

§ 1 Contents of the agreement and preparation of the agreement

- The General Standard Terms and Conditions (GSTC) of SHD Kreative Planungs-Systeme GmbH & Co. KG (hereinafter referred to as "KPS") shall exclusively apply. Any other conditions shall not become an element of the agreement, even in case KPS does not expressly contradict them.
- KPS's offers shall be binding only if they expressly include a commitment period. In any other cases, KPS's offers shall be non-binding and are subject to confirmation. In this case, an agreement shall be concluded only upon KPS's written order confirmation; at the latest, however, upon the execution of the agreement.
- Before accepting an offer, the customer shall be committed to examine if the specifications of the contractual items are matching his wishes and needs. In case the customer has doubts, he must obtain professional advice before entering into the agreement. KPS offers consulting services against separate remuneration.

§ 2 Execution of the agreement

- KPS shall provide the services it assumed in a professional way, taking into account the respective developments of technology and by employing qualified personnel. The customer is aware of the fact that KPS's interventions on his EDP installations may lead to temporary stress on the operational procedures.
- KPS shall be entitled to charge subcontractors with the provision of the performances and shall be entitled, at a reasonable extent, to execute partial deliveries and their invoicing.
- KPS shall be entitled to provide documentations and manuals electronically. The customer shall have no right to claim a printed version.
- To the extent the customer can be reasonably expected to accept it, KPS may supply or produce changed or adjusted contractual products or provide performances other than those agreed upon. Such a modification of the contractual items shall be reasonably acceptable in particular if they do not impair the agreed functional fitness for purpose of the performance.
- In the event it is obvious after the conclusion of the agreement that the counter-performance is at risk due to the lack of the customer's ability to pay, KPS shall be entitled to refuse its performances until the counter-performance has been provided.

§ 3 Hardware maintenance

- In the event the maintenance agreement relates to hardware that has not been supplied by KPS or if, in case the hardware was supplied by KPS, the maintenance agreement does not commence at the latest upon the expiration of the period for the elimination of defects, KPS shall execute an initial inspection invoiced to the customer by KPS. This shall apply as well to the elimination of the errors and faults discovered. The prices of the maintenance measures shall be communicated by KPS to the customer prior to the beginning of the works.
- The customer shall designate an employee to be responsible for the system and, if applicable, his/her substitute. The customer shall designate such an employee to be responsible for the system and his/her substitute that is sufficiently skilled and thoroughly trained with regard to the handling of the respective hardware and software. On part of the customer, only the person responsible for the system and his/her substitute shall request maintenance services.
- In the event the customer modifies the hardware to be maintained by extension, by mounting or attaching further devices, if he replaces the hardware by other devices or if their site license is modified, the remuneration for maintenance shall be adjusted accordingly. The customer shall document any changes of the configuration and of the hardware environment and shall communicate them to KPS in writing and in time.
- To the extent that can be reasonably expected of him, the customer shall take any measures for the determination, the limitation and documentation of the failures. This shall include the issuing of a fault report with a detailed description of the failure and its impact by mentioning the concerned device, its serial number and date of installation. In addition, the customer shall provide KPS with system protocols and memory dumps, the concerned input and output data, intermediate and test results as well as with any other documents suitable to illustrate the failure.
- The maintenance performances may result in discrepancies from the specifications contained in the manuals, brochures and other illustrations. In the event the maintenance performances require technical changes to be realized at the customer's site, the customer shall be notified by KPS. In case the customer requests the modifications, the expenditure incurred by the adjustment of his hardware or software environment shall be borne by him.
- KPS shall invoice any maintenance performances provided out of the working hours agreed upon with KPS. In the event it is found that the failure was caused by improper handling or interventions of the customer or any other circumstances KPS is not answerable for and that cannot be attributed to the concerned hardware, KPS shall also invoice the performances separately.

§ 4 Software maintenance and leasing

- Any software maintenance services, also in the frame of a lease agreement, shall always refer to the current standard software version supplied by KPS. The customer therefore is committed to install the software version supplied in the frame of maintenance within a reasonable period. The maintenance services shall not include any software individually adjusted or modified by the customer unless such services have been ordered separately by the customer.
- In the event the customer orders the installation of a new programme version, the installation or the required rework may result in a temporary limitation of use.
- The performance of the software made available by KPS that was described at the commencement of the agreement shall refer exclusively to the time of the commencement of the agreement; evolutions of the software that are specific for the sector or that are caused by law may reduce the performance of the application.
- The provisions of § 3 para. 2 - 6 shall apply accordingly to the software maintenance agreements and the leasing of software.

