

**A. General Contract and Business Terms & Conditions**

**§ 1 Contract Partners**

- (1) Contract partners in connection with the application of these General Contract and Business Terms & Conditions as well as of the Special Contract and Business Terms & Conditions (hereinafter jointly: "General Terms & Conditions (GTC)") shall be the respective company of the SHD Group (hereinafter "SHD") and the principal or client (hereinafter "Client").
- (2) Clients of SHD with respect to these GTC may only be entrepreneurs in terms of sect. 14 BGB (German Civil Code).

**§ 2 Application of the Contract Terms**

- (1) These GTC shall be applicable to the following companies of the SHD Group:
  - (a) SHD GmbH,
  - (b) SHD Group Holding GmbH,
  - (c) SHD Holding GmbH,
  - (d) SHD Einzelhandelssoftware GmbH,
  - (e) SHD Kreative Planungs-Systeme GmbH,
  - (f) SHD Technologie und Service GmbH,
  - (g) gff Finanz- und Personalwirtschaftssysteme GmbH,
  - (h) SHD KPS Nordic ApS,
  - (i) Cogito Retail GmbH & Co. KG.

Further details about the companies of the SHD Group are available at "[www.shd.de](http://www.shd.de)".

- (2) Arrangements or terms and conditions differing from these GTC shall become subject-matter of the contractual agreement between the Client and SHD only if these had been recognised by SHD in writing beforehand. This shall equally be applicable in cases where SHD does not expressly disagree with differing terms and conditions of the Client, even though requests for offers, purchase orders and/or declarations of acceptance of the Client have been enclosed or SHD unilaterally carries out shipments without reservation and/or renders the service covered by the contract without reservation in full knowledge of any terms and conditions of the Client that are contradictory to or differ from these Terms & Conditions.
- (3) These GTC shall further be applicable to all future purchase orders, orders and other agreements between the parties, even if they are not expressly agreed once again or no reference is made to them, unless the parties agree otherwise 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 shall prevail.

**§ 3 Subject-Matter of the Contract**

- (1) The contract between the parties, hence the mutual rights and obligations as well as the respectively owed services of the parties shall comprise the following documents:
  - (a) the provisions of these GTC;
  - (b) the order;
  - (c) the respective product and service specifications (hereinafter "Service Specifications") of any service portfolio of SHD; as well as
  - (d) any usage and licence terms.
- (2) "Order" ("Order Confirmation" or "Purchase Order") shall be the document in which the details of the contract relationship (especially commercial details) have been summarised by SHD and the respective contractual service portfolios and, where appropriate, the commencement and end of the respective contract relationship are set out.
- (3) Where the Service Specifications have not been enclosed to the Order, reference to the website ([www.shd.de/Leistungsbeschreibungen](http://www.shd.de/Leistungsbeschreibungen)), on which the relevant Service Specification may be retrieved at any time, shall be sufficient. In this case, the Service Specifications shall become part of the services covered by the contract even without being handed out in paper form.
- (4) In the event of any inconsistencies between the statements in the Service Specifications or an Order on the one hand and the provisions of these GTC on the other hand, the arrangements in the Service Specification or Order shall prevail.
- (5) Where any documentation or operating manual is needed in the context of the service portfolio, this shall be sufficient in electronic form.
- (6) SHD shall be entitled to engage subcontractors for the services covered by the contract.

**§ 4 Contract Conclusion**

- (1) Offers of SHD shall basically be non-binding and subject to change. This shall not apply only if they expressly include a commitment or acceptance period or the relevant letter has been expressly marked as "binding offer".
- (2) Unless otherwise agreed in writing by the contract parties, the contract shall materialise
  - (a) upon receipt of the Order ("Order Confirmation") by the Client, with the Order Confirmation also being valid without signature by SHD, or
  - (b) at the time of the commencement of contract set out on the Order ("Order Confirmation") or
  - (c) upon acceptance of the "binding offer" from SHD (in writing, by fax or email) by the Client, but no later than

- (d) upon provision and/or performance of the services covered by the contract by SHD or
  - (e) as of the date specified on any contract signed by both parties, where such contract is concluded
- . Details arising from the order itself.

- (3) Before accepting an offer or placing an Order with SHD, the Client always has to verify on the Client's own authority whether the respective service portfolios and services covered by the contract meet the Client's individual, technical, economic and operational needs and requirements. To that end, the Client has to obtain information on the minimum requirements at system level which must be met on the Client's part in order to operate and use the products and services of SHD covered by the contract.
- (4) The technical data, specifications or service commitments set out in these GTC, the Order or the Service Specifications shall be exclusive of quality statements and shall not be any (independent) guarantee or quality guarantee.
- (5) "Service Specification" in terms of the GTC shall be the document in which the technical details, functional contents, the scope and quality of the service to be rendered by SHD as part of the service portfolio are set out. In addition, the Service Specification shall include stipulations, terms and details for using the service covered by the contract (e.g. hardware and software) as well as details about service level agreements (SLA), in particular duties of the Client to cooperate and to provide free issue equipment.

**§ 5 Client's General Duties and Obligations**

- (1) Providing the services covered by the contract shall be subject to close cooperation between SHD and the Client. The parties shall hence inform each other about all circumstances from their sphere which may affect or impinge on the services covered by the contract or the proper operation of the contract parties.
- (2) Agreed dates shall be postponed to the reasonable extent required on account of any failure to cooperate and to provide free issue equipment, provided that SHD informed the Client about the poor cooperation in good time in advance. The extension shall be calculated based on the duration of the non-contractual cooperation or provision of free issue equipment, plus a reasonable restart period.
- (3) The Client has to name points of contact to SHD who may take legally and technically binding decisions and make legally and technically binding statements during the performance of the contract and the provision of the services covered by the contract. They have to be available for the exchange of necessary information and to contribute to the decisions required to perform the contract.
- (4) Failing any other contractual agreement (in writing, by fax or e-mail) or arrangement within a Service Specification, SHD shall owe neither the data backup nor any data recovery. Ensuring regular backup and recovery of the Client's data in this respect shall be incumbent upon the Client.

