

## **General Terms and Conditions of CP Wave GmbH ("CPWave") for the provision of IT services**

### **1. General, scope of application**

1.1 These General Terms and Conditions ("GTC") apply to all business relationships of CP Wave GmbH, Wendenstraße 4, 20097 Hamburg ("CPWave") vis-à-vis entrepreneurs ("client(s)"), insofar as these relate to the following business activities:

- The sale and supply of hardware and software, in particular standard software, also insofar as this is made available in an intangible form, e.g. by remote data transmission "online" (hereinafter also collectively referred to as the "goods"), regardless of whether CPWave manufactures the goods itself or purchases them from suppliers (§§ 433, 651 BGB).
- The lease of standard software and hardware ("lease").
- Work and services, in particular IT services, e.g. setting up an IT infrastructure for clients, software adaptations/developments (customization), software implementations and maintenance services for hardware (e.g. for network components, IT systems such as servers, PCs and printing and copying systems), hereinafter also referred to collectively as "IT services".

1.2 The GTC in their respective version shall also apply as a framework agreement for future contracts for the sale and/or delivery of goods or for the provision of IT services with the same client, even if their validity is not expressly agreed again.

1.3 These GTC apply exclusively. Any deviating, conflicting or supplementary GTC of the client will only become part of the contract if and to the extent that CPWave has expressly agreed to the validity of such. This requirement of consent shall apply in all cases, for example even if CPWave commences the provision of services to the client without reservation while being aware of the client's GTC.

1.4 Specific agreements made with the client in individual cases (including ancillary agreements, supplements and amendments) shall in all cases take precedence over these GTC. The content of such agreements shall be governed by a written contract or written confirmation from CPWave.

1.5 Any legally relevant declarations and notifications made by the client to CPWave following the conclusion of the contract (e.g. setting of deadlines, notifications of defects, declaration of withdrawal or reduction) and any amendments to such must be made in writing to be effective. The above provision shall apply mutatis mutandis to the waiver of this written form clause.

1.6 Any references to the application of statutory provisions are for the purposes of clarification only. Even without such clarification, the statutory provisions shall therefore apply unless they are directly amended or expressly excluded in these GTC.

### **2. Offer and conclusion of the contract**

2.1 CPWave's offers are subject to change and are non-binding. This shall also apply if service descriptions, technical documentation (e.g. drawings, plans, calculations, references to DIN standards, etc.), other product descriptions or documents - also in electronic form - are provided to the client. CPWave expressly re-

serves the property rights and copyrights existing in the aforementioned documents.

2.2 The ordering of goods or IT services by the client shall be deemed to be a binding offer of contract. Unless otherwise stated in the order, CPWave is entitled to accept this offer of a contract within thirty (30) calendar days of the receipt of such by CPWave. Acceptance can be declared either in writing (e.g. order confirmation) or by commencing with the provision of services to the client.

2.3 The client shall examine the offer documents closely, in particular for IT services and the service description, where appropriate, to ensure their correctness and appropriateness. If the assumptions underlying the calculation of the offer are incorrect, the client shall inform CPWave to enable CPWave to amend the offer.

### **3. Scope of services**

3.1 The service description contained in the written offer documents, if any, which was provided to the client prior to the placing of the order or was included in the contract in the same way as these GTC (hereinafter also referred to as "service description"), is the sole basis for the services to be provided by CPWave. If the written offer documents do not contain a service description, the scope of services shall be determined by the contents of the offer.

3.2 Compliance with technical standards shall only be observed insofar as they are expressly listed in the service description and in the version applicable at the time of conclusion of the contract.

3.3 CPWave reserves the right to use third parties as subcontractors and vicarious agents to provide the services.

### **4. The client's obligations to cooperate regarding IT services**

4.1 The provision of the agreed IT services requires close cooperation and involvement on the part of the client. **In particular, the client shall make decisions incumbent upon it regarding the provision and content of IT services without undue delay and notify CPWave thereof, and shall examine CPWave's proposals for change without undue delay.** The client acknowledges that the fulfillment of its obligations to cooperate is a fundamental condition for the provision of services by CPWave and an essential contractual obligation of the client.

