A. General Terms and Conditions

§ 1 Parties to the contract

(1) The parties to the contract vis-à-vis the application of these general contract and business conditions are the various firms of the SHD concern ("SHD" hereafter) and the Principal or Client ("Client" hereafter), also jointly referred to as "parties to the contract" or "parties". They shall be responsible for the execution of, and compliance with, the foregoing General Terms and Conditions (GTC), in addition to any individual terms and conditions (together: "General Terms and Conditions" hereafter).

(2) Clients of SHD with respect to the GTC can only be businesses that qualify as stipulated in article 14 of the BGB (German Civil Code).

§ 2 Scope of the General Terms and Conditions

(1) The following companies are subject to the GTCs of the SHD concern:

(a) SHD AG,

(b) SHD Holding GmbH,

(c) SHD Einzelhandels (Retail) Software GmbH,

(d) SHD Kreative Planungs-Systeme GmbH,

(e) SHD Technologie und Service GmbH,

(f) gff Finanz- und Personalwirtschaftssysteme GmbH,

(g) SHD KPS Nordic ApS,

(h) Cogito Retail GmbH & Co. KG.

Additional information on the companies may be found under "www.shd.de".

(2) Provisions or business conditions at variance with the GTC will only become valid as objects of a contractual agreement between the client and SHD when prior written confirmation and written acknowledgement by SHD is on record. This is equally applicable in cases where SHD does not expressly disagree with the Client's GTCs, even though bid solicitations, orders and/or order confirmations on the part of the Client may have been included; or when SHD unilaterally carries out shipments and/or performs services in full knowledge of the Client's nonconforming GTCs.

(3) Those GTCs shall be binding for any future orders, commissions and all other agreements between the parties, even though they may not have been explicitly re-confirmed or made reference to, unless the parties stipulate so in writing.

(4) In the event of uncertainties or contradictions between the German version of these GTC and translations into other languages, the German version has priority.

§ 3 Object of the contract

(1) The contract signed by the parties sets forth all rights and obligations and thus jointly pledged services of the parties, as enumerated in the following instruments:

(a) The stipulations contained in the foregoing GTC;

(b) The order;

(c) The specific product and performance descriptions including a company profile of SHD (hereafter: "performance descriptions") and

(d) Any specified contractual and business conditions

(2) "Order sheet" (also "order confirmation" or "order slip") is called the document which sets forth details of the contractual relationship (especially commercial particulars) by SHD and where the individual performance segments are spelled out, including commencement and termination of the contractual relationship.

(3) To the extent performance descriptions are not enclosed with the order, a reference to the website (www.shd.de/Leistungsbeschreibungen), wherefrom the respective performance description may be retrieved at any time, suffices. In such event, performance descriptions shall become part and parcel of contractual requirements even without submission of a printed copy.

(4) In the event of any inconsistencies between the stated performance descriptions and aforesaid GTCs, the language of the performance descriptions shall take precedence.

(5) When a documentation or operating manual is needed in the context of the performance profile, an online version of same shall suffice.

(6) SHD reserves the right to retain outside businesses for partial or full completion of contractual work.

§ 4 Contract Conclusion

(1) Bids submitted by SHD are noncommital and non-binding. Exceptions are bids that include specific datelines for contractual engagements and acceptance or the respective document is expressly designated as a "binding offer".

(2) Unless otherwise agreed in writing by the contracting parties, the contract shall be compiled respecting the following:

(a) Arrival of order's receipt at Client ("order confirmation"), with said confirmation also being effective without formal signature by SHD;

(b) At the time of the effective date quoted in the order confirmation or

(c) By the acceptance of the "binding offer" from SHD (in writing, by fax or email) on the part of Client, but no later than

(d) With the deployment and/or execution of the contractual performance by SHD or

(e) In case of jointly signed contract (e.g. combination contract) including its respective date.

Details arising from the order itself.

(3) Prior to the acceptance of a bid or assignment of a contract to SHD, it is incumbent upon Client to verify the respective performance profiles and contractually stipulated services to be rendered by SHD; and as to whether the individual, technical, economic and operative standards are in compliance with the Client's expectations and requirements. The Client is responsible for seeking advance information on, and to verify, his system-centric minimum requirements essential for operation and deployment of the products and contractual services supplied by SHD.

(4) The technical data, specifications and agreed-upon performances set forth in the contract's performance description shall be construed only as statements pertaining to a product's constitution/features within the meaning of art. 434, par. 1, page 1 of BGB and do not represent any (implied) warranty or a warranty with respect to makeup.

(5) "Performance description" within the meaning of our GTC refers to a document describing technical details, operating content or scope and quality of the work to be provided by SHD in line with its performance profile. The performance description also comprises norms and standards, conditions and details re consummation of contract (e.g. for hardware and software) in addition to details concerning service levels (SLA), especially cooperative and assistance-rendering duties on the part of Client.

§ 5 General duties and obligations of the Client

(1) Execution of the contractual commitments calls for a close cooperation between SHD and Client. The parties hence shall divulge to each other any pertinent specifics, which may affect or impinge on any aspect of contractual performance or the orderly business conduct of either party.

(2) Agreed-upon deadlines may be delayed on account of a Client's lack of cooperation or failure to render reasonable assistance, when put on timely notice by SHD. Any costs ensuing from such delay shall be billed in accordance with the amount of lost time that can entirely be traced to the Client's non-cooperative behaviour or failure to assist, in addition to a reasonable period of time spent on a restart of operations.

(3) Client shall provide to SHD names of persons to act as reference contacts during the time contract work and fulfillment of the contractual performance criteria is ongoing. Those contact persons shall have authority to render both legal and technical decisions and to speak on behalf of the Client. They shall be available for the exchange of needed information and to participate in decisions concerning the contract's execution.

