

Prevailing Language

In the event of any discrepancies or inconsistencies, the German version shall prevail.

Any translations are provided solely for convenience.

General Terms and Conditions for Deliveries and Services of Fischer, Knoblauch & Co. Medienproduktionsgesellschaft mbH & Co. KGaA

Version: 01/2026

1. Scope of Application

1.1 These General Terms and Conditions for Deliveries and Services (the "GTC") apply to all business transactions conducted by Fischer, Knoblauch & Co. Medienproduktionsgesellschaft mbH & Co. KGaA ("FKC") with entrepreneurs within the meaning of Section 14 of the German Civil Code (BGB). All deliveries under contracts of sale, contracts for work and materials within the meaning of Section 651 BGB, as well as all works and services — in particular in connection with the planning, creation, provision, modification or adaptation, installation and implementation of e-learning programmes and solutions, as well as other applications and work results, consultancy services and training — shall be performed exclusively on the basis of these GTC.

1.2 These GTC shall also apply to all future business relationships between the parties, even if they are not expressly agreed upon again.

1.3 The applicability of the customer's terms and conditions is hereby expressly excluded. Such exclusion shall not require repetition following receipt of the customer's terms and conditions by FKC or following any reference by the customer to its own terms. In particular, the performance of services by FKC or the acceptance of services shall not constitute acceptance of such terms and conditions under any circumstances.

2. Formation of Contract; Offer Documents

2.1 Unless expressly stated otherwise in any offer issued by FKC, all offers are subject to change.

2.2 The customer's order constitutes a binding offer to enter a contract.

FKC may accept this offer within ten (10) days pursuant to Section 145 BGB either by issuing an order confirmation in text form or by commencing performance of the contractual services in whole or in part.

Upon acceptance, a contract shall be formed between the parties (the "Individual Contract").

2.3 Employees of FKC involved in sales, distribution or service are not authorised or empowered to enter into oral ancillary agreements or to give oral assurances that go beyond the content of an offer, an order confirmation issued by FKC, or the Individual Contract.

2.4 All ownership rights and copyrights in documents and materials provided to the customer in connection with the conclusion of an Individual Contract (including, without limitation, concepts, specifications and demonstration versions) shall remain with FKC. Such documents and materials may not be disclosed to third parties without FKC's prior written consent. This applies irrespective of whether such documents and materials are designated as confidential.

3. Subject Matter of the Contract

3.1 Planning, Creation, Provision, Modification or Adaptation, Installation and Implementation of E-Learning Programmes and Solutions and Other Applications and Work Results

Unless otherwise agreed in the relevant Individual Contract, the following shall apply to the services performed by FKC:

3.1.1 Unless expressly agreed otherwise in the Individual Contract, the customer shall be solely responsible for preparing the *Lastenheft (specification of requirements)*, which sets out in full the customer's requirements for the deliveries and services. On this basis, FKC shall prepare the *Pflichtenheft* (functional specification) as the central service description, defining the technical requirements for the e-learning programmes and solutions and other applications and work results to be created, or for the respective modification or adaptation. Where agreed in an Individual Contract, FKC shall advise the customer in relation to the preparation of the *Lastenheft (specification of requirements)*. The parties may agree in the Individual Contract that the *Pflichtenheft* (functional specification) shall be prepared jointly.

3.1.2 The service description referred to above constitutes the final agreed upon specification between the parties. It contains all services to be performed by FKC and fully and accurately defines the scope of services. It shall be attached to the respective Individual Contract and shall form an integral part thereof. Any changes or adaptations to the specifications contained in the service description shall be subject to the change request provisions set out in Clause 11.

3.1.3 The software shall be capable of operation only on the hardware and system environment specified in the respective Individual Contract and/or the associated service description.

3.1.4 The software developed by FKC shall be provided to the customer in object code in executable form. The source code shall not be provided. The Individual Contract shall specify whether the software is supplied on a suitable

data storage medium (such as CD or DVD) or by way of remote data transmission (download), and whether user documentation relating to the software or to any modifications or adaptations thereof is provided. FKC shall grant the customer rights of use in respect of the software and, where applicable, the user documentation in accordance with the licence provisions set out in Clause 4 of these GTC.