4.2 The client shall use adequately qualified employees to fulfill its obligation to cooperate. In particular, the client's employees shall, without being requested to do so and without delay, advise CPWave of any requirements and procedures typical of the industry or specific to the company and, without being requested to do so, shall also provide CPWave with all technical or other documents and information necessary for the successful performance of the services, where applicable in the form specified by CPWave.

4.3 The client will inform CPWave on an ongoing basis and without delay of any circumstances from its own sphere that may affect CPWave's contractual obligations, in particular regarding the provision of the IT services, schedules and prices. Insofar as the approval requirement originates from the client's sphere, the client will also be obliged to obtain any official approvals that may be required for the provision of the IT services. The client shall inform CPWave without delay of the legal framework conditions arising from its sphere, insofar as specific requirements for the provision of the IT services result therefrom.

4.4 Should the client fail to fulfill an obligation to cooperate correctly or in a timely manner, the contractually agreed execution dead-

lines shall be extended in accordance with the delay in performance. Insofar as a lower or higher impact on the execution deadlines is specifically proven in practice or another agreement has been reached, the extension of the execution deadlines shall be applied based on the actual. CPWave reserves the right to impose an additional charge arising from the client's defective cooperation, in particular for the extended provision of its own personnel or own material resources at the rates agreed for the provision of the IT services or, if no billing based on expenditure of time and material have been agreed, at CPWave's standard rates.

- 4.5 The application of §§ 642, 643, 645 BGB remains unaffected. In the event of premature termination of the contract pursuant to § 643 sentence 2 BGB, CPWave shall be entitled to claim a part of the remuneration pro rate for the work performed and reimbursement of expenses not included in such remuneration.

## 5. Deadlines and delay in the delivery of goods

- 5.1 Delivery times for goods will be agreed individually or stated by CPWave upon acceptance of the order. CPWave will notify the client without delay if CPWave is unable to meet binding delivery deadlines for goods for reasons for which CPWave is not responsible (non-availability of service), and at the same time will inform the client of the anticipated new delivery date. If the goods are still not available within the new delivery period, CPWave is entitled to withdraw from the contract in whole or in part; CPWave will immediately refund any consideration already paid by the client. A case of non-availability of performance in this sense shall be considered, in particular, the failure of a supplier of CPWave to deliver to CPWave by the deadline if CPWave has entered into a congruent hedging transaction. The statutory rights of withdrawal and termination and the statutory provisions regarding the performance of the contract in the event of an absence of the obligation to perform (e.g. impossibility or unreasonableness of performance and/or subsequent performance) shall remain unaffected. The client's rights of withdrawal and termination pursuant to clause 12 of these GTC shall also remain unaffected.

- 5.2 The occurrence of a delay in delivery by CPWave shall be determined in accordance with the statutory provisions. In any case, however, a written reminder by the client is required.

## 6. Performance deadlines for IT services

Performance deadlines for IT services, in particular project milestones, are only binding if they have been agreed in writing between CPWave and the client. Otherwise, the occurrence of a default shall be determined in accordance with the statutory provisions. In any case, however, a written reminder by the client is required.

## 7. Transfer of risk and retention of title in the delivery of goods

- 7.1 Goods shall be delivered from CPWave's place of business, which is also the place of performance; in the case of drop shipments, the place of performance shall be the place from which the goods are shipped to the client. At the client's request and expense, the goods will be shipped to another destination (sale by delivery to a place other than the place of performance). Unless otherwise agreed, CPWave is entitled to determine the type of shipment (in particular the transport company, shipping route, packaging).

- 7.2 The risk of accidental loss and accidental deterioration of the goods shall pass to the client no later than upon the handover of such. However, in the case of sale by delivery to a place other than the place of performance, the risk of accidental loss and accidental deterioration of the goods and risk of a delay in delivery shall pass to the client upon delivery of the goods to the forwarding agent, the carrier or any other person or institution designated to carry out the shipment. The above provision on the transfer of

risk in the case of sale by delivery to a place other than the place of performance shall apply mutatis mutandis if the delivery is arranged directly by a third party in the case of a drop shipment.

- 7.3 If the client is in default of acceptance, fails to cooperate or if our performance is delayed for other reasons for which the client is responsible, CPWave is entitled to claim compensation for any damage incurred, including additional expenses (e.g. storage costs, personnel expenses).

