

**Special Terms and Conditions "dbc" of
CP Wave GmbH (CP Wave) for the provision of
data center services –
"dbc deutschlands business-cloud" for
dbc Smart IT SAP**

1. General, scope of application

The following special terms and conditions (STC) for the provision of data center services "dbc deutschlands business-cloud" ("dbc") ("**STC dbc**") shall apply to all the contractual relationships between CP Wave and the respective client for the provision of data center services ("**DC services**") and shall be deemed an integral part of the contract unless otherwise agreed in writing in an individual agreement between CP Wave and the client. These STC supplement the General Terms and Conditions of CP Wave ("**GTC**"), which form part of the contract in addition to these STC dbc.

2. Scope of services, subcontractors

2.1 Unless otherwise agreed, the data center services provided by CP Wave shall include the following services:

- Server use limited in time to the term of the data center user agreement (server hosting) to operate the respective software with an average availability of 99% over one year during the following usage periods: Mon – Fri from 5.00 am – 12.00 am (midnight), Sat from 7.00 am – 11.00 pm and Sun from 7.00 am – 10.00 pm; for clarification: CP Wave is not liable for the availability of software; the decisive service transfer and measurement point for achieving the agreed availability is the router output of the data center;
- Daily backup (if ordered) and
- Encrypted access, emergency power supply.

CP Wave will only offer additional services against separate remuneration.

2.2 CP Wave reserves the right to use subcontractors and vicarious agents to provide the data center services. For data center services, CP Wave cooperates with Capeletti & Per Gesellschaft für Datentechnik mbH (C&P), which provides and administers the data center services of "dbc - deutschlands business-cloud".

3. Updates

Updates of all components of the SAP Business One software and subsequent products are carried out centrally and based on CP Wave's internal specifications. It is not possible to stipulate individual special provisions regarding the timing or scope of the updates.

CP Wave will inform the client of the scheduled timing and scope of such updates in a reasonably timely manner.

The implementation of the described software updates is charged at a fee of €150.00 each. The calculation of the update fee is limited to twice a year, irrespective of the effective frequency.

4. Performance defect

4.1 The client will immediately notify CP Wave of any performance defect. C&P will commence an analysis of any performance defects and an investigation into the cause of the performance defect immediately upon notification of such by CP Wave, and will take all reasonable steps necessary to prevent a recurrence of the performance defect in the future.

4.2 CP Wave will notify client of the status and outcome of the remedy of such defect. If a defect in performance cannot be

remedied within a reasonable period of time, C&P will endeavor to provide a workaround.

4.3 Any technical data, specifications, service descriptions and performance assurances included in the contractual documents are to be understood exclusively as quality specifications within the meaning of § 434 (1) sentence 1 BGB (German Civil Code) / § 633 (2) sentence 1 BGB and not as an independent guarantee or a guarantee of quality or continuity. Independent guarantee assurances, quality or continuity guarantees in the legal sense only exist if they are expressly designated in writing as "independent guarantee", "quality guarantee" or "continuity guarantee".

4.4 To the extent that rental law applies to CP Wave's services, the following shall apply in addition: Termination by the client pursuant to § 543 BGB for failure to provide use in accordance with the contract is only permitted after CP Wave has been given sufficient opportunity to remedy the defect and the attempt to do so has failed. CP Wave's liability without fault for defects already existing at the time of the conclusion of the contract pursuant to § 536a (1) BGB is expressly excluded. Furthermore, the client may only assert its statutory rights pursuant to § 536, 536a BGB due to a performance defect if the remedy for such defect has failed. The rectification of defects shall only be deemed to have failed if CP Wave has been given a sufficient opportunity to remedy the defect without achieving the desired outcome, if the remedy of defects is impossible, if it is refused or unreasonably delayed by CP Wave or if it is unreasonable on other grounds. The defect shall be considered rectified if CP Wave demonstrates ways of circumventing the performance defect to the client using a workaround, provided that the use of the contractual service is only insignificantly impaired by such workaround.

5. Cooperation and provision obligations of the client

5.1 The client shall be liable for providing the connections (e.g. Wi-Fi/LAN), network components and other necessary technical infrastructure required to access the data center up to the agreed service transfer point (router output of the data center).

5.2 The client shall ensure that the usage and access authorizations and identification and authentication safeguards assigned to its employees are protected against access by third parties and are not disclosed to unauthorized users.

6. Data protection

6.1 Insofar as CP Wave collects, processes or uses personal data on behalf of the client in the context of commissioned processing, CP Wave shall be prepared to conclude the relevant contract such processing. The contract for commissioned processing will then become an integral part of these GTC. Should the client, as the responsible entity, decide to enter into this contract, it will request CP Wave to send the contract to the client. The client will then sign and return the contract to CP Wave.

6.2 To ensure the security and confidentiality of data that is subject to data protection, CP Wave will implement and maintain the necessary technical and organizational measures, in particular those established by the relevant applicable legal framework.

6.3 Data shall be disclosed exclusively to the cooperation partner C&P and solely for the purpose of commissioned processing and the operation of the data center service for the client. Data will not be disclosed to other bodies.

