

I. Scope, Data Protection

1. These General Terms and Conditions (hereinafter referred to as "GT") of CGS Publishing Technologies International GmbH, Hainburg (hereinafter referred to as "CGS"), shall only apply vis à vis entrepreneurs within the meaning of Sec. 14 BGB (German Civil Code), governmental entities or special governmental estates within the meaning of Sec. 310 para. 1 BGB. Supplies, services, offers and acceptances of orders by CGS only will take place based on these GT. These GT are valid for all future business transactions even if they are not explicitly agreed once again. The Customer's terms and conditions shall not become part of the contract, even in case CGS is fully aware of the Customer's terms and conditions when supplying, servicing, offering or accepting orders.
2. Arrangements which are concluded between CGS and the Customer in order to execute a contract and which diverge from or exceed the provisions of these GT must be in writing. Oral statements before or during the conclusion of a contract are only binding, if they are confirmed by CGS in writing. This applies especially to providing advice or confirming qualities.
3. Should any provision of the Customer-confirmed contract and/or these GT be or become invalid, the Customer does not get exempt from his obligation to accept the other delivered goods or services and from his duty to observe the other agreements.
4. These GT apply to negotiations preceding the conclusion of a contract.
5. Additionally to these GT, the terms and conditions of the manufacturers of the goods covered by these GT apply.
6. CGS will process personal data of Customers and prospective Customers according to the provisions of the German Act on Data Protection (BDSG). By placing an order, the Customer consents in saving, processing and using the personal data contained in the order form, in order to perform the order. In case the Customer consents accordingly in the order form, CGS may transmit the Customer's data to other entities, especially credit institutions or contractual partners in case this serves the execution of this contract.

II. Offer, Conclusion of the Contract

1. Offers by CGS are subject to change without notice and non-binding. CGS reserves the right to correct mistakes. First-time offers are made without charge.
2. The Customer is bound by his offer. CGS is entitled to accept or to deny the offer within 20 working days. This deadline starts no later than three days after the Customer sent off his offer. The offer is deemed to be accepted if the customer does not receive a notice of refusal within this period.
3. Unless the Customer makes an immediate advance payment, CGS is entitled to withdraw from the contract, if the Customer made false claims concerning his financial standing, ceased his payments, or if insolvency is filed concerning his estate. Concerning the return of the goods, Sec. IX applies.

III. Prices, Terms of Payment

1. The stated prices are understood plus the value-added tax, which will be charged in the amount prescribed by law on the date of the invoice. Prices are understood to be ex works. They do not include ancillary costs (such as packaging, freight, toll fees, postage, customs duties and other transport and shipping costs).
2. Price rises due to risen costs of material or of labor due to collective agreements may be charged to the customer, if they occur later than four months after conclusion of the contract. Price rises of more than 5% entitle CGS to revoke the contract. In case of imported materials, changing rates between the German currency (EURO) and the currency of the exporting country constitute price rises as well. Costs according to para 1 constitute price rises, in case the customer agreed to bear them.

3. CGS invoices are payable within 30 days after receipt of the goods and invoicing either in cash or by money transfer. A payment shall only be deemed made if the amount is finally available to CGS.
4. The customer is only entitled to make a setoff, if the counterclaims have been confirmed a final and binding court decision or are uncontested.
5. If the customer is in default of payment for more than ten days following a warning note, irrespective of other rights of CGS, all open bills of CGS become due immediately.
6. Checks are only accepted on account of performance.

