

# General Terms and Conditions (GTC) of compacer GmbH

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## A. General Terms and Conditions for Supplies and/or Services

### **§ 1 Scope of Application and Conclusion of the Agreement**

- 1 All supplies and services provided by compacer (hereinafter referred to as "Supplies and/or Services") and any business contacts prior to the conclusion of the Agreement are exclusively subject to these General Terms and Conditions (hereinafter referred to as "GTC") of compacer, unless the other party is a consumer. Other provisions will not become part of this Agreement, including any cases where compacer does not expressly object to them.
- 2 The compacer General Terms and Conditions, as amended, shall apply to all business transactions, including transactions under future agreements that do not expressly refer to these GTC, unless the parties to the contract agree otherwise.
- 3 Unless compacer provides otherwise in writing, any offers submitted by compacer are non-binding and subject to change. Customer will be bound by its offer for a period of two (2) weeks.
- 4 A binding contract is concluded when compacer accepts Customer's purchase order by means of a written order confirmation or by fulfilling the order.
- 5 Representations in test programs, and product and project descriptions are not intended to warrant a certain property. Such representations require the express written consent of compacer.
- 6 Customer shall specify Customer's requirements regarding the Supplies and/or Services of compacer in writing, e.g., in the form of functional specifications or a product brief. The parties shall agree on the implementation of the requirements in a written contract.

### **§ 2 Principles regarding Performance**

- 1 Unless otherwise agreed, compacer shall plan the tasks required for performance based on Customer's requirements. During this process, compacer shall consider Customer's requests.
- 2 Customer is responsible for ensuring that Supplies and/or Services commissioned are suited to match its requirements and needs. In case of doubt or if any questions should arise, Customer shall obtain professional advice from compacer or competent third parties in a timely manner.
- 3 Customer understands that it will need to use its best efforts to support the processes that may have been changed by the Supplies and/or Services provided by compacer, in particular, by intensive training courses for its employees. Customer is aware of the fact that the introduction of new processes may cause interruptions or impairments in its business operations.
- 4 In the event that compacer realizes during the performance of the Supplies and/or Services that Customer's requirements need to be reviewed due to facts it discovers, it shall inform Customer hereof in writing and make alternative proposals to the extent possible. Customer shall promptly decide, if applicable, on changes regarding the subject

matter of the Agreement that are required as a consequence of such information. Conversely, Customer will notify compacer, if, in the opinion of Customer, deviations from the procedure agreed between the parties should become necessary.

- 5 compacer may retain sub-contractor for performance. In the event compacer uses sub-contractors in the processing of personal data of Customer, the provisions set forth in Chapter A, § 13 shall apply.

### **§ 3 Customer's Duty to Co-operate**

- 1 Customer shall ensure that compacer is provided with any information, records and data that Customer must contribute to the performance of this Agreement and that information, records and data are complete, accurate, provided in a timely manner, free of charge and always up to date. Customer shall make any decisions that are required for contract performance within a reasonable period of time and shall cooperate in the drafting of specifications, in testing and incident management.
- 2 To the extent useful for performance, Contractor shall assist compacer with its contract performance free of charge, e.g., by providing staff, working rooms, hardware, operating system and basic software, data and telecommunications facilities.
- 3 Customer shall take reasonable precautions for the event that the deliverables fail to work properly in whole or in part, e.g., by failure diagnosis, verification of the results at regular intervals, etc. Unless compacer has assumed the backup of data as a Service to be provided under this Agreement, Customer shall ensure that data is properly backed up. In the event that compacer needs to interfere with Customer's IT systems, Customer shall first back-up its data; compacer shall inform Customer in due time prior to such interventions.
- 4 In the event that compacer performs tasks, in whole or in part, on computers of Customer, the parties shall agree so in advance. For such work, Customer shall make available to compacer computers and work space, as may be required, that are not linked with Customer's business operations, and shall provide information material, a system environment, and system support.
- 5 Customer will ensure the operability of all technical prerequisites that are required for providing the Supplies and/or Services (access system, telecommunications connection) that it is required to provide or that compacer will integrate into the technical network of Customer.
- 6 To the extent required for performance, Customer shall allow compacer immediate and remote access to its hardware and software. In connection herewith, compacer will ensure that Customer's best interests are safeguarded.
- 7 Certain Supplies and/or Services provided by compacer require the cooperation of other services providers commissioned by Customer (e.g., provision of interface information, infrastructure information, etc.) or from business partners of Customer (e.g., information from business

partners of Customer that Customer wishes compacer to connect to its IT services). compacer shall inform Customer of such cooperation duties and contributions that Customer needs to obtain from third parties. To the extent that cooperation duties or contributions are required for performance and Customer must obtain them from third parties, third parties will be considered to be vicarious agents of Customer with regard to such duties to cooperate.

- 8 In the event that Customer fails to comply with its duty to cooperate, compacer will not be deemed to be in default to the extent that performance by compacer was contingent on the cooperation by Customer. In the event that Customer fails to comply with its duty to cooperate and to provide contributions although a reasonable period had been granted, in particular, if Customer fails to obtain third party supplies and/or services that are required pursuant to Chapter A § 3 par. 7, compacer has the right to provide Customer with the Supplies and/or Services in the state that compacer can deliver at that date, the contract shall be deemed to have been duly performed by these Supplies and/or Services. compacer has the right to charge Customer with any additional expenses incurred due to a lack in cooperation or contribution, for incomplete, inaccurate information or for information that is subsequently rectified in spite of an accurate request made by compacer or in spite of an accurate agreement between the parties. Other claims of compacer remain unaffected.

#### **§ 4 Time of Performance; Delays**

- 1 Unless provided otherwise in an individual contract, compacer shall provide its Services from Monday to Friday from 9 to 5 p.m. (excluding public holidays in Baden-Württemberg and in Saarland). The operating hours, performance time, maintenance time and the availability of the agreed e-services (e.g., data center time) and other recurring Supplies and/or Services are set forth in the corresponding individual contract.
- 2 Delivery dates or times are non-binding, unless compacer has committed to a binding delivery date in writing. Partial deliveries are permissible, provided, however, that the parts supplied may reasonably be used separately. compacer reserves the right to obtain supplies itself. With regard to supplies shipped and services performed by third parties, compacer shall be responsible only for the proper placement of the purchase order. compacer is liable to Customer only in those cases where non-delivery is due to reasons for which compacer is responsible.
- 3 If and during the time that compacer is unable to provide its services in due time or with the agreed availability due to circumstances beyond compacer's control, e.g., labor unrest, force majeure, acts of God, power failure, third party network outages, the failure of telecommunication providers to provide their services, or other events for which compacer is not responsible, compacer shall not be liable for delays caused hereby. The events for which compacer is not responsible shall also include short unforeseen downtime of subcontractors that are required to provide the Supplies and/or Services for whom there is no replacement. This shall not apply, if the failure was caused by acts on the part of compacer.
- 4 Performance periods are extended by such period during which compacer is prevented from providing Supplies and/or Services due to circumstances set forth in par. 3 plus a reasonable period for resumption following the impediment or impairment. The same applies to the period during which compacer waits for information from or for the co-operation of Customer.
- 5 compacer will only be in default upon a written reminder and the granting of a grace period. Notices of defects and contract breaches as well as those regarding grace periods must be in writing to be effective.
- 6 In the event that Customer has caused a failure of the Supplies and/or Services provided by compacer (e.g., input

of inaccurate data), compacer has the right to invoice the additional expenses incurred in accordance with the valid price list. The same applies, if the fault was caused by a third party that benefits from the Supplies and/or Services provided by compacer in accordance with the intention of Customer and at Customer's side (e.g., business partners of Customer to be connected to IT services). compacer shall inform Customer of the cause of the failure or fault, as soon as compacer becomes aware of it.