(4) The absence of an ancillary contractual agreement (in writing, by fax or email) or lack of a proviso governing performance criteria, shall hold SHS harmless of any liability re data protection or data restoration. The responsibility for preservation of data and/or their retrievability lies entirely with the Client.

§ 6 Prices, rates, and payment terms

(1) Range of prices and charges ("remuneration") for the contractual services of SHD are separately set forth for each order.

(2) Travel costs, expenses, data carrier, shipping, telecommunications and other incidental costs are the result of the respective offer or will be invoiced separately by SHD.

(3) All prices and remunerations are subject to obligatory VAT as prevailing on the date of invoicing.

(4) Invoices forwarded by SHD shall be paid in full within 10 days following their due date unless SHD has included with the invoice a different payment schedule or a separate agreement is in force between the parties (in writing, by fax or email).

(5) SHD can forward invoices and payment reminders online.

(6) In the absence of a differently worded arrangement (in writing, by fax or email), the Client is responsible for payment of all customs and taxes which may be levied in conjunction with foregoing contract by national, federal, state or local agencies (especially where an export of software or its partial or comprehensive use outside the original country of acquisition is concerned) except for turnover taxes, revenue or income earned by SHD.

(7) SHD shall be entitled to change the remuneration for the scope of work commissioned in each case. The change may, however, be made no earlier than 12 months after the conclusion of the contract or the last increase in remuneration. The Client shall be notified (in writing by fax or email) of the date of the change and the amount of the adjustment thirty (30) days beforehand. The Client has the right to terminate the contract early in compliance with the agreed form for the date of the remuneration if the price change or adjustment leads to an increase of remuneration of more than 5%.

§ 7 Late payment

(1) If the Client fails to make payments within ten (10) days after the date shown on the invoice (the receipt in SHD's account is decisive for timely payment), or within the payment period shown on the invoice or in a separate agreement (in writing by fax or email) made between the parties

or if no debit is possible from his account, he shall be in default without further notice.

(2) In the event of default, SHD shall be entitled to claim the statutory default interest. The right of SHD to prove and claim higher default damages shall remain unaffected.

(3) When a Client is more than four (4) weeks late in settling an invoice without citing any attenuating circumstances, SHD reserves the right, after a written warning with a grace period of no less than fourteen (14) days, to suspend or cease the services specified in the contract until payment is made for the contractual work owed.

§ 8 Physical and legal defects

(1) SHD ensures that the contracted-for equipment features all the design elements and quality level set forth in the contract and that the utilisation of the equipment shall not infringe on the copyrights of third parties.

(2) Within the scope of liability for defects, SHD itself or third parties retained by SHD shall first of all make every effort to remedy the defect ("malfunction"). For this to occurr, SHD shall voluntarily supply to the Client either a new, nondefective unit or the Company will remedy the defect. Removal of the defect is also acknowledged when SHD avails the Client of a temporary solution, which circumvents the defect ("workaround").

(3) SHD reserves the right to make two (2) attempts to resolve a problem. If both attempts fail to bring the desired results, the Client has the right to set an appropriate extension (of at least 30 days) for the removal of defects. The Client shall specifically note in writing that if repair within 30 days is not successful, he will withdraw from the contract or demand a discount in price and damages in conformity with legal regulations.

(4) In case of legal defects, SHD shall at its own expense and discretion,

    (a) Assign Client the right to legally use the contracted-for unit which was held responsible for any infringement;

    (b) Reconfigure or alter the unit responsible for the infringement and to make it compliant or

    (c) Replace the unit responsible for the infringement.

(5) A defect or functional impairment that results from environmental conditions, faulty operation or non-compliance with the operating instructions or technical specifications is not a defect that SHD shall be responsible for. The Client's rights regarding defects are accordingly excluded in particular if the defects are due to the fact that the Client

    (a) Has modified the contractual items or

    (b) Had them modified by a third party or

    (c) Used them contrary to the technical specifications and requirements of the manufacturer or SHD

    (d) Has not updated (software)

    (e) Has not been subject to the required maintenance procedures,

unless the Client proves that in cases (a) to (c) the defect already was present at the time of the surrender of goods.

(6) Any unwarranted demand by the Client for remedy of a defect pursuant to art. 439, par. 1 BGB entitles SHD to claim damages for reasons that the Client recognized or negligently failed to recognize that the contracted-for unit is free of defects and the supposed defect instead lies within the purview of the Client.

(7) The statute of limitations for claims of physical defects expires after 12 months — except when damages are claimed. Claims for damages stemming from physical defects also have a 12 months statute of limitation unless based on premeditated or grossly negligent conduct. The same 12 months apply to harm to life, body and the health of individuals. Claims under the product liability act remain exempt from the ruling.

(8) The statute of limitations re legal defects commences at the time a third party asserts claims due to legal defects against the Client or the Client otherwise gains knowledge of said legal defects. The statute of limitations expires after six (6) months.

§ 9 Liability

(1) The contracting parties can be held liable under general legal restrictions unless the following restrictions do not apply. Those restrictions pertain to all claims for damages as well as claims for reimbursement of unnecessary expenses, irrespective of for whatever legal reasons unless stated otherwise.

(2) The parties always are jointly held liable for

    (a) Intentional or grossly negligent damage caused by their own personae and legal representatives or assistants

    (b) Under the product liability act

    (c) When one party's legal representatives or assistants are responsible for causing harm to life, body or health or

    (d) When acting with malice aforethought or in ill will

(3) SHD, its legal representatives and agents are not liable in the case of slight negligence. This does not apply only in case of culpable breach of fundamental contractual obligations. Fundamental contractual obligations are obligations by SHD whose fulfilment enables the proper implementation of the respective contract in the first place and on whose compliance the Client can regularly rely on within the scope of the rendering of the respective contractual services and therefore obligations whose breach would jeopardise the achievement of the purpose of the contract. In this case, SHD's liability is, however, limited to the foreseeable damage typical for the contract. The amount of the claim for damages is limited, however, to an overall maximum of EUR 1,000,000.00 per claim of damage in the absence of any other written agreement.

