

General Terms and Conditions.



These General Terms and Conditions of Deutsche Telekom MMS GmbH (hereinafter referred to as Telekom MMS) comprise the following sections:

- A. General Provisions
- B. Special provisions work and services
- C. Special provisions creation of individual software
- D. Special provisions software maintenance
- E. Special provisions hardware maintenance
- F. Special provisions software/computer capacities lease
- G. Special provisions software purchase
- H. Special provisions hardware purchase

The General Provisions apply to all services. The special provisions for specific services under B to H shall apply additionally.

A. General Provisions

1 Parties to the agreement

The agreement is concluded between Deutsche Telekom MMS GmbH, Riesaer Straße 5, 01129 Dresden, Germany (Local Court of Dresden HRB 11433), and the customer which is not a consumer within the meaning of Sec. 13 of the German Civil Code [*Bürgerliches Gesetzbuch – BGB*].

2 Subject matter of the agreement

- 2.1 The subject matter of the agreement is specified in these General Terms and Conditions (GTC), in the relevant prevailing licensing terms of the manufacturers and in the relevant Service Specifications and Price Lists.
- 2.2 Diverging provisions shall be made in writing. The provision of a guarantee for specific characteristics (condition - [*Beschaffenheit*]) shall also require written confirmation by Telekom MMS in order to be valid.
- 2.3 The customer's general terms and conditions shall not become a part of the agreement, even if they are attached to requests for proposals, orders, acceptance declarations, etc. and if no objection is made.

3 Agreements and proposals

- 3.1 Unless otherwise stipulated by a separate arrangement, the agreement shall be deemed established upon receipt of the order confirmation or upon commencement of provision of services by Telekom MMS at the latest.
- 3.2 Dates or deadlines for the delivery of goods and the performance of work or services stipulated in agreements shall be binding only if they were designated as such in writing by Telekom MMS.
- 3.3 All offers by Telekom MMS are subject to change, unless explicitly stated otherwise in the offer. Telekom MMS reserves the right to deviate slightly from the offer for technical reasons even after the offer has been accepted by the customer.

4 Shipping and transfer of risk

- 4.1 For any shipment in connection with the provision of work or services, the risk shall be transferred to the customer as soon as Telekom MMS has delivered the items to the person responsible for shipping.
- 4.2 The customer shall inspect the external condition of the shipment and the work or service without undue delay upon receipt and report any transport damage to the person responsible for shipping, secure the evidence, and inform Telekom MMS and the sender by telephone and in writing without undue delay.

5 Reservation of ownership

Telekom MMS shall retain ownership and any rights to be granted until the amount owed has been paid in full. Until this time, the rights shall be granted as preliminary rights and may be withdrawn by Telekom MMS at its discretion. Until transfer of ownership, the customer shall handle the goods or the software with care. Telekom MMS shall be informed without undue delay of any at-

tachment, insolvency, damage or loss in respect of the goods or the software as well as any change of possession. If software is purchased, the customer's right to further use of the software shall lapse if Telekom MMS asserts reservation of ownership. All program copies made by the customer must be deleted.

6 General terms and conditions of payment

- 6.1 Compensation and ancillary costs are, in principle, net prices plus any applicable statutory taxes and duties.
- 6.2 The amount due shall be paid to the account indicated on the invoice. It shall be credited to the account on the fifteenth calendar day after receipt of the invoice at the latest. In the event that the customer furnishes a SEPA direct debit mandate, Telekom MMS shall not debit the agreed account with the billed amount until the twelfth day following receipt of the invoice and the SEPA Pre-notification.
- 6.3 The customer may only offset undisputed counterclaims or counterclaims that have become *res judicata*. The customer shall only be entitled to assert a right of retention for counterclaims arising from this agreement.
- 6.4 Starting on the day on which the services are initially performed, monthly prices shall be payable for the rest of the month on a *pro rata* basis. Afterwards, these prices shall be paid on a monthly basis in advance. If the price is to be calculated for parts of a calendar month, it shall be calculated on a *pro rata* basis for each day. The full monthly price shall be charged if the customer terminates the agreement within less than one month after the effective date of the agreement; this shall not apply to any termination for good cause.
- 6.5 If the compensation is calculated according to actual time and expenses incurred, these costs shall be based on the generally valid prices of Telekom MMS at the time the agreement is concluded, unless otherwise agreed. In this case, Telekom MMS shall document the type and duration of the activities and attach this information to the invoice.
- 6.6 If compensation is agreed at a fixed price, Telekom MMS shall be entitled to receive advance payments for self-contained portions of the work. The advance payments for the services performed shall be due and payable upon completion of the following project phases:
 - commencement date of agreement;
 - first partial delivery;
 - readiness for acceptance;
 - acceptance.
- 6.7 In addition to compensation, Telekom MMS charges incurred traveling expenses monthly in arrears. Travel time shall be billed according to the agreed hourly rate.

7 Default

- 7.1 If the customer defaults on the payment of the prices, or a more than insignificant part thereof, for two consecutive months, Telekom MMS may terminate the agreement without notice.
- 7.2 Telekom MMS reserves the right to assert any other claims arising from a default in payment.

8 Changes in General Terms and Conditions

Telekom MMS shall be entitled to change the General Terms and Conditions, the relevant Service Specifications or the prices within a suitable notice period, provided that the change is reasonably acceptable to the customer, giving due regard to Telekom MMS' interests. The customer shall be notified of the change in writing. If changes are made to the customer's detriment, the customer shall have a special right of termination at the time the change goes into effect. In its change notice, Telekom MMS shall bring the customer's attention to this special termination right as well as to the fact that the change will go into effect unless the customer exercises its special termination right within four weeks.