#### **§ 5 Modifications and Amendments**

- 1 Customer has the right to request modifications and extensions of the agreed Supplies and/or Services (hereinafter referred to as "Change Requests") in writing. compacer has the right to refuse compliance with a Change Request in writing, if it cannot reasonably be expected to comply with it in view of its operational capacity, if the changes are not feasible or would result in a reduction of the agreed remuneration or in a delay of the due date of payments to the detriment of compacer.
- 2 compacer has the right not to examine any Change Request, unless Customer declares that it will assume any costs incurred in connection with this Change Request.
- 3 If compliance with the Change Request would affect the contractual agreements (in particular, remuneration, deadlines, etc.), the parties shall amend the Agreement in writing. compacer shall submit an offer on the additional expenses incurred and the necessary changes to the project schedule within a reasonable period of time to Customer. The compensation is subject to the price list, as amended, provided by compacer.
- 4 During the period in which compacer examines the Change Request, compacer shall continue to provide the Supplies and/or Services without any modification. In the event that Customer demands the suspension of the provision of Supplies and/or Services until a decision on the Change Request has been made, compacer has the right to invoice Customer for any expenses incurred due to this standstill.
- 5 In the event that the parties are unable to agree on the adjustment of the contract within four (4) weeks from the receipt of the offer, compacer shall perform the Agreement without taking the Change Request into account. To the extent that § 649 of the German Civil Code (BGB) is applicable, it shall remain unaffected.

#### **§ 6 General Copyrights and Rights to Use**

- 1 With regard to the relationship between Customer and compacer, compacer reserves any copyrights, rights to use, and other proprietary rights in and to the Supplies and/or Services provided by compacer. This shall also apply to the extent that Supplies and/or Services were provided by compacer in collaboration with Customer or based on Customer's specifications.
- 2 To the extent that work results are created by compacer's performance of the Agreement that are individually protectable as a proprietary right, industrial property right, patent, or copyright, compacer grants Customer the non-exclusive, indefinite and world-wide right to use the result for its own business purposes, subject, however, to the condition precedent that the agreed remuneration was paid. Customer has the right to reproduce and process the work results for this purpose. To the extent that Customer distributes work results or any adaptations thereof, displays or performs them, exploits them commercially, or intends to report about them to the general public, this shall require to the prior written consent of compacer.
- 3 In the event that these work results are Supplies and/or Services that are provided in connection with the software that was provided by compacer (e.g., customizing, adaptation of standard software), Customer is granted - in deviation from Chapter A § 6 par. 2, the rights to use that compacer has granted to Customer under the Software Provision Agreement for the underlying software.

**§ 7 Contact Person, Minutes of Meetings**

- 1 Customer will designate a contact person and an alternate for the provision of Supplies and/or Services under this Agreement. The contact person is authorized to make decisions for the project and will be available for meetings and answer questions. The contact person of Customer shall make available to compacer any information that may be useful in the performance of the tasks and shall ensure that Customer complies with its duty to cooperate.
- 2 compacer shall prepare minutes of project meetings that becomes binding on both parties when compacer provides Customer with a copy of these minutes and if Customer fails to object to the minutes within one (1) week in writing giving reasons for this objection. compacer shall include a notice regarding this consequence in the minutes of the meeting.

**§ 8 Remuneration and Terms of Payment**

- 1 In the event that the parties have not specifically agreed on prices for Supplies and/or Services the compacer price list applicable at the date of the order confirmation shall apply. If compacer provides Supplies and/or Services outside the regular working hours upon Customer's request, compacer has the right to charge higher rates for such working hours based on the then-current price list. Unless otherwise agreed, compacer has the right to charge Customer for any Services provided at Customer's location or on behalf of Customer, including travel expenses, travel time, accommodation and out-of-pocket expenses.
- 2 Value added tax will be added to all amounts.
- 3 In the absence of other agreements, the remuneration for Services will be computed based on a time and materials basis. compacer shall document the actual working time on time sheets, which shall be submitted to Customer together with the invoice. Customer may object to the information furnished only within a period of four (4) weeks after receipt; any objections must be in writing. With regard to payments made subject to a reservation, any claims under the law of unjust enrichment remain unaffected, the same applies to claims for defects or faults.
- 4 Supplies and/or Services shall be accounted for upon their provision and/or performance. If the parties have agreed on fixed remuneration, compacer may request reasonable payments on account (interim payment).
- 5 Payments are due upon receipt of the invoice and payable within fourteen (14) days. When dealing with business persons, compacer may claim interest on payments after the due date in the amount of 5% (p.a.) and interest for default in the amount of 9% above the then-applicable basic interest rate of the German Federal Bank. compacer has the right to prove and claim higher damages.
- 6 In the event that Customer is in default with a payment by more than two (2) weeks, compacer has the right to withhold any further Supplies and/or Services until payment has been received. compacer shall notify Customer of this consequence.
- 7 Customer may only offset claims against uncontested claims or claims finally adjudicated by a court. With the exception of the cases set forth in sentence 1, Customer shall not withhold any payments, unless compacer has violated its contractual duties in a grossly negligent manner. Beyond this, Customer only has the right to withhold payments based on claims under the corresponding contract. With the exception of the cases set forth in § 354 a of the German Commercial Code (HGB), Customer shall not assign any claims it may have against compacer, unless it has obtained the prior written consent from compacer.
- 8 compacer may change the agreed upon prices to the extent that recurring services are affected by written advance notice no less than six (6) weeks prior to the end of a calendar quarter. However, such a change is not permissible prior to the expiration of twelve (12) months after the execution of the corresponding contract and shall not exceed the remuneration for the preceding 12-month period by more

than 10%. If the remuneration is increased by more than 5% above the remuneration for the preceding 12-month period, Customer may terminate the contract in writing by giving three (3) weeks' written notice prior to the date on which the increase becomes effective. compacer shall include a notice to this effect in the announcement. Unless otherwise agreed, compacer also has the right to increase its prices during an agreed minimum term, unless the parties agree otherwise.

