

Terms of Delivery for Software of KURZ Digital Solutions GmbH & Co. KG („KDS-TCSW“)

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I. General Terms

1. Validity

- 1.1 The KDS-TCSW shall apply for
- the permanent provision of standard software for a one-time fee („**Purchased Software**“, see II.);
 - the temporary provision of standard software for rent („**Rental Software**“, see III.);
 - the permanent or temporary provision of standard software free of charge („**Freeware**“, see V.);
 - the provision of services like installation, integration, customizing und adaption of the respective standard software (hereinafter: „**Services**“, see IV.)

which the KURZ Digital Solutions GmbH & Co. KG ("**KDS**") provides based on a contract concluded between KDS and a business customer ("**Customer**"). The Customer and KDS collectively are hereinafter referred to as "**Parties**" or individually as "**Party**".

- 1.2 **Purchased Software, Rental Software and Freeware** are hereinafter together referred to as "**Software**".
- 1.3 The KDS-TCSW shall apply accordingly to the provision of new versions (e.g. through patches, bugfixes, updates, upgrades) of the respective **Software**.
- 1.4 Deviating terms from the KDS-TCSW shall not apply unless KDS has expressly agreed to them in writing.
- 1.5 The KDS-TCSW shall apply in the context of a continuous business relationship also for future business between KDS and the Customer, even if, in individual cases, KDS did not expressly refer to the inclusion of the KDS-TCSW at the time of conclusion of the contract.
- 1.6 Amendments to the contract shall be made in writing.

2. Offer, contractual Basis

- 2.1 The description of the quality of the **Software** and **Services** is exclusively and conclusively defined in the respective documentation and technical specification of the **Software** and **Services** provided by KDS ("**Specification**"). For **Software**, usually the current valid user manual shall constitute the Specification. The user manual describes in detail which performance and features of the **Software** can be achieved with the contractual use. Relevant for the definition of the agreed quality and the contractual use of the **Software** shall only be the Specification (e.g. the user manual).
- 2.2 KDS reserves all rights of ownership, copyright and intellectual property of documents included in the offer (e.g. illustrations, drawings, plans, manuals, construction documents etc.).
- 2.3 A pre-contractual performance during the offer stage that KDS provides on request of the Customer (e.g. development of design, artwork etc.) shall be invoiced by KDS, even where no contract is subsequently entered into by the Parties.
- 2.4 If not expressly set out otherwise in the offer, the offer of KDS is binding for 45 calendar days from the date of the offer.
- 2.5 KDS may use subcontractors for the fulfillment of its contractual obligations.

3. Terms of Payment, Setoff, Right of Retention

- 3.1 Unless otherwise agreed, the invoice of KDS is due for immediate payment without any deduction.
- 3.2 The Customer can only set off a counterclaim against a claim of KDS or exercise the right of retention if its counterclaim is undisputed or confirmed by a final and unappealable judgment.
- 3.3 If the Customer is in default of payment, suspension of payment, opening or applying for bankruptcy, insolvency or composition proceedings or rejection of such due to non-existing assets, protest of a bill, valuation of the Customer with a high business risk by a recognized information or rating agency, or in the event of comparable sustainable reasons which suggest the Customer's insolvency, KDS is entitled to demand immediate payment of all claims which are not yet due. In addition, KDS is entitled to make each provision of **Software** and/or **Services** subject to an advance payment.

4. Data Protection

- 4.1 The Parties shall comply with the respective applicable data protection law.
- 4.2 If the Customer itself or by using the KDS **Software** collects, processes or uses personal data, he shall be responsible to ensure that he is authorized in accordance with the applicable data protection law and shall indemnify KDS from any and all claims in case of a breach of this section.
- 4.3 The Customer shall remain the sole owner of any Customer specific data. KDS shall not control such data and content and KDS shall not have any responsibility concerning the legal admissibility to collect, process or use personal data. KDS shall be only entitled to process or use the personal data (e.g. for the observance of any obligation to delete or block personal data) in the context of the contract with the Customer's explicit prior written instruction; KDS shall especially not make available such personal data to any third party without prior written consent of the Customer. If KDS collects, processes or uses personal data on behalf of the Customer through the Software, the Parties shall conclude an agreement regarding the commissioned data processing.
- 4.4 For **Purchased Software** additionally the sections II 6. of the KDS-TCSW apply, for **Rental Software** additionally the sections III 6. of the KDS-TCSW apply.

5. Documentation

- 5.1 For **Software**, the Customer shall receive an electronic user manual and, if available, additional documentation (e.g. operating instructions, help file, other technical information and data).
- 5.2 Customer shall not change, reproduce or make public the documentation as of I. 5.1 without the prior written consent of KDS.

6. Support

6.1 KDS shall provide support for technical issues and fault reports („**Support**“) during the service times (I. 6.2) via E-Mail, Fax or Telephone:

E-Mail: Lkis_support@kurz.de
 Fax: + 49 911/ 7141 11-9002
 Phone: + 49 911/ 7141-9002

The Support is intended solely for the support of the Customer (but not its customers) with regards to the contractual services owed by KDS to the Customer. The support is made available to other Customers as well. Customer support queries are processed in the order in which they are received. For **Purchased Software** and **Services**, the Support is free only during the warranty period.

6.2 The Support is available on working days (Monday to Friday excluding the statutory holidays in Germany and Bavaria) during the service period from 8.30 a.m. to 4.30 p.m. to monitor the operability of the **Software** and the **Services** and to initiate the rectification of faults.

7. Supply of the Customer

7.1 The Customer shall incur liability for the use and transfer of decors, designs, company logos, trademarks, samples, drafts and other creative elements supplied by the Customer to KDS – irrespective of the data carrier - which infringe third party rights. The Customer shall immediately indemnify and hold harmless KDS from any corresponding claims of such third party.

7.2 The Customer is responsible for including but not limited to the provision of the necessary hardware and system environment as specified in the user and operating manuals and to check which programs, operating systems, Browser, etc. are each supported by the respective **Software**.

7.3 The provision of the requirements as of I. 7.2 as well as the telecommunication services including transmission services from the service transfer point to the devices used by the Customer are not part of the scope of services of KDS, but remain the sole responsibility of the Customer.

8. Liability, Damages

8.1 Unless otherwise specified in the KDS-TCSW, including the following provisions, KDS shall be liable in case of a breach of contractual and non-contractual obligations in accordance with the statutory provisions.

8.2 KDS provides application guidelines and other advices to the best of its knowledge and therefore does not constitute any liability for damages by the Customer against KDS. The Customer shall not be released from its obligation to examine the intended use of the **Software** and/or **Services** at its sole responsibility. This shall also apply if the Customer's intended use is known to KDS.

8.3 KDS is liable for damages, irrespective of the legal basis:

- in case of intent or gross negligence,
- in case of culpable loss of life, bodily injury or damage to health,
- in the event of non-compliance with guaranteed characteristics,
- in case of fraudulent concealment of a defect,
- in case of a claim of the Customer under the applicable mandatory product liability regulations (e.g. the (German) Product Liability Act), or
- for damages resulting from the culpable breach of a material contractual obligation (The fulfillment of which is the only way to ensure that the contract is properly implemented and that the other Party is allowed to rely on regularly.). In case of breach of a material contractual obligation by negligence other than gross negligence, the liability is limited to the replacement of the foreseeable, typically occurring damage.

8.4 The foreseeable, typically occurring damage for **Purchased Software** and **Services** shall be limited to the net price of the respective agreed compensation. For **Rental Software** section III. 10. shall apply.

