriate time, at which we will provide other expansions and/or modifications in accordance with our planning. We will notify the Customer in the event that this will foreseeably be in more than three months' time.

30.11 Our obligations are defined by the objective prioritisation of the error. Our failure to comply with the response time constitutes a breach of duty only if the Customer's prioritisation was objectively accurate.

31. Upgrades

31.1 We shall provide the Customer with upgrades, releases and new maintenance levels contained within the releases of the standard software, including accompanying documentation, as a download or stored on data carriers, after such are put on the market. This does not apply to developments which we offer separately as new programs.

31.2 With respect to upgrades according to this Sec. 31., the Customer shall take care that his computer system, including system software, complies with the technical requirements applicable to each of our programs. A new release may require the Customer to use an upgraded version of the system software. We shall inform the Customer in good time of which requirements must be ensured by when for the maintenance services. The Customer shall inform us in advance if he wishes for his part to install a new release of the necessary system software.

31.3 The Customer is not in any way entitled to a specific upgrade.

32. Hotline

32.1 We shall advise and support the Customer on application of the software and in the event of errors in the software by phone or other means of remote communication, provided it is only the Customer's system managers, whom we have trained, who make contact and communicate with us on behalf of the Customer.

32.2 Advice services can also be requested with regards to preparing tickets. This does not release the Customer of his obligation to report errors according to Sec 30.5.

32.3 Unless otherwise agreed in the respective offer or contract, the hotline shall be available to the Customer on working days (Monday – Friday, excluding statutory public holidays at our registered office) between 8:00 and 17:00. We will also respond to Customer tickets and enquiries received via e-mail during these hours. In individual cases, the Parties may also agree on the rendering of error remedying services outside of these hours, subject to separate remuneration.

32.4 The customer support provided according to Sec. 32.1 does not relate to operation of the computer systems, on which the software is being used, or to remedying errors in the Customer's databases. If we nevertheless do provide customer support in this regard, this shall be remunerated at cost.

32.5 Advice services can also be requested with regards to preparing tickets. This does not release the Customer of his obligation to report errors in writing according to Sec 30.5.

33. Services not due

33.1 Notwithstanding individual agreements to the contrary, the software maintenance contract does not give rise to any right to the following services:

- Adaptation of the software to versions which are used by other users or which we market;
- Adaptation of the software to a modified software environment, including adaptation to modified operating systems;
- Adaptation of the software to statutory and or other sovereign requirements;
- Remedying of errors, for which the Customer bears the risk, in particular errors resulting from software components becoming infected with computer viruses, use of unsuitable data carriers, anomalous operating conditions that are not compliant with what was contractually agreed, defective hardware, loss of power or failure of data cables, errors arising from a lack of IT security, unsuitable environmental conditions at the site where the software is being run, or force majeure;
- Remedying of errors arising from modifications made to the software or parts thereof (in particular reports, codes, validations) by the Customer or by third parties on the instruction of the Customer;
- Installation of software and software customisations delivered pursuant to Part 2 and Part 3 of these T&Cs;
- Advice and support beyond the remedying of errors as due;
- Instruction and training of software users.

33.2 This list is not exhaustive. It cannot be inferred that services which are not indicated here fall under our contractual obligations. The rights of the Customer that arise from the software maintenance contract are not affected by our liability for interruptions in service.

34. Cooperation of the Customer

34.1 Our rendering of the maintenance services, in particular the remedying and processing of errors and application support, is contingent on the Customer using the latest version of the software. The software is up-to-date provided all software modifications delivered according to the software maintenance contract have been installed or a software version which we shall consider to be equal is being used. Should the Customer be using older versions of the software, he shall reimburse any additional expenditure incurred as a result of this during our rendering of software maintenance services according to this Part 4 of the T&Cs; we are not obliged to observe the response times governed under Sec. 30.6.

34.2 There is no obligation to use the latest software version if this is unreasonable for the Customer, for example because the latest software version at such time is defective and this is having a negative effect on the Customer's business. The Customer shall inform us immediately in text form if he considers it unreasonable for him to use the latest software version, whereby he shall state his reasons for such. If the Customer is not obliged to use the latest version of the software, he shall not be required to reimburse us for additional expenditure and we shall observe the response times pursuant to Sec. 30.6.