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9 Liability

- 9.1 Telekom MMS shall be fully liable in cases of intent, gross negligence, or the lack of a guaranteed feature.
- 9.2 In the event of slight negligence, Telekom shall be fully liable for injury to life, limb, or health. In all other respects, in the event of slight negligence, Telekom shall only be liable insofar as an obligation is breached which is prerequisite to the proper implementation of the agreement, by the breach of which attainment of the purpose of the agreement is compromised and which the customer may routinely expect to be honored (hereinafter referred to as a "cardinal obligation"). In the event of a violation of a cardinal obligation, liability shall be limited to foreseeable damage that is typical of the agreement. This shall also apply to lost profit and unachieved savings. Liability for any less direct follow-up damage due to defects shall be precluded.
- 9.3 Telekom MMS shall be liable for the loss of data in the case of slight negligence under the conditions and within the scope of item 9.2 only if the customer has performed a daily backup of their data.
- 9.4 Liability for any other damage shall be excluded, in particular for data loss or hardware faults caused by incompatibility between the components already present in the customer's PC system and the new or modified hardware and software, or for system malfunctions that may result from existing configuration errors or older, interfering drivers that were not completely removed. Liability in accordance with the German Product Liability Act [*Produkthaftungsgesetz - ProdHG*] shall remain unaffected.

10 Term and termination

If the agreement provides for no specific contractual term, each party may terminate the agreement by giving three months' notice, effective from the end of a calendar quarter. Notice must be given in writing.

11 Export

Telekom MMS shall not be liable for damages resulting from the fact that the performance of the services owed is delayed or prohibited due to relevant proceedings or provisions under foreign trade law (in particular the Foreign Trade and Payments Act [*Außenwirtschaftsgesetz - AWG*], the Foreign Trade and Payments Ordinance [*Außenwirtschaftsverordnung - AWV*], the EU Dual-Use Regulation and US foreign trade law). If, for example, a required approval of a governmental entity is not granted, Telekom MMS' obligation to perform services shall lapse, and any claims for damages against Telekom MMS shall be excluded in this case. The customer undertakes to observe the provisions of the US regulations governing re-exports, for example, in the event of a subsequent transfer of goods. The relevant EC regulations and US embargo provisions shall also be observed.

12 Confidentiality

The parties shall be obliged toward each other for an unlimited period of time to treat as confidential any business and trade secrets as well as any details specified as being confidential that become known to them in connection with the performance of the agreement. Information may be divulged to third parties not involved in carrying out the order only with the prior written consent of the other party. Affiliated companies of the parties to the agreement as defined by Sec. 15 et seq. of the German Stock Corporation Act [*Aktengesetz - AktG*] are not to be regarded as third parties. The parties to the agreement shall also require their employees and any third parties involved to accept these obligations.

13 Data protection

- 13.1 If Telekom MMS processes personal data for the customer, Telekom MMS shall be entitled to carry out data processing through domestic and foreign subcontractors also without the customer's prior consent. In this regard, the subcontractors shall process personal data solely according to the instructions of Telekom MMS and shall implement measures for data security at a level which is at least equal to that owed by Telekom MMS.
- 13.2 The customer shall ensure the requirements of data protection law necessary in this respect and shall in particular inform the affected parties accordingly.
- 13.3 In respect of subcontractors outside the European Economic Area, a sufficient level of data protection shall be ensured by Telekom MMS.

14 Force majeure

- 14.1 Telekom MMS shall not be liable for events of force majeure that significantly hinder contractual performance or temporarily hamper or render impossible the due performance of the agreement by Telekom MMS. Force majeure shall be deemed to include all circumstances that are independent of the intention and influence of the parties, such as natural disasters, governmental measures, decisions by authorities, blockades, war and other military conflicts, mobilization, internal unrest, terrorist attacks, strikes, lockouts and other industrial unrest, confiscation, embargoes, epidemics, pandemics, or other circumstances that are unpredictable, serious and not due to the parties' fault and that occur following the conclusion of this agreement.
- 14.2 If one of the parties is prevented from fulfilling its contractual obligations due to force majeure, this shall not be considered to be a breach of the agreement, and the periods set out in the agreement or on the basis of the agreement shall be extended reasonably, depending on the duration of the impediment. The same shall apply if Telekom MMS relies on the service of a third party, and this service is delayed as a result of force majeure.
- 14.3 Each party shall undertake all necessary and reasonable actions within its control in order to limit the extent of the consequences which were caused by the force majeure. The party affected by force majeure shall in each case notify the other party in writing of the beginning and end of the impediment without undue delay.

15 Other provisions

- 15.1 If any provisions of the agreement are or become invalid or if a lacuna becomes evident, this will not affect the validity of the remaining provisions. In place of the invalid provisions, or to fill the lacuna, a reasonable provision shall be introduced that comes as close as possible to what the parties may be presumed to have intended according to the spirit and purpose of the agreement.
- 15.2 The customer shall not be entitled to transfer any rights and obligations under this agreement to a third party except with the prior written consent of Telekom MMS.
- 15.3 The contractual relations between the parties shall be subject to German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods.
- 15.4 The place of jurisdiction for all disputes arising from and in connection with this agreement is Dresden. Any exclusive place of jurisdiction shall have priority.
- 15.5 Throughout the duration of the project and for a period of 12 months thereafter, the parties shall neither directly nor indirectly actively solicit or try to solicit employees of the respective other party. Any contravention shall result in a contractual penalty in the amount of 10% of the order volume, but at least in the amount of EUR 50,000.

Telekom MMS or subcontractors engaged by Telekom MMS shall provide the services agreed or parts thereof in countries of the European Union or in any other country specified in the Service Specifications. Telekom MMS or subcontractors engaged by Telekom MMS may also provide services or parts thereof in other countries at their free discretion. If services are re-located to countries outside the European Union which are not stated in the Service Specifications, Telekom MMS shall notify the customer of the planned re-location. If Telekom MMS does not receive a notice from the customer stating serious grounds against a re-location within four weeks after receipt of the notification about such re-location, said re-location shall be deemed to have been approved by the customer.

