

General Terms and Conditions

I. General provisions, subject matter of the contracts, changes

1. Subject matter of the contracts, scope of application of the General Terms and Conditions

- (a) Newtron GmbH (hereinafter referred to as "Provider") provides a trading platform in the form of a virtual market place under the domain www.newtron.net/web/nmarkets/ (hereinafter referred to as "Portal") through which buyers and suppliers may enter into business relationships and optimise those using specific tools and platform services.

For that purpose, company owners as defined by Section 14 of the German Civil Code [*Bürgerliches Gesetzbuch, BGB*] may e.g. create profile pages, participate in tendering and contract award procedures, receive supplier information, create public information enquiries, use the internal messaging system and much more.

The overall scope of services shall depend on the technical functions available on the Portal, on the descriptions on www.newtron.de and on the General Terms and Conditions set out below (cf. item III.1.).

- (b) Exclusively natural and legal persons that act as company owners as defined by Section 14 of the German Civil Code in the performance of their professional – commercial or self-employment – activities, that are legal persons under public law or special funds under public law as defined by Section 310, subsection 1, sentence 1 of the German Civil Code (hereinafter jointly referred to as "User(s)") shall be permitted to use the Portal.

- (c) These General Terms and Conditions shall exclusively govern the legal relationships between the Provider and Users of the platform that electronically register for the platform as suppliers, forwarding agencies, craftspeople, and other service providers.

A usage relationship between Provider and User shall be created, subject to any possible individual contractual arrangements, exclusively with the inclusion of these General Terms and Conditions (as amended at the time of the conclusion of the relevant contract). In principle, the Provider will not accept any general terms and conditions presented by the User, even if and when these do not contradict the following regulations.

2. Changes to the General Terms and Conditions

The customer shall be notified in writing, by telefax, by email or by means of information communicated on the Platform of any changes of these Terms and Conditions. If the customer does not object to these changes within 4 weeks after having received the notification, the changes shall be considered as acknowledged by the customer. In the case of a change to the Terms and Conditions, the customer will be informed separately of the right to object and of the legal consequences of not reacting to the changes.

II. Contract conclusion, registration, termination

1. Contract conclusion

- (a) A usage contract between the Provider and the User shall be concluded exclusively by completing the registration process, after having registered as supplier and having accepted these Terms and Conditions and after we have expressly confirmed the contract and have provided the access data related to the user account.
- (b) We reserve the right to decline your registration at any time without stating any reasons. You shall be bound during a period amounting to a maximum of five business days by the offer to conclude a usage contract that is related to the registration.

2. Registration of a user account as supplier

- (a) The registration of the User as supplier, by entering mandatory information (indicated by an asterisk) and optional information, shall be required for concluding a usage contract. The data to be entered must be entered completely and truthfully. In the case of subsequent changes, the User shall be obliged to update the dataset themselves or by means of a notification to the Provider.
- (b) The User shall immediately upon the first login change the registration data provided to the User by email for login purposes, and the User shall keep it confidential and protect it from the access of unauthorised third parties. Exclusively that User and any persons authorised by the User shall have access to the user account. If it is to be suspected that unauthorised third parties have gained or will gain knowledge of the access data, the Provider shall be informed without delay. The User shall be liable for any unpermitted use by third parties within the scope of the legal regulations, unless the User is not responsible for the misuse of the user account.

3. Term of the relevant contract, termination, temporary blockage

- (a) The usage contract shall be concluded for an unlimited period and shall commence on the day on which the account is activated by the Provider. The usage contract may be terminated ordinarily at any time with four weeks' notice as of the end of any calendar month.
- (b) The right to an extraordinary termination for cause shall remain unaffected. Such a cause for a termination by the Provider shall be assumed in particular if essential contractual obligations or mandatory statutory law are infringed and the User does not remedy this infringement without delay even after having received a warning.
- (c) It shall be sufficient to submit the declaration of termination in text form.
- (d) the termination takes effect, the contractual relationship regarding the service to which the termination explicitly relates shall end. The Users shall be permitted to back up their data until 30 calendar days after the termination of the relevant contract. After the expiry of the aforementioned period at the latest, the Provider may to block the username and password.