8.5 In any other case, the Customer shall have no claim for damages against KDS.

8.6 The liability limitations resulting from I. 8. shall also apply in the case of a breach of an obligation by or in favor of persons whose fault is attributable to KDS (e.g. personal liability of employees, personnel and other vicarious agents of KDS), but not to the personal liability of legal representatives and of executives.

8.7 A change in the burden of proof to the detriment of the Customer shall not be implied with this I. 8.

8.8 Insofar as the content (text, graphics, etc.) for **Software** is provided by the Customer, the Customer hereby guarantees that any content provided, regardless of its form, is free of any claims or rights by third parties. The Customer shall indemnify KDS against any and all actions, claims or losses in this regard. KDS is entitled to demand from the Customer to provide KDS with such evidence required by KDS to establish Customer's legal rights in relation to property rights, intellectual property, trademarks, copyright or related legal interests regarding the content provided by the Customer.

8.9 The Customer is responsible for regular backups of his data.

8.10 Unless provided otherwise in this I. 8. the liability for **Freeware** is set out in section V. 4.

9. Impossibility of Performance, Contract Adjustment

- 9.1 In case the provision of **Software** and/or **Services** is impossible, the Customer shall have the right to claim damages unless KDS is not responsible for the impossibility. The right of the Customer to claim for loss or damages shall be limited to 10 % of the net price of that part of the **Software** and/or **Services** which due to the impossibility cannot be put to the intended use by the Customer. This limitation shall not apply in case of liability based on intent, gross negligence or due to loss of life, bodily injury or damage to health. A change in the burden of proof to the detriment of the Customer shall not be implied hereby. The right of the Customer to rescind the contract shall remain unaffected.
- 9.2 The contract shall be reasonably adjusted in compliance with the principle of good faith where incidents of Force Majeure substantially change the commercial importance or the content of the **Software** and/or **Services** or have a material adverse effect on the business of KDS. Where this adjustment is not economically justifiable, KDS shall have the right to rescind the contract. KDS shall inform the Customer of the exercising of the rescission of the contract without delay upon awareness of the consequences of the incident, even if initially an extension to the delivery period had been agreed with the Customer.

10. Confidentiality

- 10.1 Each Party shall not without the prior written consent of the other Party pass to third parties information, knowledge, templates, including such documents as illustrations, drawings, plans, construction documents ("**Information**") received from the other Party. This shall not apply to Information which at the time of receipt are generally known or were already known by the receiving Party without being obliged to maintain confidentiality or were transferred by a third party lawfully in possession thereof and who has the lawful power to disclose such Information or were independently developed by the receiving Party without using any Information of the disclosing Party. Information shall be returned by the receiving Party immediately if a contract is not awarded. A right of retention by the receiving Party is excluded.
- 10.2 A third party within the meaning of I. 10.1 shall not be deemed to be a company affiliated with KDS as well as a person or company entrusted with the task of performance of the contract by KDS insofar as they have been obliged to keep confidential in an equivalent manner.
- 10.3 Neither Party shall use the Information received from the other Party for purposes over and beyond the scope of the contract between the Parties without the express prior written consent of the other Party.
- 10.4 The obligation of confidentiality shall begin upon receipt of the Information and ends 5 years after the end of the business relationship.

11. Export Controls

Customer acknowledges and confirms that he is not a resident or is situated in a country, which is subject to an embargo of the Federal Republic of Germany, the European Union, the United Nations or the US government, or which the Federal Republic of Germany, the European Union, the United Nations or the US government have been classified as a "terrorism-supporting country" or which is on a list of the Federal Republic of Germany, the European Union, the United Nations or the US government regarding export bans or restrictions. The Customer must always comply with all applicable national and international (re-) export control law. The Customer shall indemnify KDS against any and all claims by public authorities or other third parties due to the non-observance of the above legal obligations with regards to export controls in full and undertakes to reimburse all costs, damages and expenses incurred by KDS in this context, unless the Customer is not responsible for the breach of duty. This shall not imply a change in the burden of proof to the detriment of the Customer.

12. Force Majeure

- 12.1 The Parties are completely or partially exempted from the obligations of the contract if and to the extent the failure to fulfill the obligations is caused by unforeseeable events of Force Majeure after conclusion of the contract.
- 12.2 Events of Force Majeure include but are not limited to acts of God, fires, floods, war, embargoes, labor disputes, acts of sabotage, riots, civil disorders, accidents, delays of carriers, voluntary or mandatory compliance with a governmental act, regulation or request, shortage of labor or materials, or by any other cause or causes beyond the Parties' reasonable control. This includes in particular water ingress, power outages, interruption or destruction of data-carrying cables as well as computer viruses or other intentional attacks on KDS's IT systems although complying with the usual precautions of care.
- 12.3 The Parties will inform each other immediately without any delay in the event of Force Majeure in writing and provide information on the expected date of the rectification of the effects of the Force Majeure event.
- 12.4 Should any event of Force Majeure last for a period of more than 60 calendar days, each Party shall be entitled to rescind the contract in whole or in part. In such case, no Party shall have a right to seek damages against the other Party, such as but not limited to indirect damages, consequential damages, loss of profit, or loss of production, interruption of business or loss of data or information.

13. Assignment

The assignment of a claim or of a right under the contract is permitted only with the prior written consent of the other Party. This shall not apply to a monetary claim.

14. Corporate Social Responsibility

14.1 As a member of the KURZ-Group, KDS is committed to respect and to observe the KURZ Code of Business Conduct.

14.2 The Customer confirms to observe the applicable law and legislation; the Customer shall not tolerate any kind of corruption or bribe, respect basic rights and the ban on child labor and forced labor. Furthermore, the Customer shall take responsibility for the health and safety of its employees, shall ensure a fair compensation and reasonable working hours, shall act in accordance with the applicable environmental laws and shall use its best efforts to promote the observance of these principles among its suppliers.

15. Applicable Law

The substantive law of the Federal Republic of Germany shall apply exclusively. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 shall be excluded.

16. Jurisdiction

The exclusive place of jurisdiction is Nuremberg, Germany.

II. Purchased Software

1. Prices

1.1 Prices are net prices in EUR (Euro), exclusive of the current value added tax (VAT) in force at the time of delivery of the **Purchased Software** without further deductions.

1.2 Unless otherwise expressly agreed, Customer shall bear the costs for delivery, packaging and making available for download.

1.3 The Customer shall bear all duties and taxes, which are raised by a governmental authority in connection with the contract (especially with an export or use of **Purchased Software** outside Germany), excluding any taxes on KDS's revenues, income or profits.

1.4 Delivery shall be EXW (EX WORKS) KDS Incoterms® 2010 ("**Place of Delivery**"). This shall also apply to free delivery as well as to delivery that will be dispatched or collected on the request of the Customer. In case the Delivery will be dispatched, the Customer shall bear the costs incurred thereby (e.g. transport, insurance, customs).

2. Deadlines, Delay

2.1 Observance of the stipulated time for delivery or provision ("**Provision**") of **Purchased Software** is conditional on the timely receipt of complete documents, necessary permits and approvals, especially of plans to be provided by the Customer as well as fulfilment of the agreed terms of payment and other obligations by the Customer (e.g. advance payment, partial payment). In case these conditions are not fulfilled on time, the period for the Provision shall be extended accordingly; this shall not apply if KDS is solely responsible for the delayed Provision.

2.2 If non-observance of the time for Provision of **Purchased Software** is due to Force Majeure (I. 12.), the time limits shall be extended appropriately.