3.1.5 The provided user documentation shall enable the proper operation of the software as agreed. The Individual Contract shall specify the language, format and content of the user documentation. The customer shall have no entitlement to any characteristics or qualities of the user documentation beyond those agreed.

3.2 Provision of Other Services

Additional services, including the establishment of technical operational readiness, installation and deployment of the software within the customer's network, induction, consultancy and support services, or training services, shall form part of the contract only if expressly agreed in writing in the Individual Contract.

3.3 Learning Content of the E-Learning Applications

3.3.1 Unless otherwise agreed in the Individual Contract or in the underlying service description, the learning content of the applications shall generally be provided by the customer or by a third party commissioned by the customer who possesses the necessary subject-matter expertise. As a rule, FKC shall not review the accuracy or completeness of the content provided by the customer.

3.3.2 Where, by way of exception, learning content is contributed by FKC, FKC shall apply only the level of care customarily to be expected when selecting such content.

3.4 No Software Maintenance or Hosting Services

Software maintenance or hosting services shall in no event form part of an Individual Contract concluded based on these GTC. Such services may, where applicable, be agreed in a legally separate software maintenance agreement or hosting agreement between the parties, which shall also regulate the duration of the services.

4. Grant of Rights and Restrictions on Use

4.1 FKC Software and Work Results

4.1.1

All software, databases, documentation, plans and concepts, graphics and layouts, WBT interface designs and comparable materials, as well as any other work results (hereinafter collectively referred to as the "Software" or "Work Results") that are created by FKC within the scope of the respective individual contract are produced by personnel engaged by FKC in the performance of their duties and in accordance with FKC's instructions for the benefit of and on behalf of FKC.

Unless expressly agreed otherwise in the respective individual contract, all industrial property rights as well as all copyright usage and exploitation rights in and to such Work Results shall vest exclusively in FKC.

Where FKC creates databases, FKC shall be deemed the manufacturer of the database within the meaning of Section 87a of the German Copyright Act (UrhG).

4.1.2

Unless otherwise agreed in the respective Individual Contract, FKC grants the customer a simple (non-exclusive), perpetual right of use in respect of the software created or software adaptations provided in object code form, as well as other Work Results created by FKC in performance of its obligations under the respective Individual Contract, in accordance with Clauses 4.1.3 to 4.1.10 below (the "Permitted Use").

4.1.3

The customer may use the Software and the Work Results solely for its own purposes and for the conduct of its internal business processes. Use by companies affiliated with the customer within the meaning of Section 15 of the German Stock Corporation Act (AktG) ("Group Companies") is only permitted when expressly agreed upon in writing in the Individual Contract. The customer shall not be entitled to publicly reproduce the Software, whether by wire or wirelessly, or to rent, lease or otherwise make it temporarily available to third parties (in particular by way of application service providing, software as a service (SaaS) or data centre operations for third parties), unless expressly agreed in the Individual Contract or approved in advance in writing by FKC. Employees of the customer who require access to the Software in order to fulfil their contractual duties shall not be deemed third parties.

4.1.4

Copies of the Software may be made only insofar as this is necessary for the Permitted Use. The customer shall be entitled to create one backup copy only where this is necessary to safeguard future use. In addition, the customer may reproduce the Software as part of proper and regular data backup. The provided user documentation may be reproduced only to the extent necessary for the Permitted Use of the Software.

4.1.5

Pursuant to Section 69d(1) UrhG, the customer shall be entitled to make modifications, edits or adaptations of the Software within the meaning of Section 69c no. 2 UrhG only where this is necessary for the Permitted Use of the Software, including the correction of software errors. Prior to correcting errors itself or through a third party engaged by it, the customer shall first give FKC the opportunity to remedy such errors. Where FKC remedies errors by providing an update or a new version of the Software, the provisions of this Clause 4.1 shall apply accordingly.

4.1.6

Reproduction or decompilation of the Software for the purpose of achieving interoperability with other programs shall be permitted within the scope of Section 69e UrhG and subject to the conditions set out therein, provided that FKC has failed to provide the necessary data within a reasonable period following a written request. Any information obtained through decompilation or provided by FKC shall be treated as confidential in accordance with Clause 16 paragraphs 1 and 2.

