

These General Terms and Conditions for Services and/or Deliveries (hereinafter referred to as "Services and Deliveries") consist of the General Terms and Conditions in Part A and the Special Terms and Conditions in Parts B to G (all parts hereinafter collectively referred to as "GTC"). The GTC apply to all contracts of SMF GmbH, Paul-Henri-Spaak-Str. 5, 44263 Dortmund (hereinafter referred to as "SMF") with companies within the meaning of Section 14 of the German Civil Code (BGB), merchants, legal entities under public law and special funds under public law (collectively referred to as "Customer") for the provision of services and deliveries.

PART A - GENERAL CONDITIONS

1. SCOPE OF APPLICATION, NO APPLICATION OF OTHER TERMS AND CONDITIONS

- 1.1 The provisions of Part A shall apply unless deviating or additional provisions are made in Parts B to G.
- 1.2 These GTC shall apply exclusively. By placing an order with SMF, the customer accepts the GTC of SMF in the version valid at the time the order is placed, provided that SMF has previously informed the customer of the validity of these GTC and the customer was able to take note of these GTC. Deviating, conflicting or supplementary terms and conditions of the customer shall not become part of the contract even if SMF does not expressly object to their inclusion. If the customer does not agree to this, he must inform SMF of this fact immediately in writing. In this case, SMF reserves the right to withdraw its offer without any claims of any kind being asserted against it.
We hereby expressly object to any reference in the form to the customer's general terms and conditions.
- 1.3 A renewed reference to the validity of these GTC in future offers is not required. These GTC shall therefore become an integral part of future contracts between SMF and the customer in each individual case, even without a separate declaration of incorporation.
- 1.4 At the customer's request, SMF shall make the current version of these GTC available to the customer free of charge at any time by e-mail, fax or letter.

2. CHANGES TO THE GENERAL TERMS AND CONDITIONS

- 2.1 SMF is entitled to amend the GTC with effect also within the existing contractual relationship in compliance with the following procedure.
- 2.2 SMF shall notify the customer of any changes to the GTC at least 30 days before the planned entry into force of the changes. The customer may object to the changes in writing within 30 days of receipt of the notification. If no objection is made and the customer continues to use the services and deliveries after expiry of the objection period, the changes shall be deemed to have been effectively agreed for all services and deliveries to be provided from the expiry of the period.
- 2.3 If the customer objects to the amendment, the previously existing GTC shall continue to apply and SMF shall be entitled to extraordinary termination of the affected contracts with a notice period of one month to the end of the next calendar month. Excluded from this right of amendment during a continuing obligation or within an otherwise existing contract are those amendments to these GTC which relate to an obligation of SMF or the customer, the fulfillment of which is essential for the proper execution of the contract and on the observance of which the other party to the contract relies or may rely (hereinafter referred to as "material contractual obligations").
- 2.4 When notifying the changes to the GTC or the amended GTC, SMF shall draw attention to the aforementioned deadline and the legal consequences of its expiry if the option to object is not exercised.

3. OFFERS, CONCLUSION OF CONTRACTS

- 3.1 General descriptions of SMF's services (e.g. on the website or in advertising brochures) are non-binding and do not constitute an offer to conclude a contract.
- 3.2 Product information is subject to change and errors until the order is placed by the customer. Any liability beyond the

In particular, the customer may not derive any obligations beyond those set out in the contract from representations in public statements, brochures or advertising by SMF or its employees or partners.

- 3.3 All offers made by SMF are subject to change and non-binding, unless a binding period is expressly stated in the offer. If an offer from SMF is expressly designated as binding, but without the indication of a binding period, SMF shall be bound by the offer for 14 calendar days from the date of the offer. The offer shall always include the general price list.
- 3.4 If SMF has made an expressly binding offer in accordance with Section 3.3 above, the contract shall be concluded by the customer's unqualified acceptance of the offer. Acceptance of the offer by the customer with amendments shall be deemed a new offer by the customer. This offer shall be deemed to have been accepted by SMF when SMF confirms the corresponding order in writing or begins to provide the services and deliveries.
- 3.5 The customer is obliged to carefully check all contract-relevant documents provided by SMF, in particular the offer, before concluding the contract.

4. CONTENT AND SCOPE OF THE PERFORMANCE OBLIGATION

- 4.1 The only authoritative basis for the content and scope of the services and deliveries to be provided by SMF is SMF's offer, including any associated annexes and any additional documents expressly referred to in the offer.
- 4.2 Deliveries and services are provided by SMF exclusively on the basis of a contract concluded with the customer, in which the rights and obligations of the contracting parties are regulated in addition to these GTC, in particular the services owed by SMF and the remuneration to be paid by the customer.
- 4.3 SMF reserves the right to make changes to the content and scope of the services and deliveries, in particular due to technical developments, changes in the legal framework and to prevent misuse, if and to the extent that the changes are reasonable for the customer and the changes do not significantly restrict the contractual purpose.
- 4.4 Technical and other information and standards, in particular information describing products and services, are subject to change and are subject to the tolerances customary in the industry. In this respect, changes are deemed to have been approved by the customer.
- 4.5 Unless expressly agreed otherwise, SMF's obligation to perform does not apply to the fact that the deliveries and services work together with products of third parties who are not upstream suppliers or subcontractors of SMF.

5. PRINCIPLES OF SERVICE PROVISION

- 5.1 SMF is entitled to have all services and deliveries provided by subcontractors/suppliers (hereinafter collectively referred to as "subcontractors"). In this case, SMF shall draw up the contractual provisions with the respective subcontractor in such a way that they do not contradict the provisions of these GTC and the other contract with the customer.
- 5.2 For services and deliveries which SMF provides at the customer's request at a location other than SMF's place of business, travel costs and expenses shall be charged in accordance with Clause 17.
- 5.3 Insofar as a specific procedure, a specific quality of performance or a specific performance content has not been bindingly agreed, SMF shall provide the services and deliveries at its reasonable discretion and in accordance with the proven state of the art.
- 5.4 The services and deliveries shall be rendered within the respective business hours of SMF. Services and deliveries may also be provided outside normal business hours by agreement, subject to a surcharge in accordance with SMF's current price list.
- 5.5 SMF is entitled to partial services and deliveries - which can also be invoiced separately - if and to the extent that their acceptance does not involve disproportionate expenses for the customer and the benefit of the services or deliveries is not significantly restricted.
- 5.6 Notwithstanding the customer's duty to cooperate in accordance with para.

