

General Terms and Conditions of imk Industrial Intelligence GmbH for Software

(Non-binding English translation, valid as of 23.02.2023)

I. General provisions

§ 1 Scope

(1) imk Industrial Intelligence GmbH, Amselgrund 30, 09128 Chemnitz ("IMK") provides its deliveries and services in business transactions with entrepreneurs, legal entities under public law or special funds under public law exclusively on the basis of these General Terms and Conditions ("GTC"). Insofar as the following refers to performance or services, this shall be understood to mean all deliveries and services of whatever kind by IMK to the customer. If the masculine form is used in relation to persons, female and diverse persons are also meant in each case subject to a deviating regulation in individual cases.

(2) IMK does not provide services to consumers in the sense of § 13 BGB. In connection with the services mentioned in paragraph 1, the GTC also apply to all pre-contractual obligations as well as to all future contracts, even if they are not expressly agreed upon again. For a future contract, not the present but a newer version of the GTC shall apply if IMK has informed the customer before or at the latest upon conclusion of the contract about the existence of the newer version and about how the customer can take note of the content in a simple way.

(3) In the event that the customer does not wish to have the GTC apply, he must notify IMK of this in writing before or at the time of conclusion of the contract. Deviating (purchasing) terms and conditions of the customer or third parties are contradicted. Therefore, the terms and conditions of the customer or third parties do not apply even if IMK does not separately object to their validity in individual cases or if IMK refers to a letter that contains or refers to terms and conditions of the customer or a third party.

(4) No authorized dealer agreement or other distribution agreement shall come into existence between the parties, even in the event of repeated deliveries. Likewise, neither exclusivity nor territorial protection is agreed. Such agreements must be in writing; this shall also apply to any agreement to waive the written form. The application, including the analogous application, of commercial agency law is excluded.

(5) References to the applicability of statutory provisions shall only have clarifying significance. Even without such clarification, the statutory provisions shall therefore apply unless they are directly amended or expressly excluded in these GTC.

§ 2 Definitions

For the purposes of these GTC is or are

1. *Agile programming* a process model of software programming, which is characterized by the fact that the *individual software*, which is only roughly defined at the beginning of the project, is created in a large number of development steps in close, trusting coordination of the parties during the course of the project;
2. *Working day* Monday to Friday with the exception of public holidays in the State of Saxony, Germany and with the exception of December 24. and December 31;
3. *Foreign trade restrictions* Prohibitions and restrictions due to the foreign trade law applicable to the specific *individual contract* and its fulfillment (in particular export control and/or customs regulations including embargos and provision prohibitions), in particular according to the foreign trade law of the Federal Republic of Germany as well as of the country in which the customer has its registered office or to which and through which the intended delivery or service is made;
4. *Prohibition of provision* Foreign economic prohibition on the direct or indirect provision of funds, technical assistance, or economic resources to specific persons, countries, entities, or organizations;
5. *Order* a binding offer by the customer to conclude an *individual contract*;
6. *Definition of Done* common understanding of the *development team* in *agile programming* under which conditions a requirement of the *product backlog* or the *sprint backlog* can be designated as fulfilled;
7. *Individual contract* the contract concluded in the individual case within the scope of these GTC;
8. *Development Team* the totality of persons involved in the project on the side of IMK for the creation of a *product increment*;
9. *Defect* a functional impairment also to the extent that it does not constitute a "defect" within the meaning of the Act;

10. *Free license* a royalty-free license to use, redistribute, and modify copyrighted works under certain conditions specified in the license terms (e.g., for open source software under the BSD License or for images under the Creative Commons License);
11. *Individual software* means a computer program to be produced by IMK according to the customer's specifications, regardless of its form (e.g. web programming, tool, program module, script), which may also consist of the adaptation or extension of another computer program, including any documentation owed;
12. *Issue* occurring in the context of *agile programming* that must be solved, processed and/or clarified;
13. *Service result* the result produced by IMK, e.g. an *individual software* created by IMK;
14. *Product backlog* the central list of all requirements for the *individual software* to be created within the framework of *agile programming*, which contains, for example, ideas, functions, improvements and bug fixes;
15. *Product increment* the result of a *Sprint*, e.g. a new program version of *individual software*;
16. *Product Owner* the person who, in the case of *agile programming*, represents the interests of the customer in the project;
17. *Reaction time* the period of time starting with the error message until the time when IMK starts to eliminate the error; if the *reaction time* is indicated in hours, only hours within the *usual business hours* are taken into account, if days are indicated, *working days* are meant, unless the parties have exceptionally agreed on an elimination of the error outside the *usual business hours*; delays for which IMK is not responsible lead to an appropriate extension of the *reaction time* and do not justify any claims for compensation of the customer;
18. *Software* the generic term for *standard software* and *individual software*;
19. *Sprint* the cycle in *agile programming* in which the *individual software* is further developed and at the end of which is the *product increment*;
20. *Sprint backlog* a part of the *product backlog* that contains the tasks to be completed in a *Sprint*;
21. *Standard software* a computer program of whatever manifestation (e.g., web programming, tool, program module, script) developed to meet the needs of a majority of customers in the marketplace and not specifically for the Customer, including any documentation owed;
22. *Usual business hours* 9 a.m. to 5 p.m. (CET) on *working days*;
23. *User story* detailed description of a requirement for *individual software* to be created in the context of *agile programming*, with which an abstract requirement is concretized.

§ 3 Individual contract

An *individual contract* and thus a contractual obligation for the individual services comes about through an *order* confirmation by IMK, through conclusive action, in particular if IMK begins with the contractual provision of services after the *order*, or through the customer accepting a binding offer by IMK. The product and service descriptions of IMK do not yet constitute a binding offer.

§ 4 Content of IMK services

- (1) The concrete content of the services owed by IMK results from the *individual contract* together with any agreed amendments and supplements to the contract.
- (2) IMK is entitled to minor deviations from the agreed service provision, provided that these do not impair the quality of the service and are reasonable for the customer.
- (3) Product descriptions, representations, test programs, etc. are descriptions of performance and do not constitute a warranty of quality. The guarantee must be in writing to be effective.
- (4) As long as services of IMK are free of charge for the customer, the services of IMK are purely voluntary and the customer has no claim against IMK for continuation of the services. IMK reserves the right to discontinue the free services at any time without prior notice. In this respect, the customer also has no right to receive free updates.
- (5) IMK may also provide its services through third parties.
- (6) All employees that IMK deploys at or for the customer remain, subject to an explicit and written agreement in the *individual contract* and regardless of whether they are deployed at the customer for a longer period of time, organizationally with IMK. Only IMK is authorized to give instructions to its employees. Any instructions by the customer are only considered suggestions and are only binding if IMK takes up these suggestions and passes them on to its employees as binding instructions. The customer will send suggestions regarding the service to be provided exclusively to the responsible contact person named by IMK and/or his deputy (Item IX. § 56). The persons employed by IMK do not enter into an employment relationship with the customer, even if they perform services on the customer's premises.

§ 5 Place of service provision by IMK

Unless otherwise agreed in the *individual contract*, IMK shall provide all services at IMK's place of business. Insofar as the provision of services requires access to the customer's systems and/or processing at the customer's place of business, the further details shall be regulated in the *individual contract*.

§ 6 Remuneration, additional costs

- (1) The prices result from the *individual contract* together with any agreed amendments and supplements to the contract.
- (2) In the absence of an express price agreement, the prices are derived from the current price list valid at the time of the agreement of the respective service provision, which can be requested from IMK at any time.
- (3) If the parties have determined daily rates or person days within the framework of the remuneration according to time and effort, IMK shall owe the performance of a maximum of eight person hours on one calendar day. If IMK provides additional person hours on a calendar day, these are to be additionally remunerated pro rata temporis subject to a deviating agreement in the *individual contract*, unless the time overrun contradicts the recognizable wish of the customer or his objective interest. If hourly rates are agreed, these shall be remunerated per 15 minutes or part thereof.
- (4) The prices quoted are exclusive of any taxes, duties and levies that may be incurred in the cross-border movement of goods and services, the ancillary costs of monetary transactions and the respective statutory value-added tax.
- (5) Unless otherwise agreed, the customer shall bear all out-of-pocket expenses such as travel and accommodation costs, expenses and third-party claims for remuneration incurred in the course of the performance of the contract against evidence. Travel time shall be remunerated in the same way as working time.
- (6) If the parties have not reached an agreement on the remuneration of a service of IMK, the performance of which the customer could expect according to the circumstances only against remuneration, the customer shall pay the remuneration customary for this service. In case of doubt, the rates of remuneration demanded by IMK for its services shall be deemed customary.
- (7) Costs caused by subsequent changes to the content of the service initiated by the customer shall be charged separately.
- (8) If IMK has also assumed services of error removal (Item IV. § 34) within the scope of *software* maintenance by individual contract, the fulfillment of legal claims for *defect* removal shall remain free of charge. Remuneration for error correction (e.g. on a time and material basis or as part of a lump sum) shall only be agreed and owed for the additional services of error correction (e.g. the correction of *errors* which are not *defects* or which were not reported in good time).