- 7.4 CPWave shall retain title to the goods sold until full payment of all present and future claims arising from the delivery of goods (secured claims). The client shall notify CPWave in writing without delay if and insofar as a third party seizes the goods belonging to CPWave. In the event of breach of contract by the client, in particular in the event of non-payment of the remuneration due, CPWave reserves the right to withdraw from the contract in accordance with the statutory provisions, to demand the return of the goods on the basis of the retention of title or withdrawal and to claim compensation for any demonstrable damage incurred. Should the client fail to pay the remuneration due, CPWave may only assert these rights if CPWave has previously set the client a reasonable deadline for payment without success or if setting such deadline is unnecessary under the statutory provisions.

- 7.5 The client must notify CPWave immediately in the event of seizures and other interventions by third parties to enable CPWave to take legal action in accordance with § 771 ZPO (German Code of Civil Procedure). Insofar as the third party is unable to reimburse CPWave for the judicial and extrajudicial costs of a successful action pursuant to § 771 ZPO, the client shall be liable for such costs.

## 8. Changes in the services for IT services

- 8.1 CPWave reserves the right to decide to accept or reject the client's requests for amendments changes or additions to existing contracts for the provision of IT services. If CPWave carries out requests for amendments, the agreed execution and acceptance deadlines will become invalid if they are not confirmed or redefined by CPWave.

- 8.2 CPWave also reserves the right to charge the client for the time and material required to review requests for amendments and additions and to prepare cost estimates and change quotations on the basis of the agreed or standard CPWave rates. CPWave shall continue the services in accordance with the contract that has been concluded until a written agreement on any amendments/additions is issued.

## 9. Prices and terms of payment

- 9.1 Unless otherwise agreed in individual cases, the contractually agreed prices shall be those indicated in the CPWave offer documents, in each case plus the statutory rate of value added tax.

- 9.2 Remuneration shall be due and payable within eight (8) days of the invoice date.

- 9.3 Unless otherwise agreed in individual cases, IT services shall be invoiced on a time and material basis. If the remuneration stated in the offer is based on "man-days", "person-days", "performance-days" or similar, these shall each correspond to eight (8) hours of work time. Unless otherwise agreed, CPWave will invoice for services based on the CPWave daily or hourly rates applicable at the time of conclusion of the contract. CPWave reserves the right to adjust the daily or hourly rates even during the term of the contract, taking reasonable account of the general trend in costs. The client reserves the right to terminate the contract in the event of changes of more than 10% within one year. Travel costs, expenses, other ancillary costs and out-of-pocket expenses incurred by

CPWave for the provision of the contractually agreed service will be invoiced separately.

- 9.4 The client shall be in default upon expiry of the payment deadline in accordance with the aforementioned clause 9.2. During the period of default, the remuneration shall bear interest at the respective statutory default interest rate applicable at the time. CPWave reserves the right to claim further damages for delay. With respect to entrepreneurs, the claim to the commercial due date interest (§ 353 HGB (German Commercial Code)) remains unaffected.
- 9.5 The client shall only be entitled to rights of set-off or retention insofar as its claim has been legally established or is undisputed.
- 9.6 If, after the conclusion of the contract, it becomes apparent that CPWave's claim to the agreed remuneration is compromised by the client's inability to perform (e.g. by an application for the opening of insolvency proceedings), CPWave may refuse performance in accordance with the statutory provisions and - if necessary after setting a deadline - to withdraw from the contract (§ 321 BGB (German Civil Code)).
- 9.7 In the event of default in payment by the client and the fruitless expiry of a reasonable grace period, CPWave may also terminate the contract with immediate effect by giving notice of termination and, at its discretion, to demand a lump-sum compensation amounting to 40% of the outstanding portion of the agreed total remuneration, damages in lieu of performance or reimbursement of futile expenses within the meaning of § 284 BGB. If additional remuneration has been agreed between the parties, the basis for calculating the lump-sum compensation will be the amount outstanding that was originally anticipated, multiplied by the rates agreed (daily rates, hourly rates, etc.). Insofar as CPWave asserts the lump-sum damages, the client reserves the right to prove that no damage or a lower level of damage has occurred.