34.3 The rendering of the maintenance services is furthermore contingent on the Customer operating the software only in the location and in the system environment stipulated upon conclusion of the software maintenance contract, unless he consults us first.

34.4 The Customer shall support us in our rendering of the maintenance services in all regards. In particular, in the interests of remedying and processing errors efficiently, the Customer shall appoint and inform us, immediately after conclusion of contract, of at least one responsible employee (a so-called key user) and an appropriate deputy with in-depth knowledge (administrator knowledge) of the software to be maintained to act as a contact partner. If we have trained system managers of the Customer, these persons shall be considered key users.

34.5 The key users shall bundle and coordinate tickets and enquiries from the Customer. Before forwarding tickets and enquiries, they shall first use their own expertise to assess how they can help the affected user. If they are unable to resolve the problems that have arisen, they shall forward tickets and enquiries to us via the hotline. Other employees of the Customer are not entitled to send us tickets or enquiries.

34.6 The key users shall also support us during our remedying of errors, for example by providing test cases and/or test data, error logs, screenshots etc.

34.7 If we are obliged to render services, for which we require access to the Customer's IT system as part of the remote transfer of data, the Customer shall facilitate such access to the software via a communication network (e.g. the internet). Should it not be possible to remedy errors via a remote transfer of data because this access was not assured, and if a call-out is therefore required, we shall charge for such pursuant to the price list applicable upon conclusion of contract with the Customer, plus travel costs and other expenses.

34.8 If it transpires that a defect that is claimed by the Customer does not in fact exist or cannot be traced back to the software (minor defect), we may charge the Customer for services rendered in order to verify and resolve the error according to our rates as applicable at any time, plus necessary expenditure, unless the Customer could not have identified the minor defect even if he had applied due diligence.

35. Duty to report defects

35.1 The Customer shall inspect the services, including any amended or supplemented documentation, immediately upon delivery and notify us immediately if he discovers any defects.

35.2 If the Customer fails to give such notice, the services, including any amended or supplemented documentation, shall be considered accepted, except in the case of such a defect which could not be identified during the inspection.

35.3 If such a defect becomes apparent at a later time, notice of such defect must be made immediately upon discovery; failing this, the services, including any amended or supplemented documentation, shall be considered accepted, even in consideration of this defect.

35.4 Timely dispatch of the notification suffices to preserve the rights of the Customer.

35.5 We may not invoke the above regulations if we have fraudulently concealed the defect.

36. Remuneration

36.1 Maintenance services pursuant to Sec. 30 to Sec. 32 are charged at a flat rate of 18% of the net price of the software licensed upon conclusion of the maintenance contract per calendar year (price for licensing standard software + customising), plus statutory VAT as applicable in each case. This applies regardless of whether and how often the maintenance services according to Sec. 30 to Sec. 32 are utilised. If the scope of the software to be maintained increases (e.g. due to customisation programming), the 18% flat-rate fee shall also apply to the fees due for this increase in scope.

36.2 Unless otherwise agreed in the respective proposal or contract, the maintenance fee shall be paid quarterly in advance. In the first quarter, the fee shall be charged pro rata until the end of the quarter.

36.3 We shall adjust the fees due according to the software maintenance contract at our equitable discretion in line with changes in the costs, on which the calculation of these fees is primarily based. Increases in prices shall be considered and reductions in prices implemented if, for example, the costs for procuring hardware/software and energy, for using communication networks, or wage costs increase or decrease, or if other changes in the economic or legal framework result in changes to the cost situation. Increases in one cost type, e.g. wage costs, may be claimed as grounds for an increase in prices only to the extent that such are not offset by any reductions in costs in other areas, such as costs for hardware and software. In the event of decreases in costs, e.g. hardware costs, the prices shall be reduced, unless these decreases in costs are offset, in part or in whole, by increases in other areas. In exercising our equitable discretion, we shall select the time at which we will implement a price change in such a way that reductions in costs are not accounted for based on criteria that are more unfavourable for the Customer than those used for price increases, that is, cost decreases shall affect the prices to at least the same amount as cost increases. We shall inform the customer of changes in our fees in text form no later than six weeks before such changes come into effect.

37. Supplementary performance

37.1 We shall render supplementary performance pursuant to the statutory regulations, unless otherwise agreed below.

37.2 We shall remedy defects which the Customer notifies us of during the term of the software maintenance contract free of charge.