IV. Delivery

1. Delivery and performance dates are non-binding, unless explicitly stated otherwise in writing. All delivery and performance dates shall apply subject to the proviso that the customer observes his contractual duties of cooperation. An agreed period of delivery is prolonged for the amount of time the customer is in default with performing his contractual duties.
2. An agreed period of delivery begins with the date of dispatching the order confirmation, but not before the customer performed possible duties of handing out papers, permission papers, etc. and receipt of an agreed down payment.
3. In case CGS is not delivered by its suppliers, even though they were carefully selected and instructed to deliver according to CGS's obligations, CGS is discharged from its duty of performance and may revoke the contract, if CGS is not responsible for the non-delivery.
4. In the event of *force majeure* or unforeseen events outside of the control or sphere of influence of CGS – including but not limited to strikes, lockouts, government orders, even if such occur at CGS's suppliers or their sub-contractors – and other events for which CGS is not responsible, CGS shall be entitled to postpone the delivery or performance by the duration of the impediment plus an appropriate start-up period.
5. In the case delivery or performance become partially or wholly impossible due to the circumstances described above, CGS is entitled to withdraw from the contract in regard to the obligation not fulfilled either partially or wholly. The same applies for circumstances which complicate the delivery considerably or render it impossible, unless CGS acted with gross negligence or intentionally.
6. In case the impediment circumstances continue for more than a month beyond the agreed delivery time, each party may withdraw from the contract. CGS is not responsible for further claims due to excess of the delivery period which is not at the fault of CGS.
7. CGS is entitled to make partial deliveries and to make part performance at any time, unless such partial delivery is of no interest to the Customer.
8. Packaging will not be redeemed by CGS.

V. Passing of Risk

1. The risk passes to the Customer as soon as the shipment is handed over to the carrier or has left the CGS warehouse for shipping purposes or if the Customer is in default in taking the delivery. This applies regardless of who bears the costs of delivery.
2. If the shipment or the acceptance is delayed due to circumstances over which CGS has no control, the risk passes to the Customer with the notice that the goods are ready for shipment. In this case, CGS may store the goods with itself or a third party at the cost of the Customer.
3. Insofar as the parties did not agree otherwise in writing, CGS shall reserve the right of choosing the method and route of shipping.
4. Delivered goods have to be received by the Customer without prejudice to eventual claims due to material defects against CGS, even if the goods are materially defective.
5. In case of return shipments to CGS, the Customer bears the risk until arrival with CGS as well as all shipping costs.

6. The extended liability according to Sec. 287 BGB is excluded.

VI. Reservation of the Right to Modify

1. CGS reserves the right to alter the goods in quality, color, width, weight, equipment or design if these alterations are minor or customary in trade. These alterations are considered to be accepted by the Customer.

2. Samples are considered as type samples which are supposed to display the probable outcome of the goods. They do not establish a right of the Customer to be delivered with goods that correspond with the sample. CGS explicitly reserves the right to deviations which are minor or customary in trade according to para. 1.

VII. Customer's Rights in Case of Defects

1. Claims by the Customer based on defects of the goods delivered require that the Customer has inspected the goods for defects immediately and has notified CGS of any existing defects in writing.

2. The quality of the goods shall be deemed approved if no written complaint is received by CGS within seven (7) calendar days after the goods have been handed over, unless the defect concerned is a hidden defect. A hidden defect shall be deemed approved if no written complaint is received by CGS within seven (7) calendar days after the discovery of the defect.

3. Defects which affect the worth and the usability for the purpose obvious to CGS not or only to a minor extent do not entitle the Customer to further claims. Notably, defects of parts of the delivered goods do not entitle the Customer to claims concerning the delivered goods as a whole, except in case partial deliveries are not in the Customer's interest. For manufacturing work to the Customer's specifications, deviations in quantity of up to 10% more or less of the order cannot be objected to. The quantity delivered will be charged. If CGS's operating or maintenance instructions are not complied with, if alterations are made to the products, if parts are replaced or consumables are used which do not correspond to the original specifications, claims for defects of the goods delivered shall lapse if the Customer does not refute a corresponding substantiated claim by CGS that it was only one of these circumstances that led to the defect. As a matter of principle, only the manufacturer's product descriptions shall be authoritative with regards to the quality of the goods delivered by CGS; not however, any public statements, promotions or advertising by the manufacturer. In the event of deviations in the quality of the materials used, CGS shall be entitled to assign claims against the respective supplier, from whom CGS ordered the material, to the Customer instead of assuming liability. In this case, CGS shall only be liable after a prior, unsuccessful recourse to the courts against the said supplier. This shall not apply if it is unreasonable to expect the Customer to seek recourse in court against the supplier because every prospect of success is lacking. If the Customer receives faulty assembly instructions, CGS is obligated to deliver assembly instructions free of errors, insofar as the defect of the assembly instructions stands in the way of proper assembly. The Customer is not receiving any guarantees in the legal sense from TSE. Manufacturer's guarantees remain unaffected hereby.