## **10. Rights to software and other work results**

- 10.1 CPWave shall grant the client a non-exclusive right of use to the work results, in particular software, created specifically for the client (hereinafter "work results") once CPWave's payment claims against the client under the respective contract have been satisfied in full. CPWave will allow the client to use the work results to the extent necessary to fulfill the purpose required under the contract.
- 10.2 The client is entitled to use the work results in its business operations for its own internal business purposes. If the work results are software or software components, CPWave shall provide the client with the software in machine-readable form (object code). The source code of the software will not be provided. CPWave will provide the client with the information required to establish the interoperability of the software with other software programs in return for remuneration that is commensurate with the efforts to do so.
- 10.3 Insofar as CPWave supplies or leases standard software from third parties to the client, the corresponding license conditions of the respective software manufacturer or other licensor shall apply. With respect to CPWave, the client shall comply with the respective license conditions at all times. At CPWave's request, the client shall immediately provide information and in writing regarding the scope of use of the software and shall provide demonstrable evidence that the contractually agreed scope of use is not exceeded. CPWave undertakes to keep confidential all non-public knowledge regarding the client's company that becomes known to CPWave in connection with the examination.
- 10.4 The client shall grant CPWave the non-exclusive right to use its existing intellectual property free of charge insofar as this is nec-

essary for the performance of CPWave's tasks in connection with the provision of services. This includes in particular the right to use hardware and software provided by the client.

- 10.5 If, during the provision of the services by CPWave, work results are produced which could be eligible for patent or a utility model, CPWave shall have the sole right to submit the respective applications in its own name. In this event, the client shall receive a royalty-free license for use to the extent required for the contractual use of the work results produced by CPWave.

## **11. Acceptance for IT services**

- 11.1 Insofar as the work results to be produced by CPWave within the scope of IT services are the subject of acceptance within the meaning of § 640 BGB (German Civil Code), the following shall apply:
- 11.2 If the work results to be produced by CPWave are for software implementations, adaptations or developments, the client will provide test data in the agreed volume and in a machine-readable form and the test results to be provided by the client in a timely manner prior to the start of the test and functional checks in the formats specified by CPWave. CPWave reserves the right to participate in the test and functional checks. If a work result has passed the acceptance test, the client shall submit a written declaration of acceptance within ten (10) working days after the completion of such acceptance test. Acceptance shall be deemed to have been granted if the client has not conclusively asserted the reasons for refusal of acceptance in writing within ten (10) working days after expiry of the period agreed for the acceptance period or has used a work result in a productive manner for a total period of over three (3) months.
- 11.3 If the services to be provided by CPWave are for maintenance or other support services (e.g. installation of hardware, implementation of hardware in the client's network, etc.), the client shall confirm the maintenance service provided by signing a proof of work submitted by CPWave. The client shall then immediately test the maintenance service provided and declare acceptance if the maintenance service has been provided without defect or if no significant defects have arisen. The client shall immediately issue written notice of any defects found. Acceptance shall be deemed to have taken place if two (2) weeks have elapsed since the provision of the respective maintenance service and the client has failed to carry out acceptance within this period for a reason other than a defect notified to CPWave which makes the use of the hardware impossible or significantly impairs such use.
- 11.4 CPWave is entitled to demand acceptance of definable partial services and interim results. If, among others, the preparation of a service description, a technical rough or detailed concept or a specification sheet has been agreed, CPWave may demand acceptance of these interim results by the client. CPWave may also request the inspection and confirmation of such services that are not work services. The most recently accepted document replaces the previously agreed service descriptions. If all partial services have been accepted, the last partial acceptance shall also be deemed the final acceptance.

## **12. The client's claims for defects in the delivery of goods and provision of IT services**

- 12.1 The statutory provisions shall apply to the client's rights in the event of material defects and defects of title of delivered goods or the provision of IT services, unless otherwise stipulated below.
- 12.2 CPWave's liability for defects is based on the agreement reached on the quality of the services. The service descriptions or the respective contents of the offer which were provided to the client prior to the placement of the order or which were included in the

contract in the same manner as these GTC shall be deemed to be an agreement on the quality of the goods or the respective IT service. CPWave reserves the right to make technical changes that would be typical in the sector up to the time of delivery of the goods, provided that such changes result in only insignificant changes in quality and do not affect the client to an unreasonable extent.