37.3 If we provide the Customer with software customisations as part of our remedying of errors according to Sec. 31 or as part of upgrades according to Sec. 32, then the Customer shall have rights to supplementary performance according to this Sec. 38 with respect to those software components which result in a change to and expansion of the software being used up until such time. Insofar as the software customisation provided is identical to the software already in use, the rights and limitation period that existed prior to this shall remain unchanged with respect to the software components already in use.

37.4 In the event of an infringement of third-party intellectual property rights which we are responsible for as a result of the services we have rendered within the framework of the software maintenance contract, it shall be within our discretion to either acquire, at our own expense, a right of use for the Customer that is sufficient for the contractually agreed use, or to modify the service in question or render a new such service such that it is no longer infringing on the intellectual property rights of third parties, provided this has no or an only reasonable impact on the Customer. Sec. 3 applies regarding the enforcement of claims for damages.

37.5 If the Customer has installed software customisations provided within the framework of the software maintenance contract pursuant to their type and purpose in such a way that they have become part of an IT system, from which the software customisations cannot be removed per se in the event that such are or become defective, then we shall not be liable for removing the software customisations from this IT system within the context of our supplementary performance. We shall equally not be liable to reimburse expenses for such if we are able to remedy errors in a short period of time by providing an update and provided this is reasonable for the Customer. Our liability to pay damages is unaffected; Sec. 3 applies.

37.6 Claims to supplementary performance lapse after 12 months.

38. Rights of use

38.1 If we provide the Customer with software customisations on a permanent basis according to the software maintenance contract, notwithstanding whether such are provided for a fee or free of charges, and within the context of supplementary performance or out of good will, we shall grant the Customer rights of use to such to the extent that we granted these to the Customer according to the licence agreement (Part 2 of these T&Cs).

38.2 For software customisations which can be executed independently, the Customer shall receive the rights under Sec. 38.1 as a condition subsequent to the provision of further software versions. Upon the provision of any further executable software customisation within the framework of the software maintenance contract, the rights to the version previously provided shall lapse. We shall tolerate use of the predecessor version to the extent described under Sec. 38.1 until installation of the software customisation provided.

38.3 The Customer may not continue using any software and software customisations which have become superfluous due to the services rendered according to the software maintenance contract and is obliged to uninstall these permanently, to confirm this uninstallation in writing, and to return to us any relevant original data carriers, including back-up copies.

39. Term of contract and termination

39.1 Unless otherwise agreed in the respective proposal or contract, the software maintenance contract is concluded for a fixed term of 24 months. If the software maintenance contract is not terminated by giving six weeks' notice at the end of its fixed term, it shall continue after the end of this term for an indefinite period and may be terminated by either Party by giving six weeks' notice at the end of each calendar quarter.

39.2 The right of both Parties to terminate the contract for good cause is unaffected.

39.3 Any termination must be made in writing in order to be effective.

39.4 Any rescission, annulment or similar restructuring of the licence agreement (Part 2 of these T&Cs) shall not affect the continuance of the software maintenance contract in the first instance. In such case, the software maintenance contract shall end at the earliest possible time, at which the Party which issued the declaration ending the licence agreement could withdraw from the software maintenance contract by means of proper termination. The Customer shall pay a flat fee equal to the maintenance fee, reduced by 60%, for the term of the software maintenance contract remaining at time of termination, provided no further maintenance services can be rendered. The right to termination for good cause is unaffected. Termination of the licence agreement alone shall not be considered good cause in this regards.

Part 5: Cloud services

40. Subject of contract

The subject of the contract is the provision of computing power and memory on servers which we provide, subject to payment of a fee and limited to the term of the contract.

41. Scope of performance

41.1 We shall provide the Customer with computing power and memory on servers (cloud infrastructure) to the extent agreed in the respective offer or contract for the storage of data and for the purposes of using the software. It is our responsibility alone to establish and maintain the technical requirements for operating and monitoring the cloud infrastructure up to the point of delivery. We are not required to establish and maintain the data connection between the Customer's IT system and the point of delivery.

41.2 We shall take steps to protect the data in line with the state of the art. However, we are not subject to any custody or safekeeping obligations with respect to the data. The Customer is responsible for securing his data sufficiently.

