HERMOS AG

General Terms and Conditions

Corporate Guideline

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A. General Terms and Conditions of Contract for Services of HERMOS

1.   General information

1.1   The following General and Special Terms and Conditions apply to each individual contract, unless expressly agreed otherwise in the respective individual contract.

1.2   The agreements in the individual contracts are referred to below and in the Special Terms and Conditions as "Individual Terms and Conditions".

1.3   An individual contract is concluded when:

1.3.1   HERMOS and the customer have signed a contract document;

1.3.2   HERMOS has confirmed the order or the customer's order by means of an order confirmation in text form;

1.3.3   The customer has accepted an offer from HERMOS unconditionally and without changes;

1.3.4   HERMOS has started to fulfil the order.

If HERMOS confirms the customer's order by means of an order confirmation in text form, this alone shall be decisive for the content and scope of the contract. Subsequent amendments shall only be possible in text form and with the consent of HERMOS.

1.4   In the event of contradictions between the provisions of the following General and Special Terms and Conditions and the Individual Terms and Conditions, the provisions shall apply in the order stated below:

•   General Terms and Conditions

•   Special contractual conditions

•   Individual contract terms

1.5   In the event of contradictions between the respective Individual Terms and Conditions, the Individual Terms and Conditions that specifically deal with the matter to be regulated shall apply. The same applies in the event of contradictions between the respective Special Terms and Conditions.

1.6   HERMOS shall not recognise any conflicting, deviating or supplementary contractual terms and conditions of the customer unless HERMOS has expressly recognised them in text form in individual cases by the signature of one of the managing directors authorised to do so instead of the present contractual terms and conditions.

1.7   The contractual terms and conditions of HERMOS shall also apply in the event that HERMOS performs its services without reservation in the knowledge of conflicting or deviating contractual terms and conditions of the customer.

1.8   Deviations from these General and Special Terms and Conditions shall only be effective if the respective clause in the Individual Terms and Conditions expressly refers to the clause in the General and Special Terms and Conditions from which the deviation is made.

1.9   HERMOS shall be entitled to use third parties to fulfil its obligations under the following contractual terms and conditions in conjunction with the respective individual contracts.

1.10   HERMOS shall decide at its own discretion on the deployment and exchange of its own employees within the framework of the fulfilment of its obligations under the following contractual terms and conditions and the individual contracts. If the services are provided at the customer's premises, HERMOS alone shall remain authorised to issue instructions to its deployed employees. The employees of HERMOS shall not be integrated into the customer's operations.

1.11   Rights of set-off against HERMOS are excluded. This shall not apply to claims against HERMOS that are undisputed, have been legally established or have been recognised by HERMOS.

1.12   Rights of retention or other rights to refuse performance may only be asserted against HERMOS to the extent that they are based on claims of the customer arising from the respective individual contract from which HERMOS asserts payment claims against the customer.

1.13   The assignment and/or transfer of rights and/or obligations arising from these General Terms and Conditions, the Special Terms and Conditions and the individual contracts by the customer shall require the prior consent of HERMOS in text form.

1.14   Cost estimates and information from HERMOS regarding the scope, type and duration of the services to be provided and the expected costs are subject to change and can only be approximate. They do not constitute a guarantee.

They can only become a binding part of the contract if HERMOS provides such cost estimates and information in text form without any reservation. Detailed cost estimates shall only be prepared at the express request of the customer. They shall be subject to a charge.

2.   Order fulfilment

2.1   Unless expressly agreed otherwise in text form, HERMOS shall only owe the contractually agreed services which HERMOS provides in compliance with the generally recognised rules of technology and the relevant statutory provisions. HERMOS personnel shall be independent of instructions when carrying out testing and evaluation orders.

2.2   HERMOS shall be liable for damage to or destruction of the customer's items and their loss as a result of the proper provision of services by HERMOS, subject to the liability provisions in clause 9no compensation.

2.3   HERMOS's liability for the storage of items handed over to HERMOS by the customer shall be limited to its own customary care.

3.   Obligations of the customer to co-operate

3.1   The customer shall inform HERMOS in full of all circumstances relevant to the provision of the contractual services. Unless expressly agreed otherwise in text form, HERMOS shall not be obliged to check data, information or other services provided by the customer for completeness and accuracy.