- 12.3 Insofar as the quality has not been agreed, the statutory regulations shall be used to assess the existence of any defects. However, CPWave accepts no liability for public statements made by the manufacturer or other third parties (e.g. catalogs, brochures, advertising statements, etc.).
- 12.4 CPWave is not therefore obliged to provide a warranty for faults in a software product supplied in the event of malfunctions and (i) the software is not being used under the intended conditions of use specified in the user documentation (e.g. system requirements). (ii) if the instructions and procedures are not followed as described in the user documentation when using the software or (iii) if changes or adaptations have been made to the software, unless the client can demonstrate that the malfunctions or faults have no causal link to the events mentioned in (i) to (iii) above or are due to a defect in the user documentation.
- 12.5 The client's claims for defects assume that it has fulfilled the statutory obligations to inspect and give notice of defects (§§ 377, 381 HGB (German Commercial Code)). Should a defect become apparent during the inspection or at a later date, CPWave must be notified thereof without delay. Notification shall be made in writing. If the client fails to notify CPWave of any defects as specified above, CPWave shall not be liable for defects that have not been notified by the client.
- 12.6 If the service provided is defective, CPWave may initially either provide a subsequent performance by remedying the defect (rectification) or may supply a service free of defects (replacement). CPWave's right to refuse the manner of subsequent performance selected under the statutory conditions remains unaffected. Insofar as the service due is the delivery, creation or adaptation of software and this is reasonable for the client, CPWave may provide the client with a new version of the software (e.g. bug fix, update, maintenance release/patch, e.g.) to rectify the defect and which no longer contains the respective defect or which remedies such defect. A defect is also considered to be remedied if CPWave shows the client ways to circumvent the defect during operation or adjusts the software settings (e.g. workaround) and the operation and function is only insignificantly affected by such circumvention.
- 12.7 If subsequent performance has failed within a reasonable period of time, the client shall set CPWave a reasonable grace period to provide subsequent performance, insofar as the setting of the grace period is reasonable for the client and CPWave does not definitively refuse subsequent performance. Once these conditions have been imposed, the client may withdraw from the contract or reduce the remuneration after the fruitless expiry of the grace period. Following a fruitless expiry of the grace period, the client shall declare, within a reasonable period, whether it will continue to demand subsequent performance or whether it intends to assert its aforementioned rights. However, no right of withdrawal shall exist in the event of an insignificant defect.
- 12.8 Claims of the client for damages or reimbursement of fruitless costs shall exist only in accordance with clause 13, otherwise such claims are excluded.
- 12.9 The client shall provide CPWave with all documents, information, IT facilities, rooms and telecommunication channels required to carry out the error analysis and troubleshooting and shall grant CPWave remote access to its IT systems. CPWave reserves the

right to request the client's personnel to install program components with the relevant rectifications (e.g. bug fix, update, maintenance release/patch, etc.) that have been sent to CPWave. The client's employees will provide CPWave with comprehensive information - verbally where appropriate - to identify defects.

- 12.10 Should a breach of obligation arise which does not constitute a defect, the client may only withdraw from or terminate the contract if CPWave is liable for such breach.

### **13. Liability**

- 13.1 Unless otherwise stipulated in these GTC including the following provisions, CPWave shall be liable for a breach of contractual and non-contractual obligations in accordance with the relevant statutory provisions.
- 13.2 CPWave shall be liable for damages in the event of intent and gross negligence, irrespective of the legal grounds. CPWave shall also be liable in the event of simple negligence, for damages arising from injury to life, limb or health and for damages arising from the breach of a material contractual obligation (an obligation, the fulfillment of which is a prerequisite for the correct performance of the contract and on the observance of which the contractual partner regularly relies and may rely and the breach of which jeopardizes the achievement of the purpose of the contract); in this case, however, CPWave's liability shall be limited to compensation for the foreseeable, typically occurring damage. However, this limitation of liability shall not apply if CPWave has fraudulently concealed a defect or has assumed a guarantee for the quality of the services. The same applies to the client's claims under the Product Liability Act.
- 13.3 To the extent that CPWave's liability under clause 13.2 above is limited to the foreseeable, typically occurring damage, CPWave's liability shall be limited to 25% per claim and, irrespective of the number of claims, to a maximum of 50% of the respective order amount within a 12-month period. In the event of a continuing obligation, e.g. lease of standard software, the contract amount shall be calculated based on the remuneration paid by the client to CPWave in the last twelve (12) months prior to the occurrence of the respective damage event ("annual remuneration"); for all damage events occurring within the first twelve (12) months after the entry into force of the respective contract, the annual remuneration shall be calculated based on the average monthly remuneration (average monthly remuneration x 12). If a significantly higher risk of damage is foreseeable, CPWave will offer the client a higher amount of liability, in which case CPWave reserves the right to adjust the respective remuneration accordingly.
- 13.4 The client's obligation to prevent and mitigate damage, in particular in the event of data or file loss, shall remain unaffected. The loss of data is not eligible for compensation unless backup copies have been created at regular intervals, at least once daily, on separate data carriers.
- 13.5 Insofar as CPWave supplies the client with software to support accounting business processes (e.g. ERP software, accounting software, etc.), the correct and legally-compliant use of this software is the sole responsibility of the client; this relates in particular to any tax and social security codes to be made in the software by the client on its own responsibility.