11.1 (5) SMF shall take all reasonable measures within its area of responsibility to exclude the risk of virus infection; however, SMF cannot guarantee that its systems and software are completely virus-free.

6. DATES AND DEADLINES

6.1 Deadlines and execution periods binding for SMF can only be determined by written agreement, unless a schedule with deadlines designated as binding has already been agreed as part of the contract documents.

6.2 All delivery and performance dates and deadlines for the services and/or deliveries to be provided by SMF that are stated in the offer and marked with approximate or similar information are non-binding orientation values.

Unless specific deadlines and/or execution periods have been bindingly agreed, SMF shall provide the services and deliveries within a reasonable period of time.

6.3 All deadlines and performance periods are subject to correct, complete and timely delivery to SMF, unless the supplier is a subcontractor of SMF.

6.4 Binding deadlines and performance periods shall be reasonably extended if SMF is unable to provide the service in whole or in substantial parts for reasons for which SMF is not responsible, in particular due to force majeure (failure of the power supply, failure of the connection to the telephone network or the Internet, fire, explosions, earthquakes, storms, floods, industrial action). SMF shall immediately inform the customer of the existence of such reasons, including force majeure, and inform the customer of the new binding dates and deadlines. The extension shall amount to the duration of the existence of the impediment for which SMF is not responsible or the force majeure plus a reasonable period of generally one week for the resumption of business operations by SMF.

The above provision shall apply accordingly if not SMF but a subcontractor of SMF is unable to fulfill its performance obligations towards SMF due to an obstacle for which it is not responsible or due to force majeure.

6.5 All deadlines and execution periods shall be postponed or extended, subject to all other rights, by the period in which the customer is in default of payment (Clause 18.5). Reference is made to Clause 13 in the event of default with duties to cooperate/provision.

7. CHANGE REQUESTS

7.1 Changes and additions to the services and deliveries may be requested by a contracting party at any time after conclusion of the contract, provided they are not unreasonable for the other contracting party.

7.2 Changes and additions that have an impact on the content of the service (in particular program/system functions/services), deadlines, remuneration, prices and/or costs shall be submitted in writing, stating the previous specification, any problems that may have arisen, the proposed change or addition and its effects. SMF shall carry out an analysis of the customer's change request in order to possibly submit an offer; the analysis is subject to a charge and will be invoiced on a time and material basis in accordance with the current price list.

7.3 A prerequisite for the implementation of changes and additions requested after conclusion of the contract is a written agreement between the contracting parties on the scope of services, remuneration, prices and/or costs, deadlines, cooperation services and other relevant contractual aspects.

7.4 Insofar as nothing has been agreed in this agreement with regard to deadlines and/or execution periods, the implementation of the agreement shall result in a postponement of the delivery and service dates and an extension of the execution periods in accordance with the change or additional work involved.

8. TERM OF CONTRACTS

8.1 If an indefinite term is agreed in a contract, the contract can be terminated - unless expressly agreed otherwise - with two months' notice to the end of the month. Section 649 BGB is excluded for contracts for work and services. For special types of contract, special notice periods may apply in accordance with Parts B ff.

8.2 The right of each contracting party to terminate a contract, which is not limited to a one-off exchange of services, extraordinarily and without notice for good cause remains unaffected. SMF shall be deemed to have good cause in particular if the customer breaches its payment obligations despite a reminder or if the customer breaches material contractual obligations.

9. HANDOVER AND ACCEPTANCE OF SERVICES AND DELIVERIES

9.1 Unless otherwise agreed, the handover and/or provision of services and deliveries shall take place at SMF's place of business.

9.2 The dispatch of deliveries and the transmission of services to the customer shall be at the customer's risk.

9.3 The customer is obliged to accept the services and deliveries on time.

10. RESERVATION OF TITLE

All services and deliveries shall remain the property of SMF until the agreed remuneration has been paid in full. The customer must inform SMF immediately in writing if and insofar as third parties have access to the goods subject to retention of title.

11. COOPERATION OF THE CUSTOMER (ACTIVITIES)

11.1 The customer shall support SMF, free of charge for SMF, in the provision of the agreed services and deliveries, insofar as necessary and reasonable for the customer, and shall ensure, within the scope of its duty to cooperate, that all requirements for the proper performance of the contract are fulfilled in good time in its area of responsibility. In particular, the customer shall

- (1) SMF in good time with all documents and information necessary for SMF to provide the contractual services and deliveries,
- (2) provide the IT infrastructure (e.g. PC workstations, printers, computer time, test data) necessary for the contractual provision of services and deliveries on the customer's premises to a reasonable extent,
- (3) SMF or its subcontractors to have access to the services and deliveries within the usual working hours,
- (4) encourage its employees to cooperate with SMF or its subcontractors,
- (5) to take all reasonable measures in its area of responsibility to protect its systems against virus attacks;
- (6) make regular backup copies of those materials and data processing systems to which SMF must have access in the course of fulfilling the contract or which could otherwise be affected by the services and deliveries to be provided by SMF in the course of fulfilling the contract. These materials to be secured include, in particular, all materials located on those computers (servers, workstations, mobile devices) with or on which SMF carries out work and/or which are provided to SMF by the customer for this purpose. Should materials be damaged or lost, SMF shall not be liable, subject to Clause 20, for any loss of data caused by a backup not made or not properly made by the Customer.

Further cooperation services by the customer are agreed in the contract.

11.2 Insofar as special statutory, official or operational safety regulations must be observed, the customer shall make these regulations available to SMF in good time before the start of the provision of services.

11.3 The customer must notify SMF immediately in writing of any defects in the services and deliveries that he has identified.

11.4 Insofar as SMF is obliged to remedy defects vis-à-vis the customer, the customer must describe the defects as precisely as possible in the form of defect reports and, as far as possible, provide the information available to the customer that is useful for determining the cause of the defect. The defect reports shall contain the following information in particular, as far as possible for the customer:

- (1) Unique number of the defect report with consecutive numbering per service or delivery (including software),
- (2) Date of the deficiency assessment,
- (3) Contact for further technical information. Also for software defects:
 - (1) Version status of the software,
 - (2) Description of the actual behavior of the software,
 - (3) Description of the target behavior of the software.