2.3 In the event that KDS is responsible for a delay of the Provision of **Purchased Software** and provided that the Customer can credibly establish that a damage for such delay has occurred, the Customer may claim liquidated damages of 0.5% for every completed calendar week of delay but in no event shall the aggregate of such liquidated damages exceed a total of 5% of the net price of the of **Purchased Software** which due to the delay could not be put to the intended use by the Customer. The obligation to pay the liquidated damages requires proof by the Customer that any damage has occurred, but not of its amount. KDS shall be entitled to provide evidence that the Customer suffered lower or no damage.

2.4 Further claims and remedies of the Customer due to the delayed Provision in particular indirect or consequential damages, loss of profit or loss of production are excluded. This shall not apply in case of liability of KDS based on intent, gross negligence or due to loss of life, bodily injury or damage to health.

2.4 Claims by the Customer for damages due to a delay of Provision of **Purchased Software** as well as claims for damages for non-performance, which exceed the limits specified in II. 2.3 shall be excluded, even after expiry of the period for the Provision reasonably set by the Customer.

2.5 The Customer shall only be entitled to rescind the contract provided that KDS is solely liable for the delayed Provision and after reaching the maximum amount of compensation specified in II. 2.3 and the Customer has set an adequate period to KDS within KDS has to perform the Provision of the **Purchased Software** and such period has expired. A change in the burden of proof to the detriment of the Customer shall not be implied hereby.

2.6 At the request of KDS, the Customer shall declare within a reasonable period whether the Customer will rescind the contract due to the delayed Provision or insist on the Provision of the **Purchased Software**.

3. License, Rights to Use

3.1 For **Purchased Software** Customer shall receive a non-exclusive, sub-licensable, transferable (with the restriction in II. 3.3), permanent license to use the functionalities as defined conclusively in the user

manual in accordance with the contract including the right to save permanently or temporarily, to load, view and run the **Purchased Software**. Customer is granted the right to copy the **Purchased Software** only for the purposes of such licensed use.

- 3.2 The Customer shall not receive any further rights to the **Purchased Software**. In particular, the Customer has no right to the source code of the **Purchased Software**.
- 3.3 If the Customer exercises his right to transfer the license as of II. 3.1, he shall be required to impose its contractual obligations with respect to the content and scope of such license to the third party. With the transfer to the third party, the Customer itself is no longer entitled to the license, shall immediately cease its use and delete all remaining copies of the **Purchased Software**.

4. Restrictions of the License

- 4.1 The Customer shall not be entitled to analyze, to reassemble, edit or change the **Purchased Software**. Subject to a statutory license, the Customer shall not be entitled to retranslate into other code forms ("decompiling") as well as use other ways of reversing the various manufacturing stages of the **Purchased Software** ("reverse engineering").
- 4.2 The Customer shall not be entitled to remove, modify or obliterate any ownership and copyright notices, serial numbers, version numbers, stickers, labels or trademarks of KDS or other manufacturers contained in the **Purchased Software**, the user manual and other supporting documentation.
- 4.3 If the license of the **Purchased Software** is limited to a predefined hardware or software environment, any deviating use shall require the prior written consent of KDS unless such predefined hardware or software environment is not functional. In this case, the Customer may use the **Purchased Software** in another hardware or software environment until the contractual use in the predefined hardware or software environment is possible.
- 4.4 In case the **Purchased Software** contains any third party software (e.g. "Open Source Software") KDS will include the respective copyright notices and license terms in the **Purchased Software** to the extent such is required for the use of the third party software. Customer shall comply with any third party copyright notices and software license terms.

5. Obligations of the Customer, Nonconforming Use

- 5.1 The Customer shall fulfill its obligations regarding the performance and execution of the contract. The Customer particularly shall
 - 5.1.1 obtain the required consent of the relevant party, insofar as the Customer collects, processes or uses personal data of such party in the course of using the **Purchased Software** if no statutory license applies.
 - 5.1.2 ensure that (e.g. for the use of text and data of third parties) all intellectual property rights, copyrights and other rights of third parties are respected.
 - 5.1.3 not misuse or allow the misuse of the **Purchased Software**, e.g. not offer or transmit information with unlawful or immoral content or refer to such information which encourage crime or glorify or trivialize violence, which is sexually offensive or pornographic, or which is suitable to seriously endanger the moral and/ or welfare of children and teenagers or which can damage the reputation of KDS.
 - 5.1.4 refrain from any attempt by itself or by an unauthorized third party to unauthorized retrieve information or data or intervene in programs that are operated by KDS or to intervene or invade KDS's data networks.
 - 5.1.5 not use the possible exchange of electronic messages for the unsolicited sending of messages or information to third parties for advertising purposes ("spamming").
 - 5.1.6 indemnify KDS against any and all third party claims which are based on an unlawful use of the **Purchased Software** by the Customer or with his consent, or which arise from claims including but not limited to claims regarding privacy, copyright or other legal disputes and which are related to the use of the **Purchased Software** by the Customer. If the Customer realizes or needs to realize that such an infringement is imminent, the Customer has the duty to inform KDS immediately.
 - 5.1.7 check data and information prior to transmission for viruses and use state-of-the-art anti-virus software.
 - 5.1.8 ensure that the users authorized by Customer comply with the provisions set for the use of the **Purchased Software**.
- 5.2 KDS is entitled to terminate the Customer's license in case of an unlawful or serious breach of the material obligations specified in II. 5.1 by him or its authorized users. Before any termination, KDS will notify the Customer of such breach providing a reasonable time limit to cure the breach, unless due to the nature and/or seriousness of the breach such notification would not be reasonable. In case of such termination for cause, the Customer shall immediately cease the use of the **Purchased Software** and shall return the original data carrier, any copies of the **Purchased Software** as well as the user manual and other supporting documentation or delete the **Purchased Software** completely and confirm such deletion to KDS in writing.
- 5.3 In the case of a culpable breach of the obligations in II. 5.1 by the Customer, the Customer is obligated to pay a contractual penalty of EUR 30,000.00. KDS reserves the right to claim further damages in which case the penalty already paid by Customer shall be deducted from such claim.
- 5.4 In the case of an unlawful breach of the obligations in II. 5.1 by a user authorized by Customer, the Customer will take the necessary measures to help clarify and punish such an offense of the user and inform KDS about the measures taken.

6. Data Protection

KDS assumes no control for Customer's stored data and content with respect to a legal admissibility of the collection, processing and use of such data; this responsibility remains exclusively with the Customer. This shall also apply in the event that KDS provides the Customer with a non-binding template for a privacy notice for the **Purchased Software** in good faith. The Customer shall not be released from his obligation to examine and if necessary adjust this privacy notice at his sole responsibility to comply with the applicable data protection law.