4. If there is a defect, CGS shall, at its option, rectify the defect or make a replacement delivery (supplementary performance). CGS can refuse the selected type of the cure or the cure as a whole, if it is only possible with excessive costs. CGS bears the cost of curing the defect, especially shipping, travelling, labor and material. In case these costs exceed 50% of the worth of the delivery, CGS may refuse curing the defect. CGS does not bear the costs that are increased by the fact that the replacement goods are being shipped to a destination other than the one contractually agreed.

5. In the event of a warranty through rectification, CGS is entitled to demand, at its option and expense, that the defective part or device be sent to CGS for repair and for subsequent return shipment. Goods about which there have been complaints are to be shipped to CGS properly packed.

6. In the event of a replacement delivery, CGS agrees to bear the outlays required for this purpose, in particular but not limited to transport costs, insofar as these are not increased by the fact that the replacement goods are being shipped to a destination other than the one contractually agreed for the purpose of supplementary performance. In case CGS delivers goods that are free of defects, the Customer has to return the defective goods delivered originally.
7. If curing pursuant to the above mentioned regulations fails, is not performed within a reasonable deadline set by the Customer or is rejected, the Customer may demand either a reduction of the purchase price or withdraw from the contract or – within the limits of these GT – ask for damages for nonperformance.
8. Claims for defects become statute-barred one year after the statutory commencing of the limitation period.
9. In case a notice of defect was unjustified, the Customer bears the causal costs of CGS.

VIII. Liability

The liability of CGS – on whatever legal grounds – shall be limited as follows:

1. CGS shall be liable only for the amount of the damage or loss that was typically foreseeable when the contract was concluded due to slight negligence leading to an infringement of essential contractual obligations.
2. CGS shall not be liable for the infringement of non-essential contractual obligations due to slight negligence.
3. Claims for lost profits, outlays saved, third-party claims for damages, as well as other indirect or consequential losses cannot be asserted.
4. In the event of impossibility of performance *ab initio*, CGS shall be liable, if it was aware of the impediment to performance or its unawareness is based on gross negligence.
5. The limitation period for claims for damages against CGS shall be one (1) year as of the statutory commencement of the limitation period, unless the damage was caused deliberately.
6. The foregoing exclusions, restrictions and limitations of liability do not apply to claims based on infringements caused by gross negligence or deliberate infringements by CGS or by infringements caused by gross negligence or deliberate infringements by statutory representatives or vicarious agents of CGS. Furthermore, they shall not apply to liability for guaranteed qualities, to claims that are indispensable by statute, in particular in accordance with the German Product Liability Act, or for damage or loss arising from death, physical injury or health impairment.
7. Any contributory fault on the part of the Customer is to be attributed to the Customer.
8. The Customer is obligated to report any loss or damage within the meaning of the foregoing liability provisions to CGS without undue delay in writing or to have such loss or damage recorded by CGS, so that CGS is informed as early as possible and can attempt to reduce the damage or loss, possibly together with the Customer.
9. As far as the liability of CGS is excluded or limited, this exclusion or limitation applies to the personal liability of CGS's employees, representatives and persons whom CGS used to perform its obligations.

IX. Claims for Damages by CGS

1. CGS is entitled to damages according to statutory law unless provided otherwise in these GT or contractually.
2. In case CGS claims damages in lieu of performance (Sec. 281 BGB), it is entitled to claim compensation of 25% of the selling price without any obligation of proof of the actual amount of the damages.
3. Additionally to the entitlement according to Sec. IX.2, in case CGS withdraws from the contract and takes back the goods, CGS is entitled to further damages of 15% of the current market value of the goods in order to cover its costs (expenses, factorage fees).
4. In the cases of Sec. IX.1 and IX.2, the Customer may prove that the damages were less or that no damages arose at all.