4.1.7

The customer may permanently transfer or sell the Software to a third party on a one-time basis provided that the following conditions are met in full:

- (i) all original copies of the Software and any user documentation provided are transferred, the customer ceases all use and deletes all copies made by it;
- (ii) FKC is notified in writing without undue delay of the name and address of the third party; and
- (iii) the third party is contractually obliged in writing to comply with the usage provisions of this contract.

4.1.8

Any use exceeding the contractually agreed scope shall be prohibited and shall require an additional grant of rights.

4.1.9

Copyright notices, serial numbers and other identifiers must not be removed from or altered on the Software. Any copies of the Software or user documentation made by the customer shall be clearly marked as such and shall bear the manufacturer's copyright notice.

4.1.10

In respect of licenced products, the contract shall commence upon signature by both parties and shall be concluded for the term specified in the offer. Where no term is specified, the contract shall be concluded for a term of three (3) years. The term shall automatically renew for a further twelve (12) months unless terminated by either party in writing at least three (3) months prior to expiry of the agreed term.

4.2 Third-Party Software

With regard to the provision of software of third parties (i.e. software not developed by FKC), the following shall apply:

4.2.1

In respect of third-party software provided by FKC, the customer shall be granted a perpetual, simple (non-exclusive) right of use for Permitted Use in accordance with the licence terms of the relevant third party as referenced in the applicable Individual Contract. Where and to the extent that open-source software is provided to the customer, the terms of use applicable to such open-source software, as referenced in the relevant Individual Contract, shall apply in addition to and with priority over the provisions of this Clause.

4.2.2

In all other respects, the provisions of Clause 4.1 shall apply accordingly; however, in the event of any conflict, the licence terms of the respective third-party software manufacturer shall prevail.

5. Performance Period; Force Majeure; Passing of Risk; Transport; Partial Services

5.1

Delivery and performance periods shall be agreed in the Individual Contract.

5.2

The agreement of fixed dates shall in all cases require written agreement. Any such dates must be expressly and literally designated as a "fixed date".

5.3

Where no specific agreement has been made regarding the performance period, FKC shall be entitled to determine the performance period in a binding manner at its reasonable discretion. In doing so, FKC shall take into account the workload required to perform the contractual services, the capacities available to FKC taking into consideration its utilisation by other orders, as well as the legitimate interests of the customer that have been communicated to FKC.

5.4

Where FKC is prevented from performing its obligations due to an unforeseeable and extraordinary event which it cannot avert even by exercising reasonable care, in particular in cases of natural disasters, disruptions to energy supply or operations, official intervention, industrial action or other cases of force majeure, agreed delivery and performance periods shall be extended by the duration of the impediment plus a reasonable start-up period after the impediment has ceased. If, in such cases, performance becomes impossible for FKC, FKC shall be released from its contractual performance obligations.

6. Fees

6.1

The fees for the contractual deliveries and services to be provided by FKC, as well as the applicable payment terms, including any payment milestones, shall be set out in the respective Individual Contract.

6.2

All fees quoted by FKC are exclusive of the applicable statutory value added tax (VAT).

6.3

Unless otherwise agreed in the Individual Contract, the agreed fees shall be due and payable within fourteen (14) days of receipt of the invoice and, in the case of deliveries, following delivery of the delivered items to the customer, in the case of contracts for work following acceptance by the customer, and in the case of services following their performance.

7. Retention of Title and Retention of Rights

7.1

FKC shall retain title to the contractual items delivered until all claims arising from the existing business relationship between FKC and the customer, whether present or future, have been fully satisfied (retention of title).

7.2

The customer shall be entitled to resell the goods subject to retention of title only in the ordinary course of business. The customer hereby assigns to FKC, by way of security, all claims against third parties arising from such resale or from any other legal ground, including all ancillary rights, also insofar as the goods have been processed or incorporated. In the latter case, the assignment shall cover the portion of the value corresponding to the ratio of the retained goods to the overall item.

7.3

At the customer's request, FKC shall release securities to the extent that their value exceeds the claims to be secured by more than twenty percent (20%).