12. PROVISIONS OF THE CUSTOMER (GOODS/RIGHTS)

- 12.1 All supplies agreed between the contracting parties (e.g. technical specifications, test data, texts, graphics, logos) must be provided by the customer in good time, free of charge for SMF and in the form and quality required for the contractual provision of services.
- 12.2 Unless expressly agreed otherwise, it is the customer's responsibility to create the conditions (e.g. connection to the data network, procurement and operation of the necessary hardware and software, provision of storage space) for the contractual use of SMF's services and deliveries.
- 12.3 The place of provision shall be the registered office of SMF, unless the provision of technical infrastructure at the installation site is involved.
- 12.4 To the extent that the customer's provided materials are protected by copyright or other protective statutes such as the Trademark Act, the customer shall grant SMF the non-exclusive and cost-free right, limited in time to the duration of the contractual relationship, to use the provided materials within the scope of the contractual agreements. All other rights remain with the customer.

13. RESPONSIBILITY OF THE CUSTOMER FOR COOPERATION AND PROVISIONS IN RELATION TO THIRD PARTIES, DELAYS AND OTHER OBSTACLES

- 13.1 The customer is solely responsible for the cooperation and provision of materials.
- 13.2 In particular, cooperation and provision must not violate applicable law (including criminal law, copyright law, data protection law and other third-party rights).

The customer shall indemnify SMF against any liability and compensate SMF for any damages and other costs incurred by SMF due to claims asserted by third parties due to infringements of rights caused by the customer's cooperation and assistance. The customer shall advance any reasonable and customary legal defense costs upon first request.

This shall apply accordingly if the materials provided constitute personal data (in particular e-mail addresses) and the defect is that the customer cannot provide evidence of legally effective consent under data protection or unfair competition law or another authorization.

- 13.3 If the customer does not comply with the agreed cooperation and/or provision of materials, SMF may refuse to provide the services and deliveries owed until the cooperation or provision of materials necessary for the provision of the services and deliveries concerned has been provided in accordance with the contract. Such delays on the part of the customer shall lead to a corresponding postponement or extension of bindingly agreed deadlines and/or performance periods.
- 13.4 The customer is obliged to compensate SMF for any damages incurred by SMF due to the customer's inadequate cooperation or provision.

14. GRANTING AND LIMITS OF RIGHTS TO SOFTWARE AND WORK RESULTS, RIGHTS TO THIRD-PARTY SOFTWARE

- 14.1 In the following, "**work results**" are understood to be the creative results owed to the customer under the contract and arising from the services and deliveries of SMF, in particular the results that are either capable of copyright protection, including computer programs in the form of object code (§§ 69a ff UrhG, hereinafter referred to as "**individual software**") and databases (§§ 87a ff UrhG), or are otherwise capable of special legal protection. In the following, the term "**standard software**" is used to describe

The term "license" is understood to mean a computer program that forms the basis of an agreed license certificate, has already been created by SMF at the time the contract is concluded and is generally released by SMF for the market, including the standard documentation for it.

- 14.2 The granting of any rights of use to work results and/or standard software to the extent agreed in the GTC and/or in the contract/license agreement is subject to the condition precedent of full payment of the remuneration owed to SMF in accordance with Clause 16.

- 14.3 If and insofar as no provision has been made in the GTC or in the contract/license certificate regarding the customer's rights of use to work results and/or standard software, the customer shall receive from SMF a paid, simple right, limited to the territory of the Federal Republic of Germany and not sublicensable or otherwise shareable with third parties, to use the work results for the purpose agreed in the contract within the company and to carry out the acts of use required for this purpose under the contract within the customer's company.

If no provision has been made in the contract/license certificate regarding the scope of the types of use granted, the customer's right shall be limited to exploitation through internal reproduction and use within the company. Any further use, in particular use outside the customer's company organization, shall require express agreement in the contract/license certificate.

Accordingly, with the exception of installation, loading into the working memory, downloading data from the running application and making backup copies, the customer is prohibited from making any copies of individual and standard software, including any accompanying material, unless such copying is absolutely necessary for the intended use.

The customer is only entitled to modify or otherwise edit the individual or standard software if this is absolutely necessary to rectify errors and SMF does not comply with its statutory liability for defects even after a reasonable deadline has been set to rectify the defect. If the customer subsequently makes changes and/or edits to the individual or standard software, the liability for defects with regard to the changed or edited parts shall expire, unless the customer proves that the defect would have occurred even if the change or edit had not been made.

Unless expressly permitted by the above or by mandatory statutory provisions, the customer is prohibited from distributing, renting, sublicensing, reproducing, translating, decompiling, disassembling, descrambling or otherwise modifying the work results or standard software in any way and requires the express consent of SMF.

- 14.4 The above rights pursuant to Section 14.3 are transferable for an indefinite period of time if granted against a one-off payment and in the event that the customer finally gives up his right of use and deletes all authorized productive installations. If the work result or the standard software is client-server software (software installed on a server that can be accessed from workstations), the right of use granted cannot be divided in terms of quantity in the event of any transfer due to exhaustion; client rights may also not be transferred in isolation. If the rights are granted in time-limited sections in return for pro rata payment (rent), the above rights pursuant to Clause 14.3 are related to the respective time-limited section and are not transferable.

- 14.5 In the case of software and databases, the above rights pursuant to Sections 14.3 and 14.4 relate to the number of workstations agreed in the contract/license certificate or are limited in terms of quantity in the manner agreed in the contract/license certificate. If no quantitative limitation is specified there, the grant refers to a single workstation computer.

- 14.6 All rights to work results or standard software not expressly granted to the customer above or in the contract/license certificate shall remain with SMF. In particular, SMF reserves all rights to the distribution, presentation, exhibition and publication of the work results and the standard software. The same applies to processing and reproduction rights, unless expressly agreed otherwise. SMF is the sole owner of all trademark and other property rights to work results and individual software. In particular, SMF shall have the right to use all knowledge, concepts, procedures, methods, know-how and other intellectual property rights on which the work results are based.

how, procedures, etc. without restriction.