41.3 The Customer shall remain the owner of the data stored on the servers and can withdraw such from the servers at any time.

42. Service levels; troubleshooting

42.1 We guarantee total availability of the services of at least 99.5% per month at the point of delivery. The point of delivery is the outlet of the server's router.

42.2 Availability means that the Customer is able to use all primary functions of the software. Waiting times and periods, in which there is a fault, constitute times of availability, provided the repair time is adhered to. Periods, in which there are insignificant faults, shall not be taken into account when calculating availability. Proof of availability shall be determined authoritatively by the measuring equipment in the server centre.

42.3 The Customer shall report faults to us immediately. Notification and remedying of faults is guaranteed Mondays to Fridays (excluding national public holidays) between 8:00 and 17:00.

42.4 We will also remedy serious faults (memory is unusable as a whole or primary function of the memory and/or computing power is not working) outside of our service hours and within no more than 2 hours of being notified of the fault, provided this notice is made within our service hours (repair time). We shall notify the Customer immediately if it will not foreseeably be possible to fix the fault within this timeframe, and shall inform him of the foreseeable timeframe.

42.5 Other significant faults (primary or auxiliary functions of the memory and/or computing power are faulty but can be used; or other not merely insignificant faults) shall be fixed within a maximum of 12 hours within our service hours (repair time).

42.6 It is within our discretion to remedy insignificant faults.

43. Obligations of the Customer

43.1 The Customer shall protect and safeguard the access data provided to him against third-party access according to the state of the art. The Customer shall take care that all use remains within the contractually agreed limits. Unauthorised access must be reported to us immediately.

43.2 The Customer is obliged not to store any data on the memory provided, the use of which is in breach of applicable laws, government orders, rights of third parties, or agreements with third parties. The Customer shall indemnify us of claims brought by third parties on the grounds of a breach of this Sec. 43.2 at the first urging.

43.3 The Customer shall inspect the data for viruses or other harmful components prior to the storage of such and shall take appropriate measures in this regard according to the state of the art (e.g. anti-virus software).

44. Warranty

44.1 The warranty provisions of lease law (Sec. 535 et seqq. BGB) apply with respect to provision of the memory.

44.2 The Customer shall notify us of any and all defects immediately.

44.3 Warranty for only insignificant reductions in the suitability of the service is excluded. Strict liability for defects which already existed upon conclusion of contract, as governed under Sec. 536a(1) BGB, is excluded.

45. Terms of remuneration and payments terms

45.1 The Customer shall pay a monthly fee for the provision of the memory, the amount of which arises from the proposal or contract.

45.2 The monthly fee shall be adjusted according to the conditions of the proposal or contract in the event of changes to the number of users or the storage volume.

45.3 Invoicing shall be performed monthly. Invoices are due within 14 working days.

46. Contract term and ending of contract

46.1 Unless otherwise agreed in the respective proposal or contract, the contract runs for an indefinite period and may be terminated by either party by giving 6 weeks' notice at the end of a calendar quarter.

46.2 The right to immediate termination for good cause is unaffected.

46.3 Any termination must be made in writing in order to be effective.

46.4 We shall permanently erase all data of the Customer remaining on the server 30 days after the contract relationship ends.

Part 6: Final provisions

47. References and competitors

47.1 Upon the ending of the contract, we shall add the company name and logos of the Customer to our list of references, unless and until such time as the Customer objects to this in writing.

47.2 The Customer agrees that we shall also work for companies who are in direct competition with the Customer.

48. Confidentiality, privacy

48.1 The Parties undertake to observe secrecy regarding all confidential processes which they become aware of within the context of preparing, executing and fulfilling the contract, in particular business or trade secrets of the other Party (including our software and user documentation), to protect such against authorised access by third parties, and not to distribute such nor to exploit such in any other way. This applies with respect to any and all unauthorised third parties, i.e. including with respect to unauthorised employees, both each Party's own and those of their Contract Partner, unless the provision of information is necessary for the proper fulfilment of our contractual obligations. In case of doubt, the Party in question is obliged to obtain the consent of the other Party before providing such information. This duty of confidentiality shall persist beyond the ending of the contract.

48.2 Whenever we access the IT system of the Customer, the Customer is responsible for compliance with the provisions of data protection law. He shall notify us if we are to gain access to personal data in the course of rendering our service and shall reach the necessary agreements with us.