(4) There exists no further liability on the part of SHD. The aforementioned regulations also apply to missed profits, unrealised savings or any other subsequent damages;

(5) Liability by SHD in case of lost data or data restoration is limited to the damage which would have occurred even during regular and professional data protection by the Client.

(6) The foregoing limits of liability also apply to the personal liability of associates, representatives and units of SHD.

§ 10 Force majeure

(1) In instances where one party finds itself unable to deliver, or to participate in or deploy contractual services due to force majeure, no damages shall be asserted, nor shall other claims or rights (including design law, objections or demurrers) by the other party be allowed. The contracting party affected by force majeure shall make every effort, though, to mitigate its deleterious effects vis-à-vis the other party while at the same time striving to the utmost in maintaining its own contractually defined performance, participation and deployments.

(2) The party affected by force majeure shall immediately after restoration of full operability catch up with performance of the delayed services, participation and deployments.

(3) Force majeure is defined as an event neither party could reasonably anticipate or avert in the face of exercising even the greatest of care and as such does materially disrupt the party's efforts to partially or entirely fulfil its end of the contract; examples are natural occurrences, arson, vandalism, burglary, sabotage, strikes or court-ordered suspensions and similar emergencies.

§ 11 Change of performance

(1) The parties acknowledge that new facts in a changing world may impact the scope of services or performance spectrum which might force consideration of or require adjustment of current price points. Not discounted can be the possibility or necessity of last minute changes demanded by the Client, or to adapt, expand or enhance technical norms and standards ("amended performance"). The Parties agree that the possibility of a post-contractual change, expansion or adaptation of services to the original contract constitutes a change of contract; adjustments shall be made in an atmosphere of mutual good will only. No legal right for either party derives from such change, enhancement or adaptation of contractual performance criteria.

(2) Process of change of performance

    (a) If the Client desires SHD to make changes to, or amend the contracted performance, the Client shall inform SHD (in writing, by fax or email) explaining the pending changes or amendments and any other contingencies ("service/change request"), at the same time requesting a respective offer sheet for their realisation. The same pertains when SHD suggests to the Client a change of, or amendment to the content or scope of its performance.

    (b) The Client's Service/Change Request shall list the following:

        (i) Description of the desired change;

        (ii) Description of the reasons and background of the change to be taken into account;

        (iii) Urgency of the desired change

    (c) SHD shall in such case review the feasibility of a change in performance and submit to the Client a plan addressing the personnel capacities and in cooperation with the Client submit a written bid addressing the execution of the desired service/change request, including a conceivable additional charge and deadline issues. Else, SHD will advice the Client as to which vital information may be missing or is found insufficient to compile a valid bid.

    (d) SHD will further state to what extent the service/change request will impact the prior deadlines (e.g. for partial or full delivery) together with contract duration or product and performance descrip-tions. The parties shall jointly explore the possibility of a postponement or adjustment of other contractual performances. Only at such point shall an agreement relative to a service/change request become practicable.

    (e) If there are several service/change requests pending, the parties are advised to set priorities in order to avoid bottlenecks.

    (f) In the event of an agreement between the contracting parties and/or acceptance by Client of SHD's offer sheet, an amendment to the contract shall be drafted or the modalities of the change set forth either in writing, by fax or email.

(3) If no agreement as to the service/change request can be reached, neither party shall bill the other for applicable services provided.

§ 12 Duration/length and termination

(1) The inception and duration/length of a specific contractual arrangement are set forth on the order sheet or in the description of services by SHD. For an effective date of the contract's inception, the clauses of "contract conclusion" in the present GTC are applicable.

(2) In the absence of any other agreement (e.g. in the order or specification of services) between the parties, a minimum contract period of 36 months shall apply for all contracts. During this time, an ordinary termination is mutually excluded.

(3) In case the contracting parties agree on a performance profile for a certain (minimum) contractual duration and/or set deadlines for termination notices, the current respective performance profile and/or description must terminate before a new performance profile, i.e. cycle, may commence. Other existing contractual relations remain undisturbed and continue to remain in force until termination of a respective performance profile.

(4) In the absence of any other agreement (in writing, by fax or email) between the parties the contract for services shall extend by one (1) year, unless the contract or a respective performance profile was not terminated in observance of the statutory three (3) month notice.

(5) The right of the parties to immediately terminate the contract for overriding reasons and without a grace period remains undisturbed only when a continuation of the contractual relationship is no longer tolerable. Overriding reasons, among others are the following:

(a) The Client has been in payment default for more than three (3) months;

(b) Either party suffered a breakdown of its asset base or similar contingencies make the probability of insolvency a genuine risk; a party going into insolvency proceedings or is so disallowed on account of negligible assets or the party's application for deletion from the trade register or liquidation becomes a known fact;

c) Either party repeatedly violates elementary duties under the contract in spite of previous written warnings to cease and desist.

(6) SHD also retains an extraordinary right of termination in observance of a three (3) months deadline from the end of the month, when technology (hard/software) that SHD procures from a supplier, software manufacturer or other service provider

(a) Is discontinued, no longer developed or no longer supplied to SHD or

(b) Can no longer be run either on advanced hardware or existing in-house equipment or in combination with other software, or

(c) A general agreement with a third party, which SHD is subject to, has been terminated by that third party.

(7) All notices of termination shall be in writing.