§ 7 Payment and default

- (1) Unless otherwise agreed, IMK's invoices are to be paid immediately, at the latest, however, 10 days after receipt of the invoice and without deduction. In case of a permissible partial delivery, this can be invoiced immediately. Invoicing can be done electronically. Insofar as payment in advance has been agreed, performance by IMK will only take place after receipt of payment.
- (2) If the customer is in default, the customer will be charged interest at the statutory rate from the relevant date. IMK reserves the right to assert a higher damage caused by delay. Other rights of IMK remain unaffected; this applies in particular to the rights of IMK to refuse performance under §§ 273 and 320 BGB as well as the right of IMK to terminate for cause.
- (3) IMK is entitled to set off payments against older debts of the customer first, despite contrary provisions of the customer, and will inform the customer about the type of set-off made. If costs and interest have already been incurred, IMK is entitled to offset the payment first against the costs, then against the interest and finally against the principal claim.
- (4) All payments shall be made in Euro and, subject to a deviating agreement in the *individual contract*, by bank transfer to an account designated by IMK. A payment shall only be deemed to have been made when IMK can dispose of the amount.
- (5) If IMK becomes aware of circumstances that objectively call into question the customer's creditworthiness, in particular if the customer stops payments or if a direct debit is returned for lack of sufficient funds, IMK is entitled to call due the entire remaining debt. In this case, IMK is also entitled to demand advance payments or the provision of security.
- (6) IMK is entitled, under the legal conditions, to demand partial payments in the amount of the value of the services rendered by IMK and owed according to the contract.

§ 8 Export control and embargoes

- (1) The delivery or service shall exclusively serve the purposes specified in the *individual contract*. Unless otherwise agreed in the *individual contract*, the customer warrants that the delivery or service will not become part of a delivery or service by the customer or its end customers in connection with any of the following technologies: Armaments Technology, Weapons, Missiles Capable of Carrying Weapons, and/or Nuclear Technology.

(2) The customer furthermore warrants that the delivery or service will not be used by the customer or its end customers in violation of *foreign trade restrictions*. The customer shall check the intended delivery or service for all possible *foreign trade restrictions* at the earliest possible time, as far as possible and reasonable already before the *order*, and shall inform IMK immediately if indications of possible *foreign trade restrictions* arise. Further details shall be set out in the *individual contract*.

(3) IMK may refuse performance of the obligations under the *individual contract* to the extent that performance is prohibited or impaired by *foreign trade restrictions* (e.g. because no export license is granted). IMK will inform the customer immediately about such circumstances.

(4) If IMK refuses the delivery or service due to a *provision prohibition* and the customer disputes the existence of a *provision prohibition*, the customer will, as far as possible and reasonable, request a written confirmation from the competent authority that IMK does not violate the foreign trade law applied by the authority with the fulfillment of the obligations from the *individual contract*. If such confirmation is not provided within a reasonable period of time, the parties shall assume the existence of a *provision prohibition*. Likewise, the Parties shall assume the existence of a *provision prohibition* if the application for the confirmation to the competent authority is impossible or unreasonable and there are objective indications that the violation of a *provision prohibition* is possible.

(5) Claims for damages and reimbursement of expenses of the customer due to the aforementioned *foreign trade restrictions* are excluded, as far as the *foreign trade restriction* is not the responsibility of IMK itself (e.g. because IMK is no longer classified as reliable by the export control authorities due to a previous conduct contrary to export control law) or IMK has fraudulently deceived the customer about the existence of the *foreign trade restriction*. IMK is not liable for a mere negligent ignorance of a *foreign trade restriction*. For the scope and amount of liability for damages and reimbursement of futile expenses due to a *foreign trade restriction* for which IMK is responsible, § 20 ("Liability of IMK") applies.

(6) Without prejudice to further legal or contractual obligations to provide information, the customer shall immediately inform IMK of all circumstances and provide all documents required under the foreign trade law of the country,

- a) in which the customer has its registered office,
- b) in which the delivery or service as intended and the
- c) through which the intended delivery or service takes place,

are necessary or expedient for a smooth fulfillment of IMK's obligations. This includes in particular information on the end customer, the country of destination and the intended use of the delivery or service.

§ 9 Dates, deadlines and obstacles to performance

(1) Delivery and performance dates or deadlines are agreed as non-binding. If they are to be binding by way of exception, this shall require an express and written agreement. The schedule provided for the services to be rendered can be regulated in the *individual contract*.

(2) For an impossibility of performance or delays in performance due to force majeure or other events not foreseeable at the time of the conclusion of the contract - this includes in particular operational disruptions of any kind, difficulties in the procurement of materials or energy, transport delays, pandemics, strikes, lawful lockouts, official orders or missing, incorrect or untimely delivery by suppliers, even if they occur at suppliers of IMK or their sub-suppliers, problems with products or services of third parties - for which IMK is not responsible, IMK is not liable. IMK will inform the customer immediately about such circumstances.

(3) Insofar as events for which IMK is not responsible within the meaning of paragraph 2 make it significantly more difficult or impossible for IMK to perform and the hindrance and the obstacle is not only of temporary duration, IMK is entitled to withdraw from the obligation to fulfill the contract; IMK will immediately refund any consideration already paid by the customer for the unfulfilled part. If such events lead to obstacles of temporary duration, the delivery or service deadlines are extended or postponed by the period of the obstacle plus a reasonable start-up period. IMK will inform the customer immediately of the expected new dates or deadlines. If the impediment lasts longer than two months, the customer is entitled to terminate the respective *individual contract* with regard to the part not yet fulfilled after setting a reasonable grace period with threat of refusal. Further legal rights of the customer remain unaffected. Likewise, the legal regulations existing in favor of IMK regarding the exclusion of the obligation to perform according to § 275 BGB remain unaffected.

(4) Paragraph 3 sentence 2 shall apply if the customer fails to cooperate in breach of the contract, e.g. fails to provide information, fails to provide access, fails to provide supplies or fails to make employees available, or if the customer is in default of payment. However, a right of the customer to withdraw from the contract or to terminate the contract is excluded in these cases.

(5) If the parties subsequently agree on other or additional services that affect agreed deadlines, these deadlines shall be extended by a reasonable period of time.

§ 10 Reminder and grace period by the customer, requirement of fault in case of withdrawal or termination

(1) The termination of the further exchange of services as a result of performance disruptions (e.g. in the case of withdrawal, termination for good cause or damages in lieu of performance) as well as the reduction of the agreed remuneration by the customer must always be threatened, irrespective of the further legal requirements, by naming the reason and setting a reasonable grace period for rectification. Only after fruitless expiry of the deadline can the termination or reduction become effective. In the cases of § 323 para. 2 BGB, the setting of a deadline may be omitted.

(2) All declarations of the customer in this context, in particular reminders and extensions of time, must be in writing to be effective. A grace period must be reasonable. A period of less than two weeks set by the customer shall only be reasonable in the event of particular urgency.

(3) Due to a breach of duty that does not consist of a *defect*, the customer may only withdraw or terminate the contract if IMK is responsible for the breach of duty.

§ 11 Price changes for continuing obligations

(1) The ongoing remuneration for continuing obligations (e.g., for *software* maintenance and support) may be appropriately adjusted annually to price developments if the producer price index for IT services of the German Federal Statistical Office has changed by at least one percentage point since the start of the contract or, in the case of changes that have already been made, since the last change.

(2) For this purpose, the party requesting an adjustment may submit a written proposal to the other party prior to the beginning of the new contractual year with regard to the amount of the price adjustment, which shall be based on the development of the producer price index for IT services of the Federal Statistical Office, taking into account equitable considerations, and which the other party may accept or reject in writing within one month.

(3) In case of refusal, the amount of the adjustment shall be determined by a publicly appointed and sworn expert in compliance with the above agreed standard. Upon request of the party wishing the adjustment, the expert shall be appointed by the Chamber of Industry and Commerce locally competent for IMK. The decision of the expert as arbitrator shall be binding on both parties; the right to challenge the decision on grounds of obvious incorrectness shall remain unaffected. The costs of the expert shall be borne equally by the parties.

(4) In case of acceptance of the proposal by the other party or determination by the expert, the new price shall apply - also retroactively - from the first month of the new contract year.

(5) The rights of the parties to adjust or terminate the contract due to a disturbance of the basis of business (Section 313 BGB) shall remain unaffected by the above paragraphs. The parties agree that in particular an inflation exceeding the scope of the usual (e.g. as a result of a pandemic) means a disturbance of the basis of business due to which IMK may demand the price adjustment or terminate the continuing obligation under the conditions of Section 313 (3) BGB even without the existence of the conditions according to the preceding paragraphs.

§ 12 Set-off, retention and assignment

(1) The customer shall only be entitled to set-off and retention if the counterclaims due have been legally established, are undisputed or are ready for decision. The customer is, however, without the further requirements from sentence 1

- a) is also entitled to set-off if he wants to set off a claim against a claim of IMK which is in a reciprocal relationship to the claim of the customer (e.g. set-off with a claim for damages due to non-performance or default against the claim for payment of the remuneration owed),
- b) shall also be entitled to withhold payment if the right of retention is asserted on the basis of counterclaims arising from the same contractual relationship.