- 14.7 Only the executable object code shall be provided to the customer. Notwithstanding the above provisions, a claim to the provision of the source code of individual or standard software requires a separate written agreement in the contract/license certificate.
- 14.8 All trademark and copyright notices must be reproduced in unaltered form in copies of work results produced by the customer. The customer shall not be entitled to change or remove references to SMF's copyright position without SMF's express written consent.
- 14.9 The mandatory rights of the entitled person pursuant to Sections 69d, 69e UrhG remain unaffected in the case of computer programs or software.
- 14.10 If SMF delivers or integrates additional third-party software, in particular so-called open source software (hereinafter referred to as **"third-party software"**), as part of the work result beyond any agreements made in the contract, the customer shall be notified of this in writing in good time before the intended delivery, including the terms of use and license conditions applicable to the third-party software and any license fees or other costs incurred. The delivery of the third-party software, including the terms and conditions applicable thereto and the customer's obligation to bear the costs of any license fees incurred, shall be deemed approved if the customer does not object to the notification within two weeks of its receipt and SMF has pointed this out to the customer in the notification. Following an objection by the customer, the contracting parties shall agree on a different solution.
- 15. OBLIGATIONS OF THE CUSTOMER IN THE EVENT OF INFRINGEMENTS OF INDUSTRIAL PROPERTY RIGHTS**
- 15.1 Should third parties assert legal violations against the customer due to the use of the contractual services and deliveries or should claims be asserted against the customer in or out of court arising from the use of the contractual services and deliveries, in particular due to the alleged violation of third-party rights, the customer must inform SMF immediately in writing of the assertion of such alleged legal violations and/or claims. The documents from which the assertion of the rights/claims of third parties arise must be enclosed.
- 15.2 The customer is not entitled to recognize such claims of third parties before he has given SMF a reasonable opportunity to defend itself against the claims asserted by the third party in another way. If a service or delivery by SMF actually infringes the rights of a third party, SMF shall, at its own discretion and at its own expense, taking into account the interests of the customer (1) either procure for the customer the necessary rights of use to the affected right of the third party (2) or modify its own service or delivery in such a way that it no longer infringes the affected right of the third party. If this is not possible, the statutory provisions shall apply.
- 15.3 In such cases, the customer shall, at SMF's request, leave the sole legal defense (including all defense and settlement options) to SMF and, upon request, support SMF to a reasonable extent in the defense against such claims at SMF's expense. If SMF expresses this wish, SMF shall at the same time indemnify the customer against the claims of third parties.
- 16. REMUNERATION AND PRICES**
- 16.1 Standard products of SMF, in particular standard software and standard training courses, are/will be provided at the prices stated in the applicable price list.
- 16.2 Unless expressly agreed otherwise, all services and deliveries not priced with a product price in the price list shall be rendered and invoiced on a time basis in accordance with the hourly rates stated in the offer, otherwise in accordance with SMF's current price list.
- 16.3 Cost calculations contained in the offer are non-binding unless they are expressly designated as a fixed price or as a binding upper limit.
- SMF shall record the number of hours spent on a time basis and keep corresponding records (time sheets). The time spent shall be confirmed in writing by the customer at any time at SMF's request, but in any case within one week of the provision of the specific service or delivery.
- Working time subject to remuneration also includes troubleshooting and fault-finding work.

and rectification times, insofar as these services are not to be provided on the basis of statutory or contractual regulations for the rectification of defects.

- 16.4 If a binding fixed price is agreed for a service or delivery in the offer, this fixed price shall only cover the services and deliveries listed or otherwise agreed in SMF's offer in relation to this fixed price.
- 16.5 SMF is entitled to reissue the general price list with changed prices on a regular basis, but no more than once a calendar year. The new version of the price list shall be sent to the customer. Clause. 2.2 and 2.3 shall apply accordingly to the new version of the price list.

17. OTHER COSTS AND EXPENSES

- 17.1 Travel costs for business trips and the related expenses shall be charged to the customer in accordance with SMF's current price list, unless expressly agreed otherwise:
- Business trips are all trips by SMF employees required for the contractual provision of services and/or requested by the customer.
- 17.2 If materials are sent or returned by post, a flat rate will be charged, which can be found in the current price list, unless expressly agreed otherwise.
- 17.3 Costs and expenses arising from services and deliveries not covered by the contractual agreements shall be borne by the customer.
- The same applies to costs and expenses incurred by SMF due to the
- incorrect or incomplete customer information,
 - other deficient cooperation services or provision obligations of the customer or
 - notifications of defects by the customer that turn out to be incorrect (e.g. because the defects in question are not covered by SMF's contractual or statutory obligations to remedy defects or because defects occur because services and deliveries have been modified by the customer without SMF's consent) and/or due to SMF's defect rectification activities in this regard.

18. TERMS OF PAYMENT, INVOICING, DEFAULT OF PAYMENT

- 18.1 All agreed remuneration is subject to value added tax at the statutory rate applicable at the time the service is provided.
- 18.2 Unless expressly agreed otherwise, SMF shall invoice its services and deliveries as follows:
- (1) for remuneration on a time and material basis: monthly in arrears and/or upon completion of the service;
 - (2) for rent: monthly in arrears after agreed periods;
 - (3) upon purchase: upon conclusion of the contract;
 - (4) for software maintenance: calendar quarterly in advance;
 - (5) if a binding fixed price for work services has been agreed: according to the agreed scale (payment plan); if no payment plan has been agreed: 30 % upon conclusion of the contract, 40 % upon provision of the services/deliveries for acceptance, 30 % upon acceptance of the services or deliveries
- However, SMF reserves the right to provide services and deliveries only against payment in advance.
- 18.3 Travel expenses shall be invoiced to the client in the month of the trip or in the following month. The invoice shall be accompanied by the travel expense report of the SMF employees concerned, the corresponding receipts and, if applicable, the time sheets.
- 18.4 The agreed remuneration is due upon receipt of the invoice and must be paid without deduction within 14 calendar days of receipt of the invoice.
- 18.5 If the customer is in default of payment, default interest shall be charged at the statutory rate (Section 288 (1) BGB). In the event of late payment, collection costs shall also be charged. Further claims for late payment remain unaffected.

19. OFFSETTING AND RETENTION

- 19.1 The customer may only offset SMF's claims against counterclaims that have been legally established or are undisputed.
- 19.2 The customer's rights of retention are only permitted insofar as they relate to claims based on the same contractual relationship.