3.2   If the customer is required to co-operate in order for HERMOS to provide its services, it shall do so at its own expense. Unless expressly agreed otherwise in text form, HERMOS shall not reimburse the customer for any expenses.

3.3   If the customer's equipment is required for HERMOS to provide the services, the customer shall make this available to HERMOS in good time at its own expense. Unless expressly agreed otherwise in text form, HERMOS shall not reimburse the customer for the costs of delivery of the equipment.

3.4   If the customer does not fulfil its obligations to cooperate, does not fulfil them on time or does not fulfil them properly, HERMOS shall be entitled to charge the customer for the additional expenses incurred as a result. HERMOS expressly reserves the right to assert further claims.

3.5   If HERMOS works on the customer's premises, the customer shall be responsible for all measures necessary for the fulfilment of safety obligations, unless the nature of the matter or an agreement with the customer provides otherwise. As long as the customer has not taken the necessary measures, HERMOS shall be exempt from providing the service .

3.6   If HERMOS performs services or goods on behalf of the customer, the customer shall be obliged, at the request of HERMOS, to provide the co-operation required for export and import at its own expense.

3.7   Further obligations to co-operate may arise from the Special and Individual Terms and Conditions.

4.   Time of performance

4.1   The time of performance shall be determined by the Individual Terms and Conditions of Contract. If the service is to be provided within a performance period, the calculation of the period shall commence on the date of the order confirmation from HERMOS or at the beginning of the period specified in the order confirmation, but not before all acts of co-operation owed by the customer have been completed and an agreed down payment has been received.

4.2   Performance dates shall only be binding if they have been expressly confirmed as binding in text form, by fax or in electronic form by the contact persons designated by HERMOS.

4.3   If a binding performance deadline is not met for reasons for which HERMOS is responsible, the customer may set HERMOS a reasonable period of grace to effect performance, stating that it will refuse performance after the deadline has expired. The period set by the customer may not be less than four weeks.

4.4   If HERMOS is temporarily prevented from providing the service due to force majeure, acts of government - regardless of whether these affect the territory of the Federal Republic of Germany or areas from and/or through which HERMOS itself is supplied - disasters, war, riots or strikes in its own factories, delivery facilities, suppliers or in the area of means of transport and is therefore unable to meet the agreed performance dates, HERMOS shall be entitled to provide the service at a later date. The agreed time of performance shall be extended appropriately as a result of the events referred to in sentence 1. In this respect, the customer shall not be entitled to any claims for non-performance or late performance. HERMOS shall inform the customer of the occurrence of such events immediately in text form.

5. Delivery

5.1 All deliveries from HERMOS are ex warehouse HERMOS at the following address:

HERMOS AG, Gartenstraße 19, 95490 Mistelgau, Germany.

5.2 HERMOS shall be entitled to make partial deliveries and reserves the right to make timely and correct deliveries to itself.

5.3 All deliveries and, if applicable, the return transport of the customer's items shall be at the customer's expense and risk. The return transport of the customer's items shall only be carried out at the express request of the customer in text form.

5.4 Unless expressly agreed otherwise in text form, HERMOS shall dispatch all deliveries as sent to HERMOS by the customer. If HERMOS ships the goods insured, the customer shall be obliged to inform HERMOS of the insured value of the item and, if the item is a sensitive item (e.g. a prototype), to inform HERMOS accordingly. If it is not possible to insure the item at the stated value or, in the case of sensitive items, there are security concerns in connection with the transport, HERMOS shall inform the customer of this immediately. The customer shall then nominate its own carrier to HERMOS or make an agreement with HERMOS in text form regarding the transport of the item. All costs and the shipping risk in this connection shall be borne exclusively by the customer. HERMOS shall assign any recourse claims of HERMOS against the carrier to the customer upon the customer's request in text form.

5.5 The customer shall be obliged to inspect the goods delivered and services rendered by HERMOS immediately after delivery or after performance, insofar as this is feasible in the ordinary course of business. The customer must notify HERMOS in text form of any recognisable defects without delay, but at the latest within 5 working days of delivery or performance. The customer shall notify HERMOS in text form of any defects not recognisable during the inspection which become apparent at a later date without delay, at the latest within 5 working days of discovery. The customer must describe the defect in question in as much detail as possible. If the customer fails to notify HERMOS, the goods or the service provided shall be deemed to have been approved with regard to the defect in question.