7. Warranty for Material Defects of Purchased Software

- 7.1 In case the **Purchased Software** does not match with the quality of the respective Specification at the time of transfer of risk ("**Material Defect**"), at its discretion KDS shall within the statute of limitations either repair free of charge or provide replacement free of charge ("**Supplementary Performance**"). If reasonable for the Customer, KDS is entitled to remedy the Material Defect with a revision (e.g. update or patch) or a new release (upgrade) of the **Purchased Software**, which eliminates or no longer contains the notified Material Defect. Until KDS can provide a revision or a new release to the Customer, Supplementary Performance may also be made by showing the Customer reasonable ways to avoid the effects of the Material Defect, e.g. by providing a "workaround".
- 7.2 The description of the quality of the **Purchased Software** is defined conclusively in the respective Specification (e.g. in the user manual). KDS shall not be liable for any defects relating to qualities not specifically mentioned in the Specification. It is the sole liability of the Customer to examine the suitability of the **Purchased Software** for the intended use.
- 7.3 Claims for Material Defect by the Customer against KDS are subject to a statute of limitations of 12 months upon delivery. In case of a delayed Provision of the **Purchased Software** due to reasons KDS is not responsible for, the statute of limitations shall expire 18 months after the receipt by the Customer of the notification of the readiness for Provision of the **Purchased Software** at the latest. This shall not apply in case of liability based on intent, gross negligence or due to loss of life, bodily injury or damage to health or fraudulent concealment of a Material Defect or non-compliance with guaranteed characteristics. The statutory provisions on suspension and recommencement of limitation period shall remain unaffected.
- 7.4 No new limitation period (II. 7.3) shall commence as a result of Supplementary Performance.
- 7.5 The Customer shall immediately notify KDS in writing of any Material Defects and shall provide KDS with all information and documents necessary for the remedy of such Material Defect.
- 7.6 Insofar as the Customer grants KDS no opportunity for Supplementary Performance within a reasonable period, KDS is exempted from liability for Material Defect.
- 7.7 In the event that Supplementary Performance fails, the Customer shall be entitled to rescind the contract or to reduce the respective price of the **Purchased Software**.
- 7.8 Claims for Material Defects are excluded
- in case of only insignificant deviations from the agreed quality (in particular in cases of defect classes 3+4, see IV. 5.);
 - in case of only insignificant impairment of usability (in particular in cases of defect classes 3+4, see IV. 5.);
 - in case of Material Defects arising after the time of transfer of risk due to faulty or negligent handling by the Customer and/or its users;
 - in case of Material Defects after the change of operating conditions (hardware/software environment), after installation and operating mistakes as far as these are not due to a faulty user manual, after interferences with the **Purchased Software** by the Customer, such as changes, adjustments and/or connections with other software or in case of Material Defects which occurred after a non-contractual use, unless the Customer can prove that the Material Defect already existed at the time of the transfer of risk or that there is no causal connection between Customer's use and the Material Defect.
- 7.9 Updates like bug fixes and safety-relevant patches shall be free of charge for the Customer during the warranty period (II. 7.3).
- 7.10 The Customer shall be liable for any damages resulting from an unjustified request for remedy of a Material Defect in case the Customer has recognized or should have recognized that the occurring error is not caused by a Material Defect of the **Purchased Software** but has its root cause in the area of responsibility of the Customer.
- 7.11 If reasonable for the Customer, Customer shall enable KDS on request with a remote access to the **Purchased Software**.
- 7.12 Claims for damages due to a Material Defect are conclusively regulated in I. 8. Claims by the Customer against KDS for a Defect, which are more extensive or different to those claims, set out in II. 7. are excluded. Section I. 8. shall apply to all other claims for damages. Any further claims or claims other than those stipulated in I. 8. or II. 7. of the Customer against KDS due to a Material Defect shall be excluded. The right of the Customer to rescind the contract shall remain unaffected.

- 7.13 In the case of a notice of Material Defect, the Customer may withhold payments to an amount that is in a reasonable proportion to the Material Defect. The Customer, however, may withhold payments only in case of a notice of Material Defect, which meets the requirements of II. 7.5. The Customer has no right to withhold payments to the extent that its claim for Material Defect is time-barred. Any unjustified notice of Material Defect shall entitle KDS to demand reimbursement of its expenses by the Customer.

8. Warranty for Defects in Title of Purchased Software

- 8.1 Unless otherwise agreed, KDS shall provide the **Purchased Software** free from industrial property rights, copyrights of third parties and/or any other third party right ("**Third Party Right**") with respect to the country at the Place of Delivery. If a third party asserts justified claims against the Customer due to an infringement of a Third Party Right by the **Purchased Software**, which was provided by KDS and used by the Customer in conformity with the contract ("**Defect in Title**"), KDS shall be liable to the Customer, within the stipulated limitation period in II. 7.3 as follows:
- 8.1.1 In the case of a liability according to II. 8.1, KDS shall at its option and free of charge for the Customer either obtain a right to use the **Purchased Software**, modify the **Purchased Software** so as not to infringe the Third Party Right or replace the **Purchased Software**. If this is not possible for KDS on acceptable terms, the Customer shall have a right to cancel the contract or reduce the price. The Customer shall accept a new version or release of the **Purchased Software** if the contractually agreed quality (Specification) is preserved and such acceptance of the new version or release would not be unreasonable for the Customer. The provisions in II 7.6 shall apply accordingly.
- 8.1.2 The fulfillment of the obligations in II 8.1.1 shall be subject to the condition that the Customer immediately notifies KDS in writing of the claims asserted by the third party, that the Customer does not acknowledge an infringement and that the protective measures and settlement negotiations are exclusively reserved for KDS. If the Customer ceases to use the Purchased Software to reduce the damage or for other important reasons, the Customer shall make it clear to the third party that the suspended use does not mean acknowledgment of an infringement of a Third Party Right.
- 8.2 A claim of the Customer shall be excluded if the Customer is liable for the infringement of the Third Party Right.
- 8.3 A claim of the Customer shall also be excluded if the infringement of the Third Party Right was caused by specific demands of the Customer, by use of the **Purchased Software** not foreseeable by KDS or the **Purchased Software** being altered by the Customer or being used together with products not provided by KDS.
- 8.4 The provisions in section II. 7. shall apply accordingly to any other defects of title.
- 8.5 Claims for damages due to a Defect in Title are conclusively regulated in I. 8.
- 8.6 Any further claims or claims other than those stipulated in I. 8. or II. 8. of the Customer against KDS due to a Defect in Title shall be excluded. The right of the Customer to rescind the contract shall remain unaffected.

III. Rental Software

1. Prices

- 1.1 Prices are net prices in EUR (Euro), exclusive of the current value added tax (VAT) in force at the time of Operational Provision of the **Rental Software** without further deductions. "Operational Provision" of the **Rental Software** shall mean the time of providing the login data for the operational **Rental Software** to Customer.
- 1.2 The price for the **Rental Software** shall normally be paid in a monthly rental fee. The rental fee or an alternative compensation model ("**Rental Fee**") will be agreed in an individual contract with the Customer.
- 1.3 KDS entitled to increase the Rental Fee with a written notice of 3 (three) months to the end of the month for the first time after a period of 12 (twelve) months after the effective date of the contract, if and insofar as the indices for IT services of the Federal Statistical Office ("Statistisches Bundesamt") have been increased accordingly. The Customer has the right to terminate the contract for the **Rental Software** within a period of 6 (six) weeks after receipt of notice of the increase of the Rental Fee.
- 1.4 Unless otherwise agreed in the contract, the Rental Fee for **Rental Software** shall be invoiced quarterly for the respective previous quarter ("**Accounting Period**"), for the first time at the end of the Accounting Period in which the first day of the Operational Provision of the **Rental Software** (III. 1.1) falls.