7.4

Rights of use in respect of software or other Work Results shall pass to the customer only upon full payment of the agreed fees. Until such payment has been made in full, the customer shall be granted only a provisional contractual right of use for the purpose of testing the software in order to fulfil its inspection and notification obligations or – in the case of contracts for work or where acceptance is agreed – its obligation to declare acceptance. Clause 10.6 below (declaration of acceptance) shall remain unaffected.

8. Customer's Obligations to Cooperate

8.1

The customer shall be obliged to cooperate free of charge insofar as this is necessary and reasonable for the performance of the services owed by FKC.

8.2

In particular, the customer shall provide the following cooperation services:

8.2.1

The customer shall be obliged to back up its data properly and on a regular basis. This applies in particular prior to the commencement of any services owed by FKC that involve measures relevant to the data inventory, such as installation services. The customer shall also remain obliged to carry out regular data backups after completion of such services.

8.2.2

The customer shall designate in writing a responsible contact person and, where applicable, a deputy, who shall possess all decision-making authority and powers required for the performance of the Individual Contract.

8.2.3

In the event of error messages, the customer shall carefully observe the symptoms that have occurred and shall notify FKC of the error, providing information useful for error correction and submitting the relevant documentation.

8.2.4

Within the scope of its possibilities, the customer shall support FKC to the best of its ability in identifying the cause of the error and shall, where necessary, instruct its employees and external service providers to cooperate with FKC's employees or with subcontractors engaged by FKC.

8.2.5

The customer shall grant employees and subcontractors engaged by FKC access to its infrastructure insofar as this is necessary for the performance of the services or for the purpose of remedying defects by FKC.

8.2.6

The customer shall provide the appropriate system environment, in particular hardware and operating system software, as required under the service description of the Individual Contract for the operability of the e-learning programmes provided.

8.2.7

Where FKC obtains access to personal data in the course of performing the services agreed under the Individual Contract, FKC shall be obliged to comply with the applicable data protection regulations. If access by FKC to personal data cannot be excluded, the customer shall conclude a written data processing agreement with FKC in accordance with Section 11 of the German Federal Data Protection Act (BDSG), or shall ensure that all necessary data protection consents of the data subjects required at the time of performance

are in place, enabling FKC to fulfil its contractual obligations without violating data protection regulations.

8.2.8

The customer shall provide information regarding its organisation insofar as such information is relevant to the performance of the contract.

8.2.9

The customer shall secure the know-how as well as the industrial property rights and copyrights of FKC and, where applicable, of third-party software manufacturers in relation to the customer's employees and third parties by appropriate measures and shall protect them from access by unauthorised third parties.

8.2.10

The customer shall provide support in the handling of insurance claims.

8.2.11

The customer shall provide support in the event of unlawful attacks by third parties.

8.2.12

The customer shall comply with the instructions for operating the Software contained in the user documentation and/or product description.

8.2.13

At FKC's request, the customer shall enable FKC to verify whether the customer complies with the provisions of this contract relating to the permitted use of the Software. For this purpose, the customer shall provide information to FKC and grant access to its business premises as well as inspection of all relevant documents and files. The customer may require that such verification be carried out only by a member of the tax advisory or business advisory professions who is subject to professional confidentiality obligations, or by an independent expert who is subject to confidentiality obligations, and that such person be contractually obliged towards the customer to disclose information obtained in the course of the verification to FKC only insofar as this is necessary for the enforcement of claims relating to licence infringements. The verification shall be carried out during the customer's usual business hours at its business premises, and due consideration shall be given, insofar as possible, to ensuring that the customer's business operations are not disrupted or are disrupted only to a reasonable extent. Verifications shall, as a rule, not be carried out more frequently than once per year.

8.3

Any further specific cooperation obligations of the customer shall be set out, where applicable, in the Individual Contract.

8.4

If the customer breaches its cooperation obligations, FKC shall not be obliged to perform its services to the extent and for the duration that FKC is prevented from performing such services due to the customer's failure to cooperate. The performance periods specified in the Individual Contract shall be extended accordingly. FKC reserves the right to claim damages in such cases. To the extent that waiting times arise for FKC as a result, such waiting times shall, unless otherwise agreed in the Individual Contract, be remunerated in accordance with FKC's remuneration rates applicable at the time of conclusion of the contract.