X. Reservation of Title

1. Until the settlement of all claims (including all balance claims from current accounts) which CGS has against the Customer on whatever legal grounds - now or in the future - the goods delivered by CGS (reserved goods) shall remain the property of CGS.
2. The Customer is obliged to handle the reserved goods with care. Insofar as maintenance and inspection work is required, the Customer shall perform such work on a regular basis at the Customer's own expense. The Customer must report any change of the possessor of the reserved goods and any change in the Customer's place of business to CGS in writing immediately.
3. The Customer is entitled to process the reserved goods during the ordinary course of business and to sell such goods against immediate payment or subject to reservation of title as long as the Customer is not in default in meeting its payment obligations. Pledges or assignments of the reserved goods as security are not permitted. The Customer herewith assigns the receivables arising with regard to the reserved goods from any resale or on any other legal grounds (insurance, torts) to CGS in full by way of security, namely independent of whether the goods have been resold without any or after processing. CGS revocably authorizes the Customer to collect the receivables assigned to CGS for CGS's account in the Customer's name. The authority of CGS to collect such receivables by itself shall remain unaffected hereby. CGS agrees not to collect the receivables as long as the Customer properly complies with the Customer's own payment obligations and is not in arrears of payment. In the event of default, the Customer is obligated, at CGS's request, to disclose the receivables assigned and their debtors, to provide all of the information required to collect such receivables, to hand over the pertinent records and to notify the debtor of the assignment.
4. Any processing or refashioning of the reserved goods shall be on behalf of but without any obligations for CGS. If the reserved goods are processed together with other goods not belonging to CGS, CGS shall acquire co-ownership of the new product in proportion of the value of the reserved goods to the other goods processed at the time of processing. If the goods are combined or mixed with other goods not belonging to CGS, CGS shall acquire co-ownership of the new product in proportion of the value of the goods to the other goods combined or mixed at the time of such combination or mixing. The Customer shall store the products to which CGS has acquired co-ownership free of charge.
5. In the event that the reserved goods are seized by third parties, in particular by law enforcement authorities, the Customer is obligated to bring CGS's ownership to the attention of such third parties and to inform CGS immediately. The Customer is liable for the costs and the damage or losses incurred. This shall apply in particular to the costs – in and out of court – incurred in this connection.
6. Any taking back of the goods by CGS shall be by way of security only. In no case shall this be construed as a withdrawal from the contract, even if partial payments were permitted. CGS shall also

be entitled to freely sell or have the goods auctioned off. Other claims for damages, in particular but not limited to the replacement of any lost profits, remain reserved.

7. CGS agrees to release the securities accruing to CGS when the value of the securities exceeds the receivables to be secured by more than 20%.

XI. Final Provisions

1. Subject to the assignment of receivables according to § 354 a HGB (German Commercial Code), the Customer may not assign individual rights of this contract or the contract as a whole to third parties, unless CGS expressly grants its consent in writing hereto. CGS will grant such consent if the justified interests of the Customer to the transfer of rights take precedence over the interests of CGS.

2. The place of performance is the place where CGS has its registered office. Insofar as the Customer is an entrepreneur within the meaning of Sec. 14 BGB (German Civil Code), governmental entities or special governmental estates within the meaning of Sec. 310 para. 1 BGB, the venue for all of the disputes arising from this contract, including check and bill of exchange payment enforcement proceedings and proceedings restricted to documentary evidence shall be the courts at CGS's place of business. However, CGS is also entitled to institute legal proceedings at the Customer's statutory place of general jurisdiction. The courts at CGS's place of business shall also be the venue if the Customer does not have a place of general jurisdiction within the Federal Republic of Germany or the Customer's domicile or place of business is unknown at the time of the filing of an action.

3. The laws of the Federal Republic of Germany shall apply to these GTs and the whole legal relationship between CGS and the Customer to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

4. Any invalidity of one or more of these provisions shall not affect the validity of the remaining provisions. In case of any invalidity, the parties agree upon reaching an agreement that under economic criteria comes closest to the invalid provision. The same applies to any gaps in these GTs.