2. Deadlines, Delay

- 2.1 Observance of the stipulated time for Operational Provision of the **Rental Software** (III. 1.1) is conditional on the timely receipt of complete documents, necessary permits and approvals, especially of plans to be provided by the Customer as well as fulfilment of the agreed terms of payment and other obligations by the Customer (e.g. advance payment, partial payment). In case these conditions are not fulfilled on time, the period for the Operational Provision shall be extended accordingly; this shall not apply if KDS is solely responsible for the delayed Operational Provision

- 2.2 If non-observance of the time for Operational Provision of the **Rental Software** (III. 1.1) is due to Force Majeure (I. 12.) the time limits shall be extended appropriately.
- 2.3 In the event that KDS is responsible for a delay of the Operational Provision of the **Rental Software** (III. 1.1) and provided that the Customer can credibly establish that a damage for such delay has occurred, the Customer may claim liquidated damages of 0.5% for every completed calendar week of delay but in no event shall the aggregate of such liquidated damages exceed a total amount of 5% of the Rental Fee for 6 months. The obligation to pay the liquidated damages requires proof by the Customer that any damage has occurred, but not of its amount. KDS shall be entitled to provide evidence that the Customer suffered lower or no damage.
- 2.4 Further claims and remedies of the Customer due to the delayed Operational Provision in particular indirect or consequential damages, loss of profit or loss of production are excluded. This shall not apply in case of liability of KDS based on intent, gross negligence or due to loss of life, bodily injury or damage to health.
- 2.5 Claims by the Customer for damages due to a delay of the Operational Provision of the **Rental Software** as well as claims for damages for non-performance, which exceed the limits specified in III. 2.3 shall be excluded, even after expiry of the period for the Operational Provision reasonably set by the Customer.
- 2.6 The Customer shall only be entitled to terminate the contract for cause because of a delay to the extent KDS fails to perform the Operational Provision of the **Rental Software** for which the Customer has set a reasonable time limit of at least 2 (two) weeks.
- 2.7 In case of a delay of the Customer with his obligation to pay the Rental Fee, KDS is entitled to deny access to the **Rental Software** after the expiry of a 30-day written notice for payment. In this case, the Customer still remains obligated to pay the applicable Rental Fee.
- In case of a delay of the Customer with his obligation to pay the Rental Fee
- i. for two consecutive Accounting Periods; or
 - ii. in a period longer than two Accounting Periods with an outstanding amount of more than the Rental Fee for two Accounting Periods

despite a prior written notice including a reasonable deadline with the request to pay the outstanding amount, KDS is entitled to terminate the contract without further notice for cause. Customer shall in such case pay liquidated damages in the amount of 50 % of the Rental Fee due until the end of the contract year. The Customer reserves the right to prove that KDS has suffered lower damages.

3. License, Rights to Use

- 3.1 For **Rental Software** Customer shall receive a non-exclusive, non-sublicensable, non-transferable and non-permanent license limited to the term of the contract (III. 11.) to use the functionalities as defined conclusively in the user manual in accordance with the contract. The respective access authorizations are mutually defined and can be extended after further agreement.
- 3.2 The Customer shall not receive any further rights to the **Rental Software**. In particular, the Customer has no right to the source code of the **Rental Software**.

4. Restrictions of the License

- 4.1 The Customer is not entitled to use the **Rental Software** beyond the permitted use according to the contract or make it available for use by any third parties. In particular, the Customer shall not sell, rent out or lease the **Rental Software** to any third party. The Customer shall not reproduce the **Rental Software** or parts thereof, unless this would be absolutely necessary for the purpose to remedy any defects, which are not remedied by KDS in time in accordance with the provisions of this KDS-TCSW. Any changes by the Customer as part of the troubleshooting must be documented and communicated to KDS. The reproduction of the **Rental Software** as part of the software distribution for the contractual use or the proper data backup of the **Rental Software** is part of the permitted use.
- 4.2 The Customer shall not be entitled to analyze, to reassemble, edit or change the **Rental Software**. Subject to a statutory license, the Customer shall not be entitled to retranslate into other code forms ("decompiling") as well as use other ways of reversing the various manufacturing stages of the **Rental Software** ("reverse engineering")
- 4.3 The Customer shall not be entitled to remove, modify or obliterate any ownership and copyright notices, serial numbers, version numbers, stickers, labels or trademarks of KDS or other manufacturers contained in the **Rental Software**, the user manual and other supporting documentation.
- 4.4 If the license of the **Rental Software** is limited to a predefined hardware or software environment, any deviating use shall require KDS's prior written consent unless such predefined hardware or software environment is not functional. In this case, the Customer may use the **Rental Software** in another hardware or software environment without KDS's prior written consent until the contractual use in the predefined hardware or software environment is possible.
- 4.5 In case the **Rental Software** contains any third party software (e.g. "Open Source Software") KDS will include the respective copyright notices and license terms in the **Rental Software** to the extent such is required for the use of the third party software. Customer shall comply with any third party software copyright notices and license terms.



5. Obligations of the Customer, Nonconforming Use

- 5.1 The Customer shall fulfill its obligations regarding the performance and execution of the contract. The Customer particularly shall
 - 5.1.1 name all users authorized by the Customer for the use of the **Rental Software** in writing, if legally permissible. The Customer also undertakes to immediately inform KDS in writing about each change of such authorized users (e.g. through organizational changes and change of staff).
 - 5.1.2 protect the assigned user and access authorizations against unauthorized access by third parties and not disclose them to unauthorized third parties.
 - 5.1.3 obtain the required consent of the relevant party, insofar as the Customer collects, processes or uses personal data of such party in the course of using the **Rental Software** if no statutory license applies.
 - 5.1.4 ensure that (e.g. for the use of text and data of third parties) all intellectual property rights, copyrights and other rights of third parties are respected.
 - 5.1.5 not misuse or allow the misuse of the **Rental Software**, e.g. not offer or transmit information with unlawful or immoral content or refer to such information which encourage crime or glorify or trivialize violence, which is sexually offensive or pornographic, or which is suitable to seriously endanger the moral and/ or welfare of children and teenagers or which can damage the reputation of KDS.
 - 5.1.6 refrain from any attempt by itself or by an unauthorized third party to unauthorized retrieve information or data or intervene in programs that are operated by KDS or to intervene or invade KDS's data networks.
 - 5.1.7 not use the possible exchange of electronic messages for the unsolicited sending of messages or information to third parties for advertising purposes („spamming“).
 - 5.1.8 indemnify KDS against any and all third party claims which are based on an unlawful use of the **Rental Software** by the Customer or with his consent, or which arise from claims including but not limited to claims regarding privacy, copyright or other legal disputes and which are related to the use of the **Rental Software** by the Customer. If the Customer realizes or needs to realize that such an infringement is imminent, the Customer has the duty to inform KDS immediately.
 - 5.1.9 check data and information prior to transmission for viruses and use state-of-the-art anti-virus software.
 - 5.1.10 ensure that the users authorized by Customer comply with the provisions set for the use of the **Rental Software**.
- 5.2 KDS is entitled to terminate the contract without notice and/or suspend or block the access of the Customer and its authorized users to the **Rental Software** in case of an unlawful or serious breach of the material obligations specified in III. 5.1 by him or its authorized users. Access is only restored when the infringement and the risk of recurrence of such infringement of the affected material obligation is permanently remedied. The Customer remains obligated to pay the Rental Fee in this case. In case of such termination for cause, the Customer shall immediately cease the use of the **Rental Software** and shall return any copies of the **Rental Software** if any as well as the user manual and other supporting documentation.
- 5.3 In case of a breach of the obligations in III. 5.1.4 – 5.1.7 KDS is entitled to delete the affected data.
- 5.4 In the case of a culpable breach of the obligations in III. 5.1 by Customer, the Customer is obligated to pay a contractual penalty of EUR 30,000.00. KDS reserves the right to claim further damages in which case the penalty already paid by Customer shall be deducted from such claim.
- 5.5 In the case of an unlawful breach of the obligations in III. 5.1 by a user authorized by Customer, the Customer will take the necessary measures to help clarify and punish such offense of the user and inform KDS about the measures taken.