5.6 In the event of delivery by a carrier commissioned by HERMOS, the customer shall be obliged to report transport damage and/or loss as well as delivery delays as described below:

5.6.1 The customer must inspect the goods upon delivery for externally recognisable transport damage and/or loss and notify the carrier of any damage and/or loss in text form upon delivery.

5.6.2 The customer must notify the carrier in text form of any externally unrecognisable transport damage and/or loss immediately after delivery, but at the latest within 5 working days of discovering the transport damage.

5.6.3 The customer must describe the damage in detail and send HERMOS a copy of the report without delay.

5.6.4 The customer must notify HERMOS immediately in text form if delivery deadlines are exceeded.

5.7 If the customer fails to notify us in good time, it shall be assumed that the goods were delivered in the condition stipulated in the contract.

5.8 Unless expressly agreed otherwise in text form, the packaging material shall become the property of the customer upon receipt of the goods. This applies in particular to. outer packaging, transport and product packaging.

6. Prices and terms of payment

6.1 The prices for the services to be rendered by HERMOS and for the goods to be supplied are set out in the Individual Terms and Conditions of Contract.

6.2 If no price has been agreed in the Individual Terms and Conditions of Contract, the services to be provided by HERMOS shall be provided on a time and materials basis.

6.3 Unless expressly agreed otherwise in text form, travelling times (including waiting times) and travel expenses shall be invoiced separately to the customer. Travelling expenses include in particular, but are not limited to, the actual transport and accommodation costs as well as catering costs in accordance with the statutory provisions.

6.4 Unless otherwise agreed in text form, all prices are quoted net in EURO and payments are due without any deductions within 30 calendar days of the invoice date. If applicable, the customer is obliged to pay the statutory value added tax applicable at the time. Other taxes and duties, such as withholding tax or import duties, which are levied on the services or goods of HERMOS shall be borne by the customer. If HERMOS is held liable for such taxes and duties, the customer shall indemnify HERMOS against such claims.

6.5 If the customer fails to pay by the due date, it shall be in default without any further reminder. In such a case, HERMOS shall be entitled to demand interest on arrears from the customer at a rate of 8 percentage points above the applicable base rate of the Deutsche Bundesbank.

6.6 If the delay in payment lasts longer than three months or if the customer is in arrears with at least two consecutive payments, HERMOS shall be entitled to terminate the respective individual contract without notice and/or to withdraw from it. Further claims of HERMOS shall remain unaffected.

6.7 If, after the conclusion of an individual contract, justified doubts become apparent as to the customer's ability to perform, in particular its solvency or creditworthiness, which jeopardise the fulfilment of the customer's obligations, and if the customer is not prepared to make advance payment or provide suitable security despite a corresponding request in text form, HERMOS shall be entitled to withdraw from the individual contract after the unsuccessful expiry of a reasonable grace period.

6.8 Fees payable monthly shall be invoiced monthly in advance. Usage-dependent, variable fees shall be invoiced at the end of the month; however, HERMOS shall be entitled to invoice an appropriate monthly instalment payment in advance.

6.9 Further terms of payment may result from the Special and Individual Terms and Conditions of Contract.

7. Retention of title

7.1 The delivered goods shall remain the property of HERMOS until all claims arising from the business relationship with the customer have been paid in full.

7.2 In the event of processing, combining and mixing with other goods, HERMOS shall be entitled to co-ownership of the new item in the ratio of the invoice value of the goods of HERMOS to these other goods at the time of processing, combining or mixing. The processing or combination by the customer shall always be carried out for HERMOS. The co-ownership shall be governed by the above clause 7.1 shall apply accordingly.

7.3 The customer may only dispose of the goods subject to retention of title, in particular by selling them, transferring them by way of security or pledging them, with the prior consent of HERMOS in text form.

7.4 If the value of the securities to which HERMOS is entitled exceeds the outstanding claims to be secured by more than 20%, HERMOS shall be obliged to release securities of its own choice to this extent. This shall be based on the net invoice value that HERMOS has invoiced to the customer.