9. Customer's Duty of Inspection and Notification of Defects

9.1

The assertion of rights and claims in respect of material defects pursuant to Clause 13 below in the case of deliveries governed by sales law or services pursuant to Section 651 of the German Civil Code (BGB) shall require that the customer has duly complied with its duties of inspection and notification of defects pursuant to Sections 377 and 381 paragraph 2 of the German Commercial Code (HGB). The customer shall notify defects in writing without undue delay after their discovery. In the event of a breach of the duty of inspection and notification, the subject matter shall be deemed approved with regard to the defect in question.

9.2

The customer's duties of inspection and notification shall not apply to services that are subject to acceptance in accordance with Clause 10.

10. Acceptance of Services under Contracts for Work

Where the services to be provided by FKC constitute services subject to acceptance under a contract for work, or where the parties have agreed in the Individual Contract that acceptance is required for the respective service, the following provisions shall apply:

10.1

FKC shall notify the customer of the readiness for acceptance of the services. Upon receipt of such notification, the customer shall carry out the acceptance review without undue delay.

10.2

If the acceptance review shows that the services conform to the service description and/or the *Pflichtenheft*, or that only insignificant defects exist, the customer shall promptly declare acceptance of the services to FKC in writing.

10.3

Acceptance shall be deemed to have taken place if the customer fails to accept the services within a reasonable period specified by FKC, despite being obliged to do so.

10.4

Any defects identified during acceptance shall be documented by the customer in a manner comprehensible to FKC and shall then be remedied by

FKC free of charge. In the event of defects preventing acceptance which render further acceptance impossible, such defects shall first be remedied and the services shall be resubmitted for acceptance after the defects have been remedied.

10.5

Unless otherwise agreed in the Individual Contract, rights shall be granted to the customer for productive use of the services only after acceptance of all services and after full payment of the agreed fees (cf. Clause 7.4 above regarding retention of rights).

11. Subsequent Changes to the Services (Change Request)

11.1

Any requests by the customer for changes to the agreed characteristics of the deliveries and services under the respective Individual Contract shall constitute a so-called change request ("Change Request").

11.2

At the customer's request, FKC shall examine the requested changes against remuneration based on time and effort and, where applicable, prepare an offer for the implementation of such changes. FKC shall have no obligation to prepare such an offer or to implement the requested changes.

11.3

It shall be at FKC's sole discretion whether to implement the requested changes against appropriate additional remuneration. Any agreed delivery and performance periods shall be extended in favour of FKC in accordance with the additional effort caused by the changes, including the examination effort pursuant to Clause 11.2 above.

12. No Assumption of Guarantees by FKC

12.1

The technical data, specifications, explanations of functions and possible uses, as well as any other information contained in product descriptions, service descriptions and user documentation, shall be understood solely as a description of the agreed characteristics and shall not constitute the assumption of an independent guarantee, a guarantee as to quality, or a durability guarantee by FKC.

12.2

Statements made by FKC regarding the subject matter of the services shall constitute independent guarantees, guarantees as to quality or durability guarantees in the legal sense only if they are made in writing by FKC's management and are expressly and literally designated as an "independent guarantee", a "quality guarantee" or a "durability guarantee".

13. Rights and Claims in the Event of Defects

For the customer's rights and claims in the event of defects in the case of deliveries governed by sales law and contracts for work, as well as services within the meaning of Section 651 of the German Civil Code (BGB), the statutory provisions shall apply unless otherwise provided in the following provisions of this Clause 13 and in Clause 15.

13.1

A defect shall exist if the software delivered, together with any data carriers supplied and/or the user documentation, or any other delivery of goods, or the software adaptation, or any other work result created by FKC under a contract for work within the meaning of Clause 4.1.1, does not have the contractually agreed characteristics.

13.2

In the event of defects, FKC shall, at the customer's request, provide subsequent performance at FKC's discretion either by remedying the defect (repair) or by delivering a defect-free item (replacement). Within a reasonable period, the customer may request a type of subsequent performance other than that chosen by FKC if the type chosen by FKC is unreasonable for the customer. The rights of FKC pursuant to Sections 635(3), 439(3), 275(2) and (3) of the German Civil Code (BGB) shall remain unaffected.