**§ 6 Prices, Remuneration and Due Date**

- (1) The prices and the amount of the remunerations ("Charges") of SHD for the services covered by the contract shall be those set forth in the respective Order.
- (2) Travel costs, out-of-pocket expenses, data storage device, shipping, telecommunications and other incidental costs shall follow from the respective offer or shall be invoiced separately by SHD.
- (3) All Charges shall be subject to VAT in the amount legally owed.
- (4) The invoice amount shall include the author remuneration owed under sect. 54 UrhG (German Copyright Act).
- (5) Payment claims of SHD shall be due without deduction immediately after receipt of the invoice and are to be settled within ten (10) days after the invoice date, unless SHD states any other term of payment on the invoice or any separate agreement thereon exists (in writing, by fax or email) between the parties.
- (6) SHD may issue and send invoices and payment reminders to the Client by electronic means.
- (7) Currency and price fluctuations as well as any transaction costs shall not be at the expense of SHD, but are to be borne by the Client. The invoice amount actually credited to the account of SHD shall be decisive of the contractual and full payment.
- (8) Failing any other arrangement (in writing, by fax or e-mail), the Client shall bear all customs and taxes levied by any national, federal, state or local authority in connection with the contract (especially for the export of software or its full or partial use outside the original country of purchase), except for all taxes for turnover, income or profits of SHD.
- (9) SHD shall be entitled to change the remuneration for the respective service portfolio ordered. The change may, however, be made no earlier than 12 months after the conclusion of the contract or the last increase in remuneration. The time of change and the amount of the adjustment are to be communicated to the Client thirty (30) days in advance (in writing, by fax or e-mail). The Client shall have the right to terminate the contract early in compliance with the agreed form as of the time of the change in remuneration if the price change or adjustment leads to any increase in the remuneration by more than 5%.

**§ 7 Default**

- (1) If the Client fails to make payments within ten (10) days after the date shown

on the invoice (receipt on the account of SHD being decisive for timely payment) or within the term of payment shown on the invoice or in a separate agreement (in writing, by fax or e-mail) between the parties or if no debiting is possible from the Client's account, the Client shall default without further notice.

- (2) In the event of default, SHD shall be entitled to assert the statutory default interest. The right of SHD to prove and assert any higher default damage shall remain unaffected.
- (3) Where the Client falls behind with paying any invoice without cause for more than four (4) weeks since the invoice due date, SHD shall be entitled, following a written threat and setting a minimum grace period of fourteen (14) days, to retain or discontinue the provision of the owed services covered by the contract until payment is effected.

**§ 8 Material and Legal Defects**

- (1) If the contractually owed service is defective, the legal provisions shall apply, providing that the limitation period for material and legal defects shall be 12 months. This shall not apply to the extent that longer periods are stringently required by law as well as in case of any injury to life, body or health, for any wilful or grossly negligent breach of duty by SHD and for fraudulent concealment of any defect. If and to the extent that services were accepted/released, the limitation period shall commence with the time of the respective acceptance/release and shall end 12 months thereafter.
- (2) SHD shall not assume any warranty (and liability) for arbitrary modifications and/or amendments made by the Client or by the Client's vicarious agents to the services covered by the contract. Furthermore, SHD shall not assume any warranty for faults, failures or damage caused by circumstances for which the Client is responsible, e.g. due to improper installation, non-compliance with the installation requirements, improper operation, contamination with malicious software/codes, use of inappropriate organisational means, users and data storage device, where such are mandatory, or abnormal operating conditions (especially deviations from installation and storage conditions). Where the Client failed to recognise that the defect originates from the Client's sphere, SHD reserves the right to invoice the fault analysis and troubleshooting costs to the Client in this case. The same shall apply if the defect was caused personally by the Client.
- (3) The Client shall be obliged to notify SHD of defects after discovery, setting out the defect symptom in detail.
- (4) SHD may perform remedy of defects on site or (if possible) remotely.
- (5) To the extent that services are made available for the Client via or by third-party providers, the services of the third-party provider shall be governed by the warranty agreements made by the third-party provider with the provider's customers on the basis of the provider's GTC and/or Terms of Use. The following shall apply to defects and faults originating from and caused by a service made available by the third-party provider (e.g. manufacturer) (e.g. bug/fault in the application / fault in the process flow) and for which SHD is hence not responsible or SHD must not allow to be attributed to it either failing any other agreement:
  - a) If analysing such defects and faults requires any expenditure on the part of SHD and
  - b) such defects and faults have any direct impacts on own (individual) developments, customisations or services of SHD covered by the contract,

SHD may bill the expenditures incurring to that end based on the agreed conditions. However, this requires prior notice to the Client, stating or estimating the resulting, anticipated expenditure. If and to the extent that the third-party provider is financially liable towards SHD for the defects and faults occurred, such services or payments shall be credited to the Client or taken into account.

- (6) Unless expressly agreed otherwise or covered by a separate manufacturer or provider commitment, SHD shall not assume any warranty, guarantee, performance commitment and liability for supplied and services of third parties beyond that.

**§ 9 Liability**

- (1) The contract parties shall always be liable to each other and without limitation for damage caused by wilful intent or gross negligence under the German Product Liability Act and on account of any assumed guarantee as well as for any injury to life, body or health. This liability remains unaffected by the following limits of liability.
- (2) Any liability of the contract parties, their legal representatives and vicarious agents for slight negligence shall be excluded. This shall not apply only to any culpable breach of fundamental contract duties, hence duties the fulfilment of which enables proper implementation of the contractual relationship in the first place or the violation of which would jeopardise achieving the purpose of the contract. In such cases, the level of the contract parties' liability shall, however, be limited to the contract-typical and foreseeable damage. Failing any other agreement, however, the totalised maximum amount for ordinary negligence for SHD shall not exceed 12 monthly net sales generated by SHD with the Client in relation to the month in and Order for which the damage occurred, but not more than € 1,000,000.00.
- (3) There exists no further liability on the part of SHD in the event of slight negligence. The provisions above shall also apply to lost profit, missed savings or other consequential damage.