20. LIABILITY

- 20.1 SMF shall only be liable for its own fault and the fault of its legal representatives, executives and other vicarious agents in accordance with the following provisions.
- 20.2 SMF shall be liable without limitation for damages caused intentionally or through gross negligence by SMF or its legal representatives, executives and other vicarious agents.
- 20.3 In the event of a slightly negligent breach of a material contractual obligation (cf. Section 2.3), SMF's liability shall be limited to the damage that must typically be expected to occur in the context of the present service relationship (foreseeable damage typical of the contract). Otherwise, liability for damages caused by slight negligence is excluded; this exclusion also applies to loss of profit.
- 20.4 In the cases of paragraph 20.3, the liability of SMF shall be limited to the amount of
- (1) for all damages arising under a contract for the creation or procurement of individual or standard software is limited to an amount of 50% of the order value (e.g. purchase price or project price), but at least to EUR 50,000,
 - (2) for all damages occurring under a contract for ongoing services (e.g. rental, maintenance of software) in a calendar year is limited to 50% of the ongoing fees incurred for a calendar year, but at least to EUR 50,000.

SMF assumes that this amount is sufficient to fully cover the foreseeable damage typical for the contract in the event of damage. Should this limitation of liability appear to the customer to be insufficient to cover the typically foreseeable damage, the customer must inform SMF of this so that protection against a possibly higher liability risk can be provided.

- 20.5 Liability for fraudulent intent, personal injury and liability under the Product Liability Act shall remain unaffected by the above provisions.
- 20.6 Liability for loss of data is limited to the cost of restoration with standard backup copies (daily backup on the customer's side).

21. HIGHER VIOLENCE

Events for which SMF, its legal representatives and its vicarious agents are not responsible ("force majeure"), in particular technical events beyond the control of SMF, power failures, non-functioning of telephone lines or other comparable technical obstacles and their consequences, shall exempt SMF for the duration of their existence from the fulfillment of the contractually assumed obligation to perform, which is made more difficult or impossible by these events.

22. CONFIDENTIALITY AND DATA PROTECTION

- 22.1 The contracting parties are obliged to treat as confidential all trade and business secrets and technical and organizational information that they obtain in the course of performing the contract (hereinafter collectively referred to as "**Confidential Information**"). Confidential Information does not include information on technical processes, products and/or services which are generally published by the contracting party to which they relate or which constitute generally accessible knowledge (e.g. software and/or communication technology).
- At the request of the client, SMF will issue a confidentiality agreement for the employees specifically deployed in the context of the provision of services.
- 22.2 The customer authorizes SMF to collect, store and process the personal data provided in connection with the business relationship within the meaning of the German Federal Data Protection Act (BDSG). SMF shall take all reasonable measures within its area of responsibility to ensure compliance with the provisions of the BDSG.

to be established.

The employees of SMF are obligated in accordance with § 5 BDSG or have been instructed accordingly in advance.

- 22.3 If and insofar as SMF collects, processes or uses personal data on behalf of the customer, or if SMF carries out the testing or maintenance of automated processes or data processing systems on behalf of the customer and access to personal data cannot be ruled out, the contracting parties shall conclude a separate agreement on commissioned data processing ("**Data Protection Agreement**"), which shall take precedence over all other agreements between the contracting parties in its scope of application.

- 22.4 If SMF uses third parties to provide the services and deliveries arising from the respective contractual relationship, SMF shall be entitled to disclose Confidential Information and Customer Data to third parties insofar as this is absolutely necessary for the contractual provision of services. SMF shall oblige the third party/third parties to handle the Confidential Information and Customer Data confidentially.

SMF is also entitled to disclose Confidential Information and customer data insofar as it is obliged to do so by law, and furthermore insofar as it concerns third parties who are obliged to maintain confidentiality in accordance with their profession.

23. REFERENCES

Both the customer and SMF shall be free to publish information about agreed services and deliveries within the scope of Clause 22, provided that the company and service share of the respective contractual partner are named.

24. TRANSFER OF RIGHTS AND OBLIGATIONS BY THE CUSTOMER

The transfer of rights and obligations to which the customer is entitled under a contract concluded with SMF requires the written consent of SMF, which may only be refused for good cause. This applies in particular to the customer's claims for defects against SMF. § Section 354a HGB remains unaffected.

25. FORMAL REQUIREMENTS

- 25.1 No verbal ancillary agreements to these GTC and the contract with the customer have been made. Amendments and supplements must be made in writing. This also applies to the revocation of this clause.
- 25.2 Insofar as the written form is required in these General Terms and Conditions, this shall be satisfied by the text form (Section 126b BGB, in particular fax and email). The electronic form (§§ 126 para. 3, 126a BGB) is excluded. The written form is mandatory for the agreement on an amendment in accordance with Clause 7.3, for a termination (in particular in accordance with Clause 8) and for all declarations aimed at the immediate termination of an agreement (e.g. withdrawal) and cannot be replaced by the text form.

26. SEVERABILITY CLAUSE

Should one or more provisions of these GTC and/or any other contracts concluded between the parties be or become ineffective or should a loophole be found in them, the validity of the remaining provisions shall not be affected and the ineffective provisions shall be replaced or the loophole filled by an appropriate, permissible provision which the contracting parties intended or would have intended according to the meaning and purpose of the terms and conditions if they had been aware of the ineffectiveness or loophole.

27. PLACE OF FULFILLMENT

The place of performance for all contractual services and deliveries shall be SMF's registered office.

28. PLACE OF JURISDICTION AND APPLICABLE LAW

- 28.1 The exclusive place of jurisdiction for all disputes arising from or in connection with the contract shall be the registered office of SMF. The jurisdiction agreement shall not apply if the dispute concerns claims other than property law claims or if an exclusive place of jurisdiction is established for the dispute by law.
- 28.2 The contracting parties agree with regard to all legal relationships that

The laws of the Federal Republic of Germany shall apply to all disputes arising from this contractual relationship to the exclusion of the UN Convention on Contracts for the International Sale of Goods and the conflict of laws.

PART B - SPECIAL CONDITIONS FOR WORK SERVICES

29. SCOPE OF APPLICATION

The provisions of Part B shall apply to work services (Sections 631 et seq. BGB) in addition to Part A and, in the event of an objection, shall take precedence over Part A.

30. ACCEPTANCE OF WORK

30.1 SMF shall notify the customer in writing of the provision of a work (e.g. individual software component) for acceptance. Unless otherwise agreed, the customer is obliged to commence the acceptance test immediately and to accept each work within a reasonable period of time, but at the latest within 14 calendar days from the provision of the respective work.

30.2 SMF is entitled to participate in the acceptance test. SMF's support of the customer during the acceptance test shall be subject to separate remuneration in accordance with SMF's current price list.