B. Special provisions work and services

1 Services provided by Telekom MMS

- 1.1 Work
By agreement and subject to technical and operational feasibility, Telekom MMS shall perform software development work and other work. The services shall be based on the current state of the art.
- 1.2 Services
- 1.2.1 By agreement, Telekom MMS shall perform consulting and support services for the customer. The services shall be based on the

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current state of the art.

- 1.2.2 Telekom MMS' services shall be performed solely to support the customer with regard to a project that is carried out under the sole responsibility of the customer. Telekom MMS shall not be responsible for a certain result in connection with the performance of the services.
- 1.3 Telekom MMS shall be entitled to provide the services by subcontracting work to third parties (subcontractors). Telekom MMS shall be liable for services provided by subcontractors to the same extent that it is liable for its own actions.

2 Acceptance of work

- 2.1 In the case of work, Telekom MMS may provide partial deliveries or partial work for acceptance (partial acceptance). These include: self-contained phases for the completion of specified phases or services, self-contained and thus operational portions, self-contained documents or parts of documents.
- 2.2 The customer shall carry out and declare, without undue delay, each acceptance (partial acceptance) of the services performed by Telekom MMS. Telekom MMS shall be entitled to participate in all acceptances.
- 2.3 Acceptance of software shall take place by means of a functionality test. This test is successful if the testing procedures agreed on for this purpose produce no substantial defects.
- 2.4 If no substantial defects are reported within fourteen calendar days or within any other agreed acceptance period after submission for acceptance (partial acceptance), or if the customer incorporates the work results into its productive operations, the work shall be deemed to have been accepted.

3 The customer's obligations and responsibilities

- 3.1 The customer shall ensure that all items and services it is required to contribute are provided in good time, in the required scope, and free of charge for Telekom MMS.
- 3.2 The customer shall give Telekom MMS employees all support they require for their work at the customer's location. As part of this support, the customer shall, inter alia:
 - ensure that a qualified employee is available for support at the place of performance;
 - ensure that the employees assigned by Telekom MMS are granted free access to the relevant computer and software at the agreed time;
 - ensure for the benefit of Telekom MMS employees that items provided by the customer comply with work safety regulations;
 - provide Telekom MMS employees in good time with the information that they need for their activities;
 - provide Telekom MMS employees with adequate and appropriate work space, including tools and materials, to the extent they are required to be at the customer's premises to fulfil the agreement.
- 3.3 Data media provided by the customer must be flawless both technically and in terms of content. If this is not the case, the customer shall compensate Telekom MMS for any and all damage arising from the use of such data media and shall indemnify Telekom MMS and hold it harmless from any claims by third parties.
- 3.4 If the customer does not contribute to the services to the extent necessary or not in good time or in the agreed manner, the customer shall bear any consequences resulting therefrom (such as delays, added cost).
- 3.5 Telekom MMS and its vicarious agents [Erfüllungsgehilfen] shall be indemnified against all claims by third parties that are based on the illegal use of the work or services protected by copyright law by the customer or with the customer's consent, or which arise from disputes involving data protection or other laws in conjunction with the use of the services. The customer shall notify Telekom MMS in writing without undue delay if third parties claim that it has infringed their rights. The customer shall not recognize any infringement of rights claimed by third parties and either have any and all disputes handled by Telekom MMS or handle such disputes only in agreement with Telekom MMS.
- 3.6 The customer shall provide notifications of defects together with a comprehensible description of the symptoms of the defect and, if possible, the submission of written records, hard copies or other documents illustrating the defects.

4 Right of Use

- 4.1 In regard of all work or services performed by Telekom MMS which are protected by copyright law, the customer shall be

granted a non-exclusive, non-expiring, non-sublicensable right to use for its own internal purposes/use.

- 4.2 If the customer is granted an exclusive right of use by agreement, and if the agreement is terminated by the customer prior to final completion of the work due to reasons for which Telekom MMS is not responsible, the customer shall receive only a non-exclusive right of use to the work results provided.
- 4.3 Copyright notices, serial numbers and any other features that serve to identify the program may under no circumstances be removed or modified. The same applies to preventing such features from being displayed on screen.

5 Defects in quality and title [Sach- und Rechtsmängel] of work

- 5.1 If the performance of work is defective so as to impair contractual use thereof to a more than insignificant extent, the customer shall initially be entitled to demand that Telekom MMS, at its own choice, either makes subsequent improvements or provides the work again (subsequent performance [Nacherfüllung]). If the customer has set a reasonable grace period for Telekom MMS to effect subsequent performance after an initial demand for action, and Telekom MMS has refused to effect subsequent performance, or if subsequent performance is unsuccessful twice, the customer shall – with regard to the elimination of defects – be entitled to demand either rescission of the agreement or reduction of the compensation. If the deviation of the work from the agreed condition is insignificant and does not limit its operability, the customer may only demand a reduction of the compensation.
- 5.2 If Telekom MMS has provided services to detect a defect after a problem was reported, and if no defect in quality [Sachmangel] is found, the customer shall bear the costs resulting therefrom. In calculating the costs, Telekom MMS shall use the rates of remuneration valid at the time of performance.
- 5.3 The liability for defects in quality shall not apply to services provided by Telekom MMS that have been modified or otherwise interfered with by the customer, unless the customer proves that the interference did not cause the defect. The liability for defects in quality shall also not apply if the customer fails to report the defect to Telekom MMS in writing without undue delay after it becomes apparent, or if the work is not used under the contractually agreed conditions as stipulated in the documentation.
- 5.4 A defect in title [Rechtsmangel] to the contractual work shall exist if the rights required for use as provided by the agreement have not been effectively granted. In the event of defects in title, Telekom MMS honours its warranty, at Telekom MMS' choice, by either granting the customer a legally flawless possibility to use the contractual work or by taking back the contractual work at the invoice amount less a reasonable compensation for use. The latter shall apply only if Telekom MMS cannot reasonably be expected to remedy the issue otherwise.
- 5.5 Claims of the customer arising from necessary expenses incurred for the purpose of subsequent performance – in particular, the cost of transportation, labour and materials – shall be excluded to the extent that the expenses are increased because the object of the services has been subsequently moved to a place other than the place of performance stipulated in the agreement.
- 5.6 The customer shall be entitled to warranty claims against Telekom MMS for one year from acceptance of the respective service.