- (4) The level of liability of SHD in case of data loss or data recovery shall be limited at any rate to the damage which would have occurred even with regular and proper data backup (at least half-day creation of backup copies) by the Client
- (5) The limitations of liability above shall also apply to the personal liability of the employees, representatives and bodies of SHD.
- (6) To the extent that services for the Client are directly obtained from third-party providers (e.g. Microsoft services), the liability and other regulations of the third-party provider shall be governed by the latter's rights. These shall include any and all agreements, in particular on warranty and liability, the third-party provider makes with own customers based on the provider's contract terms. SHD shall make the Client aware of the third-party provider's rights.
- (7) SHD shall not be accountable if SHD cannot meet obligations from the contract due to circumstances for which SHD is not responsible. In particular, SHD may not guarantee for the availability of energy or telecommunications services (of third parties) or bear liability for the performance by such third parties. This shall also apply, mutatis mutandis, if SHD is unable to perform due to force majeure (e.g. pandemics, natural disasters).

**§ 10 Change in Services**

- (1) The parties are aware of the fact that changes in service quantities and in the range of services may arise which cannot be mapped conclusively in the service portfolio in advance via by any existing price position. Besides, it may become necessary to attend to change requests of the Client at short notice and, for example, to customise, extend or complement the technical specifications ("Change in Service"). The parties are aware in this context that the possibility of any subsequent modification or amendment to and/or customisation of the existing services is an alteration of contract which may basically only be agreed consensually. This shall not result in any legal claim to any such modification or amendment to and/or customisation of the existing services for either party.
- (2) Change in Service Procedure
  - (a) If the Client desires SHD to make modifications or amendments to the service covered by the contract, the Client shall inform SHD thereof (in writing, by fax or e-mail), stating the desired modifications or amendments as well as all further conditions desired by the Client ("Service/Change Request"), and shall call on SHD to submit an appropriate offer for their realisation. The same shall apply if SHD suggests and wants to offer the Client any modification or amendment to the content and/or scope of its services.
  - (b) The Client's service/change request must at least contain the following statements:
    - (i) description of the desired change;
    - (ii) description of the circumstances and backgrounds to be taken into account regarding the change;
    - (iii) urgency of the desired change.
  - (c) In this case, SHD shall verify the realisation of a desired Change in Service and shall submit a written offer for the fulfilment of the changes specified in the service/change request, including any (additional) remuneration to be paid for that, where appropriate, as well as the schedule for the realisation, as part of the operational personnel capacities as well as in consultation with the Client. Otherwise, SHD shall advise the Client of the necessary information lacking or insufficient to draw up such an offer.
  - (d) At the same time, SHD shall advise to what extent impacts on times previously fixed (e.g. for partial or total acceptances), contract terms, product descriptions or Service Specifications arise due to the service/change request. Where appropriate, the parties have to agree any postponement of these times or the customisation of other services covered by the contract. An agreement on the performance of the service/change request may not materialise until then.
  - (e) In case of several service/change requests pending in each case, the contract parties shall agree their prioritisation in good time, if necessary, to avoid bottlenecks.
  - (f) If the contract partners come to an agreement on a service/change request or the Client accepts the offer, they shall enter into a written amendment agreement or write the outcome of the change down otherwise (in writing, by fax or e-mail).
- (3) If no agreement as to the service/change request can be reached, neither party shall owe the other the services provided for that end.

**§ 11 Term and Termination**

- (1) The term and beginning of the respective contractual relationship shall be set forth in the Order or Service Specification of SHD. The beginning of the term shall be governed by the provisions on the "contract conclusion" in these GTC.
- (2) Failing any other agreement (e.g. in the Order or in the Service Specification) between the parties, all contracts shall have a minimum term of 36 months. During this time, termination with notice shall be mutually excluded.
- (3) In the event that the contract parties agree on a specific (minimum) contract term and/or appropriate periods of notice for a service profile, this shall be possible as of the time the term ends in the respective service profile or Service Specification at the earliest. Other existing contractual relations and ongoing contractual relationships shall remain unaffected and shall remain in force until the respective service portfolio affected is terminated appropriately.

- (4) Failing any other agreement (in writing, by fax or e-mail) between the parties, the contract on the services covered by the contract shall be extended by one (1) further year in each case, unless the contract or the respective service portfolio is terminated prior to the expiry of the agreed contract end by giving three (3) months' notice.
- (5) The parties' right to terminate the contract for cause for a compelling reason without observing a notice period shall remain unaffected if continuing the contractual relationship is no longer reasonable for them. A compelling reason shall exist, in particular, in the following cases:
  - (a) The Client is in default with due payments for more than three (3) months.
  - (b) Either party suffers a financial collapse or other circumstances give cause to fear inability to pay after reasonable assessment. This is to be assumed, in particular, if any insolvency proceedings are instigated for either party or has been rejected for lack of assets or any cancellation or liquidation in the commercial register has been requested or entered.
  - (c) Either contract party violates fundamental duties under the contract again even after prior written warning.
- (6) Moreover, SHD shall have a right to terminate for cause by giving three (3) months' notice to the end of the month if the technology (hardware/software) SHD purchases from an upstream supplier, a software manufacturer or other service providers
  - (a) is no longer enhanced by these third parties or no longer supplied to SHD or
  - (b) is no longer executable on advanced hardware or with current operating and other software or
  - (c) a master agreement, to which SHD and the third party are subject, was terminated by the third party.
- (7) All notices of termination must be given in writing.

#### § 12 Audit Right of SHD

- (1) The Client shall be obliged to allow the rights holder, SHD or an expert third party engaged by them to audit the Client's contractual use of software in line with the contractual provisions at the request of the rights holder or of SHD (e.g. consistency of the number of acquired rights of use ("Licences") with the number of actual users). In doing so, the Client shall cooperate with the rights holder, SHD or their agents in performing such an audit, especially by enabling entrance to the relevant premises and access to the IT infrastructure to the extent required.
- (2) SHD will provide reasonable notice prior to the audit and its anticipated scope (in writing, by fax or e-mail). The audit shall be conducted in a manner to least disrupt the business operations of the Client.
- (3) Such audit right may be exercised for up to two (2) years after ending the contract.