**§ 9 General Provisions for Defects as to Quality and Title**

- 1 compacer warrants that the Supplies and/or Services provided by it comply with the contractual quality set forth in the corresponding contract or, in the absence of the same, that the Supplies and/or Services are fit for the intended use that is implied by this Agreement. In the event that the Supplies and/or Services provided by compacer deviate from the contractual quality only slightly, Customer is not entitled to any claims based on defects as to quality.
- 2 compacer warrants that the Supplies and/or Services that it provides are available free from third party rights restricting or precluding their use by Customer in accordance with the provisions of the present GTC or of the corresponding individual contract. If third parties assert claims to proprietary rights (in particular, copyright/patent rights) against Customer, Customer shall immediately notify compacer in writing. compacer may request to be in charge of the defense against third party claims. If compacer takes care of the defense against the claim, Customer shall not recognize any third party claims without prior written consent from compacer. Customer shall assist compacer in the defense against the claim(s). The liability of compacer is subject to the condition precedent that the violation of law is not due to a breach of Customer's duties.
- 3 In the event of defects as to quality or in title, compacer will provide warranty services for verifiable defects in the Supplies and/or Services provided by it - to the extent that is technically feasible and that both parties may be reasonably expected to accept this - initially by subsequent improvement that is free of charge.
- 4 At the option of compacer, subsequent improvement shall either mean the re-performance of the Supplies and/or Services or rectification of the defect (e.g., by providing a release update) or by showing Customer workarounds that are acceptable to Customer that help to avoid the effects of the error. Subsequent improvement with regard to defects in title can also be performed by compacer defending against or satisfying third party claims, or by replacing the Supply and/or Service concerned with an equivalent Supply and/or Service that meets the contractual requirements. Any program release made available within the scope of subsequent improvement shall be accepted by Customer, including in those cases where this results in acceptable expenses and effort for customizing or installation. Unless provided otherwise in the following Chapters, if subsequent improvement finally fails Customer has the right to rescind the Agreement or to reduce the remuneration. Chapter A § 10 shall apply to damages or reimbursement of wasted expenditures based on a defect. The provisions set forth in Chapter A § 12 remain unaffected.
- 5 Warranty services are subject to a notice of defect and a proof from Customer that the defect is attributable to the Supplies and/or Services provided by compacer. Customer shall promptly notify compacer of any defects that are known to it. If Customer fails to notify compacer of the defect, the statutory provisions shall apply. In the event that upon receipt of a notice of failure or defect and its analysis, compacer establishes that the Supplies and/or Services provided by compacer were not defective, compacer may charge Customer with the expenses incurred. This is inapplicable if Customer is able to show that the fault or defect results from compacer Supplies and/or Services.
- 6 To the extent that this may be reasonably expected, Customer shall take all necessary measures to determine, delimit, and document the defect. This includes the

preparation of an error report, system logs, dump files, providing the input/output data affected, interim and test results, and any other records that may serve to describe the error or defect. In the event of warranty claims, Customer shall provide compacer with any available information and shall assist compacer in the rectification of the defect in accordance with Chapter A § 3.

- 7 Warranty claims are subject to the condition precedent that Customer has not changed or used the Supplies and/or Services provided by compacer (including software) contrary to the Agreement and has trained its staff in the use of the software, unless Customer is able to show that the defect is not related to such circumstances.
- 8 Claims based on defects as to quality or in title come under the statute of limitations within one (1) year when Purchase Agreements or Agreements for the Provision of Services (Kauf- und Werkverträge) are concerned. This period shall also apply to any claims based on rescission or reduction in remuneration. In case of intentional wrongdoing, gross negligence, personal injury, malice, assumption of a guarantee as to a certain quality, or of a defect in title based upon which a third party that is the owner of a property right may claim the surrender of the Supplies, the statutory limitations period shall apply. The start of the statute of limitations period is subject to the statutory provisions.

**§ 10 Damages, Reimbursement of Wasted Expenditures**

- 1 Unless otherwise provided, compacer shall only be liable for intentional wrongdoing and negligence, except in such cases in which it has issued a guaranty or assumed the procurement risk. If compacer is responsible for a guaranty or for the procurement risk, this shall be agreed explicitly and in writing between the parties.
- 2 Unless otherwise agreed, compacer will be liable for damages or reimbursement of wasted expenditures (hereinafter collectively referred to as "damage"), irrespective of the legal reason, only to the following extent:
  - a. for intentional wrongdoing, malice and absence of guaranteed properties or assumption of the procurement risk in accordance with par. 1, compacer will be liable in the full amount.
  - b. in case of gross negligence, compacer will be liable in the amount of the typical and foreseeable damage that could have been avoided if due care had been exercised;
  - c. in case of ordinary negligence, compacer will only be liable for the violation of a material duty (cardinal duty) or a duty that is of such material importance that the attainment of the purpose of the Agreement is jeopardized, limited to the typical and foreseeable damage, however, as an aggregate amount for several damage incidents, limited to one fourth of the value of the corresponding contract under which the violation of the contractual duty occurred. In the event that the contract breach that results in damages occurred in connection with a recurring obligation, liability for all damage incidents that occur during one (1) contract year, is limited to one fourth of the remuneration payable by Customer within one (1) contract year. In cases of ordinary negligence, liability for lost profit is always excluded.
- 3 The statutory liability for death or injury to body and health and under the Product Liability Act remains unaffected.
- 4 compacer shall be liable only for the restoration of data if Customer has ensured that they can be reproduced from machine-readable data inventory at a reasonable cost. This liability limitation shall not apply to intentional wrongdoing and gross negligence on the part of compacer and not in those cases, where compacer is responsible for data backups under the corresponding contract.
- 5 The defense of comparative negligence remains unaffected.

- 6 Claims for damages or reimbursement of wasted expenditures for contractual or extra-contractual liability will come under the statute of limitations within one (1) year. Claims based on Chapter A § 10 par. 2 litt a and b and § 10 par. 3 are subject to the statutory limitations period. Such period commences at the end of the year in which the claim arose and the obligee becomes aware of the facts resulting in the claim and of the identity of the obligor or could have become aware thereof, had there not been gross negligence. The claims shall fall under the Statute of Limitations no later than upon the expiration of the periods set forth in § 199 par. 3 of the German Civil Code. The provisions regarding the limitation periods for defects as to quality and in title in accordance with Chapter A § 9 par. 8 remain unaffected.

**§ 11 Reservation of Title**

- 1 compacer reserves the ownership rights and title to and in the Supplies until all existing and future claims based on business dealings with Customer have been fully settled.
- 2 compacer shall release the collateral at its own discretion, if the collaterals existing due to this ownership reservation exceed the claims to be secured by more than 20%.

**§ 12 Termination of Contractual Relationship**

- 1 Prior to any termination of the further provision of Supplies and/or Services intended by Customer resulting from a breach of a duty by compacer (through rescission, termination for cause, claim for damages in lieu of Supplies and/or Services), Customer shall expressly notify compacer of the violated duty and request compacer to cure the breach within a reasonable period, unless in that particular case, no grace period is required under the statutory provisions. In addition, Customer shall advise compacer that it will decline acceptance of any other Supplies and/or Services after the grace period has expired without result, and that it will exercise one of the rights described above.
- 2 If compacer responds to Customer's request to cure the breach and intends to rectify the fault, upon expiration of the statutory period, compacer has the right to demand that Customer conclusively declares within two (2) weeks after receipt of the letter whether it desires to continue the existing contract, in order to avoid any legal uncertainties. If Customer fails to respond, it does not have the right to terminate the Agreement at such time in connection with the circumstances for which a notice of defect was issued. compacer shall notify Customer of this legal consequence in its request. Customer does not have the right to terminate the Agreement when compacer has provided the contractual Supplies and/or Services.
- 3 Customer's claim to contract performance remains effective, until Customer demands damages in lieu of Supplies and/or Services and/or declares the rescission or termination of the Agreement for cause.
- 4 The rescission of the Agreement based on non-performance of a Supply and/or Service that is due is subject to the condition that compacer is responsible for the non-performance or that performance is impossible.
- 5 All notices and declarations in connection therewith must be in writing to be effective. The textual form pursuant to § 126 b of the German Civil Code (BGB) (e.g., email) is insufficient.
- 6 If Customer acts upon its right to terminate the Agreement and if Customer is liable for contributory fault regarding the fact that authorizes it to terminate the Agreement, any resulting damage claims of compacer remain unaffected.
- 7 Customer's right to terminate a contract for a recurring obligation for convenience, the right pursuant to § 649 of the German Civil Code and the termination of an Agreement for convenience remain unaffected by the provisions set forth in Chapter A § 12, to the extent that the termination is permissible or required in accordance with statutory or contract provisions.