30.3 The acceptance test is carried out on the basis of the jointly defined test procedure and test cases. At each step, it is observed whether the plant has reacted in accordance with the specifications. The result is documented in a protocol (acceptance confirmation).

All deviations in the behavior of the tested work or part of the work from the performance specification and the specified description of the test cases that occur during an acceptance test are recorded in a list of defects and divided into defects that prevent acceptance and defects that do not prevent acceptance (residual points).

30.4 A defect is only classified as preventing acceptance if it significantly restricts the agreed use of the work because an essential function is not performed at all or is significantly defective. All other defects are not classified as preventing acceptance.

30.5 SMF shall immediately check any defects reported by the customer within the acceptance test and correctly classified as preventing acceptance and shall rectify them within a reasonable period of time.

30.6 Acceptance shall be deemed to have been granted as soon as all defects reported in due time during the acceptance test and correctly classified as preventing acceptance have been rectified or SMF has proven that they are not defects within the meaning of Section 640 BGB.

30.7 If the customer does not declare acceptance in writing within three working days of the end of the acceptance period (see Clause 30.1), nor notify SMF of the existence of defects preventing acceptance within three working days of the end of the acceptance period, the work shall be deemed to have been accepted.

Notwithstanding the above provisions, the work shall be deemed to have been accepted if the customer uses it productively outside the acceptance test for a period of at least fifteen working days without naming defects that prevent acceptance (see Clause 30.4).

30.8 SMF may demand acceptance of self-contained parts of the offer (e.g. software components, individual documents accessible for acceptance), provided that such acceptance of a partial service is not unreasonable for the customer in exceptional cases. The above provisions of this Clause 30 shall also apply to such acceptances.

In the case of the acceptance of partial services, defects occurring during later partial acceptances which have their cause in the already accepted partial service shall only prevent the acceptance of the later partial service if (1) the defect prevents the interaction with the later partial service to a more than insignificant extent or impairs the functionality to a more than insignificant extent and (2) this was not recognizable to the customer in isolation during the previous acceptance of the partial service.

31. LIABILITY OF SMF FOR DEFECTS IN WORK PERFORMANCE

31.1 The contractual service description is decisive for the quality of the subject matter of the contract.

31.2 Unless expressly agreed otherwise, SMF does not guarantee that the work will work together with third-party products.

31.3 In the event of defects, SMF shall initially provide warranty by subsequent performance, either by rectification or by replacement delivery, at its discretion. The customer is obliged to import any program parts and corrections provided to him for this purpose.

31.4 The customer shall allow SMF to rectify the defect twice within a reasonable period of time. If SMF can carry out more than one attempt at rectification within the reasonable period, this shall be tolerated by the customer, provided that this is not unreasonable for the customer. If the attempts at subsequent performance fail, the customer may reduce the remuneration or withdraw from the contract, but not if the defect is insignificant.

31.5 SMF shall only pay damages and compensation for wasted expenditure due to a defect in accordance with Clause 20.

31.6 Claims arising from liability for defects under the contract for work and services shall lapse 12 months after acceptance, except in cases of fraudulent intent.

PART C - SPECIAL CONDITIONS FOR THE PROVISION OF STANDARD SOFTWARE

32. SCOPE OF APPLICATION

The provisions of Part C shall apply in addition to Part A to the use of standard software by the customer or its employees for an indefinite period of time and for a limited period of time, taking precedence over Part A in the event of an objection. The use of standard software includes the provision of the same via a public data network with an access code (Application Service Providing/ASP or Software as a Service/SaaS).

33. RIGHTS OF USE

33.1 The properties of the standard software and the intended use are set out in the associated documentation, otherwise in the contract.

33.2 The scope of the rights of use to standard software is determined by the provisions applicable to standard software in Section 14 or in the contract/license certificate. The customer does not acquire any rights beyond this.

34. TECHNICAL REQUIREMENTS FOR USE; ACCESS CODES

34.1 Any special technical requirements for the use of the standard software, in particular the system environment to be complied with, in the case of provision via ASP/SaaS in particular the version of a web browser to be complied with, are stated in the description of the standard software or in the license certificate.

34.2 Access codes or user IDs for the use of the standard software provided must be treated with absolute confidentiality and must not be made accessible to third parties. The customer is responsible for all damage caused - including to SMF systems - by the fact that access codes or user IDs culpably come to the knowledge of third parties.

35. TERMINATION OF THE RIGHT OF USE

35.1 If the customer exceeds the rights of use granted to him, SMF may prohibit this further use.

35.2 If the customer again exceeds the rights of use granted to it for a limited period despite a corresponding warning, SMF is entitled to terminate the agreement on the granting of rights of use for a limited period for good cause. Section 38.4 applies accordingly.

36. REMUNERATION FOR THE USE OF SOFTWARE

36.1 The amount of the usage fee(s) is specified in the license certificate, otherwise in the applicable SMF price list.

36.2 SMF is entitled to increase regularly payable usage fees by written notification to the customer, for the first time twelve months after conclusion of the contract. The increase shall take effect three months after notification. In the event of an increase in usage fees of more than 7.5%, the customer may terminate the contract for cause at the time the increase comes into effect. There must be at least twelve months between two increases. SMF shall inform the customer of this termination option together with the written notification.

37. REQUEST FOR INFORMATION FROM SMF, USAGE CONTROL

37.1 At SMF's request, the customer shall provide information in writing and without delay, to a reasonable extent, as to whether the standard software is being used in accordance with the contract. This information must contain all details necessary to verify the contractual use (e.g. number of workstation installations, number of actual users, system environment used).

37.2 The customer shall grant SMF access to the relevant records and systems of the customer to the extent reasonable for the purpose of this further review of the contractual use, if SMF sees reason for a more extensive review following the notification according to Section 37.1. SMF shall treat all information received in this context as confidential and only make it accessible to third parties to the extent that this is absolutely necessary to protect the rights of SMF or these third parties.

37.3 SMF is entitled to integrate appropriate technical measures into the standard software to check that it is being used in accordance with the contract. SMF shall ensure that the technical measures do not restrict the contractual use.

37.4 SMF shall observe and comply with the provisions on data protection within the scope of Clause 37.

38. TERM AND TERMINATION OF TEMPORARY EMPLOYMENT

38.1 Unless expressly agreed otherwise, the minimum term for temporary assignments is 12 months from the date of assignment.