#### § 13 Acceptance

- (1) If and to the extent that the service covered by the contract is the subject of any acceptance, the following shall apply:
  - (a) The object of acceptance shall be the functioning of the respective service owed with due regard to the contractually agreed requirements.
  - (b) The technical characteristics, description and details of the requirements shall follow from the Order or shall be stipulated in advance by the project managers in charge.
- (2) Unless otherwise set forth in the Order, acceptance shall always require a functional test. The functional test shall be successful if the agreed requirements have been met.
- (3) During the functional test, the Client shall advise SHD of any and all arising deviations from the requested requirements without delay (in writing, by fax or e-mail). If the functional test is successful, notice of acceptance is to be given without delay.
- (4) The functional test shall be successful if either no or only insignificant defects exist or any and all acceptance criteria are met. If the Client fails to give notice of acceptance in due time, SHD may set a reasonable deadline for the acceptance. The contractually owed service shall be deemed accepted if the Client neither gives notice of acceptance (in writing, by fax or e-mail) nor advises SHD (in writing, by fax or e-mail) of the defects still to be remedied.
- (5) The right of SHD to already invoice services based on time and material before acceptance is performed and to demand their payment on production of proof of the work rendered shall remain unaffected.

#### § 14 Confidentiality

- (1) The contract partners shall keep confidential for an indefinite period of time all of the respective other party's confidential information and trade secrets which have come to their attention as part of this contractual relationship or upon contract initiation, shall use them only for purposes relating to the performance of the respective contract and shall recognise any and all information pertaining to the other party as a business secret in terms of sect. 2 of the German Business Secret Protection Act (GeschGehG). The subject-matters of the contract (in particular software source codes) and the services rendered under the contract shall be business secrets of SHD as well.
- (2) The contract partners shall also impose these obligations on their employees and any third parties deployed and shall ensure that the subject-matters of the contract will be made accessible to employees and third parties only to the extent required to exercise the granted authorisations of use.
- (3) The contract partners undertake not to make any public statements (press

releases, etc.) or to disclose or publish any other information relating to the contract without the respective other contract partner's prior written consent.

- (4) SHD shall have the right, however, to cite the Client as reference pending the Client's withdrawal.

#### § 15 Compliance

- (1) The contract parties undertake to act only within the realms of the respective applicable laws and to comply with the applicable laws.
- (2) The contract parties expressly undertake and ensure that neither they nor their employees or other persons engaged by them will perform acts or abet third parties to perform acts or aid and abet in performing acts. Such prohibited acts shall include, in particular, to offer, grant, request or accept unlawful payments, grants or other advantages for themselves or a third party.
- (3) The parties shall assure that they have the necessary preconditions under trade and craft law and will meet their obligations towards the collecting agencies (statutory health insurance companies), professional associations and finance authorities as well as in accordance with the provisions of the German Employee Secondment Act (AEntG) and Minimum Wage Act (MiLoG).

#### § 16 Data Protection

- (1) The parties shall be obliged to comply with the provisions of the data protection laws (especially the EU General Data Protection Act) regarding the protection of personal data.
- (2) The parties undertake to properly store any and all personal data and to take all necessary security measures to protect such data against unauthorised use, access, disclosure, alteration or destruction.
- (3) As needed, the parties shall separately enter into the necessary contracts on the processing of personal data by order of the Client (OPC).

#### § 17 Side Agreements and Set-Off

- (1) This contractual deed and the appendices shall include any and all agreements between the parties. Farther-reaching agreements or side agreements shall not exist.
- (2) Side agreements, modifications and amendments to the contract must be in writing in order to be effective (fax being sufficient). The written form provision may be rescinded only by a written agreement.
- (3) The Client may set receivables of SHD off only against counter-claims which are uncontested or have been finally and non-appealably established. The Client shall be entitled to assert a right of retention or right to withhold performance only on account of counter-claims which are uncontested or have been finally and non-appealably established and only to the extent that the right of retention is based on this contractual relationship.

#### § 18 Final Provisions

- (1) The contract and the contract terms set out above shall be subject to German law. The UN Sales Law shall be excluded.
- (2) If the contract partner is a businessperson, a legal person under public law or a special fund under public law, the place of jurisdiction shall be Andernach.
- (3) If individual provisions of these contract terms, including all appendices or constituent parts referred to herein, turn out to be ineffective or unenforceable, this shall not affect the validity of the remaining arrangements of these contract terms. In such event, the invalid or ineffective provision is to be replaced by a new arrangement, which shall be in line with the intended purpose and shall apply from the beginning of the ineffectiveness.
- (4) To the extent that these are provisions which are essential or cannot be omitted otherwise without jeopardising the purpose of the contract, the contract parties undertake to interpret, rectify or replace the contract by a different, effective and enforceable arrangement, taking into account the purpose pursued with the ineffective arrangement, with the result that its economic and legal purpose will be achieved as far as possible.

### B1. Special Regulations for the Purchase of Software and Hardware

#### § 1 Subject-Matter of the Contract

- (1) These Special Contract and Business Terms and Conditions Terms shall serve to govern the "Purchase of Software and Hardware" service portfolio and shall apply in addition to or along with the provisions of the GTC of SHD.
- (2) The Client shall acquire the software or hardware specified in the Order. Where software is purchased ("Permanent Software Surrender"), the subject-matter of the contract shall also include the related application documentation (in electronic form). The technical features, description and details of the hardware and software shall follow from the respective Service Specifications.
- (3) The software source code shall be neither owed nor part of the subject-matter of the contract.
- (4) Unless otherwise contractually agreed (in writing or by fax),
  - (a) future versions of the software (updates, patches or upgrades),
  - (b) the software installation, set-up and customisation,
  - (c) the Client's briefing and training and
  - (d) the data transfer from any earlier installation

shall not be part of the subject-matter of the contract as part of this service profile. Such services are to be agreed separately with SHD.

- (5) "Customising" shall mean, in general, the customisation of a software system to the needs and demands of a customer without any change being made to the source code of the software product.