- (e) The Provider shall be entitled to delete irrecoverably all data that has accrued within the scope of the use upon the expiry of the period of 30 calendar days after the termination has taken effect and if any possible statutory retention obligations have expired.

III. Portal services, availability, rights of the Provider/third parties

1. The Portal's operating principle, Provider's services

- (a) As platform for buyers and suppliers for the purpose of trading with goods and commercial services, the trading platform enables the use of a variety of services and features. The trading platform has an integrated and automated messaging system for the purpose of facilitating the communication between the buyer and the supplier and also has comprehensive features for managing and monitoring all current business transactions.

The accesses offered by Newtron are set out in the overview of services.

- (b) Individual services of the Provider, in addition to the initial setup of the supplier profile, shall not be included in the scope of services under this contract governing the use of the Portal. However, these can be requested directly from the Provider and may be ordered separately (cf. support@newtron.de, 0351-43958538).
- (c) The quotations by any supplier shall be binding and shall constitute irrevocable declarations directed at the conclusion of the contract announced by the buyer. The prices indicated on the platform shall be understood as net prices in accordance with the German Commercial Code [*Handelsgesetzbuch, HGB*]. The suppliers shall be bound by their quotation as long as the relevant supplier has determined and indicated it in each case on the trading platform when submitting the quotation. Suppliers shall not have a right to be invited to participate in requests for information, tendering procedures or auctions.
- (d) Although business dealings between the Users (suppliers and buyers) may be initiated on this platform, they may not be completed through it directly and online. The exchange of declarations that form a basis of a contract shall take place at least partially between the Users outside of this platform.
- (e) The trading platform shall be a trade and communication platform through which the buyers and suppliers communicate with each other and negotiate autonomously. The Provider shall make available for that purpose only the tools in the form of services and features of the trading platform. The Provider shall not become a contractual partner regarding the contracts that are concluded exclusively between the buyers and suppliers, and shall not act as representative or performing agent [*Erfüllungsgehilfe*] in that regard. Buyers and suppliers shall enter into the contracts on their own responsibility with regard to their content and legal effect. The contracts concluded through the trading platform shall be performed exclusively between the buyers and the suppliers. The Provider shall not ensure that contracts with the factual and/or legal terms intended by the Users are concluded between the Users and/or are duly performed. In principle, the Provider shall not examine quotations and other information uploaded by the Users as regards correctness, completeness and lawfulness.

- (f) The Provider is able to verify only to a very limited extent the data indicated by the Users upon the conclusion of the access agreement and that the data is continually up-to-date, as the possibilities for identifying persons on the internet are limited. Thus, despite security precautions it may not be ruled out that wrong or incomplete data has been provided with regard to a certain user account. For that reason, the Users must convince themselves of the identity of their contractual partners and the authority of the acting person to represent in the scope of legal transactions.
- (g) In principle, the Provider will not examine the contents published by the Users on the trading platform as regards their correctness, lawfulness and usefulness. Please direct any complaints about incorrect and/or unlawful contents to the Provider to support@newtron.de.
- (h) Uploading catalogues to the platform and using the catalogue environment shall require separate agreements between the Provider and Users.
- (i) The Provider reserves the right to technically modify, edit and adapt offers and contents of Users in a way that these may be displayed also on mobile devices or software applications by third parties. In the case that a quotation is submitted or accepted through a mobile device or a software application by a third party, the Users themselves shall be responsible for inspecting the complete content of that quotation on the trading platform before submitting or accepting it.
- (j) The Provider reserves the right to change or extend the content, functions and structure of the platform and the related user interfaces if the purpose and performance of the access agreement with the User is not, or only insignificantly, impaired thereby. The Provider shall inform the Users of the trading platform of such changes accordingly.
- (k) The Users shall be entitled to exercise their right of use only in accordance with the current level of technology.