7.5 In the event of default in payment, imminent suspension of payment, in the event of unsatisfactory information about the customer's solvency and/or financial situation or if there are foreclosures or bill protests against the customer as well as in the event of an application to open insolvency proceedings against the customer's assets, HERMOS shall be entitled to terminate or withdraw from the individual contract and to take possession of the goods subject to retention of title without further ado. The customer shall be obliged to surrender the goods.

7.6 If the property rights of HERMOS are impaired by third parties, in particular if the goods subject to retention of title are seized or attached, the customer shall notify HERMOS immediately by sending the documents available to it (e.g. pledge protocol) and inform the third party of the property rights of HERMOS. The customer shall bear all costs necessary for the cancellation of the impairment of HERMOS' rights.

7.7 The customer shall be obliged to carefully store, maintain and repair the goods subject to retention of title for HERMOS at its own expense and to insure them against deterioration, destruction and loss in accordance with the standards of a prudent businessman. The customer hereby assigns to HERMOS any insurance claims or other claims for compensation due to deterioration, destruction or loss.

7.8 The customer shall notify HERMOS immediately in text form of any changes to the location of the goods subject to retention of title.

7.9 Items, programmes or data supplied by HERMOS for test and demonstration purposes shall remain the property of HERMOS.

8. Liability for defects

8.1 The quality of the goods or services of HERMOS shall be determined exclusively and conclusively by the respective Individual Terms and Conditions of Contract or, if available, by the product description attached thereto. The information contained in the Individual Terms and Conditions and/or in the product description shall not constitute any guarantees.

8.2 HERMOS shall not assume any guarantee of quality, durability or any other guarantee, unless HERMOS has made a promise in text form in an individual case that is designated as a guarantee.

8.3 The customer shall have no warranty claims in the event of an insignificant reduction in the value and/or suitability of the goods or services. The same shall apply to defects that are attributable to external influences, operating errors or to modifications not carried out by HERMOS and not authorised by HERMOS - including modifications to the process environment -, additions, installations or removals, attempted repairs or other manipulations.

8.4 In the event of timely and justified notification of defects, HERMOS shall, at its own discretion, either remedy the defect or deliver a defect-free item. HERMOS shall be entitled to make at least three attempts at subsequent fulfilment.

8.5 In all other respects, the customer is entitled, subject to the following clause 8.6 the further statutory rights.

8.6 The general limitations of liability in accordance with Section 9.

8.7 The liability period for defects shall be 12 months from delivery and/or from completion and/or, where applicable, from acceptance. This shall not apply if HERMOS, pursuant to clause 9.8 of the general liability regulation.

8.8 The customer shall be obliged to provide HERMOS with the necessary support free of charge within the scope of the defect rectification work.

8.9 The customer is solely responsible for data backup.

8.10 The customer shall address complaints and, in particular, suggestions for improving the testing and certification processes to the quality management officer or the management of HERMOS.

9. Liability

9.1 HERMOS shall have unlimited liability for damages,

9.1.1 which were caused by intentional or grossly negligent behaviour on the part of HERMOS, its legal representatives or executive employees or by intentional behaviour on the part of its other vicarious agents;

9.1.2 from injury to life, limb or health, from the assumption of a guarantee or a procurement risk and under the Product Liability Act.

9.2 HERMOS's liability shall be limited to the damages typically to be expected within the scope of an individual contract in the event of damage,

9.2.1 caused by the grossly negligent behaviour of other vicarious agents;

9.2.2 caused by slightly negligent behaviour on the part of HERMOS, its legal representatives, executive employees or other vicarious agents, insofar as an obligation is breached, compliance with which is of particular importance for achieving the purpose of the contract (cardinal obligation).

9.3 Subject to clauses 9.1 and 9.2 any other liability on the part of HERMOS shall be excluded.

9.4 Insofar as the liability of HERMOS pursuant to Clause 9.2 HERMOS shall not be liable for indirect damage and loss of profit.

9.5 HERMOS is authorised to set liability limits in the Individual Terms and Conditions.

9.6 Liability for data loss is limited to the typical recovery costs that would have been incurred even with regular and risk-appropriate data backups.

9.7 HERMOS shall not assume any guarantee or procurement risk unless HERMOS has expressly assumed a guarantee and/or procurement risk designated as such in text form in individual cases.