## 5.2 Scope of Use on Software Purchase

- (1) SHD shall grant the Client a non-exclusive, temporarily unlimited right of use to the software. This shall also include the right to install the software and to make a back-up copy (sect. 69d(2) UrhG).
- (2) Moreover, the number of authorised users or the nature and scope of the respective rights of use granted (e.g. person-specific or machine-specific "Licences", "Group Licences") shall be set out in the respective Order or Service Specification.
- (3) Unless otherwise agreed between the Contract Parties and to the extent that SHD continues to actively distribute the relevant software product line in its product portfolio, the Client shall have the right to order further Licences from SHD during the contract term under the respective applicable and agreed conditions. This obligation of SHD to provide Licences shall apply only if and to the extent, however, that the Client has a valid software maintenance contract in accordance with the B2 terms and can prove that at the time of the purchase order that the Licences ordered retrospectively are actually required as of the effective date of the purchase order and are economically and materially connected to the Client's actual need. SHD does not need to provide any Licences ahead of schedule beyond the Client's respective actual current need. Moreover, SHD shall be entitled to deliver a substitute product if the desired software is no longer available.
- (4) Translating the software into any other forms of code (compilation or decompilation) shall be permitted only within the scope of sect. 69e UrhG. The actions addressed in said legal provision may be subcontracted to third parties only if SHD is not willing to perform the desired achievement of interoperability for a reasonable Charge after the end of a reasonable reflection period.
- (5) Each use beyond the extent contractually agreed, especially exceeding the rights of use granted, shall be an act contrary to contract. In such event, the Client shall be obliged to advise SHD of such excessive use without delay, but no later than four (4) weeks after knowledge. The Contract Parties shall then attempt to reach an agreement on the extension of the rights of use. The Client shall be obliged to pay an indemnity for the period of excessive use, i.e. until such an agreement is concluded or the excessive use is discontinued, in the amount of the difference between the "Licence Fee" paid for the scope of the rights of use provided for under the Order and the actual current "Licence Fee" for the new scope of the Licences ("Post-Licensing").
- (6) Besides Post-Licensing, SHD shall be entitled to demand a contractual penalty in the amount of three (3) times the Licence for the software purchase from the Client. This shall not affect the right of SHD to terminate for cause.
- (7) The Client may surrender the software to third parties only on the condition that the respective third party agrees in writing with the application of the terms of this agreement and the Client advises SHD of the name and address.

## 5.3 Handover, Passing of Risk and Retention of Title

- (1) The details of delivery and surrender (handover) of the software or hardware shall follow from the respective Order.
- (2) SHD shall retain title to the software and hardware until the agreed overall Charge is received. The Client shall be obliged to handle the subject-matters of the contract properly and with care until the passing of title. The Client has to advise SHD of potential damage without delay.
- (3) Pending full payment of the agreed Charge, the Client shall neither lend out, sell, rent out, pledge nor otherwise dispose of the subject-matters of the contract or their components. In the event that third parties intend to pledge the software or hardware, the Client shall notify SHD without delay. All judicial and extra-judicial costs to be expended to redress attachments as well as to recover the subject-matters of the contract are to be reimbursed by the Client.
- (4) Where the Client owes arrears of payment, SHD asserting the retention of title shall not be deemed to be any withdrawal from contract. If any of the duties above is breached, however, SHD shall have the right to withdraw from the contract after a reasonable grace period expired to no avail.
- (5) The Client shall be obliged to inspect the software and hardware for proper functioning and completeness immediately after its supply. The Client shall notify SHD of any defects without delay, where possible in writing, by fax, e-mail or phone or via service tool, and, where reasonable, in a manner comprehensible for SHD (duty to inspect and to give notice of defects). In case of any violation of the duty to inspect and to give notice of defects, the delivery shall be deemed approved in relation to the relevant defect.

## 5.4 Manufacturer's Guarantee

- (1) SHD shall pass on to the Client any guarantee provided by the manufacturer of the subject-matters of the contract ("Manufacturer's Guarantee" or "Guarantee Bond"). The Scope of the potential guarantee shall follow from the manufacturer's provisions.
- (2) The Client has to turn to the manufacturer to uphold the guarantee claims, unless the Client enters into an appropriate support contract with SHD.

## 5.5 Severability Clause

- (1) If individual provisions of these contract terms, including all appendices or

constituent parts referred to herein, turn out to be ineffective or unenforceable, this shall not affect the validity of the remaining arrangements of these contract terms. In such event, the invalid or ineffective provision is to be replaced by a new arrangement, which shall be in line with the intended purpose and shall apply from the beginning of the ineffectiveness.

- (2) To the extent that these are provisions which are essential or cannot be omitted otherwise without jeopardising the purpose of the contract, the contract parties undertake to interpret, rectify or replace the contract by a different, effective and enforceable arrangement, taking into account the purpose pursued with the ineffective arrangement, with the result that its economic and legal purpose will be achieved as far as possible.

## B2. Special Regulations for Maintenance, Upkeep and Support

### 5.1 Subject-Matter of the Contract

- (1) These Special Contract and Business Terms and Conditions shall serve to govern the "SHD Maintenance, Upkeep and Support" service portfolio and shall apply in addition to or along with the provisions of the GTC of SHD.
- (2) The "SHD Maintenance, Upkeep and Support" service portfolio shall serve to govern the acceptance of maintenance of the hardware set out in the respective Order as well as the upkeep of standard software by SHD as of the times of service specified in the Service Specification at the places of service forth in the contract.
- (3) Details of the time of service and the respective place of service shall be governed by service levels. SHD shall render services under the "Maintenance, Upkeep and Support" service portfolio only during the service times indicated in the Service Specification. Any farther-reaching service duty shall not exist. Service times within which the service portal of SHD shall be available to the Client shall follow from the Service Specification.
- (4) Outside the fixed service times, SHD shall provide services at the Client's request on the basis of separate agreement and remuneration.
- (5) The maintenance and upkeeping measures by SHD or by a third party engaged by SHD may also be performed by phone, written or electronic measures ("Remote Service" or "Remote Maintenance").

### 5.2 Service Object for Maintenance

- (1) SHD shall render the services set out in the respective Service Specification or Order as part of this service profile.
- (2) This shall include, in particular, the actual inspection and overhaul (incl. remote diagnosis and Remote Maintenance) as well as any hotline and remote support.
- (3) The technical features, description and details of the hardware to be maintained as well as the covered services (especially response and restoration times) shall follow from the Order or the respective Service Specifications.
- (4) Place of service for maintaining hardware of the Client shall be the Client's permanent establishment set out in the Order and the installation site indicated therein, depending on the respective service level (e.g. on-site service). If needed, SHD shall be entitled to perform the maintenance, installation and overhaul work at the place of business of SHD.