§ 13 SHD auditing rights

(1) The Client is pledged to allow the rights holder, SHD or a commissioned agent to inspect on demand the contractually utilised software by the Client in compliance with the contractual stipulations (e.g. matching the number of the acquired user rights ("licences") to the number of active users). Client shall fully cooperate with SHD as rights holder or its representative, especially as it concerns access to the respective premises and access to the IT infrastructure to afford a professional inspection.

(2) SHD will provide reasonable notice prior to the inspection and its anticipated scope (in writing, by fax or email). The inspection shall be conducted in a manner to least disrupt the business operations of the Client.

(3) These auditing rights may be exercised for up to two (2) years following termination of contract.

§ 14 Transfer and Acceptance

(1) If and when a contracted performance becomes the object of formal transfer and acceptance, the following applies:

(a) Goal of transfer and acceptance is the proper functioning of the owed services in consideration of their contractually stipulated output ratings;

(b) The technical characteristics, description and details of output ratings may be derived from the order sheet or shall be determined by the responsible project managers.

(2) Unless otherwise stated, acceptance is invariably contingent on a test run. The test run is successful when the contractual output ratings are met.

(3) During the test run, Client shall promptly bring to the attention of SHD any deviating data on output ratings (in writing, by fax or email). When the test run is deemed a success, acceptance shall follow immediately.

(4) The test run is successful when either no or merely negligible irregularities are detected or all criteria for acceptance are met. Should Client fail to confirm acceptance in a timely fashion, SHD will reserve the right to set a deadline for acceptance. However, the contractually pledged performance is deemed satisfactory when Client does not formally acknowledge acceptance (in writing, by fax or email) nor SHD makes any reference (in writing, by fax or E-mail) which defects might need to be rectified. The Client shall be fully advised of the legal implications of having a deadline set for him.

§ 15 Confidentiality

(1) The contracting parties shall keep strictly confidential the other's proprietary information and company policies, which in the course of contract negotiation or during execution will come into their possession. The confidentiality agreement is open-ended and its content shall only be used for consummation of the contract. Among SHD's confidential items are the contractual objects (especially software source codes) and services rendered under the contract.

(2) The contracting parties shall require their associates and third parties to abide by aforesaid confidentiality standards and to share information with other associates and third parties only as needed for their own work.

(3) Pledges of confidentiality become moot when

(a) SHD has specifically waived in writing confidentiality for the purpose of information dissemination;

(b) The Client had obtained confidential information from a third party prior to the inception of the agreement or shall obtain it from a third party being in rightful possession of it and hence is not violating the precepts of confidentiality; or

(c) The information is already in the public domain.

(4) The party disseminating the information has the burden of proof in justifying a reasonable exemption from the confidentiality pledge.

(5) The contracting parties pledge to not make any public announcement (press releases) without the written approval of the other side or to disclose or make public other information standing in correlation to the contract.

(6) SHD shall retain the right, though, to cite the Client as a reference unless advised to abstain from doing so.

§ 16 Compliance

(1) The contracting parties pledge always to act within the bounds of prevailing laws and to observe prevailing laws.

(2) The contracting parties pledge, also on behalf of their associates, to make every effort not to commit unlawful acts or not do instigate third parties to do so. Unlawful acts include especially offering, turning a blind eye to, demanding or accepting illegal payments, perks or other gratuities or benefits afforded them by third parties.

(3) The parties assure that they have the necessary preconditions under trade and craft law and shall fulfil their obligations towards the collecting agencies (statutory health insurance companies), trade associations and tax authorities as well as in accordance with the provisions of the German Act on the Posting of Workers (AEntG) and Minimum Wage Law (AEnG: minimum wage - Minimum Wage Law).

§ 17 Data protection

(1) The parties are pledged to abide by the privacy statutes of the data protection act and accordingly shall require all associates assigned to work on the contract to observe the data confidentiality act pursuant to art. 5, BDSG (Federal Data Protection Act) unless already done so at an earlier time.

(2) The parties are pledged to take effective, protective measures against abuse of personal data.

(3) As needed, the parties on request (ADV) by the Client shall conclude separate agreements for the processing of personal data.

§ 18 Separate agreements and offsets

(1) All agreements between the parties are contained in the contract and its enclosures. No separate agreements or understandings do exist.

(2) Separate agreements, changes and amendments to the contract must be in written form (fax is sufficient) to become effective. The written form shall only be waived by a written agreement.

(3) Claims by SHD may be offset by the Client only when producing incontestable or legally sanctioned counterclaims and only to the extent in that the right of retention emanates from the current contractual relationship.

§ 19 Final clauses

(1) The foregoing contract and its aforementioned stipulations are subject to German law. The UN sales convention is excluded.

(2) The city of Andernach is legal venue when the contracting party is a businessperson, legal entity, or special fund under public law.

(3) The possibility that individual aspects of the foregoing clauses, including all installations or components, might prove to be ineffective or unworkable, shall not affect the rest of the clauses. In such event, the invalid or unworkable clause shall be replaced by a rewritten version which more clearly communicates the intended purpose and shall be retroactively valid from the time of the previous clause's deletion.

(4) To the extent that certain clauses are of overriding import and may not be removed without jeopardising the contract's intended purpose, the contracting parties shall pledge to interpret and amend the contract accordingly or to replace it with a version which will ensure its economic and legal purpose.

B1. Special clauses for the purchase of software and hardware

§ 1 Object of the contract

(1) Special contractual and business conditions govern the performance profile "Purchase of software and hardware" and are deemed an adjunct or addition to the GTC of SHD.

(2) The Client acquires from SHD the software or hardware as described on the order sheet. In the event of software purchase ("permanent cession of software") the contractual object also includes the associated operating documentation (in online form). All technical features, descriptions

and details of hardware and software are contained in the respective performance descriptions.

(3) The software's source code is exempt and not part of the transaction.