9.8 In the event of intent or gross negligence on the part of HERMOS, its legal representatives or executive employees and in the event of intent on the part of other vicarious agents as well as in the event of damage resulting from injury to life, limb or health, the provisions in Section 8.7 the statutory periods for claims for defects shall apply instead of the periods for claims for defects specified in Section 8.7 above.

9.9 Insofar as according to the above sections 9.1 - 9.8 the liability of HERMOS is excluded or limited, this shall also apply in favour of the employees of HERMOS in the event of direct claims against the employees of HERMOS by the customer.

10. Copyright

10.1 Insofar as this is necessary for the contractual use of the services provided by HERMOS, and unless otherwise stipulated in the Special or

Individual Terms and Conditions, HERMOS shall grant the customer a non-exclusive and non-transferable right of use to copyrightable services to the extent necessary for the contractual use of the services provided by HERMOS following payment by the customer.

10.2 The passing on and utilisation of HERMOS's services beyond the contractually agreed purpose, in particular their publication, shall only be permitted with HERMOS's prior consent in text form.

11. Confidentiality and data protection

11.1 The parties undertake to maintain strict confidentiality with regard to all information that they receive from the other party in text form, verbally or in any other form in connection with these General Terms and Conditions, the Special Terms and Conditions and the Individual Terms and Conditions, in particular, but not limited to, documents, drafts, plans, data, know-how and any other form of business secrets.

11.2 The parties shall use this information solely for the purpose of fulfilling the obligations under these General Terms and Conditions, the Special Terms and Conditions and the Individual Terms and Conditions. The parties are obliged to impose appropriate confidentiality obligations on their employees and other persons involved in the fulfilment of these obligations.

11.3 The confidentiality obligation shall not apply if the party obliged to maintain confidentiality proves that

11.3.1 it was already aware of certain information before the cooperation began,

11.3.2 it has received this information from another authorised third party,

11.3.3 the information was generally accessible without the party obliged to maintain confidentiality being responsible for this general accessibility,

11.3.4 it has developed the information itself independently of the ongoing cooperation,

11.3.5 or it was obliged to disclose the data by official order or legal obligation.

11.4 When sending documents electronically, HERMOS would like to point out that this form of transmission is not secure and confidentiality cannot be guaranteed.

11.5 HERMOS would like to point out that personal data is stored and processed in connection with business transactions in compliance with the statutory provisions.

12. Miscellaneous

12.1 Unless otherwise expressly stipulated in these General or Special Terms and Conditions, all declarations and notifications within the scope of the contractual relationship and the business relationship with the customer must be made in text form (including by fax) or in electronic form.

12.2 Amendments and additions to these General Terms and Conditions of Contract, the Special Terms and Conditions of Contract and the Individual Terms and Conditions of Contract must be made in writing. This also applies to any amendment to this written form clause.

12.3 German law shall apply exclusively between the parties. The provisions of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) are excluded.

12.4 The exclusive place of jurisdiction for all claims against merchants and public corporations is Bayreuth for all types of proceedings.

12.5 HERMOS reserves the right to amend or supplement these General and Special Terms and Conditions from time to time. In the case of continuing obligations, the General and Special Terms and Conditions shall apply in their respective valid version. In the case of other obligations, the version valid at the time of conclusion of the respective individual contract shall apply.

12.6 Should any provision of these General Terms and Conditions, the Special Terms and Conditions or the Individual Terms and Conditions be or become invalid in whole or in part, this shall not affect the validity of the remaining provisions. An invalid provision shall be replaced by one that is legally possible and comes closest to the invalid provision in terms of content and most closely corresponds to the well-understood economic interests of the parties in the invalid provision. The same applies to any loopholes.

B. Special Contractual conditions for the permanent licensing of HERMOS software

1. Subject matter of the contract

1.1 The subject matter of an individual contract based on these terms and conditions (hereinafter referred to as "Licence Agreement") is the granting, against payment, of a right to use the HERMOS software listed in the individual contract together with the associated documentation (hereinafter referred to collectively as "HERMOS software") within the scope of use described below. Details of the name and description of the HERMOS software, number of licences, delivery time and licence fee are set out in the Individual Terms and Conditions.