6. Data Protection and Data Security

- 6.1 The software application, server and system software and other system components of the **Rental Software** are in a data center operated by KDS.
- 6.2 KDS meets the technical and organizational security measures and procedures specified by EU data protection laws. The Customer is not entitled to demand access to the premises with the KDS data center. This does not affect the access rights of the respective Customer's data protection officer upon written notice to check compliance with the requirements of the contractual agreements and the applicable data protection laws.
- 6.3 All relevant data of the **Rental Software** is backed up daily and kept 30 days. After the retention period, the data backup will be overwritten. Data is backed up on various media and is kept in different locations.

7. Availability of the Rental Software

- 7.1 KDS provides the Customer with the functionality of the **Rental Software** during the System Runtime specified below.

Times	R (System Runtime)	Periods of Planned Maintenance
Monday-Friday	12 a.m. until 12 p.m.	10 p.m. until 2 a.m. = 4 hours
Saturday-Sunday Holidays*	12 a.m. until 12 p.m.	8 a.m. until 12 a.m. = 4 hours

* Holidays in Federal Republic of Germany and Bavaria
All times are based on Central European time zone for Germany.

- 7.2 KDS is entitled to perform maintenance and the data backup with regards to the **Rental Software** and/or underlying hardware systems within the times listed in the table of section III. 7.1 as "Periods of Planned Maintenance".
- 7.3 KDS is entitled to carry out safety-related and mandatory measures for the system at any time.
- 7.4 Nonavailability (NA) is any period of time during the System Runtime (R) in which the **Rental Software** is unusable.
The following exceptions shall not constitute Nonavailability:
- disturbances or other incidents in or due to the condition of infrastructure not provided by KDS or his subcontractors;
 - disturbances or other incidents, which are not caused by KDS or his subcontractors (e.g. by exceeding the thresholds in section III. 7.5);
 - disturbances or other incidents as internet / network-related downtime or other technical problems, which are beyond the control of KDS or his subcontractors (e.g. Force Majeure) or caused by any third party;
 - Performance of measures in accordance with sections III. 7.2 and 7.3.

- 7.5 KDS can provide its services only in accordance with the contract, if the Customer ensures compliance with the thresholds indicated below. Any use outside of these thresholds can lead to a higher failure rate up to a total failure of the server or other hardware and operating software components of the **Rental Software**:

The permissible system workload caused by Customer is 100 concurrent sessions per second

- 7.6 Unless otherwise agreed in the contract, the Availability (A) of the **Rental Software** in the respective measurement period of a month (calculated to 30 days) shall be at least **99%**.

Availability (A) is determined as follows:

$$A = (R - NA) : R \times 100 (\%)$$

R System Runtime in minutes in accordance with the table of section III. 7.1
NA Nonavailability in minutes in accordance with section III. 7.4
A Availability in %

8. Warranty for Defects of Rental Software

- 8.1 The description of the quality of the **Rental Software** is defined conclusively in the respective Specification (e.g. in the user manual). KDS shall not be liable for any defects relating to qualities not specifically mentioned in the Specification. It is the sole liability of the Customer to examine the suitability of the **Rental Software** for the intended use.
- 8.2 KDS shall maintain the contractual agreed quality of the **Rental Software** during the term of the contract (III. 11.); i.e. to ensure the usability of the **Rental Software** in accordance with the Specification. Insignificant deviations from the agreed quality (in particular in cases of defect classes 3+4, see IV. 5.) shall not be considered a defect of the **Rental Software**.
- 8.3 Strict liability for damages regardless of negligence or fault shall be excluded. The liability under I. 8 and III. 10 remains unaffected.
- 8.4 Claims for defects are excluded
- in case of defects arising after the time of Operational Provision due to faulty or negligent handling by the Customer and/or its users;
 - in case of defects after the change of operating conditions (hardware/software environment), after installation and operating mistakes as far as these are not due to a faulty user manual, after interferences with the **Rental Software** by the Customer, such as changes, adjustments and/or connections with other software or in case of defects which occurred after a non-contractual use, unless the Customer can prove that the defect already existed at the time of the Operational Provision or that there is no causal connection between Customer's use and the defect.
- 8.5 The Customer shall immediately notify KDS in writing of any defects of the **Rental Software** and shall provide KDS with all information, documents and access necessary for the remedy of such defect.
- 8.6 The Customer shall be liable for any damages resulting from an unjustified request for remedy of a defect in case the Customer has recognized or should have recognized that the occurring error is not caused by a defect of the **Rental Software** but has its root cause in the area of responsibility of the Customer.
- 8.7 Claims for damages due to a defect are conclusively regulated in I. 8. and III. 10.

9. Warranty for Defects in Title of Rental Software

- 9.1 Unless otherwise agreed, KDS shall provide the **Rental Software** free from industrial property rights, copyrights of third parties and/or any other third party right ("**Third Party Right**") with respect to the country at the Place of Delivery. If a third party asserts justified claims against the Customer due to an infringement of a Third Party Right by the **Rental Software**, which was provided by KDS and used by the Customer in conformity with the contract ("**Defect in Title**"), KDS shall be liable to the Customer, within the term of the contract (III. 11.) as follows:
- 9.1.1 In the case of a liability according to III. 9.1, KDS shall at its option and free of charge for the Customer either obtain a right to use the **Rental Software** in conformance with the contract, modify the **Rental Software** so as not to infringe the Third Party Right or replace the **Rental Software** with a non-infringing version. If this is not possible for KDS on acceptable terms, the Customer shall have a right to terminate the contract or reduce the price. The Customer shall accept a new version or release of the **Rental Software** if the contractually agreed quality (Specification) is preserved and such acceptance of the new version or release would not be unreasonable for the Customer.
- 9.1.2 The fulfilment of the obligations in III. 9.1.1 shall be subject to the condition that the Customer immediately notifies KDS in writing of the claims asserted by the third party, that the Customer does not acknowledge an infringement and that the protective measures and settlement negotiations are exclusively reserved to KDS. If the Customer ceases to use the **Rental Software** to reduce the damage or for other important reasons, the Customer shall make it clear to the third party that the suspended use does not mean any acknowledgment of an infringement of a Third Party Right.
- 9.1.3 If the contractual use of the **Rental Software** is affected by Third Party Rights beyond KDS's control without negligence or fault from KDS's side, KDS reserves the right to refuse the further use of the affected **Rental Software** or parts thereof. KDS will inform the Customer without undue delay and allow him appropriate access to its data. For the period of impairment, the Customer shall not be obliged to pay the Rental Fee. Other claims or rights of the Customer shall remain unaffected.
- 9.2 A claim of the Customer shall be excluded if he is liable for the breach of the Third Party Right.
- 9.3 A claim of the Customer shall also be excluded if the infringement of the Third Party Right was caused by specific demands of the Customer, by a use of the **Rental Software** not foreseeable by KDS or the **Rental Software** being altered by the Customer or being used together with products not provided by KDS.
- 9.4 The provisions in section III. 8. shall apply accordingly to any other defects of title.
- 9.5 Claims for damages due to a Defect in Title are conclusively regulated in I. 8. and III. 10.
- 9.6 Any further claims or claims other than those stipulated in I. 8. or III. 9. of the Customer against KDS due to a Defect in Title shall be excluded.