(2) Except in the area of § 354a HGB (German Commercial Code), the customer may assign his claims against IMK to third parties only with IMK's prior written consent, unless IMK has no legitimate interest in the assignment prohibition.

§ 13 Provisions of the customer, free licenses

(1) If the customer provides materials (e.g. texts, graphics, images, videos, programs of third parties including *free licenses*), the use of which could conflict with the rights of third parties (e.g. copyrights and industrial property rights, right to one's own image), the customer is obligated to clarify and obtain rights in advance to the extent necessary to achieve the purpose of the contract. In particular, the customer will check before each provision of materials according to sentence 1 whether the customer has the necessary rights for their use within the framework of the contract both itself and in relation to the execution of the contract by IMK. Upon request, the customer will immediately prove to IMK the sufficient ownership of rights or the sufficient acquisition of rights.

(2) IMK is not obligated to the customer to verify the sufficient acquisition of rights by the customer.

(3) The customer shall compensate IMK for any damage resulting from claims by third parties due to the infringement of property rights and other rights, unless the customer is not responsible for such damage. The customer shall indemnify IMK against all disadvantages incurred by IMK as a result of claims by third parties due to damaging actions for which the customer is responsible.

(4) Insofar as it is expedient for the execution of the contract, IMK may copy suitable materials under a *free license* from publicly available sources on behalf of the customer and make them available to the customer. A separate authorization by the customer is not required for this. IMK will inform the customer at any time upon request which materials under a *free license* have been used or are to be used by IMK. Paragraphs 1 to 3 apply accordingly, but only insofar and only from that point in time from which IMK has informed the customer about the use of the respective material under a *free license* and the customer has had sufficient opportunity to check the rights clarification.

§ 14 Amendment procedure

(1) If the customer wishes to change the contractually determined scope of the services to be provided by IMK, the customer shall express this wish for change to IMK. The further procedure is governed by the following provisions. The customer is entitled to withdraw his change request at any time; the initiated change procedure then ends.

(2) IMK examines the change request. The review includes, in particular, questions of feasibility and concrete implementation, what effects the desired change will have, especially with regard to remuneration and deadlines.

(3) After reviewing the change request, IMK will notify the customer of its result. The notification shall contain either a proposal for the implementation of the change request or information on why the change request cannot be implemented.

(4) The parties shall immediately agree on the content of a proposal for the implementation of the change request and shall record the result at least in text form.

(5) If no agreement is reached or if the amendment procedure ends for any other reason, the original scope of services shall remain in effect.

(6) The deadlines and dates affected by the change procedure shall be postponed taking into account the duration of the examination of the change request, the duration of the vote on the change proposal and, if applicable, the duration of the change requests to be executed plus a reasonable start-up period, without any express notification being required.

(7) The customer shall reimburse the expenses incurred by the examination of the change request, the preparation of a change proposal and any downtimes. Likewise, the customer shall remunerate IMK's additional expenses resulting from the implementation of the changes. The remuneration is based on § 6 ("Remuneration, Additional Costs"), in particular also on its paragraphs 1 and 6.

(8) For its part, IMK may submit proposals to the customer to change the services, the schedule and the remuneration agreed to date. Paragraphs 3 to 6 and paragraph 7 sentences 2 and 3 shall apply accordingly.

§ 15 General ancillary and cooperation obligations of the customer

(1) The customer will support IMK in the fulfillment of IMK's contractual services to a reasonable extent.

(2) In particular, the customer shall

- a) ensure the prerequisites lying in the customer's sphere of operation, insofar as this is necessary for the contractual provision of IMK's services. This includes e.g. access to the required rooms, systems and documentation as well as the availability of the relevant technical contact persons by telephone. The customer will instruct IMK in detail regarding circumstances to be observed when IMK works on the customer's premises and systems;
- b) immediately after request by IMK and without being asked, as soon as the possible relevance has become recognizable for the customer, to provide IMK with all required information and documents; this applies in particular to hardware, programs, interfaces and data stocks, as far as these objects originate from the customer's sphere of control or responsibility and can be relevant for the fulfillment of the contractual services.

(3) Unless otherwise agreed in the *individual contract*, the Customer shall provide the hardware and *software* infrastructure required in the Customer's sphere of operation and shall take the necessary precautions against unauthorized access to its systems from outside, loss of data and infection with and dissemination of malware (e.g. by means of anti-virus programs, firewalls, penetration tests, data backup and, in particular, appropriate back-up routines in accordance with the respective state of the art for both data and programs, fault diagnosis, regular testing of the results, emergency planning).

(4) The customer is obligated to protect any *software* provided or made accessible to the customer by IMK from unauthorized access by third parties by taking appropriate precautions. For this purpose, the customer shall in particular keep access data and user documentation in a secure place. In addition, the customer shall expressly instruct its employees and vicarious agents as

well as other users who use the *software* in accordance with the provisions of the *individual contract* to comply with these contractual terms and conditions and the provisions of copyright law.

(5) The customer has

- a) to provide complete and truthful information for required registrations and other queries necessary to achieve the purpose of the contract,
- b) to the extent required at the time of registration, to choose a user name that does not infringe the rights of third parties or other rights to a name or trademark or morality,
- c) to keep the password secret and not to disclose it to third parties under any circumstances; the customer must inform IMK immediately if there are indications that his access is being or has been misused by third parties,
- d) to notify IMK immediately of any subsequent changes to the data requested.

Paragraph 4 sentence 2 applies accordingly to registrations and the use of user accounts.

(6) The customer undertakes to inform IMK immediately if there is a change in the person, address, name, legal form or company.

(7) All obligations of the customer to cooperate are primary obligations. The customer shall cooperate at its own expense.

§ 16 Property rights

(1) Subject to a deviating regulation in these GTC as well as in the *individual contract*, the copyright, patent rights, trademark rights and all other industrial property rights to all objects that IMK provides or makes accessible to the customer within the scope of the contract initiation and execution are exclusively due to IMK in the relationship between the parties.

(2) Insofar as third parties are entitled to property rights to the objects or these are under a *free license*, IMK has corresponding rights of use; in this case, the respective valid license conditions apply in deviation.

(3) Insofar as IMK has attached to these objects, in the case of *software* in particular also in the source code as well as on the user interface, references to its authorship, to other property rights including the property rights of third parties, to terms of use and licensing conditions as well as to safety and warning notices, liability exclusions and limitations, trademarks and logos, the customer may not remove, falsify or otherwise change these references without the consent of IMK; IMK will not refuse consent if there is an important reason for the change.

(4) IMK retains ownership and copyright of all offers and cost estimates submitted by IMK as well as drawings, illustrations, calculations, brochures, catalogs, models, tools, test or demonstration programs and other documents and aids made available to the customer. The customer may not make these items available to third parties, either as such or in terms of content, disclose them, use them himself or through third parties, or reproduce them without the express consent of IMK. At the request of IMK, the customer must return these items in full to IMK and destroy any copies made if they are no longer required by the customer in the ordinary course of business or if negotiations do not lead to the conclusion of a contract.

§ 17 Term and termination of individual contracts

(1) The start and end of the *individual contracts* are specified in the respective *individual contract*.

(2) If a minimum term is specified in the *individual contract*, the *individual contract* may be terminated for the first time by giving three months' notice to the end of the agreed minimum term. After expiry of the minimum term, the *individual contract* shall be extended by a further year in each case, provided it is not terminated within the period specified in sentence 1.

(3) If a fixed term or a fixed termination date is specified in the *individual contract*, the *individual contract* shall end when the relevant date is reached. The parties shall therefore hold discussions in good time on whether and how to extend the contract.

(4) An *individual contract* that establishes a continuing obligation on the basis of which recurring services and consideration are to be provided on an ongoing basis and that does not contain any information on the term of the contract may be terminated by giving three months' notice to the end of a calendar month.

(5) The right to terminate for good cause remains unaffected. Good cause for termination by IMK shall be deemed to be in particular

- a) a breach of main contractual obligations of the *individual contract* or a material contractual obligation of the *individual contract* by the customer,
- b) if indications become apparent that give rise to objective doubts about the customer's economic performance,
- c) a not insignificant direct or indirect (e.g. also through agreements under the law of obligations, control agreements, trust agreements) change in the customer's ownership ("change of control"); it is clarified that the mere appointment of an insolvency administrator does not constitute a change of control; in any case, the customer shall notify IMK of any changes without delay,

- d) the unsuccessful expiry of a reasonable grace period set for payment in the event of the Customer's default in payment, or if the Customer owes payment of a current monthly remuneration, if the Customer is in default in payment of the remuneration or of a not insignificant part of the remuneration for two consecutive dates or is in default in payment of the remuneration in a period extending over more than two dates in an amount equal to the remuneration for two months,
- e) the violation of the employee protection according to § 22 of these GTC,
- f) a breach of the obligation to maintain secrecy and data protection pursuant to § 23 of these GTC or
- g) any other not insignificant breach of obligations under these GTC.