### **14. Third-party property rights, defects of title**

- 14.1 Should a third party assert justified claims against the client who is using the software in accordance with the contract, owing to an infringement of industrial property rights, CPWave shall, at its discretion either incur the cost for procuring the necessary usage

rights to the infringed rights for the client or modify the software such that the software no longer infringes the industrial property rights but continues to comply with the contractual agreements. If CPWave cannot do this, the client may claim the statutory rights of withdrawal or mitigation.

14.2 The above obligation shall only apply to CPWave to the extent that the client immediately notifies CPWave in writing of the claims asserted by the third party, does not acknowledge an infringement, and CPWave reserves the right to take all defensive measures and to enter into settlement negotiations. Should the client cease to use the software to mitigate damages or for other reasons, it shall be obliged to specify to the third party that this does not constitute any acknowledgment of an infringement of property rights.

14.3 Claims of the client are also excluded insofar as the client is responsible for the infringement of property rights. This shall apply in particular if the infringement of property rights arises from the specific stipulations of the client, by a use of the software that was not foreseeable by CPWave or by changes made to the software by the client without the consent of CPWave.

#### **15. Limitation period**

15.1 The mutual claims of the contracting parties shall become statute-barred in accordance with the statutory provisions, unless otherwise stipulated below.

15.2 The limitation period for warranty claims arising from material defects and defects of title for goods is one (1) year from delivery or transfer and, insofar as the IT services are the subject of an acceptance within the meaning of § 640 BGB (German Civil Code), one (1) year from acceptance. The curtailing of the limitation period does not apply in the event of intent on the part of CPWave, fraudulent concealment of the defect and personal injury.

15.3 For defects in rectification services, circumventions or new deliveries by way of subsequent performance, the limitation period shall also end at the date determined in clause 15.2 above. However, if CPWave, in agreement with the client, examines the existence of a defect or provides subsequent performance, the limitation period shall be suspended until CPWave notifies the client of the result of the examination or declares subsequent performance to be terminated or refuses subsequent performance. The limitation period shall commence at the earliest three (3) months after the end of the suspension.

#### **16. Confidentiality, data protection**

16.1 CPWave and the client shall maintain confidential any trade and business secrets and any other confidential information and documents of the other party that are worthy of protection and that have been obtained in connection with the performance of the order and which are marked as "confidential" or similar, or which are obviously of a confidential nature. The parties shall not use such information and documents for their own or third-party purposes, but only for the performance of tasks within the scope of the provision of services. They will also impose a corresponding obligation on any employees and third parties assigned to perform duties on their behalf. The confidentiality obligation does not apply to information that is or was generally known or was developed independently and without the use of confidential information of another party or was acquired from third parties who were not obliged to maintain confidentiality or which was already in the possession of the party with no obligation to maintain confidentiality. Further legal obligations to maintain secrecy remain unaffected.

16.2 Both CPWave and the client will comply with the relevant regulations on data protection and the maintenance of professional and banking secrecy and will only use employees who are appropriately committed to perform the services.

16.3 Insofar as CPWave collects, processes or uses personal data on behalf of the client in the context of order processing, CPWave shall offer to conclude a corresponding contract for order processing. The contract for commissioned processing will then become an integral part of these GTC.

Should the client conclude this contract as the responsible body within the meaning of the currently valid data protection regulations, the contract used shall be available for download by the client on the homepage [www.cpwave.de](http://www.cpwave.de). The client shall send this contract signed in duplicate to CPWave. CPWave will return a countersigned copy of the contract to the client.