10. Liability

- 10.1 For the typical damage (I. 8.4) in the event of a system failure of the **Rental Software**, the Parties agree that compensation shall be made by payment of the lump sum amounts described in III. 10.1.1 and 10.1.2. With the payment of such lump sum amounts, all claims for damages by the Customer shall be fully compensated and further claims are thereby excluded.
- 10.1.1 In the event of a complete system failure without recovery of the contractual agreed availability (III. 7), KDS shall pay to the Customer liquidated damages in the amount of EUR 10,000.00. A complete system failure without recovery shall mean that KDS is unable to restore the contractual agreed quality of the **Rental Software** within 30 calendar days from KDS's receipt of Customer's notice of defect. Amounts already paid by KDS to the Customer in accordance with III. 10.1.2 shall be deducted from the lump sum amount in accordance with this III. 10.1.1. In case of a complete system failure without recovery, both Parties are entitled to terminate the contract with immediate effect.
- 10.1.2 In the event of a system failure with recovery of the contractual agreed availability (III. 7) within 30 calendar days from KDS's receipt of Customer's notice of defect, KDS shall pay to the Customer the following lump sum amounts:

Period of system failure in calendar days	Lump Sum Amount in Euro/ calendar day
Day 1	25
Day 2 until and including Day 10	50
Day 11 until and including Day 20	75
Day 21 until and including Day 30	100

- 10.1.3 Both in the event of III. 10.1.1 und 10.1.2 it is agreed, that the first 12 hours from KDS's receipt of Customer's notice of defect shall not give rise to any claims for liquidated damages or any other claims (grace period).

11. Term and Termination

- 11.1 Unless otherwise agreed in the contract, a contract for **Rental Software** runs indefinitely, but at least until the end of the year following the year of Operational Provision of the **Rental Software** ("**Minimum Rental Period**").
- 11.2 The contract may be terminated by either Party at the earliest with 6 months written notice to the end of the Minimum Rental Period. If not terminated the contract shall run for consecutive 12 month periods until terminated by either Party with 6 months written notice to the end of the respective contract year.
- 11.3 The right for either Party to terminate the contract without notice on exceptional reasons (termination for cause) remains unaffected. Such exceptional reasons shall be considered as, but not limited, to either Party's substantial breach of the contract, which remains uncured 30 days after notification of such breach, either Party's cessation of business, election to dissolve, dissolution, insolvency, failure in business, commission of an act of bankruptcy, general assignment for the benefit of creditors, or filing of any petition in bankruptcy or for relief under the provisions of the bankruptcy laws.
- 11.4 Any termination shall be made in writing (written form).
- 11.5 In case of any termination for cause, the Customer shall immediately cease the use of the Rental Software and shall return any copies of the Rental Software if any as well as the user manual and other supporting documentation.

IV. Services

1. Prices

- 1.1 Prices are net prices in EUR (Euro), exclusive of the current value added tax (VAT) in force at the time of performance of the **Services** without further deductions.
- 1.2 For the prices for hours of work, travelling and waiting as well as travel expenses and costs of accommodation the applicable rates for services of KDS at the time of performance of such **Services** shall apply.

2. Deadlines, Delay

- 2.1 Observance of the stipulated time for provision of the **Services** is conditional on the timely receipt of complete documents, necessary permits and approvals, especially of plans to be provided by the Customer as well as fulfilment of the agreed terms of payment and other obligations by the Customer (e.g. advance payment, partial payment). In case these conditions are not fulfilled on time, the period for provision of the **Services** shall be extended accordingly; this shall not apply if KDS is solely responsible for the delay of the **Services**.
- 2.2 If non-observance of the time for provision of the **Services** is due to Force Majeure (I. 11.), the time limits shall be extended appropriately.
- 2.3 In the event that KDS is responsible for a delay of the provision of the **Services** and provided that the Customer can credibly establish that a damage for such delay has occurred, the Customer may claim liquidated damages of 0.5% for every completed calendar week of delay but in no event shall the aggregate of such liquidated damages exceed a total amount of 5% of the net price of the **Services** which because of the delay could not be put to the intended use by the Customer. The obligation to pay the liquidated damages requires proof by the Customer that any damage has occurred, but not of its amount. KDS shall be entitled to provide evidence that the Customer suffered lower or no damage.
- 2.4 Further claims and remedies of the Customer due to the delayed provision of the **Services** in particular indirect or consequential damages, loss of profit or loss of production are excluded. This shall not apply in case of liability of KDS based on intent, gross negligence or due to loss of life, bodily injury or damage to health.
- 2.5 Claims by the Customer for damages due to a delay of the provision of the **Services** as well as claims for damages for non-performance, which exceed the limits specified in IV. 2.3 shall be excluded, even after expiry of the period for the provision of the **Services** reasonably set by the Customer.
- 2.6 The Customer shall only be entitled to rescind the contract provided that KDS is solely liable for the delayed provision of the **Services** and after reaching the maximum amount of compensation specified in IV. 2.3 and the Customer has set an adequate period to KDS within KDS has to perform the provision of the **Services** and such period has expired. A change in the burden of proof to the detriment of the Customer shall not be implied hereby
- 2.7 At the request of KDS, the Customer shall declare within a reasonable period whether the Customer will rescind the contract due to the delayed provision of the **Services** or insist on the provision of the **Services**.

3. License, Rights to Use

The license rights with regards to the use of the work results resulting from the **Services** shall be governed by the license of the **Software** for which the respective **Services** are rendered. The Customer shall not receive any further rights with regards to the work results resulting from the **Services**.

4. Acceptance of Services

- 4.1 For the purpose of acceptance of the **Services**, KDS shall notify the Customer of the completion of the **Services** and provide the **Services** to the Customer in order to render the acceptance tests.
- 4.2 In case the acceptance test shows only insignificant deviations from the agreed quality (in particular in cases of defect classes 3+4, see IV. 5), Customer shall accept the **Services** by signing the acceptance protocol. Defects for which the Customer cannot refuse the acceptance (in particular in cases of defect classes 3+4, see IV. 5) which were detected during the acceptance test shall be noted in the acceptance protocol and remedied by KDS. In case of unconditional acceptance of the **Services**, the Customer loses all rights (including claims for damages) regarding any known defects.
- 4.3 The **Services** may not be accepted by the Customer in case that during the acceptance tests defects (see IV. 5) of the defect class 1 or more than 3 defects of the defect class 2 are detected. In this case, the Customer is entitled at its discretion to cancel the acceptance tests and proceed in accordance with IV. 4.6. Defects detected during the acceptance tests shall be documented by the Customer in a way comprehensible for KDS (e.g. bug tracking system).
- 4.4 If Customer considers that the **Services** cannot be accepted, he shall notify KDS in writing within two weeks after provision of the **Services** for the acceptance (IV. 4.1) and provide the respective documentation (IV. 4.3).
- 4.5 In case Customer does not notify KDS in accordance with IV. 4.4 or in case Customer has already used the **Services** commercially, the **Services** shall be deemed to be accepted.
- 4.6 In case Customer objects to the acceptance of the **Services** and notifies KDS in accordance with IV. 4.4, KDS will comment on this objection and remedy any defects. Subsequently, KDS will again provide the **Services** for acceptance. For the subsequent acceptance test, the provisions above shall apply accordingly. If KDS fails to perform the rectification of the defects or if such rectification fails several times (at least three times), the Customer is entitled to cancel the contract or reduces the price for the **Services** accordingly. The right to claim damages shall remain unaffected.
- 4.7 In case the Parties have agreed on different dates for the completion of any **Services** or self-contained parts thereof, the respective acceptance test shall be limited to such part of the overall performance (partial acceptance). In case the success of the agreed **Services** depend on the interaction of the individual partial **Services**, the acceptance test of the last of the partial **Services** shall include an acceptance test including all partial **Services** and their interaction (final acceptance).