2. Copyrights and protective rights regarding contents of the Provider and of third parties; responsibility of the Provider

- (a) The contents that are available on the Provider's Portal (except contents of the relevant User) and the Portal itself are mainly protected by copyright or other industrial property rights and shall be in the ownership of the Provider or other third parties that have provided the relevant contents. The compilation of contents as such may be protected as database or database work [*Datenbankwerk*] as defined by Section 4, subsection 2 and Section 87a, subsection 1 of the German Copyright Law [*Gesetz über Urheberrecht und verwandte Schutzrechte, UrhG*].
- (b) The right to use these contents shall be determined exclusively by the scope set out in these provisions for the use of the services. Thus, the Users shall be prohibited from completely or partially editing, changing, translating, showing or presenting, publishing, displaying, reproducing, distributing, imitating or otherwise using these contents beyond the use of the Portal in accordance with the relevant contract.
- (c) The Provider shall not examine the contents of other Users or other third parties (so-called third-party contents) as regards their completeness, correctness and lawfulness and shall therefore assume no responsibility or warranty regarding the completeness, correctness, lawfulness and up-

to-dateness of the third-party contents. The same shall apply to any third-party contents of linked external websites.

IV. User fees, terms of payment, obligations and rights of the Users

1. Fees, terms of payment, set-off, retention, assignment

- (a) The fees for the use of services that are subject to fees shall be indicated and agreed in the relevant contract. The services that are subject to a fee shall be set out in the separate description of services. The booking shall be performed by means of an order document through our customer service.
- (b) The fees shall be due and payable by the User in advance on the basis of invoices without any deduction plus any statutory VAT. In principle, the services will be made available only after the payment has been received. If the payment is not made on time, the Provider reserves the right to block the User's username and password.
- (c) The customer shall be permitted to offset their claims only against counterclaims that are uncontested or have become *res judicata*. The foregoing sentence shall not apply if a claim that exists due to a deficient service of the Provider is offset against this claim for remuneration. The customer shall be permitted to assert a right of retention only if it is based on the same contractual relationship.
- (d) The assignment of claims against the Provider shall require the Provider's consent. The provision of Section 354a of the German Commercial Code shall remain unaffected thereby.

2. General obligations and rights of the Users

- (a) To the extent that the contents uploaded by the Users are protected by the German Copyright Law, the German Law governing the Copyright regarding Works of fine Arts and Photography [*Gesetz betreffend das Urheberrecht an Werken der bildenden Künste und der Photographie, KunstUrhG*], trademark law or other protective rights, the User shall grant to the Provider the following rights:
 - (aa) the right to reproduce the protected contents for the purposes of this contract on the server, on another server that serves for data mirroring and on a sufficient number of backup copies; this right shall be limited in terms of time to the duration of the usage relationship, and it shall be non-transferable, limited to the location of the respective server(s) (regarding backup copies: limited to the location where they are stored), and non-exclusive;
 - (ab) the right to make the protected contents available to the public by means of the network maintained by the Provider and the internet connected thereto and in a manner that individuals belonging to the public have access to the website of the Portal from a location and at a time selected individually in each case and in a manner that these individuals may store this data by downloading it from the Provider's server; this right shall be limited in terms of time to the duration of the relevant contract, and it shall be non-transferable, shall apply internationally and shall be non-exclusive. If third parties maintain protected contents in cache

memories after the termination of this contract, that storage shall no longer be attributed to the Provider.

(ac) The User shall declare and warrant in relation to the Provider that the User is entitled to grant the rights of use and exploitation in accordance with the foregoing subsections.

(ad) The User shall waive the right to be named as author.