**§ 13 Confidentiality, Storage, and Data Protection**

- 1 The parties agree to treat any information and records containing trade or business secrets or information and records marked as confidential that the other party discloses or of which they become aware during the performance of the Agreement in strict confidence. In particular, this shall apply to any software provided by compacer and any related documents and records. Any confidential information may only be used for the attainment of the corresponding purpose of the Agreement. Such information and records shall not be disclosed to third parties that are not involved in the performance of the Agreement. The parties shall store and secure such objects or items in such a manner that third party misuse is precluded.
- 2 The personnel of the parties and any third parties involved in the performance of the Agreement having access to the items indicated in par. 1 within the scope of their job duties shall be instructed on their duty of confidentiality in writing. In this regard, it will be sufficient to prove that the corresponding employment or other agreements include a confidentiality clause. The duty to instruct the employees of Customer shall also apply to the legal situation of the software provided by compacer and the contractually agreed rights of Customer.
- 3 compacer shall comply with the data protection rules and regulations. If compacer processes personal data on behalf of Customer as a processor, the parties shall enter into a data processing agreement pursuant to Art. 28 of the GDPR. With regard to the data subjects, Customer shall be liable for the permissibility of data processing.
- 4 compacer shall bind its staff assigned to the task of processing personal data to data secrecy, in particular, to the duty to process personal data to which the employee has access strictly in accordance with the instructions given by compacer and to treat the information obtained in strict confidence.

**§ 14 Software Audit**

compacer has the right to carry out software audits at Customer's site at regular intervals during which compliance with the agreed terms of use (including scope of use) with regard to the software products provided will be audited. The following procedure shall be observed:

- a) As a maximum, compacer may carry out audits every twelve (12) months, unless compacer has become aware of objective reasons for suspecting a violation of the terms of use (including the scope of use) by Customer. compacer shall notify the Customer of the audit two (2) weeks in advance in writing. At the option of compacer, the audit may be carried out by
  - (aa) completion of an audit questionnaire (report sheet) by Customer, or
  - (bb) using a software tool that was installed together with the Software for logging the use of the programs for audit purposes, or
  - (cc) inspection on premise (place of software installation) by an independent auditor who is bound to the confidentiality duty, including for the benefit of Customer.

If compacer selects actions pursuant to lit. (aa) or lit. (bb) and if these actions do not provide any meaningful results or objective evidence for a violation of the terms of use, compacer may demand an audit by an independent expert on premise.
- b) During the audit, Customer's confidentiality concerns, the protection of its business operations against negative impacts, and the data protection concerns of Customer shall be reasonably accounted for by concluding the relevant agreements with the auditor. Customer shall cooperate with compacer during the audit in a reasonable manner, in particular, it shall allow access, to the extent required, to the systems in which the Software has been installed.

- c) The reasonable audit costs charged by the auditor will be borne by Customer, if the audit results show that the Software was used in violation of the terms of use.
- d) compacer shall inform Customer about the audit results.
- e) If the audit shows or if determined in any other manner that the use of the Software by Customer exceeds the contractually agreed scope, Customer shall either discontinue the unauthorized use without undue delay or acquire the prerequisite rights to use from compacer. compacer reserves the right to assert claims to damages.

**§ 15 General Provisions on the Contract Term and Termination**

- 1 Unless the parties explicitly agree on a contract term, any Agreement shall expire upon the provision of the agreed Supplies and/or Services.
- 2 Either party has the right to terminate any Agreement for cause, with the exception of Software Purchase Agreements. Cause exists, in particular, if the other party violates a material contract duty of the corresponding Agreement and fails to cure the breach within a reasonable period of time upon written request. Claims for damages remain unaffected by the right to terminate the Agreement for cause.
- 3 In particular, cause for a termination by compacer shall exist, if Customer is in default with two (2) payments (e.g., two monthly payments) or in the event of a default regarding a significant portion of the remuneration due for a period of more than two (2) months.
- 4 The termination notice must be in writing to be effective. The textual form pursuant to § 126 b of the German Civil Code (BGB) (e.g., email) is insufficient.

**§ 16 Written Form, Place of Performance, Place of Jurisdiction, Choice of Law**

- 1 Modifications and amendments of these GTC and the individual contracts to be concluded hereunder must be in writing to be effective. The same applies to a waiver of the mandatory written form. Unless provided otherwise, compliance with the mandatory written form requirement for such statements that need to be made in written form in accordance with this provision, shall be deemed to have occurred when the statement is transmitted in textual form, including telefax or email. Chapter A § 7 par. 2 remains unaffected.
- 2 The place of performance for all Supplies and/or Services under this Agreement is the registered office of compacer.
- 3 The place of jurisdiction for all disputes arising out of or in connection with this contractual relationship is Stuttgart, Germany, if Customer is a merchant who has been entered in the Commercial Register as a merchant (Vollkaufmann) pursuant to the German Trade Code or is treated as such.
- 4 The laws of the Federal Republic of Germany, with the exception of the UNCITRAL Trade Law, shall govern this Agreement.

**B. Supplementary Provisions for Software Provision (Purchase and Rent) for Use in Customer's System Environment ("on Premise")**

**§ 17 Subject Matter**

- 1 This provision governs the provision of software for installation and use on Customer's system environment.
- 2 The rules in Chapter B supplement the rules in Chapter A and to the extent that these conflict with the rules in Chapter A, they shall prevail over the rules in Chapter A.

**§ 18 Provision of Software**

- 1 Customer will be provided with the Software in machine code on a data medium that is suitable for Customer's intended use and together with the user manual. Instead of a data

medium, the Software may also be made available by electronic download (including user manual).

- 2 Customer has no right to claim the handover of source code and development documentation, unless expressly agreed otherwise in written form.
- 3 Client is familiar with the essential functional features of the Software. Customer has verified that the specifications of the subject matter of the Agreement meet its intentions and requirements. In case of doubt, Customer shall obtain expert advice prior to entering into the Agreement.
- 4 Prior to use in live installations, Customer shall thoroughly test any program supplied by compacer for freedom from defects. Customer shall ensure that starting with the handover of the programs, there are staff members available who have been trained in the operation of the Software supplied.

**§ 19 Copyright and Grant of Rights**

- 1 The Software supplied by compacer is subject to copyright protection. As between the parties, compacer reserves all rights and title in the Software (program and user manual), in software provided under a maintenance agreement, and to all other records made available to Customer by compacer in connection with the contract negotiations, performance, and training. The same applies if the Software has been created based on Customer's requirements or with Customer's collaboration. If any third party is the owner of such rights, compacer shall hold the corresponding rights to exploit the software.
- 2 When standard software is provided, Customer is granted the non-exclusive rights that it needs to use the Software in its business operations for its own purposes as described in the accompanying manuals and set forth in litt. a to par. c. Renting, loaning and any other kind of distribution and data center operations are prohibited.
  - a. Customer is authorized to load the programs into the memory and to copy them to the hard disks of the type and number of computers indicated in the individual contract and to use them at the type and number of workstations indicated in the contract or any other kind of use set forth in the contract (e.g., performance levels and types of use). In addition, it is authorized to make the back-up copies required for a safe operation of the programs. Customer shall reproduce the programs only for such purposes. The user manuals may be copied only for internal purposes. Any copies are subject to Chapter A § 13.
  - b. The decompiling of the computer program to achieve interoperability of the Software with other programs shall be permissible within the scope of copyright law, in the event that compacer fails to provide the necessary information and records within a reasonable period for reasonable remuneration in spite of a written request from Customer.
  - c. All other kinds of exploitation of the Software, in particular, the reproduction beyond the scope set forth in lit. a, and the translation, processing, modification, re-arrangement, and other adaptations is prohibited, unless such acts are required for maintaining the intended use and for the rectification of errors and are not offered by compacer on reasonable terms and conditions.
- 3 To the extent that compacer creates customized software for Customer, Customer will be granted -upon full payment of the agreed remuneration - the non-exclusive rights that it needs to use the Software in its business operations for its own purposes. Customer has the right to reproduce the Software and to process it for the purpose of maintaining the intended use and for error correction and to re-arrange it in any other manner and to use the results created by this process and any software copies in the same manner as the original Software version. compacer will only be obligated to provide a user manual for the Software created for Customer, if the parties expressly agree on the creation of a manual. in a written document.