5. The German version of these General Terms and Conditions shall prevail over the respective English version.

XII. Software

In case the subject-matter of this contract is software, the following provisions apply additionally to the aforementioned from Sec. I to Sec. XI:

XII.I Subject Matter

1. CGS grants the Customer the non-exclusive and non-transferable right to use the software as described in the data specification without limitation in time. The data specification is part of this contract. The data specification contains information concerning hard- and software environment (especially systems software), the selling price and those provisions which are not covered by these GT.

2. The Customer will use the software only according to the contractual provisions. This implies the right to install load and run the software as well as the right to make one copy for security backup purposes.

3. CGS is not obliged to render further services, like for example training, installation, adaption, support, maintenance etc. to the Customer except the rendering of such services was agreed upon by the parties in a separate contract.

4. In case the software is equipped with a dongle, the Customer will properly store the dongle at all times, won't use any means of bypassing and will report any loss to CGS immediately. In case of dysfunction of the dongle, which does not constitute a defect according to Sec. VII within the limitation period, CGS will replace the dongle subject to charge according to the price list. In case the dongle is

lost, the Customer has to purchase a new copy of the software. The customer will use a supplied dongle only with the software it is attached to.

5. CGS will deliver the software in machine readable form suitable to the Customer's system software at CGS's option either stored on a type of data storage media in common use at the time or transferred by remote data transfer. The Customer shall receive the software documentation and a copy of the manual at CGS's option either as electronic document or as hardcopy. The Customer shall bear all costs and risks related to such delivery, including the risk of transportation (particularly the risk of accidental loss or destruction due to the failure of the Customer's hardware and telecommunication infrastructure) of the copies of the software.

XII.II Copy and Access Protection

1. The right to copy the software is limited to the installation of the software on a computer system which is in the Customer's immediate possession and to fulfill the purpose of use and a copy thereof which is required for the loading, display, running, transfer or storage of the software as well as to the right for an authorized person to make one copy for security backup purposes as stated in sec. 69d para 2 UrhG (German Copyright Act). This copy has to be marked as a security backup copy of the software.

2. The Customer is obliged to prevent unauthorized access from third parties to the software as well as to the documentation by implementing appropriate measures. The received hardcopies and the security backup copy have to be stored in a way that prevents unauthorized access from third parties. The employees of the Customer have to be instructed insistently on the observance of these GT and the statutory copyright laws.

3. The Customer must not produce any more copies than stated in this provision. This applies to printing the software code on a printer and to producing copies of the manual as well. Further manuals for use by the Customer's employee have to be purchased through CGS.

XII.III Multiple Use and Use in Networks

1. The Customer may use the software on whichever hardware that is in his immediate possession. In case of switching the hardware, the Customer has to delete the software from the hardware used hitherto.

2. The Customer must not save, keep available or use the software simultaneously. In case the Customer wants to use the software on more than one unit of hardware, for example through several employees, the Customer has to purchase further licenses.

3. The software must not be used in a computer network or in whatever kind of multiple-unit-computer system in case this use would allow for simultaneous use by multiple users. In case the Customer intends to use the software in a computer network or in whatever kind of multiple-unit-computer system, the Customer has to disable any kind of simultaneous use by multiple users by devices of access protection. Alternatively, the Customer has to pay a network fee which has to be concluded separately. CGS will immediately offer such network fee to the Customer once the Customer informs CGS about the details of the intended network usage including the number of users in writing. The operation of the software in a network is not permitted prior to disbursement of the network fee in full.

XII.IV Resale and Subletting

1. The Customer may resell the software including the manual and miscellaneous accessories to a third party under the condition that the third party declares consent and observance with these GTs in advance and in writing. In case of reselling, the Customer has to either turn over all copies of the software including security backup copies to the third party or destroy the aforementioned copies. The Customer's right to use the software expires with its resale.

2. The Customer may sublet the software including the manual and miscellaneous accessories to a third party under the condition that the third party declares consent and observance with these GTs in advance and in writing. In case of subletting, the Customer has to either turn over all copies of the software including security backup copies to the third party or destroy the aforementioned copies not turned over. During the period of subletting, the Customer must not use the software.

3. In advance to any case of reselling or subletting, the Customer has to inform CGS about the third party including its full name and address in writing.

XII.V Passing of Rights

The Customer becomes entitled to use the software not before the purchase price including additional charges and taxes has been paid in full.