### 5.3 Service Object for Software Upkeep

- (1) The software upkeep shall relate to the programme set out in the Order or the respective Service Specification and to be maintained and, in particular, the upkeeping services to be rendered by SHD.
- (2) The upkeeping services may include, in particular,
- support during software failures,
  - ongoing development, updating and correction of the software,
  - proactive performance and consulting services by SHD or
  - tools and methods for data implementation.
- (3) The technical characteristics, description and details of the software to be kept up as well as the covered upkeeping services (especially response and restoration times) shall follow from the Order or the respective Service Specifications.

### 5.4 Service Delimitation for Maintenance and Upkeep

- (1) SHD shall not be obliged to render maintenance and upkeeping services in so far as
- an application problem cannot be reproduced,
  - the Client or any third party make modifications or extensions to or other interventions in the software or hardware or changes in the installation site of the software without prior written consent by SHD, unless the measures are taken as part of the contractual use of the software or do not have any negative impacts on the work required for the services,
  - the Client does not use the software under the terms of use specified by SHD or the manufacturer.
- (2) Besides, SHD shall not owe the remedy of failures or breakdowns caused by violent impact by third parties, force majeure, own devices not maintained by the Client or improper handling (non-compliance with instructions for use, manufacturer specifications and use contrary to function) by the Client or the Client's employees. SHD shall invoice at the respective valid remuneration rates under the "Price List for Services" any services not contractually owed but requested and used by the Client.

- (3) In addition, remedying failures or breakdowns based on the software and hardware built into the devices covered by the contract not being able to correctly process, especially to entirely and correctly recognise, change and calculate, data sets due to lacking technical performance ability shall not be subject-matters of the contract. This shall also apply, in particular, to failures and breakdowns due to lacking data strength.
- (4) If the Client fails to use the software set out in the contract in line with the rights of use arrangements, the Client may not claim the upkeeping services.
- (5) If the Client wants to make use of special services from SHD, in particular the installation, integration and configuration of new hardware, back-up services, training courses or system extensions in connection with the devices covered by the contract, the Client shall request these separately whilst stating the desired service parameters. SHD shall be obliged to render these special services only if SHD confirmed acceptance to the Client. SHD shall send the Client a written Order Confirmation to that end.
- (6) The same shall also apply to patches and updates for firmware. These shall be rendered and provided as part of fault isolation and troubleshooting to the extent that this is necessary for fault rectification and overhaul. Implementation of all current patches and updates may not be claimed in connection with this service portfolio. Any costs for "Licences" incurred for necessary patches and updates shall not be included in the hardware service and are to be remunerated separately.

### § 5 Maintenance, Upkeep and Support Performance

- (1) SHD shall provide a service portal for maintenance, upkeep and support. The service times within which the portal shall be available to the Client shall follow from the Service Specification.
- (2) SHD may remedy reported problems or failures at its own option, especially by one of the following measures:
  - (a) forwarding of a patch or a new programme version the Client installed at the Client's;
  - (b) handling instruction to the Client to circumvent the problem ("Workaround");
  - (c) troubleshooting on site or by remote access.
- (3) Unless otherwise agreed (in writing or by fax), the Client may claim upkeeping services for the software set out in the Order only in the respective last version accepted from or provided by SHD. If accepting a more recent version of the software covered by the contract is unreasonable for the Client, the Client may continue to demand support and upkeeping services for the software version hitherto used by the Client. In this case, SHD shall provide support and upkeeping services for the older versions as long as SHD or the manufacturer supports that version, but no longer than for two (2) years from availability of the more recent version.
- (4) SHD shall render support and upkeeping services for any older version of the software besides the current version only for separate remuneration.

### § 6 Client's Special Cooperation Duties

- (1) Unless otherwise agreed (in writing, by fax or e-mail), the Client has to advise SHD of the implementation of devices covered by the contract at any location other than the place of service set out in the Order no later than two (2) months in advance. Unless otherwise agreed (in writing, by fax or e-mail), each implementation of servers or other network-relevant system parts has to be effected by SHD.
- (2) The Client has to grant SHD access to the company grounds as part of this service portfolio for employees or third parties engaged by SHD and to ensure that a dial-up facility be provided for Remote Maintenance measures.
- (3) As part of data updating, maintenance and upkeep ("Data Management") by SHD (including by Remote Maintenance), the Client has to inspect the services covered by the contract for conclusiveness, completeness and correctness after Data Management has been completed.
- (4) Failures or faults following the maintenance and upkeeping services have to be reported by the Client without delay.

### § 7 Severability Clause

- (1) If individual provisions of these contract terms, including all appendices or constituent parts referred to herein, turn out to be ineffective or unenforceable, this shall not affect the validity of the remaining arrangements of these contract terms. In such event, the invalid or ineffective provision is to be replaced by a new arrangement, which shall be in line with the intended purpose and shall apply from the beginning of the ineffectiveness.
- (2) To the extent that these are provisions which are essential or cannot be omitted otherwise without jeopardising the purpose of the contract, the contract parties undertake to interpret, rectify or replace the contract by a different, effective and enforceable arrangement, taking into account the purpose pursued with the ineffective arrangement, with the result that its economic and legal purpose will be achieved as far as possible.

## B3. Special Regulations for Renting and Cloud-Based Services

### § 1 Subject-Matter of the Contract

- (1) These Special Contract and Business Terms and Conditions shall serve to govern the "SHD Renting" service portfolio and shall apply in addition to or along with the provisions of the GTC of SHD.

- (2) Subject-matter of these special contract terms shall be the temporary (temporarily limited) surrender, provision or use of the software, IT infrastructure or hardware provided by SHD and owed under the contract as well as the temporarily limited granting of the rights required for such surrender and use.
- (3) Essential details of the scope, owed condition, nature and quality of the provided software or hardware, its components and other services as well as the description of the contractual use shall be set out in the Order or in the respective Service Specifications.