This restriction shall not apply to compensation claims that are based on the violation by Telekom MMS of claims to subsequent performance in the event of defects. Compensation claims based on refusal to provide subsequent performance may only be asserted within the statutory period of limitation if the claim to subsequent performance is asserted by the customer within the reduced period for material defect claims.

C. Special provisions creation of individual software

1 Services provided by Telekom MMS

- 1.1 Telekom MMS creates software for the customer based on the Service Specifications underlying the conclusion of the agreement. The Service Specifications are based on the customer's professional and functional requirements as stated by the customer. The Service Specifications conclusively describe the condition of the software owned by Telekom MMS. Amendments to the Service Specifications shall only be made pursuant to Section 8 General Provisions.

- 1.2 The copy of the software to be provided to the customer by Telekom MMS shall contain only the object code.
- 1.3 The software shall be provided together with operating instructions (user documentation or online help). Unless agreed otherwise, the operating instructions shall be written in the language of the user interface.
- 1.4 Telekom MMS shall create the software, including the operating instructions, according to the principles of proper professional conduct.
- 1.5 Telekom MMS is not obliged to perform any analysis, planning, consulting or training services.

2 The customer's obligations and responsibilities

- 2.1 The customer shall provide Telekom MMS with a comprehensive and detailed description of the professional and functional requirements as regards the software and shall in good time provide Telekom MMS with all documents, information and data required for creating the software.
- 2.2 The customer shall support Telekom MMS where necessary and establish the conditions required for proper performance of the order within its sphere of business. At the request of Telekom MMS, the customer shall provide sufficient work space and materials free of charge. The customer shall not be entitled to performance of services at its own premises.
- 2.3 The customer shall ensure that professional personnel are available during the project to support Telekom MMS and, after the handover, for a condition check and for implementation of the software.
- 2.4 At the request of Telekom MMS, the customer shall provide suitable test cases and test data for a condition check in machine-readable form. If the customer fails to provide said test cases and test data, Telekom MMS can choose and create suitable test cases itself against additional compensation.
- 2.5 The customer shall assert defects in writing in a comprehensible and detailed manner, giving any relevant information on the defects in question. In particular, the work stages leading to the occurrence of the defect as well as the effects and the manner of occurrence of the defect have to be stated.
- 2.6 To the extent required, the customer shall support Telekom MMS in the rectification of defects, in particular, enabling remote access to the customer's system and providing further material for analysis.

3 Acceptance

- 3.1 The customer shall examine all items supplied, in particular, software or operable parts of the software which were agreed as partial deliveries, without undue delay – as a rule within 14 calendar days – to determine whether these items are free from defects, in particular, in respect of the agreed condition (condition check [*Beschaffungsprüfung*]). In this respect, the customer will employ test cases and test data suitable for software in practice. Telekom MMS may liaise with the customer as regards the test procedures and can also take part in and assist the condition check at the customer's premises.
- 3.2 The customer shall duly notify Telekom MMS of any defects occurring prior to or during the condition check without undue delay, at the latest within seven calendar days after becoming aware of such defects.
- 3.3 The commercial obligation to inspect and object to defects pursuant to Sec. 377 of the German Commercial Code [*Handelsgesetzbuch – HGB*] shall apply additionally.

4 Rights of use

- 4.1 Unless agreed otherwise, Telekom MMS shall, upon full payment of the compensation owed, grant the customer the non-exclusive right to use the items supplied for the contractually agreed purpose of use in its company on a continuing basis. The customer can transfer its granted right to use the services provided by Telekom MMS to third parties only upon fully waiving its own rights.
- 4.2 Apart from that, all rights shall remain with Telekom MMS.
- 4.3 Telekom MMS shall be entitled to implement suitable technical measures for protection against any use in breach of the agreement. The use of the software in any alternative or subsequent configuration must not be significantly impaired thereby.
- 4.4 Telekom MMS shall be entitled to revoke the customer's right of use if the latter breaches any restrictions of use or other

provisions for protection against unauthorised use to a more than insignificant extent. Prior to revocation, Telekom MMS shall grant the customer a grace period to remedy such breach. In the event of repeated breach and of special circumstances which, taking the interests of both parties into account, justify an immediate revocation without a grace period being granted, Telekom MMS shall be entitled to revoke the right of use without granting a grace period. After revocation, the customer shall confirm to Telekom MMS the discontinuation of use in writing.

5 Warranty

- 5.1 The customer shall be entitled to claims for defects only if the reported defects are reproducible or otherwise provable. Sections 2.5 and 2.6 shall apply to the notification of defects.
- 5.2 Telekom MMS shall be entitled to claim compensation for any expenses incurred if
 - a) it acts on a notification without a defect having occurred, unless the customer could not be reasonably expected to recognise that no defect had occurred;
 - b) a notified fault is not reproducible or otherwise provable as a defect;
 - c) additional expenses occur because the customer failed to properly fulfil its duties.