(6) Any termination must be in writing.

§ 18 Material defects

(1) The delivery or service has the agreed quality, is suitable for the contractually presupposed, otherwise the usual use and has the quality usual for deliveries or services of this type.

(2) Claims for material defects are excluded in particular in the case of

- a) contractual relationships for which the law does not provide for claims based on material defects, such as service contracts;
- b) Deliveries and services of IMK for which the customer does not owe any consideration;
- c) only insignificant deviations from the agreed quality and only insignificant impairments of the usability;
- d) Impairments resulting from use outside the agreed environmental conditions, incorrect operation, modification contrary to the contract, faulty transport, faulty installation, faulty storage by the customer or an item provided by the customer or cooperation provided by the customer, insofar as IMK is not responsible for this;
- e) defects of which the customer remained unaware at the time of conclusion of the contract due to gross negligence;
- f) of a delivery or service to a territory outside the European Economic Area as well as in the case that the delivery or service is intended to be further distributed to a territory outside the European Economic Area or used there, insofar as the delivery or service violates technical standards, legal or other sovereign provisions in the territory concerned, which IMK neither knew nor should have known; IMK is not obliged to examine the specifics of foreign law.

All other statutory or contractual exclusions of claims for defects shall remain unaffected.

(3) The customer shall support IMK in the error analysis and elimination of defects by describing problems that occur in concrete terms and informing IMK comprehensively. In particular, the customer shall notify IMK of defects with a precise description of the defect symptoms. The customer must grant IMK the time and opportunity necessary to investigate the alleged defect and to remedy the defect. If the defect concerns a movable item, the customer shall, at IMK's discretion, send the defective item to IMK for inspection or keep it ready for inspection on site.

(4) The defect shall be remedied at IMK's discretion by removing the defect on site or at IMK's business premises or by delivering an item that does not have the defect. Due to a defect, at least three attempts to remedy the defect are to be accepted.

(5) The defect may be remedied temporarily until the final remedy of the defect, which must be made up within a reasonable period of time, also by IMK showing possibilities to avoid the effects of the defect in the sense of a workaround solution, if and as long as this is reasonable for the customer. If the defect is in a *standard software*, a new or a previous program version that does not contain the defect shall be adopted by the customer if this is reasonable for the customer.

(6) If the item is located at a place other than the place of intended use, the customer shall bear the additional expenses resulting therefrom for the examination of the defectiveness and the rectification of the defect.

(7) As far as a defect communicated by the customer cannot be determined or IMK is not responsible for the impairment, in particular according to paragraph 2 sentence 1 lit. d), the customer bears the costs of IMK according to the agreed or usual prices, unless the lack of defectiveness was not recognizable for the customer.

(8) In the event of defects in items manufactured or delivered by third parties that are part of IMK's delivery or service and that IMK cannot remedy for licensing or factual reasons, IMK will, at its option, assert its claims for defects against the third party or assign them to the customer. Claims for defects in accordance with this § 18 against IMK exist in the case of assignment of the claims for defects to the customer only insofar as the judicial enforcement of the aforementioned claims against the third party of IMK was unsuccessful, without the customer being responsible for this, or is futile, for example, due to insolvency. During the duration of the legal dispute, the statute of limitations of the relevant claims for defects of the customer against IMK is suspended. IMK shall reimburse the customer for the costs of the legal dispute that are reimbursable under the cost laws, insofar as the customer and its legal representatives were entitled to consider them necessary under the circumstances and were unable to collect them from the third party.

(9) In the event of the transfer of an item or the other granting of use for a period of time, the customer may not reduce the current remuneration in the event of defects. Any existing right to reclaim remuneration paid subject to reservation shall remain unaffected. A claim for damages or reimbursement of futile expenses due to a defect which is already present at the time of conclusion of the contract only exists if IMK is responsible for the defect; liability for initial defects according to § 536a para. 1 BGB, if applicable in conjunction with § 548a BGB, is excluded.

(10) The exclusions and limitations of the customer's rights under this § 18 do not apply insofar as IMK has acted fraudulently or has assumed a guarantee for the condition of the item.

(11) The scope and amount of liability for damages and reimbursement of futile expenses due to a material defect for which IMK is responsible shall be governed by § 20 ("Liability of IMK").

§ 19 Legal defects

(1) Subject to a deviating agreement in the *individual contract*, IMK warrants that the delivery or service in the European Economic Area is not subject to any third party rights. IMK is obliged to check conflicting industrial property rights or other intellectual property of third parties only for the territory of the European Economic Area.

(2) In the event of a delivery or service to an area outside the territory of the European Economic Area as well as in the event that the delivery or service is intended to be further distributed to an area outside the territory of the European Economic Area or is to be used there, a defect of title due to an opposing industrial property right or other intellectual property of third parties shall only exist if IMK knew or should have known of this at the time of conclusion of the contract. The customer will therefore carry out the necessary property right research himself before delivery or use abroad.

(3) In the event of defects of title, IMK warrants that, at IMK's option, IMK will

- a) modify or replace the delivery or service in such a way that the defect of title is eliminated and this does not lead to a reduction in quality, quantity or value and is otherwise reasonable for the customer, or
- b) provides the customer with the right of use by concluding a license agreement.

(4) The customer shall inform IMK immediately in writing if third parties assert property rights (e.g. copyrights, trademark rights or patent rights) to the delivery or service. The customer authorizes IMK to conduct the dispute with the third party alone. If IMK makes use of this authorization, the customer may not acknowledge the claims of the third party on his own without IMK's consent. IMK will then defend the claims of the third party. As far as the customer is responsible for the assertion of the property right infringement (e.g. as a result of a use contrary to the contract or in case of omission of property right research by the customer), the customer indemnifies IMK from all expedient costs associated with the defense against these claims and reimburses IMK for all damages and expenses beyond this; in this case IMK is entitled to payment of an appropriate advance.

(5) The scope and amount of liability for damages and reimbursement of futile expenses due to a defect in title for which IMK is responsible shall be governed by § 20 ("Liability of IMK").

(6) § Section 19 (2) sentence 1 lit. a), b), d) and e), sentence 2 as well as (8), (9) and (10) shall apply accordingly.

§ 20 Liability of IMK

(1) IMK's liability for damages, irrespective of the legal grounds (e.g. impossibility, delay, defective or incorrect delivery or performance, breach of contract and tort), shall be limited in accordance with this § 20 ("Liability of IMK"), insofar as the liability presupposes fault on the part of IMK.

(2) IMK's liability for simple negligence is excluded unless there is a breach of an essential contractual obligation, the fulfillment of which makes the proper execution of the contract possible in the first place and on the observance of which the customer could rely and the non-fulfillment of which endangers the achievement of the purpose of the contract (so-called "cardinal obligation"). In the event of a breach of such an essential contractual obligation, IMK's liability in the case of simple negligence is limited to damages foreseeable at the time of the conclusion of the contract and typical for the contract. However, IMK's liability for simple negligence shall be limited to the amount of the liability limits agreed in the *individual contract*.

(3) In the event of gross negligence, IMK's liability shall be limited to damages foreseeable at the time of conclusion of the contract and typical for the contract.

(4) The above exclusions and limitations of liability in paragraphs 2 and 3 shall apply, also retroactively, to the same extent to claims arising from the breach of obligations during contractual negotiations.

(5) Insofar as IMK is not itself obligated to carry out data backup measures, the damage foreseeable at the time of conclusion of the contract and typical for the contract in the event of data loss corresponds to the typical recovery expenditure. The typical recovery expenditure is measured according to the damage that would have occurred if the customer had taken reasonable backup measures based on the due diligence of a prudent businessman.

(6) Insofar as the breach of duty by IMK concerns deliveries and services which IMK provides to the customer free of charge (e.g. within the scope of a gift, loan or free of charge provision of services as well as in the case of pure favors), the liability for simple negligence is excluded as a whole. Furthermore, IMK's liability for gross negligence is excluded in this case if the customer is an entrepreneur, a legal entity under public law or a special fund under public law. As far as IMK gives technical information or acts in an advisory capacity after conclusion of the contract and this information or advice is not part of the contractually agreed scope of services owed by IMK, this is done free of charge and under exclusion of any liability for negligent false information or advice.

(7) The exclusions and limitations of liability of this § 20 ("Liability of IMK") shall apply accordingly to claims for compensation of futile expenses.

(8) The exclusions and limitations of liability of this § 20 ("Liability of IMK") apply to the same extent in favor of the organs, legal representatives, employees and other vicarious agents of IMK.

(9) The exclusions and limitations of liability of this § 20 ("Liability of IMK") shall not apply to the liability of IMK due to intentional conduct, due to injury to life, body or health, in cases of fraudulent intent, in case of assumption of a guarantee or in case of claims under the Product Liability Act.