### § 2 Service Object for Software Renting

- (1) SHD shall provide the software surrendered on a rental basis to the Client either
  - (a) on a data storage device installed by the Client on the server or clients on site or
  - (b) by enabling the Client to download the software using a personal ID (by data remote transfer) via the Internet or
  - (c) by the alternative option of holding the software ready for processing request with the computer performance required for its use and with the necessary storage space on own servers for the Client in the current version and for the contractually fixed duration. In this case, the software shall remain with SHD.
- (2) SHD shall not owe ensuring the Client's access to the Internet or the operation of data lines or data networks as part of the Internet in this context.
- (3) The Client shall receive the software or access to the software comprised of the object code and the documentation (electronically).
- (4) Unless otherwise contractually agreed (in writing or by fax),
  - (a) the installation of the software,
  - (b) the Client-specific customisations and customising,
  - (c) briefings, training courses and other consulting and upkeeping services beyond the software or hardware renting
 shall not be part of the subject-matter of the contract as part of this service profile. Such services are to be agreed separately with SHD.
- (5) Customisations or modifications of the software as well as the creation of interfaces to third-party programmes shall be owed by SHD only to the extent that these are required to service and overhaul the rental item or to ensure the contractual use. Other than that, SHD shall be obligated to customisations or modifications only if this is explicitly agreed. Relevant services are to be ordered separately by the Client, where appropriate.
- (6) To the extent that SHD, as partner of third-party software manufacturers, brokers the conclusion of any licence contract with the relevant software manufacturer for the Client (licensor), the contract information required to that end shall be exchanged between the Client and SHD.

### § 3 Service Object for Cloud-Based Services

- (1) Object of the cloud-based services of SHD shall be the provision of decentralised IT infrastructures via a computer centre as well as the provision of relating services, with SHD entitling the Client to use one or several component(s) from the "Portfolio" of the "SHD Cloud Services". The Client shall have the right to use these cloud-based services or the IT infrastructure via an own Internet access during the agreed contract term.
- (2) The Order or the respective Service Specifications shall prevail for the scope, owed condition, nature and condition of the provided infrastructure as well as of the cloud-based services, their components and other services.
- (3) SHD shall provide the Client with the services or the access to the IT infrastructure for processing request and/or access via an Internet connection (via VPN) to be personally ensured by the Client. Even failing any other written agreement, the Client has to personally ensure the IT infrastructure in order to use the provided cloud and CC services of SHD or a third party via the Internet. Handover point for the services contractually owed by SHD in the range of the cloud-based services shall be the router outlet of the computer centre used by SHD to the Internet.
- (4) SHD shall be entitled to engage third-party companies to fulfil the technical terms as part of the cloud-based services.

### § 4 Scope of Use

- (1) To the extent that the applications and/or software components covered by the contract as well as the IT infrastructure provided or to be procured are applications or services provided by third parties (rights holders, licensors or manufacturers) (e.g. Microsoft), their respective usage and licence terms shall apply exclusively. Unless otherwise agreed, granting rights and imposing duties in connection with the use of such applications and/or software components or services shall hence be effected directly by the respective rights holders, licensors or manufacturers towards the Client.
- (2) As part of this service portfolio, SHD shall grant the Client a non-exclusive, non-transferable and non-sublicensable right to use the software or hardware as well as the respective IT infrastructure, which shall be limited in time to the duration of the rental contract.
- (3) This shall also include the right to install and to create a back-up copy of the software (to the extent it is handed over) (sect. 69d(2) UrhG). Where technically feasible, the back-up copies must bear the copyright notice of the original data storage device.
- (4) In addition, the Client shall not be entitled to reproduce the software.
- (5) The number of authorised users or the nature and scope of the respective

rights of use granted (e.g. person-specific or machine-specific "Licences", "Group Licences") shall be set forth in the respective Order or the Service Specification.

- (6) Unless otherwise agreed between the Contract Parties and to the extent that SHD continues to actively distribute the relevant software product line in its product portfolio, the Client shall have the right to order further Licences from SHD during the contract term under the respective applicable and agreed conditions. This obligation of SHD to provide Licences shall apply only if and to the extent, however, that the Client can prove that at the time of the purchase order that the Licences ordered retrospectively are actually required as of the effective date of the purchase order and are economically and materially connected to the Client's actual need. SHD does not need to provide any Licences ahead of schedule beyond the Client's respective actual current need. SHD is also entitled to deliver a replacement product if the desired software is no longer available.
- (7) The Client may use the rented software and cloud-based services only for the purpose of handling internal business transactions and those of enterprises affiliated with the Client in terms of sect. 15 AktG (German Stock Corporation Act) ("Group Companies"). In particular,
  - (a) any own computer centre business for third parties or
  - (b) the temporary provision of the services (e.g. as application service providing -"ASP") for non-Group Companies or
  - (b) using the services to train persons who are not employees of the Client or the Client's Group Companies
 shall be permitted only after prior written consent by SHD.
- (8) The Client shall not be entitled to surrender to third parties
  - (a) the software handed over and/or provided to the Client,.
  - (b) the created back-up copy, where appropriate, or
  - (c) the hardware
 ("Passing-On Prohibition"). In particular, the Client shall not be permitted to alienate, lend out, rent out or further licence the software in any other manner whatsoever or to communicate or make the software accessible to the public.
- (9) Translating the software into any other forms of code (compilation or decompilation) shall be permitted only within the scope of sect. 69e UrhG. The actions addressed in said legal provision may be subcontracted to third parties only if SHD is not willing to perform the desired achievement of interoperability for a reasonable Charge after the end of a reasonable reflection period.
- (10) Each use beyond the contractually agreed extent, especially exceeding the granted rights of use, shall be an act contrary to contract. In such event, the Client shall be obliged to advise SHD of such excessive use without delay, but no later than four (4) weeks after knowledge. The Contract Parties shall then attempt to reach an agreement on the extension of the rights of use. The Client shall be obliged to pay an indemnity for the period of excessive use, i.e. until such an agreement is concluded or the excessive use is discontinued, in the amount of the difference between the "Licence Fee" paid for the scope of the rights of use provided for under the Order and the actual current "Licence Fee" for the new scope of the Licences ("Post-Licensing").
- (11) Besides Post-Licensing, SHD shall be entitled to demand a contractual penalty in the amount of three (3) times the Licence for the software purchase from the Client. This shall not affect the right of SHD to terminate for cause.
- (12) The right of SHD to prohibit the Client from using the software promptly and entirely as well as to have any and all software copies installed on the Client's systems erased as well as to erase or hand out to SHD any back-up copy created in case of any violation of these provisions shall remain unaffected.