48.3 If and insofar as we have access to personal data of the Customer within the context of rendering our service, the Parties shall conclude a corresponding data processing agreement before processing begins. In such case, we shall process the corresponding personal data according to the provisions contained in such agreement and in accordance with the instructions of the Customer only.

49. Non-assignment clause and exclusion of set-off

49.1 The Customer is not entitled to assign his claims from the contractual relationship with us to third parties; this non-assignment clause does not apply to financial claims from a legal transaction which constitutes a commercial transaction for both Parties.

49.2 The Customer is due a right of set-off or right of retention only insofar as his claim has been asserted with legal effect or is uncontested. The counter-claims of the Customer are unaffected in the case of defects in the delivery or performance.

50. Severability clause

50.1 Should a provision of these T&Cs or the individual agreements concluded between us and the Customer be or become ineffective/invalid or unenforceable, in part or in whole, for reasons of the law on standard business terms according to Sec. 305 to Sec. 310 BGB, the statutory regulations shall apply.

50.2 Should a current or future provision of these T&Cs or of the individual agreements concluded between us and the Customer be or become ineffective/invalid or unenforceable, in part or in whole, for reasons other than those stipulated under the provisions on the law of standard business terms according to Sec. 305 to Sec. 310 BGB, this shall not affect the validity of the remaining provisions of this contract and the regulations under Sec. 50.3 and Sec. 50.4 above shall apply. The same shall apply in the event that it transpires after conclusion of the contract that the contract with the Customer contains a loophole.

50.3 The effectiveness of the remaining contract provisions should be maintained under all circumstances against any principle, according to which a survival clause is in principle intended only to reverse the burden of proof, and thus Sec. 139 BGB should be waived in its entirety.

50.4 The Parties shall replace the provision that has become ineffective/invalid/unenforceable due to reasons other than those stipulated under the provisions on the law of standard business terms according to Sec. 305 to Sec. 310 BGB or any loophole with an effective provision which most closely reflects the legal and financial content of the ineffective/invalid/unenforceable provision and the overall purpose of the contract. Sec. 139 BGB (Partial invalidity) is explicitly excluded. If the invalidity of a provision is based on a specific measure given therein with regards to performance or time (timeframe or deadline), then the provision shall be agreed with a legally permissible measure which most closely reflects the original measure.

51. Written form

51.1 Separate agreements made with the Customer in individual agreements (including auxiliary agreements, addenda and amendments) shall take precedence over these T&Cs in all cases. A written contract or our written confirmation is authoritative regarding the content of such agreements, notwithstanding evidence to the contrary.

51.2 Legal declarations and notices of the Customer relating to the contract (e.g. the setting of deadlines, notice of defects, withdrawal or abatement) must be issued in writing, i.e. in written or text form (e.g. letter, e-mail, fax). Statutory form requirements and other substantiation, in particular in case of doubt concerning the authority of the person making the declaration, are unaffected.

52. Choice of law, arbitration and place of jurisdiction

52.1 These T&Cs and the contractual relationship between us and the Customer are subject to the law of the Federal Republic of Germany, under exclusion of international private and uniform law, in particular the UN CISG.

52.2 In the event of a contractual dispute, the Parties undertake to enter into arbitration pursuant to the Arbitration Regulation of the Hamburg Arbitration Board (Hamburger Schlichtungsstelle) for IT Disputes, in the wording applicable at such time as arbitration proceedings are initiated, before undertaking legal proceedings (action). The arbitration proceedings are intended to resolve the dispute in part or in whole, and provisionally or with final effect.

52.3 If the Customer is a merchant within the meaning of the HGB (Commercial Code), a legal person under public law, or a public-law special fund, the exclusive place of jurisdiction for all disputes arising from the contractual relationship (including internationally) is our registered office. The same place of jurisdiction shall apply if the Customer does not have any general place of jurisdiction within Germany, if he relocates his place of residence or ordinary domicile outside of Germany after conclusion of contract, or if his place of residence or ordinary domicile is not known at such time as the action is brought. However, we are in all cases entitled to also bring an action at the place of performance of the delivery or service obligation pursuant to these T&Cs or an individual agreement which takes precedence, or at the general place of jurisdiction of the Customer. Statutory regulations which take priority, in particular concerning exclusive jurisdictions, remain unaffected.