§ 5 Copyrights and the granting of rights

- The software made available by KPS, the documentation and any other documents, descriptions and materials may be protected by copyright. In the relation of the contracting parties, KPS shall be exclusively entitled to the respective rights. To the extent a third party is entitled to the rights, KPS shall have the corresponding rights of utilization.
- KPS shall grant to the customer the right of use of the contractual items. The customer shall be entitled to use the software according to the contractual provisions already before the payment has been effected in full. The scope shall be stipulated in each agreement. Unless otherwise agreed upon, he shall receive the non-exclusive authorizations he requires to use the software in his business in the way described in the manuals and the following provisions:
 - The customer shall be entitled to load the software to the internal memories and the hard disks of the kind and number of computers contractually agreed upon and to use them according to the kind and number contractually agreed upon. He shall be entitled to create the backup copies of the software that are required for a safe exploitation. The customer shall be entitled to duplicate the software for the said

purposes only. The manuals may be copied for internal purposes of the company only. Any other copies shall be subject to § 13.

- The modification of the software for the achievement of interoperability with other programmes shall be admissible only in the frame of the provisions of the copyright law and only if KPS does not make available the information and documents required to that effect despite of a written request of the customer within a reasonable period and against a reasonable remuneration.
 - Any other kinds of utilization of the software, in particular decompiling, translation, processing, arrangement and any kind of redesigning shall be prohibited. The leasing, lending, making available by ASP (Application Service Providing), the distribution as well as the exploitation of the software in a computing centre shall not be permitted without KPS's previous written consent.
 - Prior to the involvement of a third party (e.g. pursuant to § 69 e para. 1 nr. 1, para. 2 nr. 2 UrhG (copyright law)), the customer shall provide KPS with a written declaration stating that the third party commits itself directly to KPS to comply with the provisions contained in § 5 and § 13.
- The customer shall not be entitled to claim the delivery of the source programmes and the development documentation.
 - In the frame of software lease agreements, the transmission of the software to third parties shall not be allowed.
 - Upon the purchase of the software against a single payment, the definite and complete transmission shall only be admissible if
 - the customer handles the purchase by transmitting to his purchaser the licence conditions as a whole including these GSTC and including each and every limitation resulting from these conditions;
 - the customer sells the licences, purchased from KPS, as a whole in a block to one single purchaser, preserving the structure, graduation and arrangement of KPS' price grading granted to the customer in his relationship to KPS and keeping the numbering to the licences as is fixed in KPS' price grading;
 - KPS is provided with the third party's name and address with full details before the purchase;
 - the third party commits itself to KPS to comply with all terms and conditions of licence, utilization and transmission concerning the software including the limitations contained herein and if the customer provides KPS with the third party's declaration of commitment in writing.

The customer is not entitled to split off and sell single or groups of licences from the price-grading-package of licences that is hold by him.

- Any use of the software other than in accordance with the present provisions and the regulations of the respective agreement (e.g. higher classes of computers, higher number of work stations, number of processes) shall require the previous written consent of KPS. Any overuse has to be paid for retroactively according to the respectively valid price list and shall entitle KPS to a termination without notice. Any further claims shall remain unaffected.
- KPS shall be entitled to revoke the authorizations for use for cause. This shall be the case in particular if the customer's payments are delayed, if he does not comply with the limitations of use according to § 5 or if he infringes the obligation to maintain secrecy pursuant to § 13 and does not immediately refrain from this way of acting even following a written adhortatory letter under penalty of revocation. Upon the revocation of the right of use, the customer shall return the original software and any existing copies and shall delete any stored programmes. He shall assure KPS of the return and deletion in writing. For the period of utilization, KPS shall be entitled to the remuneration for use usually due.
- In the event a third party asserts industrial property rights against the customer, the customer shall notify KPS immediately in writing. KPS shall at its discretion defend itself against the claim or satisfy it or exchange the concerned performance against an equivalent performance coming up to the contractual provisions, if this is acceptable for the customer.