#### § 5 Special Liability Regulations for Renting and Cloud-Based Services

- (1) By way of derogation from A. sect. 9(3) of the GTC, the total level of liability of SHD in case of slight negligence shall be limited to one twelfth of the respective current monthly net contract value of the SHD CC services per event of damage at the time of the respective event of damage, not exceeding, however, a max. total of EUR 1,000,000.00.
- (2) The remaining provisions of the GTC shall remain unaffected.

#### § 6 Client's Special Duties for Renting and Cloud-Based Services

- (1) When using the SHD cloud, the Client has to comply with the applicable German laws and legal regulations. The Client shall be prohibited, in particular, from misusing the cloud services and the related services of SHD, from uploading, using or saving data and contents violating legal regulations as well as from breaching any other's property rights and copyrights or other rights of third parties.
- (2) SHD and its vicarious agents are to be indemnified from any and all claims of third parties which are based on any unlawful use of the SHD cloud services by or with the Client's approval. This shall include, in particular, claims of third parties under data protection, copyright or other laws in relation to the use. If the Client becomes or must become aware that such a violation is impending, the Client shall have the duty to notify SHD without delay.
- (3) The Client shall be obliged to treat the access data (especially user names and passwords) as confidential and secret towards unauthorised third parties. The Client shall not be entitled to pass on and make such access data available to unauthorised third parties or otherwise enable unauthorised third parties, who are not parties to the contract, to use the services and/or the ordered components. The Client has to take internal, appropriate measures to

ensure that the access data will not be passed on to unauthorised third parties.

- (4) SHD reserves the right to demand from the Client a list of all third parties engaged and authorised by the Client. The Client shall be obliged to inform SHD without delay once the Client become aware that the access data has or might have become known to unauthorised third parties.
- (5) The Client shall be liable for the consequences of any misuse of the services for which the Client is responsible at the expense of the Client, SHD or third parties.
- (6) To the extent that the Client collects, processes or uses personal data when using the SHD cloud services and no legal permission elements apply, the Client has to personally ensure compliance with the provisions under data protection law and, in particular, to obtain the necessary consent from the respective data subject.
- (7) In case of any sufficient suspicion of any violation of the Client's duties set out in the paragraphs above, SHD may temporarily block the affected service pending clearance. SHD shall not have any duty to check for unlawful contents of the Client.
- (8) Where technically feasible and reasonable, the blocking is to be limited to the allegedly infringing contents and services. The Client is to be immediately advised of the blocking whilst stating reasons and to be requested to remove the allegedly unlawful contents or to expound and, where appropriate, prove their lawfulness.
- (9) Blocking the service shall not result in SHD losing the claim to remuneration. SHD reserves the right to block legally questionable contents as part of the provided services (e.g. content on websites), when necessary. If the Client is responsible for the breach of duty, the Client shall be obliged to reimburse SHD for the damage from the breach of duty or to exempt SHD from liability.
- (10) The Client shall be obliged to give written notice of defects in the software or hardware to SHD immediately after their discovery. In case of material defects, the Client has to state the time of appearance of the defects and the detailed circumstances to SHD.
- (11) The Client has to make appropriate arrangements to protect the software against unauthorised access by third parties. The Client shall keep the original data storage devices and the data storage devices with the copies produced by the Client as well as the documentation at a secured location. The Client shall point out to the Client's employees and the other persons entitled to dependent use that producing copies beyond the contractual scope is inadmissible.

#### § 7 Rent

- (1) The amount and due date of the rent for the temporary surrender of the software or hardware (rent) or the provision of the IT infrastructure shall follow from the respective Order.

#### § 8 Use of Software Dongles (Dongles/Tokens)

- (1) Where the Client receives a "Dongle" or "Token" (dongle) from SHD for the usage and use of any software or software components surrendered on a rental basis, these shall be integral parts of the rental item. The software may not be used without such "Dongle". Unless otherwise agreed, the number of "Dongles" must correspond with the number of the contractually agreed rights of use (Licences).
- (2) The "Dongle" must be returned to SHD once the rental period expires. Otherwise, the Client must continue to pay the respective rent. The Dongles shall be returned at the Client's expense and risk. SHD shall confirm receipt of the Dongle towards the Client without delay.
- (3) Any lost or destroyed Dongle must be replaced at the Client's expense. The replacement costs shall amount to € 2,750.00 (loss charge). The Client is thus advised to take out an adequate liability insurance covering the loss or destruction. SHD shall have the right to disable/block the lost or destroyed Dongle and shall provide the Client with a substitute against payment of the loss charge.
- (4) Payment of the contractually agreed rent shall remain unaffected if the Dongle is lost or destroyed and hence also for the duration of the impossibility of use for which the Client is responsible.

#### § 9 Consequences of Ending the Contract

- (1) Where the contractual relationship is ended, the Client shall be obliged to return any and all subject-matters of the contract as well as to completely return, at the Client's expense, the surrendered documentation, the access hardware (e.g. Dongle, Token, hardlock or key) and other documents surrendered by SHD to the Client in connection with the services covered by the contract. The risk of destruction during return shall be borne by the Client.
- (2) Proper return shall also include the complete erasure and destruction of any and all copies existing of surrendered or provided software, where appropriate. SHD may waive surrender and order the erasure of the programme as well as the destruction of the documentation and have the Client confirm its performance by written assurance.

#### § 10 Severability Clause

- (1) If individual provisions of these contract terms, including all appendices or constituent parts referred to herein, turn out to be ineffective or unenforceable, this shall not affect the validity of the remaining arrangements of these contract terms. In such event, the invalid or ineffective provision is to be replaced by a new arrangement, which shall be in line with the intended purpose and shall apply from the beginning of the ineffectiveness.

- (2) To the extent that these are provisions which are essential or cannot be omitted otherwise without jeopardising the purpose of the contract, the contract parties undertake to interpret, rectify or replace the contract by a different, effective and enforceable arrangement, taking into account the purpose pursued with the ineffective arrangement, with the result that its economic and legal purpose will be achieved as far as possible.