D. Special provisions software maintenance

1 Services provided by Telekom MMS

- 1.1 Consulting

Telekom MMS shall advise the customer in connection with the technical requirements and conditions for the use of the maintenance software [*Pflegesoftware*] as well as individual functional aspects. These services shall be provided during normal business hours of Telekom MMS and to the extent possible. Telekom MMS may refer to the documentation of the maintenance software provided to the customer for answering inquiries. Further services, such as other contact times and periods as well as an on-call service or deployment of Telekom MMS personnel to the customer's premises, must be agreed on expressly in advance.
- 1.2 Debugging
 - 1.2.1 Telekom MMS is responsible for the elimination of defects of the software and of the program documentation. When used in accordance with the agreement, the software must provide the services specified in the Service Specifications. To the extent that Telekom MMS is not the licensor of the software, the customer and Telekom MMS shall, prior to the commencement of the maintenance agreement, determine the status of the software in the form of a status report that will be the basis for any subsequent determination of an error.
 - 1.2.2 To the extent agreed upon in the agreement, Telekom MMS shall provide the customer with certain new versions of the maintenance software in order to keep the latter up to date and prevent faults. For this purpose, Telekom MMS shall provide the customer with updates of the maintenance software containing technical modifications and improvements as well as minor functional enhancements and improvements. Also for this purpose, Telekom MMS shall provide the customer with patches containing corrections to the maintenance software and other measures to work around possible faults.
 - 1.2.3 The scope of service shall not include the provision of upgrades involving major functional enhancements or any changes required by law that can be made only by partially or completely reprogramming the relevant software that is to be maintained. In this case, Telekom MMS shall be entitled to claim reasonable additional compensation upon prior written notice. If the customer fails to give its written consent in this regard, Telekom MMS shall be entitled to terminate the agreement for good cause.

2 The customer's obligations and responsibilities

- 2.1 Telekom MMS and its vicarious agents shall be indemnified against all claims by third parties that are based on the illegal use of the software and the services connected therewith by the customer or with the customer's consent, or which arise, in particular, from disputes involving data protection, copyright, or other laws in conjunction with the use of the software. The customer shall notify Telekom MMS in writing without undue delay if third parties claim that it has infringed their rights. The customer shall not recognise any infringement of rights claimed by third parties and either have any and all disputes handled by Telekom MMS or handle such disputes only in agreement with Telekom MMS.

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- 2.2 Copyright notices, serial numbers and any other features that serve to identify the program may under no circumstances be removed or modified. The same applies to preventing such features from being displayed on screen.
- 2.3 The customer shall ensure that all items and services it is required to contribute are provided in good time, in the required scope, and free of charge for Telekom MMS.
- 2.4 The customer shall give Telekom MMS employees all support they require for their work at the customer's premises. As part of this support, the customer shall, inter alia:
 - ensure that a qualified employee is available for support at the place of performance;
 - ensure that the employees assigned by Telekom MMS are granted free access to the relevant computer and software at the agreed time;
 - ensure for the benefit of Telekom MMS employees that items provided by the customer comply with work safety regulations;
 - provide Telekom MMS employees in good time with the information that they need for their activities;
 - provide Telekom MMS employees with adequate and appropriate work space, including tools and materials, to the extent they are required to work at the customer's premises to fulfil the agreement.
- 2.5 In order for the fault to be properly cleared,
 - the fault must be adequately described by the customer and also be identifiable by Telekom MMS;
 - detected faults must be reported in the specified form via a fault report;
 - the documentation required for fault clearance must be made available to Telekom MMS for inspection;
 - the customer must not have altered or tampered with the software;
 - the software must be operated under proper conditions in accordance with the documentation.
- 2.6 Data media provided by the customer must be flawless both technically and in terms of content. If this is not the case, the customer shall compensate Telekom MMS for any and all damage arising from the use of such data media and shall indemnify Telekom MMS and hold it harmless from any claims by third parties.
- 2.7 If the customer does not contribute to the services to the extent necessary or not in good time or in the agreed manner, the customer shall bear any consequences resulting therefrom (such as delays, added cost).

3 Rights of use

- 3.1 The customer's rights to use the new versions and any corrections to the maintenance software correspond to its rights to use the previous version of the maintenance software. With regard to the rights of use, the rights to the new versions and other corrections shall replace the rights to the previous versions and other corrections following a reasonable transition period – which as a rule does not exceed one month. The customer may archive a copy.
- 3.2 The customer may create a full copy of the new versions and corrections for backup purposes. The customer shall mark this copy as a backup copy and provide it with the copyright notice of the original data media. Beyond this, the customer shall have no right to copy the software.

4 Warranty

- 4.1 Elimination of defects
If the elimination of defects is performed in a defective manner so as to impair contractual use thereof to a more than insignificant extent, the customer shall initially be entitled to demand that Telekom MMS, at its own choice, either makes subsequent improvements or provides the service again (subsequent performance). If the customer has set a reasonable grace period for Telekom MMS to effect subsequent performance after an initial demand for action, and Telekom MMS has refused to effect subsequent performance, or if subsequent performance is unsuccessful, the customer shall – with regard to the elimination of defects – be entitled to demand either rescission of the agreement or reduction of the compensation. If the deviation of the service from the agreed condition is insignificant and does not limit its operability, the customer may only demand a reduction of the compensation.
- 4.2 Consulting

If the performance of the consulting services is defective so as to impair contractual use thereof to a more than insignificant extent, the customer shall initially only be entitled to demand that Telekom MMS provides subsequent performance within a reasonable period. If subsequent performance is unsuccessful or if Telekom MMS refuses to effect subsequent performance, the customer, at its own choice, shall be entitled to either terminate the consulting service without notice or claim a reduction of the monthly compensation. The subsequent performance shall be deemed failed after the second unsuccessful attempt, unless a different arrangement is reached, in particular as a result of the type of the goods or services or the defect or other circumstances. If the deviation of the service from the agreed condition is insignificant, the customer may only demand a reduction of the compensation.

- 4.3 If Telekom MMS has provided services to detect a defect after a problem was reported, and if no defect in quality is found, the customer shall bear the costs resulting therefrom. In calculating the costs, Telekom MMS shall use the rates of remuneration valid at the time of performance.
- 4.4 The liability for defects in quality shall not apply to services provided by Telekom MMS that have been modified or otherwise interfered with by the customer, unless the customer proves that the interference did not cause the defect. The liability for defects in quality shall also not apply if the customer fails to report the defect to Telekom MMS in writing without undue delay after it becomes apparent, or if the service supplied is not used under the contractually agreed conditions as stipulated in the documentation.
- 4.5 Claims of the customer arising from necessary expenses incurred for the purpose of subsequent performance – in particular, the cost of transportation, labour and materials – shall be excluded to the extent that the expenses are increased because the object of the services has been subsequently moved to a place other than the place of performance stipulated in the agreement.
- 4.6 The customer shall be entitled to warranty claims against Telekom MMS pursuant to Sections 4.1, 4.2 for one year from acceptance of the respective service.
This restriction shall not apply to compensation claims that are based on the violation by Telekom MMS of claims to subsequent performance in the event of defects. Compensation claims based on refusal to provide subsequent performance may only be asserted within the statutory period of limitation if the claim to subsequent performance is asserted by the customer within the reduced period for material defect claims.