§ 21 Limitation of the customer's claims

(1) The limitation period for claims of the customer against IMK is as follows

- a) for claims arising from material defects or defects of title for repayment of the remuneration arising from withdrawal or reduction one year from submission of the effective declaration of withdrawal or reduction; the withdrawal or reduction shall only be effective if declared within the period of lit. b) for material defects or the period of lit. c) for defects of title;
- b) one year in the case of claims arising from material defects which do not involve repayment of the remuneration due to withdrawal from the contract or reduction of the purchase price;
- c) two years in the case of claims arising from defects of title which do not involve repayment of the remuneration on the basis of withdrawal or reduction; however, if the defect of title is due to an exclusive right of a third party on the basis of which the third party can demand surrender or destruction of the items provided to the customer, the statutory limitation period shall apply;
- d) two years in the case of claims for repayment of the remuneration, damages or reimbursement of futile expenses that are not based on material defects or defects of title.

(2) Subject to a deviating individual contractual provision, the statute of limitations shall commence in the cases of paragraph 1 lit. b) and c) in accordance with the statutory provisions, in particular the applicable defect liability law, in the case of paragraph 1 lit. d) from the point in time at which the customer became aware of the circumstances giving rise to the claim or should have become aware without gross negligence. The subsequent delivery or rectification does not lead to the running of a new statute of limitations or an extension of the statute of limitations, unless IMK has exceptionally declared an acknowledgement in the sense of § 212 para. 1 no. 1 BGB. The limitation period shall commence at the latest upon expiry of the maximum periods stipulated in § 199 BGB.

(3) Notwithstanding the foregoing, the statutory limitation provisions shall apply

- a) in the case of claims for damages and reimbursement of futile expenses arising from gross negligence and in the cases specified in Section 204 (9),
- b) in the case of claims due to a defect in the cases of § 438 para. 1 no. 2 BGB and § 634a para. 1 no. 2 BGB,
- c) in the case of claims for reimbursement of expenses after termination of a lease,
- d) for all claims other than those referred to in paragraph 1.

If IMK has also assumed services of error correction (Item IV. § 34) within the scope of *software* maintenance by *individual contract*, the claims for material defects for defect correction with regard to the respective objects to be maintained, insofar as these claims would otherwise become time-barred earlier, shall only become time-barred upon termination of the *software* maintenance. The extension of the statute of limitations shall apply exclusively to the elimination of material defects, but not to further claims due to material defects, such as, in particular, according to paragraph 1 lit. a) or for damages.

§ 22 Poaching of employees

The customer undertakes not to entice away or have enticed away IMK employees himself or by third parties or to promote or support third parties with regard to such enticement measures for a period of two years after termination of the contractual cooperation.

§ 23 Confidentiality and data protection

(1) The customer undertakes to treat the content of the *individual contracts* concluded on the basis of these GTC as well as all information and findings obtained in connection with the negotiation and execution of the contract as confidential and not to disclose them to any third party, insofar as they are recognizably subject to secrecy according to the express wish of IMK and/or according to the circumstances of the individual case, unless this should be necessary for the execution of the contract or the disclosure is required by law or has been bindingly ordered by a court or an authority. Customer shall notify IMK in advance of any compelled disclosure, to the extent lawful, and shall limit disclosure to that which is necessary. Consultants, auditors, banks or insurance companies bound to secrecy are not considered third parties. Further legal obligations to maintain secrecy remain unaffected.

(2) The Customer shall comply with the currently applicable data protection regulations. This also includes technical security measures adapted to the current state of the art (Art. 32 DSGVO) and the obligation of employees to maintain the confidentiality of personal data (Art. 28 para. 3 lit. b) DSGVO). If there is a commissioned processing (Art. 28 DSGVO) or a joint responsibility (Art. 26 DSGVO), the customer is obliged at any time upon request of IMK to conclude a data protection agreement in accordance with the requirements of the EU General Data Protection Regulation.

(3) The obligations of confidentiality under paragraph 1 and compliance with data protection obligations under paragraph 2 shall apply for an unlimited period.

(4) In case of doubt, a confidentiality agreement already concluded or to be concluded between the parties shall take precedence over this Section 23.

§ 24 Contractual penalty

In the event of a culpable breach of an obligation under § 22 ("Solicitation of Employees") or § 23 ("Confidentiality and Data Protection"), the customer undertakes to pay to IMK a contractual penalty to be determined by IMK in each individual case at its reasonable discretion and, in the event of a dispute about the appropriateness, to be reviewed by the competent court; for the breach of an obligation under § 23 ("Confidentiality and Data Protection"), however, the obligation to pay a contractual penalty shall be limited to breaches of obligation within five years after execution of the last *individual contract* concluded on the basis of these GTC. Further claims for damages are not excluded by the contractual penalty.

§ 25 No obligation to pay contractual penalties by IMK

IMK is not obligated to pay a contractual penalty to the customer for any legal reason whatsoever. This shall also and in particular apply in the event of default on the part of IMK.

II. Purchase of standard software

§ 26 Subject of the contract

(1) Insofar as IMK sells *standard software* to the customer, the further details, in particular regarding the nature and scope of performance as well as the type and number of licenses, result from the *individual contract*.

(2) The customer receives the *standard software* consisting of the executable program. The customer has no claim to the transfer of the source code, templates or other source products. If documentation is owed, it shall be delivered in a common file format (e.g. PDF, Word, TXT) unless otherwise agreed in the *individual contract*.

(3) The installation and setup of the *standard software* shall only be owed if this is stipulated in the *individual contract*. In the absence of a deviating provision in the *individual contract*, the *standard software* shall be provided on a server for download.

§ 27 Scope of the customer's rights of use

(1) The scope of the rights of use results from the *individual contract* as well as the license conditions of IMK referred to therein.

(2) Insofar as the *standard software* represents a program of a third party or a program under a *free license*, or the *standard software* contains or uses such programs, the license conditions applicable to these programs shall apply in deviation.

(3) The acquisition of the right of use is subject to the condition precedent of full payment of the remuneration owed. Prior to this, the Customer shall only have a provisional right of use under the law of obligations in the form of a permission revocable at any time in accordance with paragraph 4.

(4) IMK may revoke the rights of use granted to the customer for good cause. An important reason exists in particular if the customer violates his obligations from the license conditions in a significant way despite a written warning. If the right of use does not arise or ends, IMK can demand from the customer the return of the items and *software* provided as well as the destruction of

all copies of the items and *software* or the written assurance of the customer that the items and *software* including all copies have been destroyed.

§ 28 Duty to examine and to give notice of defects

The customer's claims for defects shall be subject to the condition that he has complied with his statutory obligations to inspect and give notice of defects (§§ 377, 381 HGB). In the case of items intended for installation or other further processing, an inspection must in any case be carried out immediately before processing. If a defect becomes apparent during delivery, inspection or at any later time, IMK must be notified of this in writing without delay. In any case, obvious defects must be reported in writing no later than on the 10th calendar day after delivery and defects not visible during the inspection must be reported within the same period after discovery. If the customer neglects the proper inspection and/or notification of defects, IMK's liability for the defect not notified or not notified in time or not notified properly is excluded in accordance with the statutory provisions.

III. Software lease

§ 29 Subject of the contract

(1) Insofar as IMK provides the customer with *standard software* for temporary use (software lease), the further details, in particular regarding the nature and scope of services as well as the type and number of licenses, result from the *individual contract*.

(2) Sec. II. § 26 ("Subject matter of the contract") paragraphs 2 and 3 shall apply accordingly.

(3) Subject to the agreement of a delivery of updates, IMK does not owe any

- a) Adaptation of the *software* to changing external conditions of a technical, economic or legal nature,
- b) Adaptation of the *software* to other changing conditions,
- c) Continued development in terms of quality and modernity.

The obligation to deliver new program versions, in particular bug fixes and patches, which eliminate existing material defects, in particular in the sense of security defects or functional defects, as well as defects of title, shall remain unaffected.

§ 30 Scope of the customer's rights of use

(1) The scope of the rights of use results from the *individual contract* as well as the license conditions of IMK referred to therein. If, exceptionally, there is no express agreement in the *individual contract*, the right of use is of a purely contractual nature, limited to the duration of the software lease, non-transferable, restricted to the purpose of the transfer of the right of use and limited to use in the territory of the European Economic Area.

(2) If the subject matter of the software lease is *standard software* of third parties, the relevant license terms of the third party shall apply, to which reference shall be made in the *individual agreement*.

(3) Any further use requires the prior written consent of IMK.

§ 31 Response times for the elimination of defects

Unless otherwise agreed in *individual contracts*, the *response time* for *defects* shall be one *working day*.

§ 32 Updates

For Updates within the scope of the Software lease, Section IV. § 35 ("Updates") shall apply accordingly.

IV. Software maintenance

§ 33 Subject of the contract

Insofar as IMK provides *software* maintenance services for the customer, the further details, in particular regarding the scope of services, result from the *individual contract*.