16.4 Order processing is carried out using automated data processing. Upon conclusion of the contract, the client shall give CPWave express authorization to process the data disclosed during the contractual relationship within the scope of the purpose of the contractual relationship, insofar as this is necessary for the execution or processing of such contract. The client acknowledges that CPWave will store data from the contractual relationship for the purpose of data processing and may disclose the data to third parties (e.g. insurance companies) to the extent necessary for the performance of the contract.

#### **17. Lease conditions and the provision of standard software**

17.1 Insofar as CPWave leases standard software to the client to use, the above provisions for the transfer of standard software under the law of sale, in particular the provisions in nos. 10.3, 12.3, 12.6, 12.8, 12.9 and 12.10, shall apply accordingly. In addition, the following regulations apply:

17.2 The client may not transmit to third parties a copy of the software provided to it to use on a lease basis or any backup copies, if any, that have been created. In particular, the client may not sell, lend, rent or otherwise sub-license the software or publicly reproduce or make the software available.

17.3 Unless otherwise stipulated in these GTC, the statutory warranty provisions of rental law (§§ 536 to 541 BGB) shall apply accordingly should defects occur in the software.

17.4 The client may only assert its statutory rights pursuant to §§ 536, 536a BGB due to a defect in the software if the rectification of such defect has failed. The rectification or replacement delivery shall only be deemed to have failed if CPWave has been given sufficient opportunity to rectify the defect to provide a replacement delivery without the desired success being achieved, if the rectification or replacement delivery is impossible, if it is refused or unreasonably delayed by CPWave or if it is unreasonable for other reasons.

17.5 CPWave's strict liability for damages (§ 536a BGB) for defects in the software existing at the time of conclusion of the contract is excluded.

17.6 Termination by the client pursuant to § 543 BGB (German Civil Code) for a failure to provide use in accordance with the contract is only permissible after CPWave has been given sufficient opportunity to remedy the defect and this has failed.

17.7 A fixed minimum lease period of twelve (12) months applies to the use of the software. The lease relationship may be terminated by either party with three (3) months' notice to the end of the calendar quarter of each year after expiry of the minimum lease period. Termination must be issued in writing. The right to termi-

nate the lease agreement for good cause (§ 314 BGB) remains unaffected.

17.8 Furthermore, the lease agreement may be terminated for good cause in writing by either party without notice. Good cause entitling CPWave to terminate the contract exists in particular if the client is in arrears with the payment of two (2) or more current lease payments or infringes the rights to use the software by using the software beyond the scope permitted under this contract and fails to remedy the infringement within a reasonable period following a warning from CPWave.

17.9 All program copies of the software, if any, existing at the customer's premises shall be deleted by the customer immediately after termination of the lease; the data carriers, if any, including the backup copies, shall be destroyed. The client will confirm such deletion and destruction in writing upon CPWave's request.

#### **18. Assumption of the contract by third parties with a software lease**

Insofar as standard software of a third party is leased by CPWave to the client, the client agrees upon conclusion of the lease agreement that the agreement may, upon request, be transferred by CPWave to the corresponding third party by a transfer of the agreement. CPWave shall inform the client in a timely manner that a transfer will take place.

#### **19. Choice of law and place of jurisdiction**

19.1 These GTC and all legal relationships between CPWave and the client shall be governed by the laws of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).

19.2 The exclusive place of jurisdiction for all disputes arising from or in connection with the contractual relationship is Hamburg, unless another place of jurisdiction is mandated by law. However, CPWave is also entitled to bring an action at the client's general place of jurisdiction.

#### **20. Final provisions**

20.1 The place of performance for all services and deliveries shall be the registered office of CPWave.

20.2 The assignment of rights of the client arising from the respective contractual relationships is excluded without the prior consent of CPWave; the assignment of monetary claims within the scope of § 354a of the German Commercial Code (HGB) shall remain unaffected.

20.3 CPWave may use the client's company and brand as a reference for marketing purposes.

20.4. Should any individual provisions of these GTC be or become invalid or unenforceable, this shall not affect the validity of the remaining provisions. A new provision shall be mutually agreed which comes as close as possible to the economic purpose of the invalid provision to replace the invalid provision. The same applies should these GTC contain loopholes.