13.3

In the event of defects in the software, FKC shall be entitled to provide subsequent performance by delivering a new program version of the software, provided that it has the same functional scope as the contractual version of the software and that its adoption is reasonable for the customer and does not lead to significant disadvantages. Upon delivery of a new version, the customer shall be obliged to return or delete the defective software.

13.4

FKC shall be entitled to provide the customer with temporary workarounds and to remedy the defect at a later date by delivering the next new program version of the software released by FKC or, in the case of third-party software, by the respective manufacturer, provided that this is reasonable for the customer. Where FKC exercises this right, this shall be taken into account when determining the reasonableness of the period for subsequent performance pursuant to Clause 13.6 below.

13.5

The customer shall comply with any instructions provided by FKC in the course of subsequent performance, whether given verbally, in writing or electronically. FKC may provide such instructions in particular with regard to the installation of new program versions supplied for the purpose of subsequent performance and to the implementation of temporary workarounds.

13.6

If the customer sets FKC a reasonable period for subsequent performance and such subsequent performance fails within that period, the customer shall, subject to the statutory requirements, be entitled to further rights to a reduction of the fees or, at its option, to withdraw from the contract, and, in addition, where FKC is responsible for the defect, to claim damages in lieu of performance or reimbursement of futile expenses within the meaning of Section 284 of the German Civil Code (BGB), in each case in accordance with the liability limitations individually agreed in the Individual Contract or, in the absence of an individual agreement, in accordance with the provisions set out in Clause 15 below. However, the customer shall be entitled to withdraw from the contract and to claim damages in lieu of performance only in the event of material defects. The setting of a grace period, the declaration of withdrawal and the assertion of damages in lieu of performance shall require written form to be effective. The setting of a period by the customer shall be dispensable in the statutory cases pursuant to Sections 281(2), 323(2), 440 and 636 of the German Civil Code (BGB).

13.7

After the unsuccessful expiry of a period set for subsequent performance pursuant to Clause 13.6 above, the customer shall, within a reasonable period, declare to FKC in writing whether it continues to request subsequent performance or whether it asserts the further rights referred to in Clause 13.6 sentence 1. If the customer continues to request subsequent performance and FKC subsequently announces such subsequent performance without undue delay, the customer shall grant FKC a further reasonable period for this purpose, during which the customer shall not be entitled to assert the rights referred to in Clause 13.6 sentence 1. Clause 13.6 sentence 4 shall remain unaffected.

13.8

If, in the course of investigations in connection with defects reported by the customer, it transpires that no claims or rights of the customer against FKC exist under this Clause 13, FKC shall be entitled to charge the customer for the effort incurred in the course of such investigations in accordance with FKC's prices applicable at the relevant time, provided that the customer recognised or negligently failed to recognise that no defect existed and that the cause of the fault complained of lay within the customer's own sphere of responsibility.

13.9

FKC shall not be liable where modifications or changes to the Software have been made by the customer or by third parties, unless the customer proves that the defects that have occurred are not attributable thereto.

13.10

Claims of the customer arising from a defect shall become time-barred after twelve (12) months. In the case of deliveries governed by sales law and deliveries pursuant to Section 651 of the German Civil Code (BGB), the limitation period shall commence upon delivery; in the case of services under a contract for work or where acceptance is required, upon acceptance. In cases of intentional or grossly negligent breaches of duty, fraudulent concealment of a defect, third-party rights in rem within the meaning of Section 438(1) no. 1 BGB, personal injury, claims under the German Product Liability Act, and the assumption of a guarantee as to quality, the statutory limitation periods shall apply; in the case of an assumed guarantee, however, this shall apply only insofar as the respective guarantee agreement does not provide otherwise.

14. Rights and Claims in the Event of Defects of Title

14.1

The statutory provisions shall apply to the customer's rights and claims in the event of defects of title, unless otherwise provided in the following provisions of this Clause 14 and in Clause 15.

14.2

A defect of title shall exist if the customer is not effectively granted the rights required for the contractually agreed use of the deliveries and services.