§ 34 Troubleshooting

(1) Insofar as the *individual contract* includes the elimination of errors, this shall be carried out in addition to any statutory liability for material defects that may exist. The aim of the error correction is the production and maintenance of the agreed functionality of the *software* independent of the question of the existence of a "defect" in the sense of the law. If the customer has obtained the

software via IMK, the elimination of defects shall in particular also include the elimination of functional impairments for which the customer cannot prove that these already existed at the time of the transfer of risk, as well as functional impairments that were not reported in due time.

(2) Unless otherwise agreed in *individual contracts*, the parties agree on a *response time* of one *working day*.

(3) There is no obligation on the part of IMK to ensure a certain availability of the *software*.

(4) Clause I. § 18 ("Defects as to quality") paragraph 2 sentence 1 lit. c), d) and f) shall apply, i.e. if such a case exists with regard to the *software*, elimination of the defect shall be excluded.

(5) For the implementation of the fault rectification, Clause I. § 18 ("Material Defects"), Paragraph 3, Sentences 1 and 2, Paragraphs 4, 5, 6, 7 and 8 shall apply accordingly.

(6) Further legal claims due to a defect of the *software* remain unaffected and are neither excluded nor limited by this § 34.

§ 35 Updates

(1) Insofar as the *individual contract* includes the delivery of updates of *software* produced by IMK itself, IMK shall adapt the *software* to changing general conditions of a technical, economic and legal nature within a reasonable period of time in each case insofar as these changes are significant for the contractual use of the *software*. This obligation exists within the scope of IMK's operational and economic possibilities and does not apply if the adaptation is associated with unreasonable effort for IMK. Further development beyond this in terms of quality and modernity is only owed insofar as this is agreed in the *individual contract*.

(2) In particular, there is no obligation to adapt according to paragraph 1, as far as there are changes to third-party *software* provided by the customer or its interface configuration, which affect or could affect the functionality of IMK's *software*. The customer shall notify IMK of such pending changes without delay so that IMK can offer the customer a solution which is to be remunerated separately by the customer if IMK is commissioned with the solution implementation; the parties shall agree on the details in an *individual contract*.

(3) The obligation to provide updates does not include new versions that have an extended range of functions or other extended performance features, i.e. in particular upgrades and major releases; IMK can offer the customer the provision of such program versions at a reasonable price, which is based on the scope of the extended functions and performance features compared to the current program version.

(4) Subject to any agreement to the contrary in individual cases, the provisions governing the rights of use for the previous program version shall apply to the rights of use for a new program version.

(5) Subject to a deviating provision in the *individual contract*, IMK shall determine the number of updates at its reasonable discretion.

(6) If IMK offers the customer a new update, the customer must install the update in accordance with IMK's installation instructions. If the customer wishes an installation by IMK, this is to be remunerated separately according to the respective valid price list of IMK.

(7) If the customer is behind the current version with two or more updates, there is no claim for error correction regarding the outdated version.

(8) If IMK supplements or replaces the *software with the result* that the customer receives more than one - not necessarily complete - *software* version, the customer must delete the surplus *software*, confirm the deletion in writing and return any data carriers available for this purpose to IMK. Rights of use to the surplus *software* expire with the use of the new *software* parts after a period of four weeks. The provisions of this paragraph also apply to services provided by IMK without an obligation to do so.

(9) As far as IMK has taken over the delivery of updates and other new program versions which do not refer to a *software* produced by IMK, the concrete services including the determination of the maintenance intervals depend on the *individual contract*.

§ 36 Responsibility for programs under a free license and provided programs

Insofar as new program versions to be delivered within the scope of *software* maintenance are *software* that is under a *free license* or was provided by the customer, liability of IMK for material defects and defects of title of the updates, patches and other program versions is excluded.

§ 37 Duty to examine and to give notice of defects

For *software* maintenance services, in particular for new program versions and auxiliary programs which the customer receives within the scope of *software* maintenance, Clause VI. § 45 ("Duty to examine and give notice of defects") shall apply, with the proviso that the period pursuant to Section VI. § 45 paragraph 1 and paragraph 3 respectively shall amount to one month.

V. Support

§ 38 Subject of the contract

- (1) As far as the *individual contract* includes support, IMK answers inquiries of the customer and his employees concerning the *standard software* and its functionality.
- (2) Support can be limited to a maximum number of hours per month in the *individual contract*.
- (3) Support can also be provided by authorized partners of IMK under subcontract to IMK.
- (4) Unless otherwise agreed in the *individual contract*, the following shall apply to the Support:
 - a) Support is provided as telephone and e-mail support.
 - b) Telephone support is available during *normal business hours*.
 - c) Email support is provided within one *business day* of receiving the email.
- (5) Further details on the type and scope of support can be agreed in the *individual contract*.

VI. Creation of individual software

§ 39 Subject of the contract

- (1) Insofar as IMK produces *individual software* for the customer, the further details, in particular regarding the quality, the scope of services and the project management, result from the *individual contract*. Unless otherwise specified in the *individual contract*, IMK shall create the *individual software* by way of *agile programming*.
- (2) The customer receives the *individual software* consisting of the executable program. The customer has no claim to the transfer of the source code, the templates or other source products. If documentation is owed, it shall be delivered in a common file format (e.g. PDF, Word, TXT) unless otherwise agreed in the *individual contract*.
- (3) The installation and setup of the *individual software* shall only be owed if this is stipulated in the *individual contract*. In the absence of a deviating provision in the *individual contract*, the *individual software* shall be made available for download on a server.

§ 40 Creation of a technical concept

- (1) Insofar as this is agreed in the *individual contract*, IMK shall develop a technical concept on behalf of the customer. The basis is the task definition of the customer.
- (2) The technical concept describes the target state of the *individual software* to be developed, including the target state of any agreed additional services. Further details shall be regulated by the *individual contract* to be concluded between the parties.
- (3) The technical concept shall be accepted by the customer upon completion. Acceptance is a partial acceptance and is governed by § 42 ("Acceptance"). The customer shall check the technical concept for correctness and completeness. The accepted technical concept becomes part of the respective *individual contract*. If and to the extent that there are contradictions with the customer's terms of reference, the technical concept shall take precedence. With acceptance of the technical concept, IMK begins with the creation of the *individual software*.
- (4) Defects that the customer can recognize from the technical concept must be notified upon acceptance of the technical concept, at the latest before IMK begins with expenses for the implementation of the technical concept. If noticeable defects are notified later, the customer shall bear the additional costs arising from the subsequent consideration of the notification.
- (5) If changes are made to the performance specifications after the start of implementation, the technical concept must be updated accordingly by IMK.
- (6) IMK receives remuneration for the development and updating of the technical concept.

§ 41 Function test

- (1) Each (partial) acceptance is always preceded by a functional test. Within the scope of this, the customer thoroughly tests each functionality for its usability in the specific situation before the customer begins productive use of the service object.
- (2) The organization of the functional test is the responsibility of the customer. IMK supports the customer in the functional test as far as necessary. The details of the functional test, in particular the type, scope and duration, can be regulated in the *individual contract*. Upon justified request of a party, the functional test will be extended appropriately, if necessary.

(3) During the functional test, the customer is obligated to immediately notify IMK in writing of any deviations from the requirements for the object of performance, specifying the error symptoms in a concrete and easily comprehensible manner or, if a ticket system is used, via this ticket system.

(4) The functional test is successful if no defects are found that prevent acceptance. Defects that do not prevent acceptance are, for example, errors in the documentation (if contractually owed) that do not cause any consequential errors; defects in ease of operation; performance losses that occur briefly or are otherwise acceptable; malfunctions that can be easily eliminated with workarounds; malfunctions that have no direct influence on operation.

(5) IMK will summarize the deviations, as far as they stand in the way of a successful functional test, to a suitable extent, rectify them and declare readiness for acceptance after their rectification. This is followed by a new functional test, which the customer has to carry out quickly.

§ 42 Acceptance

(1) The contractual conformity of the subject of performance is confirmed by the acceptance.

(2) The acceptance procedure starts after IMK has notified the customer that the goods are ready for acceptance.

(3) The customer declares acceptance after successful completion of the functional test (§ 41). Any remaining defects, in particular defects that do not prevent acceptance (§ 41 Paragraph 4), will be recorded in the acceptance declaration and remedied by IMK within the scope of IMK's liability for material defects and defects of title.

(4) The acceptance shall be made in writing. An acceptance protocol (takeover handover protocol) shall be drawn up.

(5) Acceptance shall be deemed to have taken place if the customer

- a) has put the subject of performance into use or passed it on to third parties, even if this violates the terms of the license, insofar as the putting into use takes place without notification of defects preventing acceptance and not merely for test purposes,
- b) within fourteen calendar days after notification of readiness for acceptance (paragraph 2) by IMK has not given notice of any defects preventing acceptance, or
- c) has not refused acceptance after completion of the object of performance within a reasonable period set by IMK, expressly naming at least one defect.

(6) At the request of IMK, the customer must accept self-contained parts of the service separately. The above paragraphs apply accordingly to the partial acceptances. If the customer is in default with a partial acceptance, IMK is entitled to refuse further services without prejudice to further rights resulting from the default.