(4) In the absence of a differing contractual agreement, the

    (a) Future versions of the software (updates, patches or upgrades);
    (b) Installation, commissioning and customizing of software;
    (c) Training and schooling of the Client; and
    (d) Data transfer from earlier installations

are not part of the deliverable sales product within the framework of the performance profile. Those services require a separate arrangement with SDH.

(5) "Customizing" signifies the adaptation of a software system to the needs and demands of a Client without any change to the source code.

§ 2 Scope of software's utilisation at time of purchase

(1) With a software purchase, SHD grants the Client a basic, open-ended user right to the software. It includes the right of installing the software and to produce one back-up copy (art. 69 d par. 2 copyright law).

(2) The number of eligible users and/or the scope of the respectively granted user rights (e.g. person-specific or equipment-specific "licences", "allied licences") are set forth in each order and performance description.

(3) The software's reconfiguration in other code forms (compiler or decompiler) is permitted only within the bounds of art. 69 e of the copyright law. The operations referred to in those legal regulations may be assigned to third parties only after SHD expresses its unwillingness—after a reasonable period of contemplation—to tackle the desired task of interoperability for a proportionate remuneration.

(4) Each use beyond the contractually set limit, especially the exceeding of user rights, constitutes a breach of contract. In such event, the Client is required to promptly, but no later than four (4) weeks, report the excess use to SHD. The contracting parties shall attempt to arrange an expansion of the user rights. For the time of excess usage, i.e. until the conclusion of such agreement, the Client is obliged to pay damages in the amount of the difference between the paid "licence fee" and the actual "licence fee" for the renegotiated, expanded licence range. ("follow-up licencing")

(5) Besides a follow-up licence, SHD reserves the right to impose a contract penalty triple (3) the cost of a licence purchase. SHD's right of termination for cause remains undisturbed.

(6) The Client may assign the software to a third party only when the latter agrees in writing with the contract's conditions and the Client will disclose the third party's name and address to SHD.

(7) Copyrights or other right holder notes on the data carriers and user documentation shall not be deleted, altered or suppressed.

§ 3 Cession, transfer of risk and right of retention

(1) The details relative to delivery and cession (assignment) of software or hardware ensue from the respective order sheet.

(2) SHD retains ownership of the software and hardware up to the time of full remittance of the contractual price. When accepting the purchased equipment, Client is required to maintain and handle the units with all due care. Any damage shall be promptly reported to SHD.

(3) Until full payment of the purchase price, Client is prohibited from lending, selling, renting out, pledging, or collateralising the equipment or its components or otherwise mistreat them. In the event third parties are planning to impound or attach the software or hardware, Client shall immmediately report such action to SHD. All measures taken to remove any liens or retrieve the equipment, together with legal and non-legal expenses sustained toward that goal shall be reimbursed by the Client.

(4) In the event of payment default by Client, our assertion of the right of retention does not represent a cancellation of contract. A violation of above-captured obligations shall, however, entitle SHD to terminate the contract after expiration of a reasonable grace period.

(5) The Client is required upon receipt of the goods to immediately inspect the software and hardware as to their proper working condition and completeness. Any defects shall be duly reported (preferably in writing, by fax or email or by phone or service tool) and if at all feasible, transmitted in a way acceptable to SHD (investigation and reprimand duty). In case of an improper handling of the investigation and reprimand duty the delivery shall be deemed error-free relative to the supposed defect.

§ 4 Manufacturer's Warranty

(1) If the contracted product is warranteed by the manufacturer ("manufacturer's warranty" or "warranty declaration"), SHD will pass the same on to Client. In those instances, the contracted products will have a warranty card ("warranty declaration") attached to them. The extent of the granted warranty can be learned from the manufacturer's warranty card.

(2) To safeguard his warranty claims, the Client will in case of defects/malfunctions that are covered by the warranty contact SHD in observance of the manufacturer's warranty clauses, especially requiring a pristine condition of the contracted hardware. SHD shall contact the manufacturer to process the warranty claim.

(3) SHD complies with the manufacturer's warranty clauses to the extent that a statute of limitation for liability of material or legal defects commences

only when having become cognizant of the problem within the framework of the warranty clauses, and secondly, the deadline hangs in the balance until the inspection, repair of defects and exchange processing on the part of manufacture is completed. Beyond, and on account of the manufacturer's warranty clauses, no claims by Client against SHD shall be recognised.

§ 5 Severability clause

(1) The possibility that individual clauses of the contract, including all applicable enclosures or components might prove to be ineffective or unworkable shall not impinge on the validity of the other clauses. In such event, the invalid or ineffective clause shall be replaced by a reworded clause which more clearly communicates the intended purpose and which shall retroactively become effective with the deletion of the former clause.

(2) To the extent that certain clauses are of overriding import and may not be removed without jeopardising the contract's intended purpose, the contracting parties shall pledge to interpret and amend the contract accordingly or to replace it with a version which will be conducive to ensure its economic and legal purpose.

B2. Special provisions for maintenance, upkeep and support

§ 1 Contractual object

(1) These special contractual and business provisions govern the performance profile "SHD maintenance, upkeep and support" and serve as adjuncts to the GTC of SHD.

(2) The performance profile "SHD maintenance, upkeep and support" governs the transfer of maintenance duties of hardware listed in a respective order and the upkeep of standard software by SHD, in conformity with their maintenance intervals as spelled out in the performance description at the contractually stipulated performance venues.

(3) Details of the maintenance interval and respective performance venue are subject to the service level. SHD provides service within the performance profile "maintenance, upkeep and support" only during service times listed in the performance description. There is no additional obligation involved. Service times at which the service portal of SHD is made available can be found in the performance description.

(4) Outside of fixed service times, SHD will provide services on request. They are subject to separate arrangements and charges.