XII.VI Duty of Inspection and Notification, Claims for Damages

1. The Customer has to inspect the delivered software including its documentation immediately for defects – especially concerning completeness of the hardcopies, the manual and its functioning – and to notify CGS concerning possible defects immediately in writing. The quality of the software shall be deemed approved if no written complaint is received by CGS within seven (7) calendar days after the software has been handed over, unless the defect concerned is a hidden defect. A hidden defect shall be deemed approved if no written complaint is received by CGS within seven (7) calendar days after the discovery of the defect.

2. Defects must be notified in writing with a comprehensible description of the error symptoms, as far as possible evidenced by written recordings, hard copies or other documents demonstrating the defects. The notification of the defect should enable the reproduction of the error.

3. A defect can be cured at the option of CGS by delivering or installing a new version of the software or a workaround. In case of defects which affect the functionality of the software not or only to a minor extent, CGS may exclude further claims for damage by either delivering a new software version or by performing an update within the regular schedule of bringing new versions, updates and upgrades to the market.

4. In cases of delivery of updates, upgrades and new software versions, claims for damages are limited to the alterations to the previous version.

5. The limitation period of one year according to Sec. VII.8 commences with the delivery of the first hardcopy of the software including the manual or with the download of the software including the manual. In case of delivery of updates, upgrades or new versions, the limitation period commences with the respective delivery or download.

6. Amendments or additions to the software delivered which the Customer carries out itself or through third parties, shall cause the Customer's rights in case of defects to be cancelled, unless the Customer proves that the amendment or addition did not cause the defect. The CGS shall also not be responsible for defects which are caused by improper use or improper operation or the use of unsuitable means of operation by the Customer.

7. In case of the loss of data, CGS's liability is limited to the amount which would be necessary for the recovery of the lost data in case the data would have been stored properly and on a regular basis, but limited to an amount of 100.00 EUR.

8. The software delivered by CGS is free from third party rights which prevent the use in accordance with the contractual provisions. Excepted from this are customary retentions of title. If third parties are entitled to such rights and they pursue these, then CGS shall do everything in its power in order to defend the software at its own expense against the third party rights claimed. The Customer shall inform CGS in writing without delay of the claiming of such rights by third parties and shall give CGS all powers of attorney and authorizations which are necessary in order to defend the software against

the third party rights claimed. To the extent that there are defects in title, CGS is (a) entitled at its option to either (i) take legitimate measures to remove the third party rights which impair the contractual use of the software, or (ii) remedy the enforcement of such claims, or (iii) change or replace the software in such a manner that it no longer infringes the rights of third parties, provided and to the extent that this does not substantially impair the warranted functionality of the software, and (b) under an obligation to reimburse the Customer for its necessary refundable costs incurred in the enforcement of legal claims.

XIII. Application Service Providing („Cloud-Computing“)

In case the subject-matter of this contract is providing the temporary use of standard software applications and memory capacity for storing the application data created by the Customer, the following provisions apply additionally to the aforementioned from Sec. I to Sec. XII:

XIII.I Subject Matter

CGS nongratuitously provides software applications (thereinafter “software”) to be used as such, the technical possibility of using the software with an additional access software (thereinafter “access software”) and the rights to use the software, the access software, the memory capacity for storing the data the Customer generated by use of the software (thereinafter “customer-generated data”) as well as the data necessary for using the software (thereinafter “user data”) according to the provisions of the individual contract between the parties (thereinafter “individual contract”).

XIII.II Providing of Software and Memory Capacity for User Data

1. Commencing with the date agreed upon in the individual contract, CGS will provide the contractual software on one or more servers in the current version for use by the Customer according to the following provisions.
2. CGS is liable for the usability of the software for the purposes agreed upon in the specifications in the individual contract and for the absence of defects throughout the term of the contract, in particular for the absence of viruses and similar defects which annihilate the applicability of the software for the contractual purposes.
3. CGS provides the Customer with the contractually agreed number of user names and user passwords.
4. CGS will provide storage capacity for the customer-generated data from the date set out in the individual contract and according to the extent set out therein. Further details concerning storage capacity and customer-generated data will be set out in the individual contract.
5. CGS will perform security backups of the software and the customer-generated data at least every calendar day. The observance of storage obligations according to statutory commercial and tax law is within the responsibility of the Customer.
6. Point of transfer for the software and the customer-generated content is the outlet of the data processing center of CGS or of a data processing center commissioned and authorized by CGS.
7. Agreements concerning hardware requirements on the part of the Customer will be set out in the individual contract. CGS is neither responsible for the condition of the necessary hard- and software of the Customer nor for the telecommunication connection between the Customer and the outlet of the data processing center.