§ 43 Special features of agile programming

(1) In the case of *agile programming*, the *Product Owner* is authorized and obligated to make and receive binding declarations for the customer. The *Product Owner* manages and is responsible for the *product backlog*. Each entry (e.g., *user story*, *issue*) must be formulated clearly and unambiguously, assigned a priority, and the *product backlog* sorted according to this prioritization. The *product backlog* is to be updated according to the course of the project. Entries in the *product backlog* are to be made, prioritized and removed by the *Product Owner* in coordination with the *development team*. The *Product Owner* may be supported in his tasks by an IMK employee (in particular a Solution Architect) from IMK).

(2) Before the start of a *Sprint*, the *Product Owner* presents the entries of the *product backlog* to the *development team*. The *development team* decides on the entries to be implemented during a *Sprint*, taking into account the prioritization, and records them in the *sprint backlog*.

(3) The *development team's* entries in the *sprint backlog* contain not only the *Definition of Done* for the next *Sprint*, but also an effort estimate for the implementation of the entries. The *sprint backlog* must be released for implementation by the *Product Owner* without delay. The released *sprint backlog* is part of the *product backlog* and becomes part of the contract as a performance description. In case of contradictions between backlogs, the more recent backlogs take precedence over the older ones. After release, IMK begins with the creation of the *product increment*.

(4) The *product increment* of a *Sprint* is all entries of the *sprint backlog* that meet the *Definition of Done* at the end of the *Sprint* according to the assessment and evaluation of the *Product Owner*. All other entries go back into the *product backlog*. The release of a *product increment* after completion of a *Sprint* may be preceded by a functional test within the meaning of Section 41 ("Functional Test"). Insofar as no such functional test takes place, the *Product Owner* shall notify the *Development Team* of its assessment and evaluation of the fulfillment of the *Definition of Done* immediately after the end of the *Sprint*. Errors recorded in the course of the *product increment check* shall be added to the *product backlog* as *Issues* and shall be dealt with as determined by the *Product Owner* in the course of one of the next suitable *Sprints*.

(5) Unless otherwise agreed in the *individual contract*, the project responsibility for *agile programming* lies with the *Product Owner* and thus with the customer. Acceptances therefore do not take place and the warranty for material defects and defects of title is excluded. Instead, the provisions of Section VIII ("Services under the Service Agreement") shall apply in this respect.

(6) If, on the other hand, in the case of *agile programming* the responsibility for the project implementation lies with IMK, then § 42 ("Acceptance") paragraph 6 shall apply accordingly to the acceptance of the *product increment* to be declared by the *Product Owner*. Defects recorded within the scope of the acceptance declaration shall be eliminated by IMK in accordance with the hourly rates provided for under the *individual contract*; if further *Sprints* are planned, this may be done within the scope of one of the next suitable *Sprints*. In the event that the budgets provided for in the *individual contract* are exceeded, the elimination of errors shall be carried out within the scope of IMK's liability for material defects and defects of title. Subject to a deviating provision in the *individual contract*, no further acceptance, in particular no final acceptance, shall take place.

§ 44 Scope of the customer's rights of use

(1) Subject to a deviating agreement in the *individual contract*, IMK grants the customer a simple, unlimited and limited transferable right of use to the *individual software for the territory of the European Economic Area*. The concrete content of the right of use results from the *individual contract*, alternatively from the purpose of the transfer of the right of use.

(2) The acquisition of the right of use is subject to the condition precedent of full payment of the remuneration owed. Prior to this, the Customer shall only have a provisional right of use under the law of obligations in the form of a permission revocable at any time in accordance with paragraph 13.

(3) The customer may make copies of the *individual software* exclusively for exercising his right of use and for backup purposes. The backup copies must be stored safely and, as far as technically possible, must be provided with the reference to the authorship of IMK. The user manual and other documents provided by IMK may only be copied for internal purposes. A transfer to third parties is prohibited subject to paragraphs 4 and 5.

(4) If IMK has granted a transferable or limited transferable right of use and has placed the *individual software* on the market in the territory of the European Union or another contracting state of the Agreement on the European Economic Area, the customer is only entitled to transfer the *individual software* or parts thereof to a third party in accordance with the following rules and after the following procedures have been carried out:

- a) The customer hands over the *individual software* to the third party. If IMK has delivered the *individual software* on data carriers, the customer shall hand over the data carriers to the third party. Likewise, the customer hands over to the third party the user manuals and other documents originating from IMK for the *individual software*.
- b) The customer shall delete all other copies of the *individual software* (in whatever state), in particular on workstations, servers, data carriers and other storage media, with the exception of copies which have been linked to other data in the context of data backup or archiving in such a way that separation and separate deletion is not possible or is possible only with unreasonable effort, shall permanently give up use and shall confirm to IMK in writing that these obligations have been fulfilled.
- c) The transfer to the third party is made on a permanent basis, i.e. without any right of return or repurchase option.
- d) The customer declares in writing to IMK that the customer has made known to the third party the agreements between the customer and IMK on the scope of the transfer of the rights to use the *individual software* as well as all provisions of these GTC that concern the intended use of the *individual software*.

(5) *Individual software* which has not been brought into circulation by IMK in the territory of the European Union or another contracting state of the Agreement on the European Economic Area may not be passed on to third parties without the written consent of IMK.

(6) In case of a violation of the rules according to paragraph 4 or paragraph 5 by the customer, the customer owes IMK a contractual penalty in the amount that the third party would have had to pay IMK at the time of the disclosure, but at least in the amount of the remuneration agreed between the customer and IMK; a further claim for damages remains unaffected.

(7) The customer may only remedy a defect in the *individual software* itself after the unsuccessful expiry of a reasonable period of time specified by the customer for the remedy of the defect, insofar as the contractually determined use is not changed or extended as a result; an obligation of IMK to surrender the source code does not result from this. § Section 323 (2) BGB shall apply accordingly. The determination of a deadline is also not required if the elimination of the error has failed or is unreasonable for the customer. After termination of the warranty and outside the scope of a software maintenance or service contract, IMK may make the elimination of errors dependent on the payment of an appropriate advance.

(8) The customer may only decompile the interface information of the *individual software* within the limits of § 69e UrhG (German Copyright Act) and only after he has informed IMK in writing of his intention and requested the transfer of the necessary information with a period of notice of at least one month. Item I. § 23 ("Confidentiality and Data Protection") shall apply to all knowledge and information obtained by the customer in the course of decompiling. Prior to any involvement of third parties, the customer shall

provide IMK with a written declaration by the third party that the third party undertakes directly to IMK to comply with the contractual provisions on confidentiality and the rights of use.

(9) All other acts of use, in particular the leasing and use of the *individual software* by and for third parties (e.g. through outsourcing, data center activities, application service providing, cloud services) are not permitted without the prior written consent of IMK.

(10) The *individual software*, documents, proposals, test programs and other objects of IMK in connection with the *individual software* that are made available to the customer before or after conclusion of the contract are considered intellectual property and business and trade secrets of IMK. Unless otherwise stated in the above, they may not be used in any way whatsoever without written permission from IMK and must be kept secret in accordance with Item I. § 23 ("Confidentiality and Data Protection"). Insofar as employees, subcontractors, affiliated companies or cooperation partners of the customer are authorized to use the *individual software*, the customer will inform them of the scope and limits of the rights of use as well as the agreed confidentiality and oblige them to comply with the contractual regulations on confidentiality and the rights of use, also directly vis-à-vis IMK.

(11) Insofar as the *individual software* contains or uses a program of a third party or a program that is subject to a *free license*, the license conditions applicable to these programs shall apply in deviation therefrom.

(12) If the creation of an *individual software* consists in the adaptation or extension of a *software*, the following shall apply to the scope of the rights of use:

- a) If the program to be adapted or extended is a *software* of IMK, the rights of use to the achieved performance results shall not be different from the rights of use to the *software* of IMK, unless otherwise agreed in the *individual contract*.
- b) The above paragraphs 1 to 11 shall apply to the adaptation or extension of programs of third parties or programs under a *free license*. If it follows from the *free license* or the license conditions of third parties that other rights are to be granted for the adaptations or extensions, e.g. the adaptations or extensions are also under the *free license* or are to be adapted to the license conditions of the third parties concerned, the regulation of the *free license* or the license conditions of the third parties shall take precedence.

(13) IMK may revoke the rights of use granted to the customer for good cause. An important reason exists in particular if the customer violates his obligations from the above paragraphs in a significant way despite a written warning. If the right of use does not arise or ends, IMK can demand from the customer the return of the objects and *individual software* provided as well as the destruction of all copies of the objects and *individual software* or the written assurance of the customer that the objects and *individual software* including all copies have been destroyed.

§ 45 Duty to examine and to give notice of defects

(1) The customer shall inspect the *performance result* or the goods immediately after delivery and, if a defect becomes apparent, shall give notice thereof in writing without undue delay, describing the symptoms of the defect in detail, unless a functional test has been agreed and insofar as this is feasible in the ordinary course of business. The customer shall thoroughly test each essential function before the customer starts productive use. In any case, obvious defects shall be notified in writing no later than on the 10th calendar day after delivery.