- (b) The Users shall be fully responsible for the contents uploaded by them. In particular, the Users shall be obliged to provide complete and correct information in the scope of the communication with other Users. The Provider shall not carry out any examination of the contents as regards completeness, correctness, lawfulness and up-to-dateness, quality and suitability for a specific purpose.
- (c) If disturbances should occur during the use of the technical facilities and services of the Provider, the relevant User shall inform the Provider of these disturbances without delay.
- (d) The Users shall be prohibited from performing, in connection with use of the infrastructure of the Provider, any activities that violate applicable law and/or third party rights. In particular, the following activities shall be prohibited:
- uploading, distributing, offering and advertising content, services and/or products that have a pornographic character or violate laws regarding the protection of young persons, criminal law, competition law, data protection law and/or any other law;
 - using, providing, distributing and advertising of contents, services and/or products that are protected by law or subject to third party rights (e.g. copyrights) without being authorised to do so;
 - distributing viruses, Trojans, spam and other malicious files;
 - any activities that are suitable to impair the smooth operation of the technical facilities of the Provider or third parties to an extent that is not insignificant and, in particular, that are suitable to unduly overuse the Provider's systems.
- (e) If there is a suspicion of unlawful activities or criminal offences, the Provider shall be entitled and/or obliged (if applicable) to examine the activities of the User and to initiate suitable legal measures. This may also include submitting a case to the public prosecutor's office.
- (f) If a User does not comply with the regulations containing a prohibition set out in item IV.2 (d), the Provider shall be entitled to claim from the User to cease and desist and the payment of a compensation and, in addition and in particular, the Provider shall be entitled to claims for indemnification against any claims asserted by third parties vis-à-vis the Provider. The indemnification obligation shall also include the obligation to completely indemnify the Provider against the costs of legal defence (court fees, attorney's fees, etc.).

V. Warranty, liability, access blocking

1. Warranty

If the statutory warranty provisions as provided by Sections 536 et seqq. apply to services related to the use of the Portal, the following shall apply:

- (a) During the term of the access contract, the Provider shall warrant that the software used for the creation of the trading platform has no defects that would reduce its value or the suitability for the purpose intended in the contract or that would render it useless or unsuitable for the purpose intended in the contract. Any reduction that is only insignificant shall remain out of consideration. Any impairment of the use in accordance with the contract caused by inappropriate or incorrect use by the User shall also remain out of consideration.
- (b) Claims based on defects shall become statute-barred after the expiry of one year, except claims for damages regarding which the liability may not be restricted in accordance with the liability provisions set out below.
- (c) The Provider's liability without fault in accordance with Section 536a, subsection 1, 1st alternative of the German Civil Code due to defects existing already at the time of the conclusion of the contract shall be excluded.

2. Liability of the Provider

- (a) The Provider shall be liable in accordance with the statutory provisions without restrictions for any damage arising from injury to life, body or health that is attributable to an intentional or negligent breach of duty or an intentional or negligent breach of duty on the part of one of their performing agents [*Erfüllungsgehilfen*].
- (b) Furthermore, the Provider shall be liable without restrictions in accordance with the statutory provisions for any other damage if the damage is based on a violation of an essential contractual obligation. This shall be the case if a duty is breached the fulfilment of which enables the due performance of the contract in the first place, the violation of which jeopardises the achievement of the contractual purpose and on the compliance with which the User could usually rely on. However, in the case of a violation of an essential contractual obligation, the liability shall be limited to the damage that is foreseeable and typically occurs.
- (c) The Provider shall also be liable, to a limited extent, if warranted characteristics do not or no longer exist or if a guarantee is not complied with, and in cases of claims based on the German Product Liability Law [*Produkthaftungsgesetz, ProdHaftG*].
- (d) The Provider shall be liable for all other violations of duties only in cases of intent and gross negligence. This shall apply, without any exclusion, to all claims for damages, regardless of their legal nature, and to claims for the reimbursement of expenses that are asserted instead of a claim for damages.

- (e) If the Provider's liability for damages is excluded or limited, this shall also apply with regard to the personal liability for damages on the part of their staff, employees, personnel, representatives and performing agents.
- (f) The Provider shall not be liable for the loss of data and/or programs if and when the damage is based on the User having failed to perform data backups and to ensure in this way that lost data may be recovered with justifiable work and/or expenses.

3. Blocking of the access and the services

- (a) The Provider shall be permitted to temporarily block the access of the User to the Portal and/or the services (cf. III.1.) if there is a probable cause of violations of the law or the violation of third party rights, or on the basis of a warning by the allegedly injured party that is not obviously unfounded or due to investigations by government authorities.
- (b) The blocking shall be limited to the allegedly unlawful contents if this is technically feasible and reasonable. The User shall be informed without delay of the blocking, whereby the reasons shall be stated, and the User shall be requested to remove the allegedly unlawful contents or to state and prove (where applicable) their lawfulness. When deciding about a blockage, the Provider shall appropriately take into consideration any justified interests of the User.
- (c) The blockage shall be removed as soon as the suspicion has been allayed or the Provider had the opportunity to terminate the contract for cause due to the User's behaviour.