5 Defect in title

- 5.1 In the provision of new versions, a defect in title shall exist if the rights required to use the software as provided by the agreement have not been effectively granted after the software is handed over. In the event of defects in title, Telekom MMS honours its warranty, at Telekom MMS' choice, by either providing the customer with a legally flawless possibility to use the software or by taking back the software at the invoice amount less a reasonable compensation for usage. The latter shall apply only if Telekom MMS cannot reasonably be expected to remedy the issue otherwise.
- 5.2 Claims of the customer arising from a defect in title shall be subject to a limitation period of one year from the commencement of the statutory limitation period.

E. Special provisions hardware maintenance

1 Services provided by Telekom MMS

- 1.1 Scope of performance
 - 1.1.1 Telekom MMS shall perform the preventive services required to maintain the operational readiness of the hardware to be maintained (maintenance) and will carry out repairs or provide a replacement during the elimination of problems (repair), hereinafter referred to as "Maintenance Services".
 - 1.1.2 Telekom MMS may replace defective parts and/or defective systems for the purpose of carrying out the Maintenance Services. Technical modifications shall be subject to the customer's prior consent. Any parts replaced shall become the property of Telekom MMS. Telekom MMS may take the system or parts thereof to a Telekom MMS branch for the purpose of eliminating defects and provide an equivalent loaner unit free of charge. If any such loaner units or replacement devices are used, Telekom MMS' services shall include reinstalling the backed-up user data (if available). Telekom MMS shall without undue delay delete any data stored on parts or systems that have been replaced or taken back. If this

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is impossible, Telekom MMS shall render these parts completely unusable. The services shall also include disposal of replaced spare parts.

- 1.1.3 These Maintenance Services shall not include services in connection with the replacement of consumable parts and wearing parts. If such services are rendered by Telekom MMS at the customer's request, Telekom MMS shall bill the customer for these services separately based on the prices applicable in this respect.
- 1.1.4 These repair services shall not cover hardware problems caused by improper use of the hardware (failure to comply with the relevant user manual, for example), modifications to the hardware by the customer or third parties involved by the customer or other circumstances for which the customer is responsible.
- 1.1.5 Maintenance shall be carried out subject to the condition that Telekom MMS itself is supplied by its upstream suppliers in good time and as contractually agreed.
- 1.2 Period of performance
 - 1.2.1 The maintenance work shall be performed during Telekom MMS' normal business hours.
 - 1.2.2 The repair work shall be carried out after receipt of the problem report during Telekom MMS' normal business hours on the same day, if possible, but no later than the following working day.
- 1.3 Place of performance
 - 1.3.1 The place of performance for maintenance of the customer's hardware shall be the customer's business premises as agreed and the specified installation site.
 - 1.3.2 The customer shall inform Telekom MMS in writing at least two months in advance before moving the hardware to a place of performance other than the one agreed. In this case, Telekom MMS shall continue to provide Maintenance Services provided that this is not more time or cost-intensive. If the change of location influences the time and/or costs required to render the service, Telekom MMS shall be entitled to demand payment of compensation that is reasonable in view of the changed situation.

2 Acceptance

Any maintenance work shall be deemed accepted by the customer upon expiry of 14 calendar days after completion of the work unless the customer has given written notice of material defects in quality within the aforementioned period.

3 Special obligations and responsibilities of the customer

- 3.1 The customer shall ensure that all items and services it is required to contribute are provided in good time, in the required scope, and free of charge for Telekom MMS.
- 3.2 The customer shall give Telekom MMS employees all support they require for their work at the customer's premises. As part of this support, the customer shall, inter alia:
 - ensure that a qualified employee is available for support at the place of performance;
 - ensure that the employees assigned by Telekom MMS are granted free access to the relevant hardware at the agreed time;
 - provide Telekom MMS employees in good time with the information that they need for their activities.
- 3.3 In order for the fault to be properly cleared,
 - the fault must be adequately described by the customer and also be identifiable by Telekom MMS;
 - the documentation required for fault clearance must be made available to Telekom MMS for inspection;
 - the customer must not have altered or tampered with the hardware;
 - the hardware must be operated under proper conditions in accordance with the technical product description.
- 3.4 If the customer does not contribute to the services to the extent necessary or not in good time or in the agreed manner, the customer shall bear any consequences resulting therefrom (such as delays, added cost).

4 Warranty

- 4.1 If the service rendered (Section 1.1) is defective so as to impair contractual use thereof to a more than insignificant extent, the customer shall initially be entitled to demand that Telekom MMS, at its own choice, either makes subsequent improvements or provides the service again (subsequent performance). If the customer has set a reasonable grace period for Telekom MMS to effect subsequent performance

after an initial demand for action, and Telekom MMS has refused to effect subsequent performance, or if subsequent performance is unsuccessful, the customer shall – with regard to the elimination of defects – be entitled to demand either rescission of the agreement or reduction of the compensation. If the deviation of the service from the agreed condition is insignificant and does not limit its operability, the customer may only demand a reduction of the compensation.

- 4.2 If Telekom MMS has provided services to detect a defect after a problem was reported, and if no defect in quality is found, the customer shall bear the costs resulting therefrom. In calculating the costs, Telekom shall use the rates of remuneration valid at the time of performance.

F. Special provisions software/computer capacities lease

1 Services provided by Telekom MMS

The services include the provision of a software application via Internet for a fixed term and the provision of storage capacity for the customer's application data. The details are set out in the Service Specifications.