(2) If the customer fails to notify us, the *result of the performance* or the goods shall be deemed to have been approved, unless the defect was not recognizable during the inspection.

(3) If such a defect only becomes apparent at a later date, the notification must be made immediately after discovery; otherwise the *performance result* or the goods shall be deemed to have been approved also in view of this defect. In any case, defects not recognizable during the inspection must be notified in writing no later than on the 10th calendar day after discovery.

(4) If IMK has fraudulently concealed a defect or assumed a guarantee for the quality of the performance, IMK may not invoke the above provisions.

(5) Further obligations and duties of the customer based on statutory duties of inspection and notification of defects shall remain unaffected.

§ 46 Responsibility for provided programs

In case of adaptation of a program under a *free license* or other program provided by the customer, liability of IMK for material defects and defects of title of the program to be adapted is excluded.

VII. Other work services

§ 47 Subject of the contract

Insofar as IMK performs other work services for the customer (e.g. in connection with customizing, integration of *software* as well as production planning), the further details of the services, in particular regarding the scope of services, result from the *individual contract*.

§ 48 Preparation of a technical concept, functional testing and acceptance, scope of the customer's rights of use, obligation to inspect and give notice of defects

The following provisions shall apply regarding other work services:

1. Sec. VI. § 40 ("Preparation of a technical concept");
2. Sec. VI. § 41 ("Functional test");
3. Sec. VI. § 42 ("Acceptance");
4. Sec. VI. § 44 ("Scope of the Customer's Rights of Use"),
5. Clause VI. § 45 ("Duty to examine and give notice of defects").

VIII. Contractual services

§ 49 Subject of the contract

(1) Insofar as IMK provides consulting and/or support services under a service contract for the customer, including the performance of workshops, briefings and trainings, the further details, in particular regarding the scope of services, result from the *individual contract*. Such service-contractual programming, consulting and/or support services are regularly provided by IMK in particular if IMK owes the pure service according to the contractual agreements, as is the case, for example, with the cooperation in larger projects under the management of the customer.

(2) IMK shall perform the services under the service contract by suitable personnel to the agreed extent. IMK does not owe the production of a certain work or otherwise the achievement of a certain success.

§ 50 Project responsibility

Insofar as IMK provides services for the customer under a service contract, the customer, in particular its project manager, bears the overall responsibility for the professional, timely and budgetary realization of the project.

§ 51 Scope of the customer's rights of use

(1) IMK grants the customer a simple and unlimited copyright right of use to the service results provided by IMK. The concrete content of the right of use results from the *individual contract*, alternatively from the purpose of the service contract.

(2) The acquisition of the right of use is subject to the condition precedent of full payment of the remuneration owed.

(3) IMK is not obliged to check the performance results for conflicting industrial property rights or other intellectual property of third parties.

(4) Documents, proposals, test programs and other objects of IMK in connection with the programming, consulting and/or support services under the service contract, which are made accessible to the customer before or after conclusion of the contract, are considered intellectual property and business and trade secrets of IMK in the relationship between the parties. Unless otherwise stated in the above, they may not be used in any way whatsoever without the written permission of IMK and must be kept secret in accordance with Section I. § 23 ("Confidentiality and Data Protection"). In all other respects, Section I. § 16 ("Intellectual Property Rights") paragraphs 3 and 4 shall apply.

§ 52 Provisions of the customer

Subject to an express agreement to the contrary in the *individual contract*, all deliveries and services going beyond the pure service of IMK are excluded. In particular, the customer shall provide all materials related to the service (e.g. texts, graphics, images, videos, third-party programs including *free licenses*) in accordance with Section I. § 13 ("Provisions of the Customer").

IX. Other provisions

§ 53 Exclusions of benefits

- (1) The scope of services of an *individual contract* concluded on the basis of these GTC do not include in particular
- a) all services performed at the customer's request outside *normal business hours*, unless the contractually agreed service is to be performed outside *normal business hours*;
 - b) all services that are performed at the request of the customer at a location other than the registered office of IMK;
 - c) the elimination of errors after the end of the warranty for *defects* and outside of a *software* maintenance and support contract;
 - d) Work and services that become necessary due to improper use by the customer, regardless of whether this was done by the customer, his vicarious agents or other persons within the customer's sphere of influence;
 - e) Work and services that become necessary due to force majeure or other circumstances for which IMK is not responsible;
 - f) Work and services resulting from changed or new individual usage requirements of the customer;
 - g) Work and services on *software* not covered by the contract;
 - h) Work and services triggered by a use of IMK's IT systems by the customer or his vicarious agents that exceeds the usual extent, e.g. frequent mass dispatch of documents, permanent exports in full synchronization and the effects of such use, such as in particular increased data traffic, increased use of storage space and computing power on the servers, increased utilization of the networks and data lines as well as additional expenditure of work and personnel of IMK.

in the absence of a specific express provision.

(2) The services referred to in paragraph 1 shall only be provided on the basis of a separate agreement in the *individual contract* and only against separate remuneration. Separate remuneration shall only not be owed if this is expressly stipulated in the *individual contract*.

§ 54 Reference designation

IMK is entitled to list the customer's company and logo as well as a brief description of the project in reference lists and to publish and distribute these on the Internet, in print media, at presentations or otherwise for factual information. Any use beyond this is not permitted in the absence of a provision to the contrary.

§ 55 Notifications and declarations

(1) Subject to a deviating regulation, the text form in accordance with § 126b BGB (e.g. e-mail and fax) is sufficient for the effectiveness of declarations and notifications, but also necessary. On the other hand, declarations for which these GTC or the law expressly require this must be in writing (§ 126 BGB), whereby a transmission by telecommunication is sufficient to meet the deadline if the recipient receives the original written declaration as soon as possible.

(2) An e-mail shall be deemed to originate from the other party, subject to proof to the contrary, if the e-mail contains the name and e-mail address of the sender and a reproduction of the sender's name as the conclusion of the message.

§ 56 Contact

(1) In the *individual contract*, the parties shall each name a contact person and a deputy who can make decisions or bring about decisions at short notice and provide information within the scope of the power of representation to which they are entitled under the *individual contract*. Without further specification in the *individual contract*, the power of representation of the contact persons and their respective deputies shall be limited in case of doubt to making decisions to concretize or specify the services agreed in the *individual contract*, to commission changes and extensions of the agreed services, to reschedule non-binding or binding dates and to provide binding information.

(2) One party shall notify the other party without undue delay of any changes in the designated contact persons and/or their deputies. Until receipt of such notification, the previously designated contact persons and/or their deputies shall be deemed authorized to make and receive declarations within the scope of their previous power of representation.

§ 57 Transfer of rights and obligations

IMK can transfer all rights and obligations from the *individual contract* to third parties at any time. The customer may object to the transfer within one month if legitimate interests of the customer are affected by the transfer, e.g. because the acquiring company is a direct competitor of the customer, does not offer the required knowledge and qualifications or there are reasonable doubts about its economic performance.

§ 58 Final provisions

(1) These GTC as well as all *individual contracts* concluded under their inclusion shall be governed exclusively by the laws of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods (CISG) is excluded; mandatory provisions of the UN Convention on Contracts for the International Sale of Goods (esp. Art. 12, Art. 28 and Art. 89 et seq. CISG) shall remain unaffected.

(2) This document is available in both a German original version and an English translation. The English language translation is non-binding and serves solely as a guide to the content of the regulation. The German-language original alone is therefore decisive for the content. The German version is also authoritative in the event of contradictions and ambiguities regarding the interpretation.

(3) If the customer is a merchant, a legal entity under public law or a special fund under public law or if the customer, who has no general place of jurisdiction in the Federal Republic of Germany, the exclusive place of jurisdiction for all disputes in connection with the *individual contracts* concluded under inclusion of these GTC is the place of business of IMK. For lawsuits of IMK against the customer, any other legal place of jurisdiction is also valid. Mandatory statutory provisions on exclusive places of jurisdiction remain unaffected by the above provisions.

(4) The agreements on the place of jurisdiction pursuant to paragraph 2 shall be governed exclusively by the law of the Federal Republic of Germany.

(5) If the customer is a merchant, a legal entity under public law or a special fund under public law, the place of performance is the place of business of IMK, unless otherwise stipulated in the above provisions or the *individual contract*.

(6) A lawsuit may only be filed after the parties have attempted to reach an out-of-court settlement. For this purpose, the parties shall agree on a neutral third party as mediator. The statute of limitations for all claims arising from the matter in dispute shall be suspended from the initiation of the settlement attempt by one party until the end of the conciliation. § Section 203 of the German Civil Code shall apply accordingly. Expedited court proceedings or the filing of an action to interrupt a statutory limitation period which cannot be extended by agreement between the parties shall remain permissible at all times.

(7) Insofar as the *individual contract* concluded with the Customer on the basis of these General Terms and Conditions contains loopholes, those legally effective provisions shall be deemed to have been agreed to fill these loopholes which the parties would have agreed according to the economic objectives of the *individual contract* if they had known about the loophole.