XIII.III Access Software

1. CGS provides the Customer with access software as stipulated in the individual contract which enables the Customer to access the server. CGS is liable for the contractual usability of the access software to access the server. Sec. XIII.II para 2 to 4 apply accordingly.

2. The server may only be accessed by the access software provided by CGS. Technical and functional details of the access by use of the access software are stipulated in the individual contract.
3. The access software must not be usable to enable access to the data processing devices of the Customer to CGS or third parties, unless necessary for the proper execution of the contract. Such access has to be coordinated by the parties in advance and expressly in writing.

XIII.IV Functional Availability of the Software and the Access to Customer-Generated Data, Duration of Response and Recovery

1. CGS is liable for the availability of the software and the customer-generated data at the point of transfer. Availability is the technical usability of the software and the user data at the point of transfer for the use of the Customer under application of the access software.
2. All details of the availability, in particular technical parameters and procedures of measuring and determining the availability are stipulated in the individual contract, which in particular contains the usage-period of the systems, the core usage-period, the edge usage-period, the period in which CGS performs periodic service and maintenance, the period within the availableness is calculated, the degree of availableness in per cent within the core usage-period and the edge usage-period; the maximum permissible continuous downtime per time unit agreed within the core usage-period and the edge usage-period; details of sanctions in case of non-observance of the availableness.
3. Additionally, the parties stipulate the maximum permissible duration of reaction and recovery, which apply in case of non-availableness and/or in case of defects of the access software and/or the software and/or the customer-generated data, including possible sanctions in case of non-observance.

XIII.V Further Services of CGS

1. At the written request of the Customer, CGS will provide a monthly subsequent report with the information stipulated in the individual agreement.
2. Further services of CGS may be agreed upon at any time in writing, in particular trainings concerning the access software and/or the software. Such additional services will be charged based upon the documented expenses of CGS according to the price schedule effective at the date of ordering.

XIII.VI Grant of Rights Concerning the Access Software, the Software and Rights of CGS in Case of Non-observance

1. The rights concerning the access software and the software are governed by Sec. XII. Additionally, the following applies:
2. The Customer will use the access software solely for accessing the server in order to use the software on the server. The software will not be ceded to the Customer. The Customer has to use the access software and the software solely for his own commercial purposes and through his own personnel.
3. The Customer is held liable for not using the access software and the software for racist, discriminating, pornographic, for minors unsuitable, political extreme or miscellaneous unlawful purposes and for not generating corresponding data, in particular customer-generated data and/or saving it on the server.
4. In case of culpable violations of para 2 and 3 by the Customer, CGS may bar the Customer after a written warning in advance from the access to the software or the customer-generated data, if the violation can be stopped verifiably this way.
5. In case of an unlawful violation of para 4, CGS is entitled to erase the affected data, respectively the affected customer-generated data. In case of such violation by users, the Customer is obliged to

immediately disclose all information necessary for pursuing claims against the users at the request of CGS, in particular the name and the address of the users. In case the Customer keeps on violating its obligations under para 2 to 4 despite a written warning notice of CGS, CGS may declare cancellation of the contract without notice.

6. For each case of culpably enabling third parties or users not declared to CGS to use the software, the Customer has to pay a contractual penalty consisting of the monthly basic fee as stipulated in the individual contract which is due immediately. CGS reserves its right to claim damages, in such case, the contractual penalty will be credited against the damages.

XIII.VII Remuneration

1. The remuneration for providing the temporary use of standard software applications and memory capacity for storing the application data created including the performing of security backups consists of basic fee and usage-dependent fees according to the individual contract.