(5) The measures for maintenance and upkeep by SHD or an agent retained by SHD can also be effectuated by using the phone, in writing or online ("remote upkeep or "remote maintenance").

§ 2 Performance object relative to maintenance

(1) Within the bounds of the performance profile, SHD renders all services listed in the various performance descriptions or on the order sheets.

(2) This includes the actual inspection and repair (including remote diagnose and maintenance) as well as hotline support if necessary.

(3) The technical features, descriptions and details of the hardware to be maintained including the covered services (especially reaction and restoration times) can be found on the order sheet or the various performance descriptions.

(4) Venue for the maintenance of the Client hardware shall be the address given by Client and locale of installation, contingent on the respective service level (i.e. on-site service). If needed, SHD shall have the right to complete maintenance, installation and set-up work at the head offices of SHD.

§ 3 Performance object in context with software upkeep

(1) Software upkeep relates to any program scheduled for upkeep on its respective order sheet or performance description and specifies the services to be rendered by SHD.

(2) Upkeep services may comprise;

    (a) Support at the time of software interference;
    (b) Continuing development, updating and finetuning of the software;
    (c) Proactive services und consultations by SHD; or
    (d) Tools and methods for the implementation of data.

(3) The technical characteristics, descriptions and details of software to be kept up in addition to applicable maintenance (especially reaction and restoration times) can be found on the order sheet or respective performance descriptions.

§ 4 Limits of performance within the bounds of maintenance and upkeep

(1) SHD is not required to provide maintenance and upkeep in cases when

    (a) An application problem cannot be replicated;

    (b) The Client or third parties engage in the expansion or other tweaking of software or hardware or change the software's place of installation without prior approval by SHD, with the exception these steps were taken within the purview of contractually sanctioned use of the software and have no negative effects on the work essential for performance;

    (c) The Client does not use the software under conditions approved by both the manufacturer and SHD.

(2) SHD is not responsible for the elimination of interferences or breakdowns that can be traced to mishandling by third paties, force majeure, the Client's improperly maintained equipment or improper use (disregard of user directions, manufacturer's data and extraneous, non-functional use) by Client or its associates. SHD shall bill Client for requested, noncontractual services rendered at the current rates in conformity with the "price schedule for services".

(3) The elimination of interferences or breakdowns is not part of the contract when the software and hardware installed in the contracted equipment is unable to process data sets properly, especially to read them completely and correctly as well as perform tasks of alterations and computations flawlessly. This especially applies to interferences and breakdowns caused by lacking data strength.

(4) If Client fails to properly implement the contracted-for software in violation of the user rights agreements, he forfeits the right to any upkeep services.

(5) Should the Client request special services from SHD, especially installation, integration and configuration of new hardware, backup services, training or system expansion in conjunction with the contracted devices, he shall have to requisition those separately by stating the desired performance parameter. SHD is only obligated to render those special services after SHD has signalled Client its acceptance of the order. SHD will subsequently forward to Client a formal order confirmation.

(6) The same applies to patches and updates of firmware. They will be commissioned and deployed as needed for the purpose of error isolation and error elimination. There exists no right in conjunction with the performance profile to have all current patches and updates implemented. Ensuing "licencing" costs for necessary patches and updates are not part of the hardware service and shall be billed separately.

§ 5 Implemenation of maintenance, upkeep, and support

(1) SHD sets a service portal aside for maintenance, upkeep and support. Service times during which the portal is available to Clients can be found in the performance description.

(2) SHD shall remedy reported problems or interferences at its discretion, especially in the following ways:

    (a) Forwarding of a patch or a new program version, which Client may install;
    (b) Directions for the Client how to bypass the problem ("Workaround");
    (c) Error elimination on-site or by remote access.

(3) In the absence of other agreements (in writing or by fax) the Client is entitled only to upkeep services on the most recent software version listed on the order sheet supplied by SHD. If acceptance of a yet more recent version of the contracted-for software cannot be expected of Client, he may continue to demand support and upkeep services for his version of software. In this instance, SHD will provide support and upkeep services for the older version as long as SHD or the manufacturer supports that version, but no longer than two (2) years following the newer version's date of issuance.

(4) SHD only provides support and upkeep services for the older version of a software whereas a later version is available for a separate fee.

§ 6 Special Client duties with respect to cooperation

(1) The relocation of contracted devices to a different venue than the one cited on the order sheet shall be reported to SHD (in writing, by fax or email) no later than two (2) months ahead of time unless other arrangements are in force. Each removal of servers or other network-related system components to a new spot shall be done by SHD unless other arrangements are in force (in writing, by fax or email).

(2) Client shall afford SHD's associates or authorized agents/representatives access to the premises in context with the performance profile, including the making available of phone facilities for remote maintenance operations.

(3) Following updating, maintenance and upkeep of data ("data upkeep") by SHD (incl. remote maintenance), Client shall check all work done for compatibility, completeness, and operability.

(4) In the wake of maintenance and upkeep work, Client shall immediately report any interferences or errors arising.

§ 7 Severability clause

(1) The possibility that individual aspects of the foregoing clauses, including all installations or components, might prove to be ineffective or unworkable, shall not affect the rest of the clauses. In such event, the invalid or unworkable clause shall be replaced by a rewritten version which more clearly communicates the intended purpose and shall be retroactively valid from the time of the previous clause's deletion.

(2) To the extent that certain clauses are of overriding import and may not be removed without jeopardising the contract's intended purpose, the contracting parties shall pledge to interpret and amend the contract accordingly or to replace it with a version which will be conducive to ensuring its economic and legal purpose.

B3. Special regulations regarding leasing and cloud-based services

§ 1 Contractual object

(1) The special terms and conditions for business govern the performance profile "SHD rental" and serve as adjunct to the GTC of SHD.

(2) The subject of those contractual points is the temporary cession and usage of contractual software, IT infrastructure or hardware, together with a temporary cession of rights essential for their use.