VI. Data protection, final provisions

1. Data protection, data security, confidentiality

- (a) The parties shall comply with the data protection provisions that are applicable in each case, in particular in Germany.
- (b) The User shall be the controller in accordance with Article 4 (1) of the GDPR with regard to personal data of third parties if the User submits such data to the Provider within the scope of the use of the Portal. Insofar, the Users themselves shall be responsible for the lawfulness of the data transmission and data processing by the Provider. If there is no other legal basis for the data processing, the User shall be obliged to inform the Provider of the requirement of an agreement on commissioned data processing in accordance with Article 28 of the GDPR and shall enter into such an agreement with the Provider. In the case of inconsistencies between that contract and the agreement on commissioned data processing, the latter shall take precedence over that contract.
- (c) The User shall indemnify the Provider against claims by third parties if such claims are based on an infringement of data protection provisions the compliance with which the User is responsible for as described above.
- (d) The servers of the host provider shall be secured in accordance with the current level of technology, in particular by firewalls; however, the User is aware of the fact that there is a risk for all participants that transmitted data may be observed on the transmission path. This shall not only apply to the exchange of information for which email is used and during which information leave

the system, but also to the integrated messaging system and to all other transmissions of data. Thus, the confidentiality of the data transmitted in the scope of the use of the trading platform may not be ensured.

- (e) The contractual partners shall maintain confidentiality with regard to all information to be treated as confidential and that they have gained knowledge of in the scope of this contractual relationship and the contractual partners shall use it in relation to third parties – irrespective of the reason of that use – only with the prior written consent of the respective other party. The information to be treated as confidential shall include both information that is expressly designated as confidential and information the confidentiality of which results from the circumstances. In particular, the application data entered by the customer shall be considered as confidential data in this context.

2. Applicable Law

The law of the Federal Republic of Germany shall be applicable to the contract.

3. Place of performance and jurisdiction

- (a) If the User is a business person, legal person under public law or special fund under public law, the exclusive place of jurisdiction and the place of performance shall be in Dresden.
- (b) In all other cases not governed by these General Terms and Conditions, the place of jurisdiction shall be governed by the statutory provisions of the Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters and the German Law on Civil Procedure [*Zivilprozessordnung, ZPO*].

4. Severability Clause

This General terms and conditions shall constitute the entire regulation regarding the subject matter of the contract. The parties have not entered into any subsidiary agreements. If any provision of this general terms and conditions should be invalid or unenforceable, the legal validity of the other provisions shall remain unaffected thereby.

Special provisions for services

1. Scope of application of the General Terms and Conditions

Any services of the provider in addition to the use of the Portal that is governed by the foregoing General Terms and Conditions shall be agreed upon with the User in separate contracts. The foregoing General Terms and Conditions shall apply also to those contracts unless it is obvious or stated explicitly that the General Terms and Conditions solely refer to the use of the Portal. In addition, the following regulations shall apply.

2. Conclusion of contracts

Services / work performances may be contracted exclusively in text form or written form. The Provider shall endeavour, but shall not be obliged, to accept any corresponding contracts. If a User submits a

legally valid quotation to the Provider that is directed at a contract governing the provision of a service, the User shall be bound by this quotation during a period of seven business days.

3. Subject matter of the contracts, services of the Provider

- (a) The subject matter of the contracts and the services of the Provider shall be indicated exclusively in the individual contractual agreement and in the service descriptions and/or other documents included in it.
- (b) The provision of services by third parties who have been retained the Provider in accordance with the Provider's own professional discretion and that are equivalently qualified shall be permitted if, from the User's point of view, there is no objective important reason against the person/company of the subcontractor.