§ 6 Duties of the customer

- The customer shall take part in the provision of the performance. He shall provide KPS on time with any information required for the execution of the agreement. For the hardware maintenance, he shall in particular make available the maintenance documentation and the technical operating and handling instructions.
- To the extent this is useful for the execution of the agreement, the customer shall assist KPS free of charge in the execution of the agreement by providing e.g. personnel, work space, hardware, the exploitation system and basic software, data and telecommunication installations and lines. For the period of the hardware and software maintenance, the customer shall grant to KPS according to its instructions, even in the frame of a lease agreement, access to the hardware and software directly or by means of data remote transfer, and shall ensure the required technical conditions as far as the environment is concerned.
- The customer shall take appropriate measures for the event that the contractual items do fully or partially not work properly, e.g. by documented data safeguarding, failure diagnosis, regular examination of the results, uninterrupted power supply, journaling etc. Prior to the beginning of the maintenance services and any other interventions of KPS on the EDP installation required for the provision of the performances and any other special events, the customer shall realize a data safeguarding or shall otherwise ensure that the current data can be reproduced with reasonable efforts on the basis of a data stock provided in a machine-readable form. KPS shall notify the customer on time before such interventions.
- In the event the customer does not comply with his duties to participate, KPS shall be relieved from its duty to perform. However, if KPS executes its performance, the additional expenditure shall be invoiced according to the valid price list.

§ 7 Time of performance, delays

- Any time limits shall be binding only if fixed in writing. Any reminders and the fixing of time limits on part of the customer need to be done in writing. Any additional periods shall be of reasonable duration. They shall not remain under two weeks.
- Time limits and deadlines shall be extended by the period during which KPS is waiting for information and cooperative actions of the customer. The same shall apply if KPS is prevented from the proper execution of the agreement due to circumstances KPS is not answerable for. In particular force majeure, governmental measures, the non-obtainment of official authorizations, labour disputes of any kind, sabotage, the shortage of raw materials, the excusable, delayed supply of data and material by third parties as well as any other unforeseeable obstacles beyond KPS's control shall be considered as such circumstances. KPS shall immediately notify the customer about the beginning, the end and the nature of the obstacle.
- In the event KPS is delayed, does not provide its performances or not in the way agreed upon and in case the customer is entitled to choose between fulfilment, withdrawal

- and/or damages, he shall exercise that right to choose within one week in writing vis-à-vis to KPS. In the event the customer fails to do so, it will be supposed that KPS is entitled to provide further performance and that the customer will not assert any rights arising out of the default in performance.
- If the customer is answerable for a delay, KPS shall be entitled to invoice the additional costs incurred.

§ 8 Receipt and acceptance of delivery and performance

- Following each delivery and performance that does not need to be accepted, KPS shall be entitled to ask the customer for a written declaration stating that the delivery or performance is correct, complete and free from apparent defects (declaration of acceptance). Otherwise, the execution of an acceptance inspection legally valid towards KPS shall be carried out only on the basis of a special agreement.
- If there are any apparent defects, the customer shall concretely designate them in the declaration of acceptance. Discrepancies from the contractually agreed quality that are of minor importance shall not entitle the customer to refuse the declaration. The duty to eliminate defects in the frame of additional performance shall remain unaffected.
- The declaration of acceptance shall be supplied within two weeks following the request, otherwise it shall be considered as having been submitted. At the beginning of this time limit, KPS shall draw the customer's attention to this legal consequence. The declaration shall also be considered as having been submitted in the event the customer uses the contractual items for more than two weeks without any complaint or if he expresses his approval in another way, e.g. by paying the remuneration without reservation.
- If applicable, KPS shall previously in a dry run give to the customer evidence of the compliance with the performance features according to defined criteria by means of test data and test scenarios to be provided by the customer.
- In case of partial performances, the declaration of acceptance shall not refer to those qualities of the contractual items that can be inspected only in connection with subsequent deliveries and performances. As soon as partial performances or partial works can be used productively by the customer, they shall be considered as accepted.
- The above mentioned provisions shall not affect the duty to complain pursuant to § 377 HGB [German Commercial Code].
- For the acceptance of performances that need to be accepted, § 8 para. 1 - 5 shall apply accordingly.

§ 9 Reservation of ownership

- KPS shall reserve the ownership of the delivered items until any existing and future debt claims resulting from the commercial relationship with the customer shall be settled in full. KPS shall release the securities in the event the securities arising out of the reservation of ownership are exceeding the debt claims to be secured by 20 %.
- In the event of a pledging, an arrest or any other dispositions and interventions of a third party, the customer shall immediately notify KPS in writing and draw the third party's attention to KPS's reservation of ownership.