1.2 The installation, implementation and/or parameterisation of the HERMOS software on the customer's hardware shall not form part of the licence agreement, but shall be governed by the Special Terms and Conditions for the Provision of Services or Works.

1.3 HERMOS accepts no responsibility for ensuring that the HERMOS software is compatible with the customer's hardware and software environment.

1.4 The software, manuals, operating aids and other documentation shall be made available to the customer by HERMOS as a hard copy or by electronic means, i.e. online or by e-mail.

2. Granting of rights of use

2.1 HERMOS shall grant the customer the non-exclusive, perpetual right to use the HERMOS software within the scope of and in accordance with these terms and conditions for the licensing of HERMOS software from the date specified in the individual contract.

2.2 The customer may only use the HERMOS software for its own internal purposes as set out in the subject matter of the individual contract. In particular, the customer shall not be authorised to use the HERMOS software for other commercial services vis-à-vis third parties, in particular but not limited to services that consist exclusively or predominantly in the use and application of the HERMOS software.

2.3 The customer is not authorised to grant sub-licences.

2.4 The customer is not entitled to receive the source code or access to the source code.

3. Rights to the HERMOS software

3.1 All industrial property rights and necessary exploitation rights to the HERMOS software shall belong either to HERMOS or to the third party named in the individual contract or on the original data carrier and/or on the original documentation (hereinafter "Third Party Rights Holder"), who has authorised HERMOS to grant licences within the scope of and in accordance with these contractual terms and conditions.

4. Duplication

4.1 The customer may reproduce the HERMOS software insofar as the reproduction is necessary for the contractual use of the HERMOS software. Necessary reproductions are the installation of the HERMOS software from the original data carrier to the mass memory of the hardware used and the loading of the HERMOS software into the working memory of the hardware.

4.2 The customer shall also be authorised to make a machine-readable copy of the HERMOS software for backup purposes. When making the copy, it must be ensured that a copyright notice for HERMOS and/or for the third-party rights holder is affixed to the copy in machine-readable form and in plain text on the data carrier. Containers in which such data carriers and documentation are stored shall be labelled with a clear imprint or sticker firmly attached to the object to indicate the rights of HERMOS and/or the third-party rights holder.

4.3 If, for reasons of data security or to ensure rapid reactivation of the computer system after a total failure, the regular backup of the entire data stock including the computer programs used is essential, the customer may make backup copies of the HERMOS software in the number absolutely necessary. The data carriers concerned shall be stored as described in the above clause 4.2 above. The backup copies may only be used for purely archival purposes.

4.4 The customer shall be obliged to keep complete records of the creation and whereabouts of the copy(s) made by it. HERMOS shall be entitled to inspect these records.

4.5 The customer may use the HERMOS software and the copy(s) exclusively for its own purposes. The customer shall be obliged to keep the HERMOS software and the copy(s) secret from third parties. The customer warrants that no third party and no employee not expressly authorised for the individual case shall have access to the HERMOS software and the copy/s and/or copy them in whole or in part.

4.6 The customer may not make any further copies, including outputting the software code to a printer or photocopying the documentation.

5. Decompilation

5.1 The retranslation of the software code provided into other code forms (disassembly, decompilation) and other types of reverse engineering of the various production stages of the HERMOS software are not permitted, subject to the following clause 5.2 below.

5.2 If the customer requires interface information that is essential for establishing the interoperability of the HERMOS software with other software, it shall inform HERMOS accordingly in text form. HERMOS shall inform the customer within a period of 30 calendar days after receipt of this notification whether it will make the interface information available to the customer or perform the actions required to establish interoperability at the customer's premises itself for a reasonable fee. If HERMOS does not offer either of the above alternatives within this period, the customer may exercise its rights pursuant to Section 69 e UrhG.

5.3 According to the above clause 5.2 above may only be used by the customer for its own internal purposes. Disclosure of this information to third parties, in particular to competitors of HERMOS, is prohibited.

6. Processing

6.1 The removal and/or circumvention of copy protection or similar protection routines is not permitted. The emulation of a dongle or other DRM protection mechanisms is also not permitted.

6.2 Copyright notices, serial numbers and other features serving to identify the software may not be removed or altered under any circumstances.