6.4 C&P will appoint a data protection officer and ensure that C&P and CP Wave personnel carrying out duties relating to the data center services (i) are instructed regarding the importance of data protection, the obligations arising from da-

ta protection laws and special data protection provisions, and that such personnel are bound in writing and (ii) process data subject to data protection only in accordance with the relevant legal requirements.

- 6.5 In the context of the termination of data center contracts, C&P will release to the client the data collected, processed and/or used for the client in a standard and common format on electronic data carriers and/or make it available online, insofar as the client has requested CP Wave to do so in writing in a timely manner prior to the end of the contract.
- 6.6 C&P and CP Wave shall grant the client's company data protection officer access to the client's own data processing facilities and to the data center of the respective subcontractor and to enable the client to verify compliance with the provisions of the GDPR and other relevant data protection regulations by C&P and any subcontractors of C&P. The client shall announce the performance of tests with a lead time of four weeks, perform tests only during the general business hours of C&P or the respective subcontractor and take into account C&P's interest in a seamless operational process during the testing. In particular, the client shall also take into account the security and confidentiality interests of other clients or subcontractors of C&P. A further condition is that the client observes the IT security regulations of C&P and the subcontractors used at the time of the audit (e.g. conclusion of confidentiality agreements, assistance to the auditors by the personnel of C&P or the respective subcontractor). In addition, the client will only use auditors who are not competitors of C&P and who are also qualified to perform the audits.

7. Term of contract, termination

- 7.1 The dbc Smart IT SAP user agreement is concluded for an indefinite period. The minimum contractual period is 12 months unless otherwise agreed. The parties may terminate the dbc Smart IT SAP license agreement no earlier than at the end of the minimum contract term or at the end of each additional year with a notice period of three (3) months. The contract shall be renewed for a further year in each case unless it has been terminated in due time. Notice of termination must be issued in writing. The right to terminate the data center usage agreement for good cause (§ 314 BGB) remains unaffected.
- 7.2 Good cause entitling CP Wave to terminate the data center usage agreement shall be deemed to exist in particular:
- If the client is in default of payment in whole or in part for more than two (2) months;
 - If the client breaches material contractual obligations on several occasions or through gross negligence and fails to remedy the breach of contract despite CP Wave's written request to do so.
- 7.3 In the event of termination for good cause by CP Wave, CP Wave shall retain the claim to the remuneration incurred up to the date of termination and may also demand a claim that is immediately due for liquidated damages in the amount of the remuneration incurred up to the date on which the client could have terminated the contract for the first time in an ordinary termination. The client reserves the right to demonstrate that CP Wave has incurred lower damages.

8. Prices and terms of payment

- 8.1 The remuneration for the dbc services is specified in the respective offer from CP Wave. All the prices indicated therein exclude the statutory rate of value added tax.
- 8.2 Unless otherwise agreed in the CP Wave offer, the remuneration payable for the data center services shall be payable monthly in advance and shall be due for payment eight (8)

days after the invoice date. Insofar as this has been agreed with the client, the respective remuneration shall be debited from the client's account at the beginning of each month.

- 8.3 CP Wave is entitled to adjust the remuneration with a notice period of two (2) months at the beginning of a quarter, taking reasonable account of the general trend in costs and prices. However, any cost adjustments are permitted no earlier than twelve (12) months after conclusion of the dbc Smart IT SAP user agreement and may not exceed the remuneration of the preceding 12-month period by more than 10%. Insofar as the remuneration is increased by over 7.5% of the preceding 12-month period, the client may terminate the dbc Smart IT SAP user agreement in writing with a notice period of three (3) months to the date of the increase.
- 8.4 CPWave will conclude main contracts with the client, which will be confirmed by the signature of both parties. CP Wave will only confirm subsequent (generally smaller) quantity adjustments in writing and will dispense with the signature process on the part of the client. The client acknowledges the extension of the contract through the respective payments.
- 8.5 Quantity-based billing: CP Wave may retrieve billing-related data within the client environment through a manual or automated process. This data may lead to quantity-based billing in accordance with the price list. The following applies to user licenses: The highest number of users in the operating system or in a user software product is the basis for the settlement of all license products that require reporting. If 15 users are registered in a user software product, C&P is obliged to report these users to e.g. MICROSOFT, CITRIX and/or other licensors. These license costs are charged to the client based on quantity. The contractual minimum number of quantity and users must not be reduced.

9. Final provisions

- 9.1 The assignment of the client's rights arising from the contractual relationship with CP Wave is only permitted with CP Wave's prior consent; this shall not affect the assignment of monetary claims within the scope of § 354a HGB (German Commercial Code).
- 9.2 Should any individual provisions of this STC dbc 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 any loopholes.
- 9.3 Amendments and supplements to this STC dbc must be issued in writing. This also applies to changes in the written form requirement. Ancillary agreements and special arrangements must be confirmed in writing by CP Wave.
- 9.4 This contract and the legal relationship between the parties 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). The place of jurisdiction for both parties is Hamburg.