**C. Supplementary Terms for Provision of Software for an Indefinite Term (Software Purchase) for Using it in the System Environment of Customer ("On Premise")**

**§ 20 Subject Matter**

- 1 The following Terms and Conditions govern the provision of Software for an indefinite term (Software Purchase) for the installation and use on the system environment of Customer.
- 2 The rules in Chapter C supplement the rules in Chapters A and B, and in the event that these conflict with the rules in Chapters A and B, they shall prevail over the rules in these two chapters.

**§ 21 Remuneration for provision of Software for an indefinite term**

compacer has the right to charge the remuneration upon provision of the Software or when it is made available for electronic download and Customer has been informed of the availability of the Software. If Supplies are shipped in a tangible form packaging and shipping fees will be added. In the event of a provision by remote data transmission or for electronic download, compacer will bear the costs for remote data transmission or for providing the Software for electronic download on a network. Customer shall bear the costs for the retrieval.

**§ 22 Rights granted in and to Software that is provided for an indefinite term**

- 1 Customer will be granted the rights to use in and to the Software subject to the condition precedent that the agreed remuneration has been paid.
- 2 Rights to use are granted for an indefinite term.
- 3 If Customer wishes to transfer the Software to a third party, the Software shall be transferred in its entirety subject to the following conditions:
  - Customer finally discontinues its use of the Software prior to the transfer and shall not retain any copies thereof and
  - the third party shall declare in written form to compacer that it will comply with the contractually agreed terms of use and transfer.

Customer shall provide the third party with the original data medium or with a data medium on which the Software is stored and that includes a compacer copyright notice and other original records. Customer shall inform compacer about the transfer of the Software to another user together with its name and address for service.

**§ 23 Specific Terms and Conditions for defects in connection with Software purchases.**

- 1 Customer's claims based on defects are subject to the condition precedent that Customer has duly complied with its duty to inspect the Supplies and to notify compacer of any defects in accordance with § 377 of the German Commercial Code (HGB). This obligation is subject to Customer's ability to discover and to identify such defects. The notice shall include information on the type of the fault or defect as well as on the tasks that were performed when the error occurred.
- 2 In the event that subsequent improvement fails after several attempts, but no less than two (2) attempts, for one and the same defect or if compacer rightfully refuses subsequent improvement or if Customer cannot reasonably be expected to accept the kind of subsequent improvement chosen by compacer, Customer may demand - at its option - either a rescission of the Agreement or reduction of the purchase price. Claims to damages and reimbursement of wasted expenditures are subject to Chapter A § 10. Chapter A § 12 remains unaffected.

**D. Supplementary Terms for Provision of Software for a Definite Term (Software Rental Arrangement) for Using it in Customer's System Environment**

**§ 24 Subject Matter**

- 1 The following terms govern the provision of Software for a definite term and the provision of services for maintaining the contractually agreed state (Software Rental Agreement).
- 2 The rules in Chapter D shall supplement the rules in Chapters A and B and in the event that they conflict with the rules in Chapters A and B, they shall prevail over the rules in these two chapters.

**§ 25 Remuneration for Software Rental Arrangements**

The remuneration will be set forth in individual contracts and shall be payable in advance no later than by the fifth working day of each month.

**§ 26 Rights granted for Software Rental Arrangements**

- 1 compacer grants Customer the non-exclusive, non-transferable right to use the Software for the intended purposes and subject to the agreed terms and conditions for the agreed definite period for its own purposes.
- 2 If the use of the Software in the agreed system environment of Customer should be temporarily impossible or only possible with restrictions due to a fault or maintenance and/or repair, Customer has the right to temporarily use the Software in another system environment. In the event of a permanent migration, the use of the Software in the new system environment is permissible; the Software shall be fully deleted from the previously used system environment. Customer shall promptly inform compacer of the system migration.

**§ 27 Specific Provisions for Defects and Liability for Software Rental Arrangements**

- 1 compacer warrants that the Software is free from any defect that would render it unfit for the intended use or significantly reduce its usability and that the Software does not lack any properties that compacer had guaranteed or that they shall not be discontinued at a later date.
- 2 In the event of defects or in the absence or discontinuation of a guaranteed property, Customer does not have the right to enforce its claim to the reduction of the purchase price by reducing recurring fee payments. In the event that the pre-conditions are met, the right to claim reimbursement of any remuneration paid subject to a reservation clause remains unaffected.
- 3 In the event that Customer exercises its right to rectify errors or defects on its own pursuant to § 536a par. 2 of the German Civil Code (BGB), the services shall be provided in a skillful manner and documented.
- 4 In the event of defects in the Supplies and/or Services that are provided under a Software Rental Agreement, cause that authorizes Customer to exercise its right to terminate the Agreement for cause and without notice in accordance with § 543 par. 2 sentence 1 no 1 of the German Civil Code (BGB) shall exist, if the rectification of the defect fails. The rectification of the defect will be deemed to have failed, if the rectification of the defect is unsuccessful after no less than two (2) attempts concerning one and the same defect, if it is impossible to rectify the defect, if it is refused by compacer or if Customer cannot reasonably be expected to accept the method of error rectification chosen by compacer.
- 5 Claims to damages and reimbursement of wasted expenditures are subject to the liability provisions set forth in Chapter A § 10. However, in the event of fault, compacer will only be liable for errors and defects that existed at the date of the Agreement as set forth in Chapter A § 10.

**§ 28 Term and Termination of Software Rental Arrangements**

- 1 The Agreement will enter into force on the agreed date and may be terminated by either party by giving three (3) months' notice to take effect at the end of a contract year, however, not prior to the expiration of the agreed minimum contract term. In the absence of an agreed minimum contract term, the Agreement may be terminated no earlier than upon the end of the second contract year.
- 2 The right of either party to terminate this Agreement for cause and without notice pursuant to § 543 of the German Civil Code (BGB) remains unaffected, however, Chapter D § 27 par. 4 shall prevail in the event of a termination due to a defect. Chapter A § 12 remains unaffected. The termination for cause is subject to Chapter A, § 15, par. 2 et seq.

**§ 29 Return, Discontinuation of Use**

- 1 Upon the termination of a Software Rental Agreement, Customer's right to use the Software expires. To the extent that compacer has provided Customer with data media, Customer shall return them together with any other records and documents it may have received. It shall fully delete the Software from its computers and delete any other copies of the Software in a non-recoverable manner. Customer shall confirm to compacer in writing that it has complied with its duty to delete the Software and any copies thereof.
- 2 Any use of the Software upon the termination of the Agreement is prohibited.