(3) Essential details of the scope, contractual constitution, type and quality of the deployed software or hardware, their components and other services in addition to an outline of its use under the contract can be found on the order sheet or the various performance descriptions.

§ 2 The leasing of software as a performance object

(1) SHD makes software available to the Client on a lease basis that either comes with

    (a) a data carrier being installed on the servers and Clients on-site; or
    (b) lets the Client download the software with a password from the web (remote data transfer); or
    (c) alternately, SHD will store the software and its computational resources in their latest version on its own servers for the contractually defined time, ready for instant call-up. The software in this case remains with SHD.

(2) The Client's uninterrupted access to the net or the management of data traffic or data networks/intranets is the responsibility of the Client and outside of SHD's purview.

(3) The Client shall receive the software and access thereto including object code and documentation (web).

(4) In the absence of other agreements (written or by fax)

    (a) The installation of the software;
    (b) The Client-specific adjustments and customizing;
    (c) Training, schooling and sundry advisory and upkeep services unrelated to the software/hardware leases

shall not be part of the contract relative to the performance profile. Such services are subject to a separate agreement with SHD.

(5) Adjustments or modifications of the software as well as the creation of interfaces to third-party programs shall only be owed by SHD insofar as these are required for the maintenance and repair of the leased item or security of the use according to the contract. Else, SHD is liable for adjustments and/or changes only when explicitly agreed-upon. The Client may order these respective services separately.

(6) When SHD, as partner of third party software producers, arranges with Client a licence agreement with said software producer (licencor), the exchange of all contractual specifics shall be conducted between the Client and SHD only.

§ 3 Cloud-based services as performance object

(1) Core of SHD's cloud-based services is the deployment of decentralised IT infrastructures by way of a data processing centre and the provision of related services. SHD will grant the Client the right of use of one or several assets of the SHD "cloud services" portfolio. It enables the Client to utilise those cloud-based services and/or infrastructure via his own internet access over a contract's agreed length.

(2) The type of order and its respective performance descriptions dictate the scope, constitution, and quality standard of the infrastructure to be deployed in addition to cloud-based services, its components and ancillary services.

(3) SHD makes available to Client the services or access to, and call-up of, the IT infrastructure by way of internet connection (via VPN), for which Client is responsible himself. Unless otherwise agreed, Client shall also be responsible for the EDV infrastructure enabling him to utilise over the internet the deployed cloud and RZ services of SHD or a third party. Transfer point for SHDs contractually owed services in the field of cloud-based services shall be the router exit to the internet of the data processing centre used by SHD.

(4) SHD has the right to commission third party businesses with the execution of technical requirements relative to cloud-based services.

§ 4 Scope of use

(1) Within the framework of above performance profile, SHD shall grant the Client a basic, non-transferrable, non-sublicenceable user right to the software or hardware, being of limited, contractually defined duration, together with the use of its respective IT infrastructure.

(2) It includes the right to install (in case of transfer) the software and to create a back-up copy (art. 69 d, par. 2 copyright law). The backup copies must bear the copyright notes of its original data carrier.

(3) Beyond, the Client is prohibited from duplicating the software.

(4) The number of permitted users and/or the type and scope of the respectively granted user rights (e.g. person or machine-specific "licences", "allied business licences") can be found on the individual order sheet or performance description. Unless otherwise agreed upon between the contracting parties, the customer has the right to order additional licences from SHD during the term of the agreement, according to the respective

applicable and agreed conditions. This obligation of SHD to provide such licences is however, only then and to the extent that, the customer can prove that at the time of the order the subsequently required licences are actually required as of the reference date of the order and that they in an economic and material context with the actual requirements of the customer. SHD does not need to provide licences ahead of schedule beyond the actual requirements of the customer. SHD is also entitled to deliver a replacement product if the desired software is no longer available.

(5) Client shall implement the leased software and cloud-based services only for the purpose of internal and allied business operations pursuant to art. 15, bus. Law ("allied business") Especially

   (a) A separate data processing centre for third parties or
   (b) A temporary handover of services (e.g. as application service provider-ASP) to other allied businesses or,
   (c) The utilisation of services for the training of persons who are not associates of the Client or allied businesses,

   are permitted only following prior written approval by SHD.

(6) The Client is enjoined from passing on to third parties ("Non-dissemination"),

   (a) His transferred or deployed software;
   (b) The created backup copy; or
   (c) The hardware

   The Client shall not sell, loan, lease out or otherwise sub-licence the software or publish or generally make it available.

(7) Translation of the software in other forms of code (compilation or decompilation) is permitted only within the copyright law (art. 69 e). The tasks addressed in the directive may be assigned to third parties only when SHD decides (following a reasonable time of consideration) to decline the sought creation of interoperability in exchange for an adequate fee.

(8) Any use by the Client beyond the contractually defined extent, especially excess use of his granted user rights, shall constitute a violation of the contract. The Client shall immediately cease and desist from such practice and report the excess use to SHD no later than four (4) weeks after becoming aware of it. The parties to the contract shall subsequently attempt to reach an understanding on the expansion of the software's use. For the period of excess use, i.e. until a new agreement has taken effect, Client is liable for damages amounting to the pro-rated difference between the originally paid licence fee and the renegotiated rate ("follow-up licencing").

(9) Next to a follow-up licencing, SHD reserves the right to demand from Client a contract penalty in the amount of triple (3) the licence fee. SHD's right of termination for cause remains undisturbed.

(10) In the event of violation, SHD's right to immediately prohibit the Client from using the software and to extinguish all copies installed on its systems including the back-up copy, if any, and return them to SHD, shall remain undisturbed.