4. Change request

- (a) The User shall be permitted to request changes to the contractual services, in particular if the performance requirements change during the performance of the contract. The Provider shall comply with the change request if this is reasonable for the Provider in the scope of their operating capacity and if their original contract is not jeopardised thereby. Each change request shall be formulated in text form and shall first be presented to the Provider for examination and implementation.
- (b) In principle, any changes to services as described in item (a) above shall be remunerated, even if the parties have not entered into an express agreement in that regard. The remuneration shall be paid for the extra work of the Provider caused by the change request compared to the initially agreed service. The Provider shall indicate the extra work transparently in their statement of expenses. If the User does not state any reasonable doubts regarding the correctness of information on extra work in the statement of expenses, it shall be assumed that the statement of expenses is correct.
- (c) All other services rendered by the Provider that are based on subsequent change requests and requests for additions shall also be considered as extra work that shall be remunerated additionally. This shall apply in particular if the Provider must carry out, after the approval of a complete or partial service, changes or additions that refer to services that have already been accepted and approved. The same shall apply if an approval has still not been carried out although the preconditions for an acceptance are met already.

5. Deadlines, due dates

- (a) In principle, only the deadlines contractually agreed upon in written or text form shall apply to services and deliveries of the Provider.
- (b) In cases of doubt, deadlines agreed upon in accordance with item (a) shall only form the basis for due dates regarding the contractual services/deliveries and therefore constitute neither relative fix liabilities [*relative Fixschulden*] as defined by Section 323, subsection 2, number 2 of the German Civil Code nor absolute fix liabilities [*absolute Fixschulden*] of the Provider unless the parties have agreed upon such liabilities. Furthermore and contrary to Section 286, subsection 2, number 1 of

the German Civil Code, the exceedance of these deadlines by the Provider shall give rise to a default only if a corresponding reminder has been submitted.

- (c) Determined deadlines for completions or deliveries shall not be binding on the Provider if the Provider was unable to meet the deadlines for reasons that the User was solely or mainly responsible for. This shall apply in particular if the User violates the User's duties to cooperate and if the User's change requests, which require an adjustment of the time schedule, are implemented.

6. Remuneration

- (a) The remuneration agreed upon in the contract shall be paid.
- (b) If, pursuant to the relevant contract or these General Terms and Conditions, any services or extra / additional work of the Provider shall be remunerated in accordance with an agreed-upon hourly rate. Any additional work to be performed free of charge within the scope of the warranty obligations shall remain unaffected thereby. The hourly remuneration shall be invoiced in 5 minutes units (1/12 of an hour) as commenced.
- (c) Any services of the Provider and any possible rights of use regarding these shall remain in the ownership or with the Provider until the contractual fee is completely paid.

7. Obligations of the User

- (a) The User shall be obliged to support the Provider in performing their services with appropriate and reasonable efforts if the contribution by the User is necessary and expedient for performing the contract without delays and defects. All of the User's obligations to contribute shall be actual obligations on the part of the User.
- (b) The User shall notify the Provider without delay of any disturbances and defects of the contractual services, support the Provider to a reasonable extent in the determination of the causes and their removal and take all reasonable measures for preventing and reducing a damage.
- (c) If the Provider holds the view that the User does not fulfil any cooperation and supply duties in accordance with the contract, the Provider shall inform the User of this without delay and shall set for the User an appropriate grace period regarding the performance of the cooperation or supply; if applicable, the Provider shall inform the User of any possible adverse consequences of the failure to cooperate or supply in accordance with the contract during the set grace period.
- (d) As long as the cooperation or supply has not been performed in accordance with the contract, the Provider shall be completely or partially released from the corresponding duty to perform to the extent that the Provider depends on the relevant cooperation or supply. The Provider shall not be responsible for any defaults in performance caused by the User's failure to cooperate or supply in accordance with the contract.
- (e) The Provider may invoice separately any extra work caused by the failure to cooperate or supply in accordance with the contract. Any further claims by the Provider shall remain unaffected.