**E. Supplementary Terms and Conditions for Work (Werkleistungen)**

**§ 30 Subject Matter**

- 1 The following Terms and Conditions govern the provision of Work (Werkleistungen).
- 2 The rules in Chapter E shall supplement the rules in Chapter A and to the extent that they conflict with the rules in Chapter A, they shall prevail over the rules in Chapter A.

**§ 31 Work, Time of Performance**

- 1 The rendering of Work is subject to the condition precedent that Customer has described its requirements clearly and specifically and that they are the subject matter of the Agreement.
- 2 In the event that compacer has been commissioned with the provision of conceptual services (e.g., preparation of lists of requirements, functional specifications, etc.) compacer shall create them in close cooperation with Customer. Upon completion, compacer will provide the results to Customer for review. Customer shall carefully review the document within the agreed period of time, in particular, whether its specifications and requirements have been fully considered and implemented. Customer shall promptly notify compacer of any inadequacies, errors, and omissions in writing, and grant compacer an opportunity to supplement and amend the document. If the requirements of Customer have been met, Customer shall declare its approval in writing. The content of the released document is binding for the Supplies and/or Services to be provided. Requirements that are specified by Customer at a later date do not become part of the Agreement, unless the parties enter into a written agreement in accordance with Chapter A § 5.
- 2 The parties will agree on a schedule for the provision of Work. Unless provided otherwise in that specific case, it shall include an approximate project schedule. The parties shall mutually agree upon updates of project schedules.

**§ 32 Acceptance**

- 1 An acceptance procedure is not required, unless the parties have contractually agreed on an acceptance procedure or if they have concluded a contract for work or services

(Werkvertrag). Any contract regarding the supply of movables to be created or generated (e.g., supply of customized software, supply of customized standard software, or supply of standard software) is subject to the legal provisions governing a purchase agreement pursuant to § 651 of the German Civil Code (BGB), i.e., there are no legal provisions stipulating an acceptance procedure for such agreements. Neither are professional services subject to an acceptance procedure.

- 2 If an acceptance procedure needs to be carried out pursuant to par. 1, compacer may claim a declaration of acceptance from Customer. However, Supplies and/or Services shall also be deemed to have been accepted without any written declaration of acceptance, if Customer does not notify compacer of any defects preventing acceptance within four (4) weeks from delivery or expresses in any other manner that the Supplies and/or Services comply with Agreement (e.g., by making payments without notice of defect, use, etc.). Customer may not withhold its acceptance, except in case of material defects. Further details of the acceptance procedure may be set forth in the corresponding individual contract.
- 3 The provisions set forth in this section shall also apply to partial Supplies and/or Services. compacer has the right to demand acceptance procedures for partial Supplies and/or Services. In this case, however, Customer's approval does not extend to such characteristics of the Supplies and/or Services that cannot be inspected until further Supplies and/or Services have been received.

**F. Supplementary Provisions for Professional Services (Dienstleistungen)**

**§ 33 Subject Matter**

- 1 The provisions set forth in Chapter F apply to professional services.
- 2 The rules in Chapter F supplement the rules in Chapter A and to the extent that these conflict with the rules in Chapter A, they shall prevail over the rules in Chapter A.

**§ 34 Provision of Professional Services**

- 1 The Agreement concluded by and between the parties governs the contents, scope and quality of the professional services.
- 3 To the extent that Professional Services are provided at Customer's site, compacer has the exclusive right to issue directions to its employees. The employees do not become part of Customer's business operations. Customer may issue its directions exclusively to the compacer contact person, but not directly to individual compacer employees.
- 4 compacer shall assign qualified employees to the tasks to be performed. They possess the necessary knowledge and experience required for proper performance of this Agreement.
- 5 compacer reserves the right to replace any employee at any time with another employee possessing the necessary skills. compacer may also deploy free-lancers and subcontractors in the performance of the Agreement.

**§ 35 Fault in the Provision of Professional Services**

In the event that a Professional Services that is subject to the Law on Service Agreements (Dienstvertragsrecht) is not provided in accordance with the Agreement and if compacer is responsible for this fault, compacer has the right to provide a compliant Service in whole or in part without any additional expenses for Customer within a reasonable period of time. In the event that compacer fails to exercise this right or if the repeated Service fails, Customer has the right to terminate the Agreement for cause and without notice. Chapter A § 10 governs claims to damages and reimbursement of wasted expenses. Chapter A § 12 remains unaffected.

**G. Supplementary Provision for E-Services**

**§ 36 Subject Matter**

- 1 The following provisions govern the provision of e-services.
- 2 The rules in Chapter G supplement the rules in Chapter A and to the extent that they conflict with the rules in Chapter A, they shall prevail over the rules of Chapter A. To the extent that rules of other Chapters apply, they shall prevail.

**§ 37 E-Services**

- 1 compacer offers e-services. E-services are services for the digital processing of business processes of, between or among companies that are not provided, in whole or in part, in Customer's system environment (on premise), but at the compacer data center. Customer is allowed access to this service. In particular, e-services (hereinafter referred to as "Services") can be:
  - EDI Shared Managed Services
  - Application Service Providing
  - Software as a Service
  - Platform as a Service
  - Hosting
- 2 compacer shall provide any Supplies and/or Services that are required for the provision and maintenance of these Services and any other IT or data processing services. compacer will provide the necessary system infrastructure and software. Depending on the Supplies and/or Services ordered, this shall include, in particular, the following Services at the data center:
  - (1) Planning, procurement, provision, operation and maintenance of the hardware and software required for the provision of the Supplies and/or Services;
  - (2) Software maintenance, in particular, by upgrades and updates, error rectification and hardware maintenance, in particular, maintaining the operability;
  - (3) Setup, monitoring and management of data storage systems;
  - (4) Creation of messages, setup of communication links, data conversion, data exchange in accordance with the provisions of the individual contract;
  - (5) Archiving of communication data in accordance with the provisions of the individual contract;
  - (6) planning, preparation, performance and quality assurance for the entire work preparation and scheduling;
  - (7) change, capacity, performance and incident management;
  - (8) Implementation of appropriate access control procedures for ensuring the identification and authentication of users. Access authorizations for Customer's data and the data communication will be solely defined by Customer;
- 3 The Supplies and/or Services ordered by Customer are defined in the individual contracts (hereinafter referred to as "Individual Contract" or "Agreement").
- 4 compacer shall archive the data generated or any other data in accordance with the Agreement. With regard to EDI Managed Services, data generated within the scope of the EDI Service are generally stored for 60 (sixty) days and will be deleted by compacer upon the end of this period. This shall not apply, if the parties have agreed on any other mode of archiving.
- 5 Customer shall make an operative telecommunications connection available. Other environmental conditions, the hardware and software to be provided by Customer and the volume requirements of Customer will be defined in the corresponding Agreement. In each case, these particulars refer to the date of the conclusion of the Agreement. The parties shall promptly inform each other of any changes in these areas.



**§ 38 Realization and Provision of E-Services**

Unless provided otherwise, the parties shall implement and provide the agreed services as follows:

(1) Conception phase:

During the conception phase, Customer shall define the standard work flows in cooperation with compacer and with regard to the EDI Managed Services it shall define the business partners to be connected with Customer. compacer will provide Customer with the necessary documents.

(2) Preparation of access to the data center at Customer's site:

In order to enable Customer to use data center services, compacer will set up Customer's data center access. To the extent that adaptations based on Customer's specifications are required, these will be performed by compacer and charged on a time and materials basis. If Customer is provided with software and hardware for this purpose, the parties shall enter into an Agreement to this effect.