6.3 Any modification of the HERMOS software is not permitted.

7. Multiple use and network deployment

7.1 The customer is authorised to use the HERMOS software within a network or other multi-station computer system. The amount of the licence fee to be paid by the customer to HERMOS is set out in the Individual Terms and Conditions.

8. Disclosure to third parties

8.1 Subject to clause 8.6 and without prejudice to the provision in the following clause 9 the customer shall only be entitled to sell or give away the HERMOS software to third parties insofar as the third party agrees to the continued application of the copyright conditions of the licence agreement, in particular the restriction of the right of use. In the event of a transfer, the customer shall be obliged to hand over all copies of the HERMOS software to the third party or to destroy the copies not handed over. As a result of the transfer, the customer's right to use the HERMOS software shall expire.

8.2 If the HERMOS Software consists of several individual software products which HERMOS only licences together as a software package, the customer may use the HERMOS Software subject to clause 8.1 only sell or give away the HERMOS software to third parties together as a software package.

8.3 The customer shall not be authorised to pass on the HERMOS software to third parties by way of renting or leasing. The customer shall only be entitled to transfer the HERMOS software to a third party for a limited period of time if the third party agrees to the continued application of the copyright provisions of the licence agreement, in particular the restriction of the right of use, and the customer transfers all copies of the HERMOS software to the third party or destroys the copies not transferred. During the transfer of the HERMOS software to the third party, the customer shall not be authorised to use the HERMOS software itself.

8.4 In the event that the HERMOS software is passed on to third parties, the customer shall be obliged to inform HERMOS of the name and full address of the third party in text form.

8.5 The customer shall not be entitled to make the HERMOS software available to third parties if there is reasonable suspicion that the third party will violate the terms of the licence agreement, in particular by making unauthorised copies. The same shall apply to the customer's employees.

8.6 If the software is made available to the customer by HERMOS exclusively by electronic means and without a physical data carrier, the software may not be passed on to third parties without the prior consent of HERMOS in text form.

9. Right of first refusal

9.1 The sale of the HERMOS software to third parties, whether against payment or free of charge, is only permitted in accordance with the following provisions.

9.2 If the customer intends to sell the HERMOS software in whole or in part to a third party, it must first offer it to HERMOS by registered letter on the terms agreed with the third party and at the price agreed with the third party. HERMOS may accept the customer's offer by registered letter within 30 calendar days of receipt of the offer by HERMOS.

9.3 If HERMOS does not accept the customer's offer within the period in accordance with the above clause 9.2 above, the customer shall be entitled to sell the HERMOS Software to the third party on the terms and at the price notified to HERMOS.

9.4 If the customer intends to sell the HERMOS software under changed conditions and/or at a changed price, it must notify HERMOS of the purchase of the HERMOS software in accordance with Sections 9.1 and 9.2 again.

9.5 Companies affiliated with the customer within the meaning of Section 15 of the German Stock Corporation Act (AktG) shall not be deemed third parties within the meaning of the above clauses 9.1 to 9.3.

10. Access by third parties

10.1 The customer is obliged to take suitable precautions to prevent unauthorised access to the HERMOS software by third parties.

10.2 The customer shall store the HERMOS software, including any copies, in a place secured against unauthorised access by third parties and shall expressly instruct its employees to comply with these contractual terms and conditions and to observe the copyright of HERMOS and/or the third-party rights holder. In particular, the customer shall request its employees not to make any unauthorised copies of the HERMOS software.

10.3 If an employee of the customer infringes the copyright of HERMOS and/or of the third-party rights holder, the customer shall be obliged to co-operate to the best of its ability in clarifying the copyright infringement, in particular to inform HERMOS immediately of the relevant acts of infringement. Further claims by HERMOS shall remain unaffected.

11. Terms of payment

11.1 The licence fee shall be invoiced to the customer upon delivery.

11.2 Payment of the licence fee shall cover the costs of granting the right of use in accordance with these contractual terms and conditions for the licensing of HERMOS software on a permanent basis. In particular, costs for installation, implementation, parameterisation and maintenance of the HERMOS software as well as for instruction and training of the customer's employees are not

covered. These services shall be the subject of a separate agreement in accordance with the relevant Special Terms and Conditions of Contract.

12. Liability for defects

12.1 HERMOS would like to point out that it is not possible to develop data processing programmes that are completely error-free for all areas of application, even with the care customary in the industry.