2. The basic fee as agreed upon in the individual contract is to be paid per month or part thereof after CGS delivered operable access to its services. The basic fee becomes payable in advance at the antepenultimate day of the preceding calendar month. In case the Customer gave notice with good cause, the basic fee will be refunded pro rata temporis.

3. The usage-dependent fee of each application will be regulated in the individual contract.

4. The usage-dependent fee for the continuous storage and providing of the user generated data including the security backups will be regulated in the individual contract.

5. The usage-dependent fees according to para 3 to 4 will be billed retroactively on a monthly base. The usage-dependent fees and each additional fees are due 21 calendar days upon receipt of a bill.

6. Other services of CGS which are agreed upon as chargeable explicitly will be billed according to time and effort under the current schedule price.

XIII.VIII Duties and Requirements of the Customer

The Customer will observe all contractual duties and requirements that are necessary for the fulfillment of this contract. In particular, the Customer will protect the confidentiality of the user and access authorizations and the devices of identification and authentication protection assigned to him respective its employees, and not grant access to the aforementioned to third parties or non-eligible persons. This data has to be protected by adequate and common measures. The Customer will notify CGS immediately in case it suspects that unauthorized persons have gained knowledge of the aforementioned access data; will provide the necessary equipment for the use of the contractual services of CGS; will neither retrieve information or data nor interfere with computer programs operated by CGS nor promote such interference; won't abuse the provided services of CGS for the exchange of messages for the unsolicited sending of advertising; will indemnify CGS from possible third-party claims which are based upon the illegal use of the access software or which arise from lawsuits concerning issues in particular, but not limited to data protection and intellectual property infringements in respect to the use of the access software; will have the authorized users to pledge observing this contract; will take care to respect the rights of third parties concerning the materials processed (for example by transmitting texts or data of third parties to CGS servers); will gather all necessary consents for the collection, processing and use of personal data; will virus check all data and information prior to sending it to CGS; will use state-of-the-art virus protection measures; will pay all fees in due time; will do appropriate security backups of all data that is generated with the use of the services of CGS and transmitted to CGS, in order to be able to reconstruct its data in case of loss of data; and, insofar as the technical possibility exists, to make security backups of the downloaded data generated by the Customer using the services of CGS. The obligation of CGS to perform security backups remains unaffected.

XIII.IX Data Security, Privacy Protection

1. The parties will comply with the German statutory provisions on data security and privacy protection and will have those employees who are consigned with the execution of this contract, pledge to comply with the obligations according to Sec. 5 BDSG (Federal Data Protection Act), unless they are not already obliged to do so.
2. In case the Customer collects, processes or uses personal data, he guarantees to be entitled to do so, in particular by the applicable statutory provisions on data security and privacy protection and will indemnify CGS from possible claims of third parties.
3. CGS will collect and use data of the Customer only to the extent necessary to fulfill this contract. The Customer consents the collection and use of this data in the extent described.
4. The obligations according to para 1 to para 3 will persist as long as user data remains within the sphere of CGS, even beyond the term of this contract.
5. The parties will conclude an agreement concerning data procession by appointment according to Sec. 11 BDSG (Federal Data Protection Act).

XIII.X Term of the Agreement, Notice of Cancellation

1. This Agreement shall take effect as from the conclusion of the individual contract and shall be of an undefined period of time. The contractual services will be provided from the date contractually agreed upon.
2. Both parties may terminate the agreement in writing at least three months prior to the end of a quarter. The first possible termination is the end of the first quarter after a one year duration of the contract.
3. Albeit the provisions of para 2, CGS is entitled to terminate the contract without notice if the Customer fails to pay the fees or a substantial part of the fees for two consecutive months or for a period of time which exceeds two months. In such case, CGS is entitled to claim compensation corresponding to a quarter of the monthly basic fees that would become due until the regular termination of the contract. The Customer may prove that the damages were less or that no damages arose at all.

XIII.XI Duties upon Termination of the Contract

Upon termination of the contract, but not before fulfillment of the contract by CGS, the Customer has to return all hardcopies of the access software to CGS and to erase all existing copies of the access software which might be saved on its IT hardware.