§ 10 Prices, payments, compensation and assignment

- To the extent the contracting parties did not individually agree upon the prices of the deliveries and performances, KPS's respectively current price list shall apply to the deliveries and performances. KPS shall invoice travel costs, expenses, data carriers, forwarding, telecommunication and any other ancillary costs according to the respectively valid price list. KPS shall supply to the customer the respectively valid price list.
- Any prices shall be increased by the legal value-added tax at its respectively current legal rate.
- KPS shall be entitled to replace the price list valid upon the conclusion of the agreement by a new price list or to increase the agreed remunerations for maintenance or rent (§§ 3 and 4 of the General Standard Terms and Conditions), at the earliest, however, 12 months after the conclusion of the agreement or the last increase. KPS shall be entitled to make use of this right several times. The respectively new price lists and remunerations shall then be valid for the further execution and invoicing of the agreement. The price increase shall be communicated to the customer in writing within four weeks before the end of the month. In the event the price increase exceeds 5% compared to the last invoicing of the same performance for an unchanged scope of performance, the customer shall be entitled to the extraordinary termination of the agreement in writing, being effective as of the coming into force of the price increase. This termination shall be received by KPS one week before the date of increase. In the event of a termination, any performances provided prior to the termination of the agreement shall be invoiced at the old prices.
- Unless fixed payment deadlines have been agreed upon, payment shall be due immediately following the receipt of the invoice without any reduction and shall be effected within 14 days.
- The customer shall be entitled to compensation only with regard to uncontested or legally determined debt claims. Any payments of the customer shall be compensated pursuant to § 366 para. 2, § 367 BGB (German Civil Code). The customer shall be entitled to assign any claims arising out of the present agreement to a third party only with KPS' previous written consent. The right of retention may only be based on claims arising out of the present agreement.

§ 11 Liability for defects

- KPS promises the professional and careful execution of the agreement. The customer is aware of the fact that software usually is not completely free from defects. The software shall be considered as free from redhibitory defects if it comes up to the quality contractually agreed upon when being made available. Representations in test programmes and public statements, in particular in product and project descriptions, in advertising or on the internet shall not constitute a description of the quality of the performance or a warranty for performance, unless expressly referred to in the agreement. Only the indications contained in the price list, the order confirmation and the present General Standard Terms and Conditions shall be authoritative.
- To a reasonable extent, the customer shall take any measures required for the determination, limitation and documentation of the defects. In the event a defect is discovered, he shall provide KPS with any available information and shall support the elimination of the defect in the frame of his contractual duties to cooperate.
- First of all, KPS shall be entitled to eliminate a defect by additional performance (rework or additional supply). In the case of hardware, the additional performance shall consist, at KPS's discretion, in maintenance or a new delivery, and in the case of software services, at KPS's discretion, in making available a new programme version or in KPS's showing the possibilities how to avoid the impacts of the defect. Not in each case, reworking will permit the complete elimination of the software faults. The customer shall accept a new programme version or substitute hardware even if this leads to reasonable adjustment expenditure to be borne by him. KPS shall not bear the transport and travel costs required for the reworking.
- In the event the additional performance with regard to a particular defect fails definitively after three attempts despite a reasonable time limit fixed in writing, the customer shall be entitled to reasonably reduce the remuneration or to withdraw from the agreement. In the case of a maintenance agreement, the customer shall be entitled to the extraordinary right of termination instead of reducing the remuneration. As far as claims

- for damages are concerned, § 12 shall apply. Any other rights of the customer on account of the defect, in particular the reimbursement of expenses incurred by the elimination of the defect by a third party, new delivery and costs of the agreement shall be excluded.
- In case KPS intervenes due to failure resulting from the environment of the contractual software or hardware, their modification by the customer or by faulty operation, KPS shall invoice the expenditure incurred. The same shall apply in case the customer did not comply with his duty to complain pursuant to § 377 HGB.
 - With the exception of cases of intention and the taking over of a warranty for the quality of a matter or a performance aiming at achieving a certain success („Warranty of Quality“) claims for damages shall fall under the statute of limitations 12 months after the passing of risk. Further claims for damages of any kind are excluded with the reservation of claims for damages restricted in § 12. Such claims for damages fall under the statute of limitations according to § 12 paragraph 8.