2 The customer's obligations and responsibilities

- 2.1 The customer has, in particular, the following obligations:
 - a) The services may not be misused, in particular
 - no information with content that is illegal or against good morals may be transmitted or posted on the Internet and no reference may be made to such information. This in particular includes information which, within the meaning of Secs. 130, 130a and 131 of the German Criminal Code [*Strafgesetzbuch – StGB*], serve to incite hatred and violence against persons or groups on the basis of their race or ethnicity, encourage or induce criminal offences by disseminating or providing instructions or glorify or downplay violence, as well as such information which is sexually offensive, pornographic within the meaning of Sec. 184 StGB, conducive to posing a significant moral threat to children and adolescents or impairing their well-being or could have a negative impact on the image of Telekom MMS. The provisions of the German Länder Convention on Youth Protection in the Media [*Jugendmedienschutzstaatsvertrag – JMStV*] and the German Act on the Protection of Young People [*Jugendschutzgesetz - JuSchG*] shall be observed.
 - national and international copyright, trademark, patent, name and label rights as well as other intellectual property rights or personality rights of third parties must be observed.
 - b) The customer shall inform its users in good time prior to commencement of the use about the details of this agreement, in particular about the rights and obligations pursuant to the General Terms and Conditions. The customer shall be liable for every breach of obligation by its users and other third parties breaching an obligation within the sphere of the customer's control, unless the customer proves that it is not responsible for such breach of obligations.
 - c) of the relevant affected party has to be obtained.
 - d) Telekom MMS and its vicarious agents shall be indemnified against all claims by third parties that are based on the illegal use of the application and the services connected therewith by the customer or with the customer's consent, or which arise, in particular, from disputes involving data protection, copyright, or other laws in conjunction with the use of the application. The customer is obliged to notify Telekom MMS without undue delay if it is or should be aware that such infringement is imminent.
 - e) Personal access data (user ID and password) may not be disclosed to third parties and must be stored in a secure place so as to protect them from and against third-party access. Such data must be changed prior to first use and in regular intervals for security reasons. The customer shall change access data suspected of being disclosed to unauthorised parties without undue delay. Such data must be encoded if stored on a PC, USB flash drive or CD-ROM.
 - f) If Telekom MMS is to process special categories of personal data within the meaning of Article 9 of the General Data Protection Regulation (GDPR), the customer shall notify Telekom MMS of this in writing without undue delay.
- 2.2 Telekom MMS is entitled to suspend the services at the customer's expense in the event of serious breaches of the customer's obligations pursuant to Section 2.1 or reasonable and significant suspicion thereof.

3 Rights of use

- 3.1 The customer and the users set up by the customer shall have the non-exclusive right, which is restricted to the period of use and the term of the agreement respectively, to access the software functionalities via Internet. The customer shall not be granted any further-reaching rights.
- 3.2 The customer shall not be entitled to use the software or to let third parties use or access the software beyond the use permitted pursuant to this agreement. In particular, the customer shall not be entitled to copy or sell the software or parts thereof.
- 3.3 The customer shall, upon request, provide Telekom MMS with all information required to assert claims against third parties, in particular, it shall inform Telekom MMS of their names and address and of the nature and scope of any claims it has against these third parties arising from the unauthorised provision of the program without undue delay.
- 3.4 The customer must also pay the prices arising from use by the users set up and thereby authorised by the customer. The same applies in the event of unauthorised use by other third parties, if and to the extent that the customer is responsible for such use.

G. Special provisions software purchase

1 Services provided by Telekom MMS

- 1.1 The scope of software goods and services as well as the authorised application environment are described in the relevant product description and additionally in the user manual. The product description and user manual shall, as a rule, be written in the language of the manufacturer.
- 1.2 The software shall be provided for download.

2 Special obligations and responsibilities of the customer

- 2.1 Telekom MMS and its vicarious agents shall be indemnified against all claims by third parties that are based on the illegal use of the software and the services connected therewith by the customer or with the customer's consent, or which arise, in particular, from disputes involving data protection, copyright, or other laws in conjunction with the use of the software. The customer shall notify Telekom MMS in writing without undue delay if third parties claim that it has infringed their rights. The customer shall not recognize any infringement of rights claimed by third parties and either have any and all disputes handled by Telekom MMS or handle such disputes only in agreement with Telekom MMS.
- 2.2 Copyright notices, serial numbers and any other features that serve to identify the program may not be removed or modified. The same applies to preventing such features from being displayed on screen.

3 Rights of use

- 3.1 Telekom MMS shall, upon full payment, grant the customer an
- 3.2 The customer may create a full copy of the software for backup purposes. The customer shall mark this copy as a backup copy and provide it with the copyright notice of the original data media. Beyond this, the customer shall have no right to copy the software. Partial reproduction of the written materials for internal purposes is permitted to the extent required by use of the software for its intended purpose. Additional manuals can be obtained through Telekom MMS if required.
- 3.3 If the software is resold, the customer may transfer rights to the software and the user manual to the same extent as they are transferred to it for the performance of this agreement. The customer shall be obliged to hand over program copies or to destroy any copies not handed over and to contractually oblige third parties, in turn, to use the software and the user manual only to the extent pursuant to Section 3.1 of these contractual terms and conditions.
- 3.4 To the extent not expressly permissible according to the Copyright Act [*Urheberrechtsgesetz – UrhG*] or by agreement, the customer may neither carry out itself nor have a third party carry out reverse engineering, disassembling or decompiling of the software.
- 3.5 In every case of use of the software and the user manual in culpable breach of the agreement, in particular enabling unauthorised third parties to use the software and the user manual, producing an unauthorised copy or using the software

on additional computers, the customer shall pay damages in the amount of the purchase price. The damage compensation shall be higher or lower if Telekom MMS proves that the loss suffered was greater or the customer proves that it was less. Telekom MMS reserves the right to assert further claims for damages.