§ 5 Special liability regulations in the areas of leasing and cloud-based services

(1) By way of derogation from § 9 para. 3 of the GTC, the liability of SHD in the case of slight negligence is limited to the amount per damage claim to twelvefold the respective current monthly net contractual value at the time of the respective damage claim and of SHD-RZ services – however to an overall maximum of EUR 1,000,000.00.

(2) The remaining provisions of the GTC shall remain unaffected.

§ 6 Special duties of the Client relating to lease and cloud-based services

(1) When using SHD's cloud, Client shall abide by all applicable German laws and legal directives. The Client is prohibited to use the cloud services and by implication SHD's name in an abusive fashion; to upload, use or store data and content which violate existing law or to infringe on the copyrights or other rights of outside entities.

(2) SHD and its agents shall be held harmless of all third party claims deriving from Client's unlawful use, or tolerated unlawful use, of SHD's cloud services. Applicable are issues relating to data protection, copyright or other claims by third parties in context with general usage. It is incumbent upon Client to immediately report any violation to SHD once he obtains knowledge thereof.

(3) Client is pledged to treat all access data (especially user names and passwords) confidentially vis-a-vis ineligible third parties and to keep them confidential. Client shall not pass on, make accessible or otherwise disclose those access data to ineligible third parties which are not party to the contract, nor shall Client facilitate the use of the services or associated components by outsiders. Client shall take company-wide measures to prevent ineligible third parties from gaining knowledge of such access data.

(4) SHD reserves the right to demand from Client a list of all third parties duly commissioned by Client. Client is pledged to promptly inform SHD of instances where ineligible third parties have gained knowledge of access data.

(5) Any consequences arising from a misuse of services to the detriment of Client, SHD or third parties shall be borne by Client.

(6) When Client, through use of SHD cloud services, legally accesses, processes or uses person-specific data, it shall be incumbent upon him to abide by all data protection directives, especially as they regard approvals of the parties concerned.

(7) In case of sufficient evidence pointing to a Client violation of foregoing paragraphs, SHD may at its discretion suspend services until such time the matter has been resolved. SHD is not obligated to check for unlawful content on the part of Client.

(8) The suspension, if technically feasible and tolerable, shall be limited to the assumed unlawful content and services. Client shall be immediately informed of the suspension along with the reasons for it and be instructed to remove the assumed unlawful content; or alternately be allowed to give his side of the story, to plead the content's lawfulness and conceivably furnish proof for his arguments.

(9) A suspension of service does not entail a loss of SHD's claim to remuneration. SHD reserves the right to suspend legally questionable content within the deployed services (e.g. content on websites). If the Client is guilty of the violation, he will have to indemnify SHD for damages resulting from the violation and/or hold SHD harmless.

(10) Client is pledged to inform SHD of any defects in the software or hardware as soon as such are discovered. The time of their appearance and correlating circumstances should be included in the report.

(11) Client shall take appropriate steps to protect the software from unlawful access by third parties. He is held to store the data carriers and their back-up copies in a secure place. He shall advise his associates and other eligible users that a duplication of the copies beyond their contractually mandated scope is prohibited.

§ 7 Lease rates

(1) The rates for lease and payment deadlines for the temporary cession of software or hardware (lease) and/or deployment of the IT infrastructure derive from the respective order sheet.

(2) SHD reserves the right to increase lease rates after twelve months following the effective date of contract by serving a 3 months advance notice written at month's end—if and when attendant costs for maintaining the lease arrangement have increased. The provision takes on added importance when the software manufacturer raises the prices for its basic licences. The Client shall have the right to serve notice within four (4) weeks after receipt of the lease increase. The general contract terms remain in force.

§ 8 Deployment of software dongles (dongles/tokens)

(1) When the Client receives for deployment and usage a lease-based software or software component from SHD, a socalled "dongle" or "token" (dongle) comes with it. The latter shall be an integral part of the lease arrangement. The software cannot be used without such "dongle". In the absence of a different agreement, the number of dongles must be equal to the number of contracted user rights (licences).

(2) With expiration of the lease term, the dongle shall be returned to SHD; or else the client remains liable for continued lease payments. Return of the dongles takes place at the risk and expense of Client. SHD shall immediately advise the Client of the receipt of the dongle.

(3) The expense of loss or destruction of a dongle shall be borne by the Client. Costs for its replacement run at €2,750.00 (loss charge). The Client is thus advised to take out an adequate liability insurance that will cover any potential loss. SHD reserves the right to deactivate/suspend the lost or destroyed dongle and shall send a replacement copy upon payment of the loss charge.

(4) Regular payment of the contractual lease shall remain unaffected in case of a lost or destroyed dongle, even though the Client will be unable to operate the leased equipment until a replacement arrives.

§ 9 Consequences of contract termination

(1) At termination of contract the Client is liable, at his expense, for the return of all contractual objects and equipment, the entire documentation, access hardware (e.g. dongle, token, hardlock or key) and other records that SHD transferred to his premises under the terms of the contract. The risk of loss during return transport shall be borne by the Client.

(2) Orderly return includes the complete and thorough extinguishment and destruction of any existing copies of ceded or deployed software. SHD reserves the right to waive a physical return and instead may order extinguishment of the program and destruction of all documentation upon receipt of a written guarantee to that effect on the part of the Client.

§ 10 Severability clause

(1) The possibility that individual aspects of the foregoing clauses, including all installations or components, might prove to be ineffective or unworkable, shall not affect the rest of the clauses. In such event, the invalid or unworkable clause shall be replaced by a rewritten version which more clearly communicates the intended purpose and shall be retroactively valid from the time of the previous clause's deletion.

(2) To the extent that certain clauses are of overriding import and may not be removed without jeopardising the contract's intended purpose, the contracting parties shall pledge to interpret and amend the contract accordingly or to replace it with a version which will be conducive to ensuring its economic and legal purpose.