38.2 Either party may terminate the temporary transfer at any time without giving reasons, subject to the minimum term and a notice period of three months to the end of the month.

38.3 The right to terminate the contract without notice for good cause is not affected by the above provisions.

38.4 When the termination takes effect, the license ends and the customer's right of use expires. The customer must completely remove the standard software from the computers so that it can no longer be recovered and destroy the accompanying material.

39. DEFICIENCY

39.1 If a defect occurs during the use of standard software provided for a limited period of time that prevents or significantly restricts its contractual use, or if such a defect is present at the beginning of use, the customer shall be entitled to a reasonable reduction in the usage fee for the duration of the restriction or suspension of use.

39.2 In the event of defects in software provided for an indefinite period of time, SMF shall initially provide warranty by subsequent performance, either by repair or replacement, at its discretion.

The customer is obliged to import any program parts, corrections or new versions provided to him for this purpose, provided this is not unreasonable for the customer.

SMF shall also be deemed to have remedied a defect if it shows the customer reasonable options for avoiding the effects of the defect.

39.3 Claims arising from liability for defects in the case of the provision of software for an indefinite period shall expire 12 months after delivery of the software, except in the case of fraudulent intent.

39.4 In any case, SMF shall only pay damages and compensation for wasted expenditure due to a defect in accordance with Clause 20.

40. CONDITIONS/LIMITATIONS OF LIABILITY FOR DEFECTS

40.1 The quality of the standard software (including its scope of functions) is determined by the documentation supplied.

40.2 SMF does not guarantee that the software will work together with third-party products, unless the accompanying material for the software expressly provides for such cooperation.

40.3 SMF expressly points out that, for technical reasons, the software in the configuration according to the license certificate is intended exclusively for use on the system environment and with the database specified in the license certificate. For the

SMF assumes no liability for defects in the software if the software is used in a different system environment and/or with a different database, unless the customer proves in the event of a defect that this is not due to the use of the software in the different system environment or with a different database.

PART D - SPECIAL CONDITIONS FOR STANDARD SOFTWARE MAINTENANCE

41. SCOPE OF APPLICATION

The provisions of this Part D shall apply in addition to Part A for the provision of maintenance services for the standard software designated in the license certificate for which software maintenance has been agreed, taking precedence over Part A in the event of a conflict.

42. SCOPE OF CARE SERVICES

42.1 Versions generally contain extensive changes to standard software; they are identified by changes to the second digit in the case of a three-digit designation ("0.0.0"). Updates generally contain minor changes and/or summaries of bug fixes; in the case of a three-digit designation, they are identified by changes in the third digit. New updates and/or new versions of the software are developed at intervals determined by SMF and offered to the user as part of software maintenance after market release without additional remuneration; a new version is released on average every six to 12 months.

42.2 The latest version of the software released for the market and offered to the user, as well as the previous version, are maintained.

42.3 Software maintenance includes, as decided by SMF, (i) the ongoing improvement of the software in its organizational process or program flow, (ii) the consideration of new or amended legal regulations, (iii) the development of further functionalities, (iv) the elimination of errors and (iv) the provision of up-to-date documentation.

The updates and versions of the software released for the market shall be provided to the customer by download, including the associated documentation. In addition, the customer shall receive the release notes, which contain additional instructions that must be observed, provided they are not unreasonable for the customer.

42.4 Troubleshooting may be carried out by means of remote maintenance.

42.5 As part of software maintenance, SMF will continue to advise the user by telephone on questions regarding the operation and use of the software and inform the user about supplementary software products related to the software.

42.6 The customer's existing claims for defects arising from the software procurement contract in parallel with the maintenance services remain unaffected.

43. COMMUNICATION

43.1 An automated ticket system and a hotline e-mail address are available to the customer for the duration of the software maintenance. The user only uses these communication channels to report errors and to make use of the support services.

43.2 The customer shall designate a natural person and a deputy as the sole contact persons for SMF.

44. SERVICES NOT INCLUDED IN SOFTWARE MAINTENANCE

44.1 The provision of data carriers as well as transportation, installation and training activities as well as activities for the further development of software at the customer's request are not part of software maintenance. If they are used in addition, they shall be invoiced separately in accordance with SMF's current price list, unless otherwise agreed on a time and material basis.

44.2 Part F applies to support requests that are not error messages.

45. REMUNERATION FOR SOFTWARE MAINTENANCE

45.1 The amount of the maintenance fee is specified in the license certificate, otherwise in the applicable SMF price list.

45.2 SMF is entitled to increase the maintenance fee due to cost increases at SMF itself or at upstream suppliers by written notification to

the customer, for the first time twelve months after conclusion of the contract. The increase shall take effect three months after notification. If the usage fees are increased by more than 7.5%, the customer may terminate the contract extraordinarily at the time the increase comes into effect. There must be at least twelve months between two increases. SMF shall inform the customer of this termination option together with the written notification.

46. RIGHTS OF USE

For the use of updates and new versions provided to the customer for use within the scope of software maintenance, the regulations for standard software in Clause 14 apply accordingly.

47. DURATION OF SOFTWARE MAINTENANCE

- 47.1 Software maintenance begins on the date specified in the license certificate and runs for an indefinite period. If no commencement of the contract is agreed in the license certificate, the software maintenance begins with the provision of the respective standard software.
- 47.2 Software maintenance can be terminated with three months' notice to the end of the quarter, but at the earliest two years after the start of software maintenance.
- 47.3 The right to terminate the contract without notice for good cause remains unaffected by the above provisions.

PART E - SPECIAL CONDITIONS FOR TRAINING COURSES

48. SCOPE OF APPLICATION

The provisions of this Part E shall apply in addition to Part A for the provision of training services, e.g. user training for the customer's employees, and shall take precedence over Part A in the event of an objection.