(3) Integration test and operation:

Once the technical prerequisites are set up at Customer's site, compacer shall perform an operability test. During this test operation, the parties intend to assess whether the electronic data communication can be operated trouble-free. When the data communication operates reliably, compacer will declare its readiness for production use (Betriebsbereitschaftserklärung). Afterwards, Customer may run its own test phase or start production use.

**§ 39 User Help Desk**

compacer has set up a user help desk that is available during the regular compacer business hours. The user help desk supports Customer with the operation, system-specific matters and other issues of Customer in connection with the Services. The user help desk will support Customer as soon as possible. compacer will record the services rendered and shall issue invoices to Customer.

**§ 40 Incident Management, Defects**

- 1 In the event that Customer encounters technical problems during the use of the compacer services, Customer shall promptly report them to compacer in writing. It shall provide compacer with an incident report with the most precise possible description of the fault and its effects. To the extent that this may be reasonably expected, Customer shall take all necessary measures to determine, isolate, and document the incident. Customer shall make available to compacer input/output data affected, interim and test results, and other records that may serve to describe the incident. In addition, Chapter A § 3 shall apply.
- 2 compacer shall promptly start the trouble shooting. In the event of time-critical incident correction processes the parties may mutually agree on procedural simplifications. compacer may render incident correction services by remote maintenance.
- 3 compacer shall charge Customer for any Supplies and/or Services that compacer provides in connection with the incident analysis and correction. This shall not apply, if compacer determines or Customer shows that the incident was caused by the Supplies and/or Services provided by compacer, i.e., is a fault or defect in the Supplies and/or Service provided by compacer.
- 4 Chapter A § 9 and Chapter D § 27 shall apply in the event of defects in a supplementary manner. Chapter F § 35 shall apply to Professional Services in a supplementary manner.

**§ 41 Time of Performance and Availability**

- 1 The operating and service hours for the agreed Services, including maintenance times, are set forth in the corresponding Individual Contract.
- 2 To the extent that any Individual Contract contains provisions on the availability of the Service, this shall mean the technical usability of the Service and/or the application data at the point at which the Service is made available for use by Customer (hand-over point). If no hand-over point is defined in the Individual Contract, this shall be the router exit at the compacer data center. Any further details on the availability, in particular, on the technical parameters and procedures for measuring and determining the availability will be set forth in the Individual Contracts.
- 3 Unless provided otherwise in an Individual Contract, compacer warrants the provision of the Services with an availability of 98% per month, in each case based on the operating hours set forth in the Individual Contract. For the avoidance of doubts, the liability of compacer for downtime remains unaffected if compacer is responsible for it, including all cases where the availability rate had been met. The warranted availability shall not apply to periods during which circumstances exist that are indicated in Chapter G § 41 par. 4.
- 4 The warranted operating hours and availability shall not include periods,
  - during which compacer performs scheduled maintenance tasks. These maintenance times will be specified in the Individual Contract.
  - during which compacer needs to perform unscheduled maintenance tasks (e.g., replacement of CPUs or installation of new releases) for which the agreed maintenance time is not long enough. In this event, compacer will notify Customer of the duration of the additional interruption at the earliest possible date and consider Customer's needs to the extent feasible.
  - during which compacer is unable to provide the Supplies and/or Services, or not in time or not in compliance with the agreed availability or quality due to force majeure or other circumstances that are beyond the control of compacer or for which compacer is not responsible, in particular, Acts of God, government actions, failures or delays in telecommunications, in the business operations of Internet providers or at hosting facilities beyond its control or failures that are related to hardware, software or power supply units, none of which are possessed or within the sphere of control of compacer.
- 5 If Customer runs time-critical processes or processes subject to a deadline (in particular, on weekends or at certain dates to be defined) that need to run as scheduled, compacer is prepared to set up an emergency desk to support these processes, subject to its operational capacity. Customer shall order this Service from compacer no less than four (4) weeks prior to the start of the time-critical process. The amount of effort incurred by compacer by this service will be set forth in an Individual Contract.

**§ 42 Remuneration and Payment**

- 1 The duty to pay remuneration for recurring services to be remunerated at regular intervals will commence upon the declaration of readiness for operation (Chapter G § 38 par.3) made by compacer. Unless provided otherwise, invoices will be issued at the end of each month. Other Supplies and/or Services shall be invoiced promptly upon their provision based on the then-current price list, unless otherwise agreed.
- 2 To the extent contractually agreed, compacer shall document the Professional Services and the transactional and data communication services provided within the scope of EDI Managed Services and shall provide Customer with the corresponding lists together with the invoice. If the invoice is issued on a time and materials basis, the time worked by compacer will be recorded on time sheets that shall be submitted to Customer at regular intervals.

**§ 43 Rights in and to compacer Software**

To the extent that the use of Software is required for providing the Services, compacer grants Customer the non-exclusive rights for the term of the corresponding Individual Contract that it needs to use the Software and any other records provided within the contractually agreed scope and for its own purposes at the compacer data center. The Software will not be made available outside the data center. To the extent required for the provision of Software, the rules in Chapter A § 6 and Chapter B § 18 and § 19, Chapter C § 22 and Chapter D § 26 shall apply accordingly.

**§ 44 Responsibility for Contents**

compacer does not assume any responsibility vis-à-vis Customer or any third party for the lawfulness (copyright act and treaties, unfair competition acts, other proprietary rights, moral rights, etc.) of the contents submitted by Customer. Customer shall indemnify and hold compacer harmless from and against any disadvantages that compacer suffers due to the fact that third parties assert claims against compacer based on a violation or infringement committed by Customer in connection with the compacer Supplies and/or Services.

**§ 45 Status of Parties Involved in the EDI Process**

Regarding its performance of the contract concluded with Customer, compacer does not enter into any contractual relationship with the business partner of Customer that will be connected to the EDI Managed Service upon Customer's request. Business partners are not entitled to any claims against compacer. Claims against compacer under these GTC and Individual Contracts may only be asserted by Customer. With regard to the business relationship between compacer and Customer, the connected business partner is a vicarious agent of Customer (e.g., with regard to cooperation duties or contract breaches).

**§ 46 Term, Termination and Consequences of Termination**

- 1 The term of the Agreement shall be defined in the Individual Contract. Chapter D § 28 shall supplement provisions governing the term and termination.
- 2 Upon the termination or expiration of the Agreement, compacer will discontinue the provision of Services, the access to the Services will be blocked. Customer shall return to compacer any records and Software, if any, it may have received and/or delete copies thereof from its computers in a non-recoverable manner.
- 3 Following the receipt of the notice of termination the parties shall mutually agree on the procedure for winding up the Agreement. In order to secure the data processing operations of Customer, compacer shall provide, to the extent reasonable, Supplies and/or Services to be agreed in detail for a maximum period of six (6) months beyond the termination of the Agreement for separate remuneration. This obligation shall not apply if compacer has terminated the Agreement for cause for which Customer is responsible.
- 4 At the request of Customer and for remuneration based on the then current compacer price list, compacer shall provide Customer with a data medium on which application data is stored that existed at the compacer data center at the time the Agreement expired or was terminated. Furthermore, application data will be deleted sixty (60) days following the termination or expiration of the Agreement with compacer without any further notice to Customer. To the extent compacer is subject to data protection obligations with regard to the return or erasure of data, these remain unaffected and shall prevail of the rules in Chapter G, § 46.