14.3

If a third party asserts claims against the customer alleging an infringement of intellectual property rights by the Software, the customer shall:

- (i) notify FKC thereof in writing without undue delay,
- (ii) authorise FKC to conduct the legal defence and any settlement negotiations with the third party at FKC's own expense and, insofar as possible, at its sole discretion, and to undertake procedural actions only with FKC's consent, and
- (iii) provide FKC with all reasonable assistance and supply FKC with the necessary information, documents and powers of attorney available to the customer.

14.4

FKC shall not be liable for claims arising from infringements of rights that are based on:

- (i) the use of outdated or modified versions of the Software, where such infringement could have been avoided by using a current, unmodified version of the Software available to the customer from FKC or, in the case of third-party software, from the respective manufacturer, or
- (ii) the combination, operation or use of any software supplied under the Individual Contract with programs or data not supplied by FKC, where such infringement could have been avoided by using the Software without such

programs or data, or

- (iii) use of the Software not in accordance with the documentation.

14.5

In the event that third-party rights are infringed by the Software, FKC shall, at its discretion, provide subsequent performance by:

- (i) modifying the Software so that it no longer infringes rights, while providing an equivalent performance and maintaining the contractually agreed functional scope for the customer, or
- (ii) acquiring for the customer and granting a right of use sufficient for the purposes of the contract to continue using the Software, or
- (iii) replacing the Software with other software that is equivalent for the customer with regard to the agreed characteristics of the Software, provides equivalent performance and does not result in any significant disadvantages for the customer, or
- (iv) delivering a new program version whose contractually compliant use does not infringe third-party rights, which has the same functional scope as the previous version and whose adoption is reasonable for the customer and does not result in any significant disadvantages for the customer.

In the cases set out in sentence 1 alternatives (ii) to (iv), the customer shall be obliged to return or delete the Software affected by defects of title.

14.6

In all other respects, the provisions on defects in goods set out in Clauses 13.5, 13.6, 13.7, 13.9 and 13.10 shall apply accordingly in the event of defects of title.

15. Limitations of Liability

Provisions regarding limitations of liability shall generally be agreed individually between the parties in the respective Individual Contract. Where no individual agreement is made, FKC shall be liable – irrespective of the legal basis – for claims for damages or for reimbursement of futile expenses within the meaning of Section 284 of the German Civil Code (BGB) in accordance with the following provisions:

15.1

FKC shall be liable without limitation in accordance with the statutory provisions for damages resulting from injury to life, body or health, for damages caused by intent or gross negligence, as well as for damages falling within the scope of protection of a guarantee, a guarantee as to quality or a durability guarantee given by FKC, unless otherwise provided in the respective guarantee agreement.

15.2

For damages other than those referred to in Clause 15.1 which are based on a slightly negligent breach of material contractual obligations (cardinal obligations), FKC shall be liable only up to the amount of the contract-typical, foreseeable damage. Material contractual obligations within the meaning of sentence 1 are those obligations whose breach jeopardises the achievement of the purpose of the contract, whose fulfilment is essential for the proper performance of the contract, and on whose compliance the customer regularly relies.

15.3

In all other respects, any further liability for damages other than those referred to in Clause 15.1 which are based on a slightly negligent breach of obligations other than those referred to in Clause 15.2 shall be excluded.

15.4

Liability under the German Product Liability Act shall remain unaffected.

15.5

The above limitations of liability shall also apply with regard to the personal liability of FKC's employees, agents, legal representatives and corporate bodies.

15.6

If the customer breaches its obligation to perform proper data backups, FKC's liability for data loss shall, within the scope of the above provisions, be limited in amount to such damages as would have occurred even if the customer had carried out proper and regular data backups.

16. Confidentiality

16.1

The contracting parties undertake to treat as confidential, for an unlimited period of time, all information or items transmitted or made available to the other contracting party in the course of contract negotiations or performance of the contract which constitute business or trade secrets or are designated as confidential ("Confidential Information"), and to use such Confidential Information solely for the purposes of performing the contract. The contracting parties shall secure such Confidential Information in a manner that prevents access by unauthorised third parties. The customer's right to a one-time transfer of purchased items (cf. Clause 4.1.8) shall remain unaffected.