- 3.6 The customer shall, upon request, provide Telekom MMS with all information required to assert claims against third parties, in particular, it shall inform Telekom MMS of their names and address and of the nature and scope of any claims it has against these third parties arising from the unauthorised provision of the program without undue delay.

4 Defect in quality

- 4.1 Telekom MMS warrants that the software shall fulfil the functions described in the accompanying documentation to the extent the software is used on the operating system described in the agreement.
- 4.2 If the software is defective, the customer shall be entitled to demand that Telekom MMS, at its own choice, either makes subsequent improvements or provides the service again (subsequent performance). If the deviation from the agreed condition is only insignificant, the customer may only demand a reduction of the compensation. If the service provided by Telekom MMS deviates only slightly from the agreed condition, without limiting its operability, the customer shall not have any claim due to defects in quality.
- 4.3 If Telekom MMS has provided services to detect a defect after a problem was reported, and if no defect in quality is found, the customer shall bear the costs resulting therefrom. In calculating the costs, Telekom MMS shall use the rates of remuneration valid at the time of performance.
- 4.4 The liability for defects in quality shall not apply to services provided by Telekom MMS that have been modified or otherwise interfered with by the customer, unless the customer proves that the interference did not cause the defect. The liability for defects in quality shall also not apply if the customer fails to report the defect to Telekom MMS in writing without undue delay after it becomes apparent, or if the service is not used under the contractually agreed conditions as stipulated in the documentation.
- 4.5 In order for the defect to be properly remedied, it must be adequately described by the customer and thus be identifiable by Telekom MMS. Furthermore, the documentation required for defect clearance must be made available to Telekom MMS for inspection.
- 4.6 Claims of the customer arising from necessary expenses incurred for the purpose of subsequent performance – in particular, the cost of transportation, labour and materials – shall be excluded to the extent that the expenses are increased because the object of the services has been subsequently moved to a place other than the place of performance stipulated in the agreement.
- 4.7 Software defects shall be remedied, at the choice of Telekom MMS, by providing a new update status of software or a workaround. Until such time that a new update status is provided, Telekom MMS shall provide temporary solution for working around the defect, if Telekom MMS can be reasonably expected to do so at a reasonable cost.
- 4.8 Claims of the customer arising from a defect in quality shall be subject to a limitation period of one year from the commencement of the statutory limitation period.

5 Defect in title

- 5.1 A defect in title shall exist if the rights required to use the software as provided by the agreement have not been effectively granted after the software is handed over. In the event of defects in title, Telekom MMS honours its warranty, at Telekom MMS' choice, by providing the customer with a legally flawless possibility to use the software or by taking back the software at the invoice amount less a reasonable compensation for usage. The latter shall apply only if Telekom MMS cannot reasonably be expected to remedy the issue otherwise.
- 5.2 Claims of the customer arising from a defect in title shall be subject to a limitation period of one year from the commencement of the statutory limitation period. This restriction shall not apply to compensation claims that are based on the violation by Telekom MMS of claims to subsequent performance in the event of defects. Compensation claims based on refusal to provide subsequent performance may only be asserted within the statutory period of limitation if the claim to subsequent performance is asserted by the customer within the reduced period for material defect claims.

H. Special provisions hardware purchase

1 Scope of goods and services

- 1.1 The scope of hardware goods and services as well as the authorised application environment are described in the relevant product description and additionally in the user manual. The product description and user manual shall, as a rule, be written in the language of the manufacturer.
- 1.2 If the hardware is delivered with software that is indispensable for its operability, the customer shall only be granted a right to use that software together with that hardware. Any other software shall be governed by separate provisions.

2 Default

If the customer does not accept the hardware on the agreed date, Telekom MMS may grant it an additional grace period for acceptance. If the hardware has still not been accepted after this grace period, Telekom MMS shall be entitled – without prejudice to its legal rights arising from default – to rescind the purchase agreement and to demand damages in lieu of performance as a lump-sum payment that falls due immediately and amounts to 20% of the purchase price as well as compensation for services already provided.

The amount shall be higher or lower if Telekom MMS proves that the loss suffered was greater or the customer proves that it was less.

3 Defect in Quality

- 3.1 If the hardware is defective so as to impair contractual use thereof to a more than insignificant extent, the customer shall be entitled to demand that Telekom MMS, at its own choice, either makes subsequent improvements or provides the service again (subsequent performance).
If the customer has set a reasonable grace period for Telekom MMS to effect subsequent performance after an initial demand for action, and Telekom MMS has refused to effect subsequent performance, or if subsequent performance is unsuccessful, the customer shall be entitled to demand either rescission of the agreement or reduction of the purchase price.
If the deviation of the service from the agreed condition is insignificant and does not limit its operability, the customer may only demand a reduction of the purchase price.
- 3.2 The liability for defects in quality shall not apply to services provided by Telekom MMS that have been modified or otherwise interfered with by the customer, unless the customer proves in connection with the notification of the defect that the interference did not cause the defect. The liability for defects in quality shall also not apply if the customer fails to report the defect to Telekom MMS in writing without undue delay after it becomes apparent, or if the service is not used under the contractually agreed conditions as stipulated in the product description and user manual.
- 3.3 The customer shall be entitled to warranty claims against Telekom MMS pursuant to Sections 3.1, 3.2 for one year from delivery or acceptance of the relevant service.
This restriction shall not apply to compensation claims that are based on the violation by Telekom MMS of claims to subsequent performance in the event of defects. Compensation claims based on refusal to provide subsequent performance may only be asserted within the statutory period of limitation if the claim to subsequent performance is asserted by the customer within the reduced period for material defect claims.
- 3.4 If Telekom MMS has provided services to detect a defect after a problem was reported, and if no defect in quality is found, the customer shall bear the costs resulting therefrom. In calculating the costs, Telekom MMS shall use the rates of remuneration valid at the time of performance.
- 3.5 The provisions set forth in A. General Provisions Section 9 shall apply to any claims for damages.