**H. Supplementary Provisions for Software Maintenance**

**§ 47 Subject Matter**

1. The following Terms and Conditions govern the provision of Software maintenance.
2. The rules in Chapter H supplement the rules in Chapter A and to the extent they conflict with the rules in Chapter A, they shall take precedence over the rules of Chapter A. To the extent that provisions set forth in other Chapters apply, they shall prevail.

**§ 48 Subject Matter, Services**

1. Unless otherwise provided in an individual contract, compacer will provide the following maintenance services under a Maintenance Services Agreement that covers the Software indicated in that Agreement:
  - a. Information  
Customer will receive information on new program versions (upgrades) and program enhancements (updates).
  - b. New program versions  
compacer will provide Customer with new, released program versions. Customer shall install the new program versions on its own.
  - c. Error analysis  
Customer shall notify compacer of any program error in writing in accordance with Chapter H, § 48, par. 4. compacer will analyze the program components affected by the error and shall provide information as to whether the error is due to an error in the software to be maintained.
  - d. Assistance in the event of errors  
If the error analysis shows that the error exists in the Software, Customer will receive information on the error rectification or on how to circumvent the error. An error exists when the Software does not operate as agreed or described in the documentation or generates inaccurate computing results. compacer shall provide Customer with program versions in which the error has been rectified. Customer has no claim to a rectification of the error prior to a new program release and to the rectification of minor defects.
  - e. Telephone hotline  
compacer will maintain a telephone hotline during its regular business hours which Customer may contact in the event of errors. Only the system administrator or his/her alternate (Chapter H, § 51, par. 4) have the right to make inquiries.
2. Software maintenance services are restricted to the then current software version offered by compacer. Customer is, therefore, obligated to install the software version shipped under the Software Maintenance Agreement within a reasonable period. compacer will provide maintenance services for the software version preceding the then-current software version for a maximum of twenty-four (24) months. Error existing in a previous version will not be rectified, if the most recent software version includes the error rectification.
3. Software maintenance services do not cover customized software or software modified by Customer, unless such services are ordered by Customer under a separate agreement.
4. When errors occur, Customer shall notify compacer in writing. Customer shall describe the error and its effects, together with information on the Software components or features affected, in as much detail as possible. Upon the request of compacer, Customer shall make available the system error messages, system logs, test results and any other records that may serve to describe the defect and will be available for providing additional information. In any case, the maintenance services to be provided by compacer are subject to the condition that the error that occurred can be reproduced and that Customer provides comprehensible information on the error.
5. compacer may perform Software maintenance services remotely. Customer will make any technical prerequisites that are required for remote maintenance (access system,

telecommunications connection) for which Customer is responsible available free of charge.

6. compacer will offer the following additional services to Customer for separate remuneration:
  - installation and go-live of a new program version;
  - software maintenance services for sequence control/ programs that were modified by the Customer or on its behalf by compacer;
  - diagnosis and assistance in the event of failures that are caused by improper operation or other circumstances that cannot be attributed to compacer or the Software.
  - Creation of customized additional programs;
  - restoration of programs and, to the extent possible, of data in the event of data corruption or loss of data media;
  - modification of the Software for adaptation to a new or modified system environment or other concerns of Customer.

**§ 49 Performance Periods, Response Times**

1. Compacer will provide maintenance services during its regular business hours in accordance with Chapter A, § 4, par. 1.
2. With regard to the services to be provided by compacer pursuant to Chapter H, § 48, par. 1, lit. c. and d. the following response times shall apply to the start of service provision:
  - In the event of an error preventing operation, compacer shall start the error rectification by phone or remote maintenance within six (6) hours from receipt of the error report. If the rectification of the error should require an employee to be assigned to Customer's location, this will be done within one (1) day after the error rectification by remote maintenance or phone failed.  
An error shall be deemed to be preventing operation if the system cannot be used as set forth in the Agreement. There is no workaround. The operative daily business cannot be carried out.
  - In the event of an error impairing operation, compacer shall start the error rectification by phone or remote maintenance within twelve (12) hours from receipt of the error report. If the rectification of the error should require an employee to be assigned to Customer's location, this will be done within three (3) days after the error rectification by remote maintenance or phone failed.  
An error impairing operation shall be deemed to exist when individual system features are not available or only to a limited extent. The issue has a significant impact on the operative daily business, a workaround may be available.
  - In the event of other errors, compacer will start its activities within a reasonable period.
3. The response time starts upon receipt of a due written error report in accordance with Chapter H, § 48, par. 4. The response time will be computed based on the regular Business Hours of compacer pursuant to Chapter A, § 4, par. 1. If the error is reported outside the Business Hours, it will be treated - regarding the response time to be complied with by compacer - as if it had been received at the beginning of the subsequent business period. If the end of the response time is outside the Business Hours, the response time will be suspended and will be resumed at the start of the following business period, unless the parties agree otherwise.

**§ 50 Supplementary Provisions regarding Remuneration**

1. Compacer is entitled to an annual remuneration ("maintenance fee") for the maintenance services that the parties shall agree on in the Maintenance Services Agreement. Unless the amount of remuneration is specified in that Agreement, the annual maintenance fee shall be 20% of the license fee to be paid by Customer for the Software covered by the Software Maintenance Agreement. Customer

shall pay the maintenance fee for each calendar year in advance.

2. In the event it should become clear during the performance of maintenance services that the reported defect or failure is not a Software error, i.e., was not caused by circumstances attributable to the compacer Software, compacer shall issue a separate invoice for its services rendered based on the then-current price list (e.g., error in software environment, force majeure, operator errors). The same applies to all other services that Customer orders and that are not covered by the Software Maintenance Agreement.
3. In the event Customer acquires additional Software licenses, the maintenance fee due will be determined based on the then-current compacer price list.
4. The maintenance fees apply to work performed at the compacer facilities in Herrenberg. With regard to services rendered at Customer's location, compacer will charge ancillary costs in accordance with the then-current price list.

**§ 51 Technical Requirements for Performing Maintenance Services**

1. For the purpose of providing maintenance services, Customer shall allow compacer either direct and/or remote access to the hardware and software required for performance. compacer shall protect the interests of Customer while working on its hardware and software. To the extent required for contract performance, Customer shall give additional assistance to compacer free of charge when compacer provides contractually agreed services.
2. Customer shall ensure that all data related to the Software to be maintained will be available in machine-readable form or that it can be reproduced from data stores with a reasonable effort.
3. If technical changes at Customer's operations become necessary due to maintenance services, Customer shall assume the costs of the adaptation of its software environment unless it cannot be reasonably expected to do so. In this event, either party may terminate the Agreement for cause, however, by giving written notice in compliance with the period set forth in Chapter H, § 52, par. 2, including all cases where the minimum contract term is not completed.
4. On Customer's part, only the system administrator or his/her alternate may order maintenance services. Only those employees of Customer who have received thorough training in the operation of the Software to be maintained are eligible for appointment as the system administrator and his/her alternate. Customer shall immediately notify compacer in writing of any change in the identity of the system administrator or his/her alternate.

**§ 52 Term and Termination**

1. The effective date of the Software Maintenance Agreement and its term will be set forth in the relevant individual agreement. In the absence of a written agreement on the contract term, the Agreement shall enter into force after it has been signed by both parties or after an order has been placed by Customer and it shall be valid for indefinite term.
2. Unless otherwise agreed in the relevant Software Maintenance Agreement, either party may terminate the Agreement by giving three (3) months' written notice to take effect at the end of the contract year, however, no earlier than upon the expiration of the third full contract year. Chapter A, § 15, par. 2 et seq. apply to the termination in a supplementary manner.

**compacer GmbH**  
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