16.2

The customer shall make Confidential Information accessible only to those employees and other third parties who require access for the performance of their duties vis-à-vis the customer, and only within the scope of the rights of use granted to the customer under this contract. The customer shall instruct employees and third parties who are legitimately granted access to Confidential Information of their confidentiality obligations and shall oblige such persons in writing to maintain confidentiality and to use the Confidential

Information only to the extent specified above, unless such persons are already bound by confidentiality obligations to the same extent on the basis of another legal ground.

16.3

The above confidentiality obligations shall not apply to Confidential Information of a contracting party which:

- (i) was publicly known at the time of its disclosure, or
- (ii) becomes publicly known after its disclosure by the disclosing contracting party through no fault of the receiving contracting party, or
- (iii) was already lawfully in the possession of the receiving contracting party at the time of its disclosure by the disclosing contracting party, or
- (iv) is lawfully disclosed to the receiving contracting party after its disclosure by the disclosing contracting party by a third party without any restriction as to confidentiality or use, or
- (v) is developed independently by the receiving contracting party without use of the Confidential Information, or
- (vi) must be disclosed by the receiving contracting party pursuant to statutory provisions, provided that the receiving contracting party informs the disclosing contracting party thereof without undue delay prior to disclosure and supports the disclosing contracting party in preventing disclosure by taking legal remedies.

17. Data Protection

17.1

FKC shall comply with all applicable statutory data protection provisions, in particular where FKC is granted access to the customer's operations or to the customer's hardware and software. Prior to commencing their activities, FKC shall oblige its employees and other vicarious agents to comply with such provisions; in particular, FKC shall oblige them to observe data confidentiality in accordance with Section 5 of the German Federal Data Protection Act (BDSG).

17.2

In the performance of the Individual Contract, FKC does not intend to process or use personal data on behalf of the customer. Any transfer of personal data shall occur only in exceptional cases as a secondary consequence of the contractual performance by FKC. Personal data shall be processed by FKC in compliance with the applicable data protection provisions. Where access by FKC to personal data cannot be excluded, the customer shall conclude a written data processing agreement with FKC in accordance with Section 11 of the German Federal Data Protection Act (BDSG), or shall ensure that all relevant data protection consents of the data subjects required at the time of performance are in place, enabling FKC to fulfil its obligations under this contract without violating data protection provisions.

18. Set-Off and Right of Retention

18.1

The customer may set off claims against claims of FKC only with counter-claims that are undisputed, have been finally adjudicated or are ready for decision.

18.2

The customer shall be entitled to exercise a right of retention only to the extent that the counterclaim on which the right of retention is based is undisputed, has been finally adjudicated or is ready for decision and arises from the same contractual relationship.

19. Miscellaneous Provisions

19.1

All agreements between the parties are contained in the contractual document of the Individual Contract and its annexes. No further agreements exist.

19.2

Any amendments and/or supplements to this contract shall require written form to be effective. The waiver of the written form requirement shall likewise require written form to be effective.

19.3

The customer may assign rights and obligations arising from this contract only with the prior written consent of FKC. Section 354a of the German Commercial Code (HGB) shall remain unaffected.

19.4

FKC shall be entitled to engage subcontractors for the performance of its contractual obligations.

19.5

This contract shall be governed by the laws of the Federal Republic of Germany, to the exclusion of conflict-of-law provisions referring to another legal system. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.

19.6

Where the customer is a merchant, a legal entity under public law or a special fund under public law, the exclusive place of jurisdiction for any disputes arising out of or in connection with this contract shall be the registered office of FKC. However, FKC shall also be entitled, at its discretion, to bring proceedings against the customer at the customer's general place of jurisdiction.

19.7

Should any provision of these GTC be or become invalid or unenforceable, or should a gap exist, this shall not affect the validity and enforceability of the remaining provisions of these GTC or of the Individual Contract, provided it can be assumed that the parties would have concluded the contract even without the invalid or unenforceable provision. In place of the invalid provision, a provision shall be deemed agreed which corresponds to the statutory provision. If the parties have overlooked a matter requiring regulation in the contractual arrangement, a provision shall be deemed agreed which they would have agreed upon, taking into account their mutual interests, had they been aware of the gap in the contract.