§ 12 Other liability

- Claims for damages of the customer, regardless of their legal argument, in particular on account of the infringement of duties resulting from the obligatory relation and from unlawful act shall be excluded unless legal liability is mandatory, in particular according to the law of product liability, in cases of intention or gross negligence, in the event of an injury of life or body or health, in cases of damages which are due to the infringement of duties resulting from major infringements of the duties endangering the proper execution of the agreement or from the infringement of duties the fulfilment of which will make possible the proper fulfilment of the agreement (infringement of vital contractual obligations), in cases of intention and when accepting a guaranty.
- As far as the punctual and correct supply of data about third-party products is concerned, KPS is exclusively depending on the upstream suppliers. KPS therefore shall not be responsible for the punctual and correct supply of such data, but only for the fulfilment of its own duties.
- KPS shall be responsible for the recovery of data if the customer has ensured that these data can be reproduced on the basis of data stock provided in machine-readable form at reasonable expenditure. The liability shall be limited to the expenditure of recovery unless the loss of data is due to KPS's acting with intention or gross negligence.
- In the event of culpable but not grossly negligent or deliberate infringement of material contractual obligations, of grossly negligent infringement of other obligations by staff members or representatives who are not bodies or executives of KPS as well as in the event of accepting a guaranty, which is not a procurement guaranty, damages shall be limited to the damage which is typical for the agreement and foreseeable. Moreover, it is possible to individually limit in a separate agreement the coverage of liability for all such damages resulting from any individual agreement, from an entire project or the business relationship as such and damage which has to be compensated according to this provision.
- In cases mentioned in paragraph 4 sentence 1, there is no liability for indirect damages, consequential damages or missed profit.
- As far as SHD - according to these GSTC or for any other reason - is liable for any damage, this liability is limited to the average volume of sales that SHD has been making during the past 3 years with the customer asserting the claim; the decisive volume is the aggregate of all invoices issued to this customer by a date within the last 36 months up to the event of damage. At the most, the maximum amount of liability is 1,000,000.- EUR.
- In the event an insurer of KPS is answering for the damage, KPS shall provide the customer with the full insurance payment.
- In cases mentioned in paragraph 4 sentence 1, the customer's claims for compensation shall come under the statute of limitations 2 years after the end of the year in which the claim had arisen and in which the customer got knowledge of the event of damage. However, regardless of the customer's knowledge, claims for damages shall terminate after 5 years at the latest calculated from the damaging event.
- The preceding provisions shall apply accordingly to the personal liability of the legal representatives and the persons KPS is employing in performing its obligations.

§ 13 Secrecy and custody

- The contracting parties undertake to treat as confidential any information and documents they receive from the other contracting party or that become known to them upon the execution of the agreement, even after the termination of the agreement. The contracting parties shall hold in safe custody and secure these objects in a way preventing any abuse by third parties.
- Each party shall be committed to return the documents it received from the other contracting party for the purpose of the execution of the agreement to the other party upon its request. The respective right of retention shall be excluded.
- The employees of the contracting parties and any third party involved in the execution of the agreement having access to the items mentioned in paragraph 1 shall be informed in writing about the duty to maintain secrecy. This shall apply to the customer's employee also with regard to the legal relations relating to the software and the customer's authorities according to § 5.

§ 14 Termination of the agreement

- Each termination and notice of withdrawal needs to be done in writing.
- A termination for cause must previously be announced in writing by indicating the reason and by fixing a reasonable deadline for the elimination of the reason, unless any further waiting time cannot be expected to be complied with. Important reasons justifying a termination are, among others, as follows:
 - Delay in payment for three months;
 - Infringement of the obligations incumbent on the customer, in particular of §§ 6, 13;
 - The opening of insolvency proceedings against the customer or the refusal of the opening of such proceedings for lack of funds.
- In the event that the credit sale insurance for the execution of the agreement is refused, KPS shall be entitled to a special right to withdraw which can be exercised within two weeks following the notification of the insurance company.
- Upon termination of the contractual relationship, the customer shall return any contractual documents as well as the complete documentation made available and any other documents. The proper return shall also include the complete deletion and destruction of any possibly existing copies. KPS may renounce to the return and request the deletion of the programme and the destruction of the documentation.

§ 15 Final provisions

- Any ancillary agreements and modifications of the agreements need to be done in writing. The obligation of the written form shall also apply to the removal of the written form. In order to comply with the obligation of the written form, a confirmed e-mail shall be sufficient.
- KPS's seat shall be the place of fulfillment.
- If the customer is a businessman or in an equivalent position, Andernach shall be the place of jurisdiction for any disputes arising out of the contractual relationship.
- The law of the Federal Republic of Germany shall apply exclusively. The application of the UN convention for the sale of goods shall be expressly excluded.

Any previous General Standard Terms and Conditions shall no longer be valid and are replaced by the present version.