- (f) If a project should be interrupted for more than 10 days due to the customer's failure to cooperate or supply in accordance with the contract, the Provider shall be permitted to submit to the customer an invoice requesting a partial payment. The amounts of the partial payments shall depend on the value of the services already performed by the Provider in accordance with the calculation.
- (g) If the Provider submits to the customer suggestions, drafts, test versions or the like, the customer shall examine them swiftly and carefully to the extent that this is reasonable. The customer shall notify the Provider in any case without delay of any complaints and change requests.
- (h) If tests run or acceptance tests, presentations or other meetings become necessary or expedient, the customer shall send experienced employees, who shall be authorised to take any necessary or expedient decisions, in order to participate in such meetings.

8. Acceptance of software-related services

The productive use of the developed software shall be equivalent to the acceptance required by law (Section 640 of the German Civil Code).

9. Rights of use

- (a) Unless otherwise agreed by the parties, the Provider shall grant to the User a right of use – which shall be unlimited in terms of time, location, and content – with regard to the work performance contractually owed by the Provider.
- (b) The User shall hereby grant to the Provider, for the duration of the contract, a non-exclusive, non-transferable right of use in order to use the intellectual property of the User during the term of the relevant service to the extent that this is necessary for performing contractual services in relation to the User. The creation of copies of the intellectual property of the User and processing or changing these shall only be permitted if this is necessary for performing the contractual services. Subject to an individual agreement to be concluded on a case-by-case basis, granting any sublicenses or the use by third parties shall be excluded.

10. Warranty

- (a) If the law governing contracts for work and services, governing sale and purchase agreements or governing lease agreements should be applicable, the Provider shall be liable for defects in accordance with the applicable statutory warranty provisions unless the parties have agreed upon regulations deviating therefrom that are set out below.
- (b) The User shall examine the services performed by the Provider without delay after their performance by the Provider to the extent that this is feasible in accordance with the orderly course of business. Any defects that are noticeable during the examination shall be reported without delay. Any defects that are not noticeable during the examination shall be reported without delay after they have been noticed. Such a report shall be required to be made in text form. If the principal fails to report a defect, any claims based on defects shall be excluded.

- (c) If a service to be performed in accordance with this contract is defective, the Provider shall be obliged to render a supplementary performance, which may consist in providing an alternative solution or a workaround.
- (d) The Provider shall be entitled to choose whether the supplementary performance shall consist in the removal of the defect or the delivery of an item that is free of defects. Only when the supplementary performance has failed, the User shall have the right to reduce the remuneration or to rescind the contract.
- (e) Claims based on defects shall become statute-barred after the expiry of twelve months. Claims for damages, which are based on defects, against the Provider, their statutory representatives or performing agents due to a damage arising from injury to life, body or health, claims for damages based on intent or gross negligence, claims arising from the German Product Liability Law or arising on the basis of guarantees and claims based on the infringement of essential contractual ancillary duties shall be excluded thereof.
- (f) The foregoing claims shall lapse if the User or third parties perform changes to services to which the Provider has not granted their express prior consent. This shall not apply only if the User proves that occurring errors or malfunctions were not caused by the changes and that the changes have not complicated the identification and the removal of the error.
- (g) If an alleged defect of work, rental or purchase services performed by the Provider may, after corresponding examination, not be related to a liability for defects on the part of the Provider and if the customer could have noticed that, the customer may be charged for the Provider's expenses (at the applicable remuneration rates) incurred for the verification and removal of the defect.

11. Imitation protection, prohibition of competition

- (a) The User shall undertake to refrain from imitating in any form the services sold to the User by the Provider or otherwise dedicated to the User by the Provider for use or any other services of the Provider; the User shall in particular refrain from designing, developing, producing and distributing software with a similar purpose of use, similar technological features, a similar graphical surface design (user interfaces) and/or a similar program code, and from enabling third parties to perform the aforementioned activities.
- (b) For each case of a culpable infringement of the foregoing prohibition of imitation, the User shall pay a contractual penalty to be determined by the Provider using equitable discretion and the appropriateness of which shall be examined by the competent court in cases of dispute.
- (c) The Provider shall be prohibited, during the term of this contract, from offering services and/or products and performing other activities to the extent that this constitutes a specific threat of a not only insignificant competition that is disadvantageous for the customer.

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