5. Defect Classes

- 5.1 Defect Class 1:
The functional and economically viable use of the overall system/work result in accordance with the Specification is not possible, or restricted or hindered by defects or failures within its programs, modules or components in such way that the handling of the daily business or an acceptance test cannot reasonably be continued (exemplary defect: The code management for foil products displays incorrect values).
- 5.2 Defect Class 2:
The functional and economically viable use of the overall system/work result in accordance with the Specification is significantly restricted or hindered. While the core functionality is still warranted, there is a significant defect in an essential part of the system/work result, which considerably hinders working with the system/work result (exemplary defect: The storing of codes is possible but an error log cannot be printed using the print function.)
- 5.3 Defect Class 3:
The functional and economically viable use of the overall system/work result in accordance with the Specification is only insignificantly restricted or hindered, without any significant impact on the key functionality of the overall system/work result (exemplary defect: A statistic report terminates with an error message).
- 5.4 Defect Class 4:
Other defects of the overall system/work result, which do not affect its functionality in accordance with the Specification, but which are more or less annoying (exemplary defects: misspellings on the screen mask, errors in the documentation, etc.).

6. Change Requests

- 6.1 A request for a change in relation to the **Services** ("**Change Request**") shall be drawn up and provided by the Customer in writing. KDS will endeavor to take into account any Change Requests of the Customer, unless the desired change is unacceptable or unreasonable for KDS.
- 6.2 KDS will examine the effects of the desired Change Request in particular with regards to the effects on schedule and compensation (additional expenses) and whether it is technically feasible. After examining the Change Request KDS shall provide the Customer with a proposal in writing (text form is sufficient) including the impact on the contract state or KDS will reject the Change Request. Any rejection must be substantiated in writing.
- 6.3 In case of a proposal for a Change Request by KDS, the Parties shall agree on the implementation without undue delay.

7. Defects of the Services

- 7.1 The description of the quality of the **Services** is defined conclusively in the respective Specification. KDS shall not be liable for any defects relating to qualities not specifically mentioned in the Specification.
- 7.2 In case KDS renders the agreed **Services** not at all or not in conformance with the contractually agreed quality, Customer shall immediately notify KDS in writing and shall provide KDS with a reasonable time limit to properly perform the agreed **Services** or to remedy the **Services** in any other way ("**Subsequent Performance**"). Such notice of defect shall include all information and documents necessary for the Subsequent Performance. If reasonable for the Customer, KDS is entitled to remedy the defect with a revision (e.g. update or patch) or a new release (upgrade) of the **Services**, which eliminates or no longer contains the notified defect. Until KDS can provide a revision or a new release to the Customer, Subsequent Performance may also be made by showing the Customer reasonable ways to avoid the effects of the defect, e.g. by providing a "workaround".
- 7.3 Claims for defects shall expire in 12 (twelve) months from the time of acceptance. This shall not apply in case of liability based on intent, gross negligence or due to loss of life, bodily injury or damage to health or fraudulent concealment of a defect or non-compliance with guaranteed characteristics. The statutory provisions on suspension and recommencement of the limitation period shall remain unaffected.
- 7.4 Insofar as the Customer grants KDS no opportunity for Subsequent Performance within a reasonable period, KDS is exempted from liability for defects.
- 7.5 Claims for defects are excluded
- in case of only insignificant deviations from the agreed quality (in particular in cases of defect classes 3+4, see IV. 5.);
 - in case of only insignificant impairment of usability (in particular in cases of defect classes 3+4, see IV. 5.);
 - in case of defects arising after the acceptance due to faulty or negligent handling by the Customer and/or its users;
 - in case of defects after the change of operating conditions (hardware/software environment), after installation and operating mistakes as far as these are not due to a faulty user manual, after interferences with the **Services** by the Customer, such as changes, adjustments and/or connections with other software or in case of defects which occurred after a non-contractual use, unless the Customer can prove that the defect already existed at the time of acceptance or that there is no causal connection between Customer's use and the defect.
- 7.6 Updates like bug fixes and safety-relevant patches shall be free of charge for the Customer during the warranty period (IV. 7.3).
- 7.7 The Customer shall be liable for any damages resulting from an unjustified request for remedy of a defect in case the Customer has recognized or should have recognized that the occurring error is not caused by a defect of the **Services** but has its root cause in the area of responsibility of the Customer.
- 7.8 If reasonable for the Customer, Customer shall enable KDS on request with a remote access to the **Services**.
- 7.9 Claims for damages due to a defect of the **Services** are conclusively regulated in I. 8.
- 7.10 Any further claims or claims other than those stipulated in I. 8. or IV. 7. of the Customer against KDS due to a defect of the **Services** shall be excluded. The right of the Customer to rescind the contract shall remain unaffected.

8. Warranty for Defects in Title

- 8.1 Unless otherwise agreed, KDS shall provide the **Services** free from industrial property rights, copyrights of third parties and/or any other third party right ("**Third Party Right**") with respect to the country at the Place of Delivery. If a third party asserts justified claims against the Customer due to an infringement of a Third Party Right by the **Services**, which was provided by KDS and used by the Customer in conformity with the contract ("**Defect in Title**"), KDS shall be liable to the Customer, within the stipulated limitation period in IV. 7.3 as follows:
- 8.1.1 In the case of a liability according to IV. 8.1, KDS shall at its option and free of charge for the Customer either obtain a right to use the **Services** in conformance with the contract, modify the **Services** so as not to infringe Third Party Rights or replace the **Services** with a non-infringing version. If this is not possible for KDS on acceptable terms, the Customer shall have a right to cancel the contract or reduce the price. The Customer shall accept a new version or release of the **Services** if the contractually agreed quality (Specification) is preserved and such acceptance of the new version or release would not be unreasonable for the Customer. The provisions in IV 7.4 shall apply accordingly.
- 8.1.2 The fulfilment of the of the obligations in IV 8.1.1 shall be subject to the condition that the Customer immediately notifies KDS in writing of the claims asserted by the third party, that the Customer does not acknowledge an infringement and that all countermeasures and settlement negotiations are reserved to KDS. If the Customer ceases to use the **Services** to reduce the damage or for other important reasons, the Customer shall make it clear to the third party that the suspended use does not mean any acknowledgment of an infringement of a Third Party Right.



- 8.2 A claim of the Customer shall be excluded if the Customer is liable for the breach of the Third Party Right.
- 8.3 A claim of the Customer shall also be excluded if the infringement of the Third Party Right was caused by specific demands of the Customer, by a use of the **Services** not foreseeable by KDS, or the **Services** being altered by the Customer or being used together with products not provided by KDS.
- 8.4 The provisions in section IV. 7. shall apply accordingly to any other defects of title.
- 8.5 Claims for damages due to a Defect in Title of the **Services** are conclusively regulated in I. 8.
- 8.6 Any further claims or claims other than those stipulated in I. 8. or IV. 8. of the Customer against KDS due to a Defect in Title of the **Services** shall be excluded.

V. Freeware

- 1. For the permanent provision of **Freeware**, the regulations for **Purchased Software** (II.) and for the temporary provision of **Freeware** the regulations for **Rental Software** (III) of this KDS-TCSW shall apply accordingly.
- 2. With the exception of the provision of **Freeware** free of charge, no further services like support or maintenance services are owed by KDS.
- 3. KDS shall not be liable for any defect of **Freeware** unless KDS has concealed a defect of the **Freeware** fraudulently. A further liability or warranty for defects and deficiencies shall be excluded.
- 4. Besides that, KDS is only liable in connection with the provision of **Freeware** in the case of intent and gross negligence. Further claims for damages by Customer against KDS, for whatever legal reason, are excluded.