49. REGISTRATION

- 49.1 Registrations for the training courses offered by SMF are possible either in writing or via a registration form provided by SMF on the Internet for this purpose. The customer's registration for the training shall be expressly accepted by SMF; it shall also be deemed to have been accepted if SMF has not rejected it within two weeks of receipt.
- 49.2 The customer is entitled to cancel his registration at any time up to the start of the training course. If the cancellation is made up to two weeks before the start of the training course, the customer shall be reimbursed the full amount of the remuneration owed less a flat-rate processing fee of 20% of the remuneration, but at least 25.00 euros. If the cancellation is made at a later date, the customer remains obliged to pay the remuneration in full. Instead of canceling, the customer is entitled to name a substitute participant for the participant(s) registered for the training course. The Customer reserves the right to prove that SMF has incurred no expenses or only significantly lower expenses than the processing fee due hereunder as a result of the cancellation.
- 49.3 SMF is entitled to cancel a training course at least two weeks before the start of the course if there is an objective reason for doing so. An objective reason exists for SMF in particular if
 - (a) the minimum number of participants specified in advance by SMF for the training course has not been reached,
 - (b) the instructor named for the training course is ill or otherwise unable to attend for good cause, or
 - (c) the venue intended for the training is no longer available for reasons for which SMF is not responsible.
- 49.4 If a training course is canceled by SMF, SMF shall inform the customer of this without delay; the customer is obliged to inform any participants registered by him with SMF of the cancellation of the training course without delay. If the training course is subject to remuneration, SMF shall reimburse any remuneration already paid by the customer immediately after the cancellation of the training course; any further claims of the customer due to the cancellation shall be subject to the provisions of Clause 1.
- 49.3 not.
- 49.5 Working documents for the training courses carried out by SMF are not owed, unless this is stated in the contract as an exception.
- 49.6 SMF is entitled to invoice the remuneration immediately after acceptance of the customer's registration, whereby the remuneration is payable in

In this case, the invoice shall be due two weeks before the start of the training; Clause 18.5 shall apply accordingly, but with the proviso that the date of receipt of the invoice shall not be decisive for the occurrence of default, but instead the date on which the invoice is due. If the invoice is not issued until after the training course, Clause 18.5 shall apply.

part f - special conditions for consultancy services, in particular those outside the scope of softwares care

50. SCOPE OF APPLICATION

The provisions of this Part F apply in addition to Part A for the provision of advisory services to the client, taking precedence over Part A in the event of an objection.

51. INITIATION, PROVISION AND QUALITY OF CONSULTING SERVICES

- 51.1 The service to be provided by SMF is usually requested by the customer via an automated ticket system by entering the data provided there. Each processing of a ticket is charged separately on a time and material basis in accordance with the price in the price list, in time units of 15 minutes each, unless the activity is remunerated at a flat rate as a software maintenance service (Part D). A flat rate of one time unit is charged for the initial handling of a ticket. The expenses incurred for processing tickets are invoiced to the customer quarterly in arrears, starting with the first receipt of the support request.
- 51.2 If it is determined during the initial check of a ticket that the effort required to process the ticket is likely to take more than two hours, the customer will receive a cost estimate via the ticket system in the form of a non-binding offer. Processing will not begin until the customer has approved the cost estimate or the contracting parties have otherwise agreed on the price for processing the ticket.
- 51.3 Unless otherwise agreed, the service to be provided by SMF constitutes a service. It is not a highly personal performance obligation of a specific SMF employee.
- 51.4 SMF shall determine the location, working hours and work process for the services to be provided. In doing so, SMF shall take into account the interests of the customer, insofar as this is reasonable for SMF.
- 51.5 SMF shall provide the services independently and on its own responsibility. The employees of SMF and any subcontractors commissioned by SMF are subject solely to the supervision and instructions of SMF. Insofar as an employee or subcontractor employed by SMF to provide the services must be replaced by another, SMF alone shall determine the choice; in doing so, SMF shall take appropriate account of the wishes and interests of the customer, insofar as this is possible and reasonable.

PART G - SPECIAL CONDITIONS FOR HOSTING CONTENT PROVIDED BY THE CUSTOMER

52. SCOPE OF APPLICATION

The provisions of this Part G apply in addition to Part A for the provision of services rendered to the customer in connection with the hosting of content, taking precedence over Part A in the event of an objection.

53. OBJECT OF PERFORMANCE

- 53.1 SMF shall provide the customer with the storage space agreed in the contract with the availability of the storage space specified therein. The storage space is accessible to the customer via the Internet.
- 53.2 SMF is not obliged to provide access to the Internet.
- 53.3 Maintenance work is carried out by SMF on weekdays between 2.00 a.m. and 7.00 a.m. or at weekends. Extensive maintenance work that takes place outside these times must be notified to the customer in good time in advance and requires the customer's prior written consent, except in cases of imminent danger. During maintenance work, there may be restrictions on access to the website.

This may result in reduced server speed or short-term unavailability of the servers; these are not counted towards the periods of unavailability.

54. OBLIGATIONS OF THE CUSTOMER

- 54.1 The customer shall keep the access data provided to him by SMF secret.
- 54.2 A password preset by SMF must be changed immediately by the customer and replaced by a password known only to the customer and secure according to the state of the art. The customer shall inform SMF immediately if third parties have gained knowledge of the customer's access data or if the customer suspects this.
- 54.3 The customer shall not use the storage space provided by SMF to store or distribute content that violates applicable legal provisions in Germany. This applies in particular to content which violates industrial property rights (such as trademark rights) or copyrights of third parties or which commits criminal offenses.
- 54.4 If SMF is informed by a third party and otherwise becomes aware that there is illegal content on the customer's storage space, SMF may block access to the content concerned or, if it is not possible to block the content concerned, block the customer's storage space concerned until the legal situation has been clarified. SMF will inform the customer of this immediately and give the customer the opportunity to delete or block the affected content himself. SMF will then lift the block unless SMF is forced to maintain the block or to block it again by a provisional enforceable court decision or official order.

55. RESPONSIBILITY FOR INFORMATION

- 55.1 When hosting content for the customer, SMF shall only act as a technical service provider for the customer to the extent agreed in the contract. The content posted by the customer on the website is third-party content for SMF, which is not selected or modified by SMF, but merely stored for the customer. SMF is therefore neither responsible for the accuracy and completeness nor for the legality of such information (§ 10 TMG).
- 55.2 The customer shall indemnify SMF against all claims asserted by third parties against SMF due to an infringement of rights to the content referred to in Clause. The customer shall bear the costs of SMF's necessary legal defense, including court and attorney's fees in the statutory amount. This does not apply if the customer is not responsible for the infringement in question.
- 55.3 In the event of a claim by a third party, the customer is obliged to inform SMF immediately of the asserted claims and to provide SMF with all information necessary for the examination of the claims and SMF's legal defense; this does not apply if this is unreasonable for the customer.

56. LIABILITY FOR THE PROVISION OF STORAGE SPACE

SMF's strict liability for defects already existing at the time of conclusion of the contract is excluded.