12.2 The rectification of a defect in the event of a timely and justified notice of defect shall be deemed equivalent to HERMOS showing the customer a reasonable way of circumventing the defect. The customer shall be obliged to accept a new version as part of the subsequent fulfilment, unless this is unreasonable for the customer.

12.3 The customer's claim for damages due to a defect existing at the time of conclusion of the contract or arising later or due to HERMOS's delay in remedying a defect shall be subject to the general limitations of liability pursuant to Section 9 of the General Terms and Conditions.

12.4 Within the scope of its obligation to provide support in remedying defects in accordance with Section 8.8 of the General Terms and Conditions of Contract, the customer shall in particular be obliged to log the error messages displayed and, in the case of errors that are not readily reproducible, to provide HERMOS with a machine-readable test example with a sufficient error description for the reconstruction of the error.

13. Property rights of third parties

13.1 If the contractual use of the HERMOS software is impaired by third-party property rights, HERMOS shall have the right, to an extent that is reasonable for the customer, either to modify the HERMOS software at its own discretion so that it falls outside the scope of the property rights but nevertheless complies with the contractual provisions, or to obtain authorisation to use the HERMOS software in accordance with the contract without restriction and at no additional cost to the customer.

13.2 HERMOS shall indemnify the customer against all third-party claims arising from or in connection with an infringement of third-party rights and industrial property rights by or in connection with the contractual use of the HERMOS software by the customer.

13.3 The contracting parties shall inform each other immediately in text form if third parties assert claims against them for infringement of rights or industrial property rights.

13.4 The customer shall indemnify HERMOS against all third-party claims arising from or in connection with a breach of these General and Special Terms and Conditions by the customer, in particular if the customer makes unauthorised changes to the HERMOS software or uses the HERMOS software in any other unauthorised manner.

C. Special Terms and Conditions for the Licensing of HERMOS Software on a Temporary Basis

1. Subject matter of the contract

1.1 The subject matter of an individual contract based on these terms and conditions (hereinafter referred to as "Rental Licence Agreement") is the granting, against payment, of a right to use the HERMOS software listed in the individual contract together with the associated documentation (hereinafter referred to collectively as "HERMOS software") within the scope of use described below. Details of the name and description of the HERMOS software, number of licences, delivery time, licence period and licence fee are set out in the Individual Terms and Conditions.

1.2 A prerequisite for the effective conclusion of a rental licence agreement is the simultaneous conclusion of a software support agreement for the HERMOS software in accordance with the Special Terms and Conditions for Software Support.

1.3 The installation, implementation and/or parameterisation of the HERMOS software on the customer's hardware is not part of the rental licence agreement, but is governed by the Special Terms and Conditions for the Provision of Services or Works.

1.4 HERMOS accepts no responsibility for ensuring that the HERMOS software is compatible with the customer's hardware and software environment.

1.5 The customer shall have no claim to further development of the HERMOS software or to participation in the further development of similar software that HERMOS makes available to other customers.

1.6 Manuals, operating aids and other documentation shall be made available to the customer at HERMOS's discretion as a hard copy or on an electronic data carrier, i.e. online or by e-mail.

2. Granting of rights of use

2.1 HERMOS shall grant the customer the non-exclusive, non-transferable right to use the HERMOS software for a limited period of time for the duration of the rental licence agreement within the scope of and in accordance with these terms and conditions for the licensing of HERMOS software.

2.2 The customer may only use the HERMOS software for its own internal purposes as set out in the subject matter of the individual contract. In particular, the customer shall not be authorised to use the HERMOS software for other commercial services vis-à-vis third parties, in particular but not limited to services that consist exclusively or predominantly in the use and application of the HERMOS software.

2.3 The customer is not authorised to grant sub-licences.

2.4 The customer is not entitled to receive the source code or access to the source code.

3. Rights to the HERMOS software

3.1 All industrial property rights and necessary exploitation rights to the HERMOS software shall belong either to HERMOS or to the third party named in the individual contract or on the original data carrier and/or on the original documentation (hereinafter "Third Party Rights Holder") who has authorised HERMOS to grant licences within the scope of and in accordance with these contractual terms and conditions.

4. Duplication

4.1 The customer may reproduce the HERMOS software insofar as the reproduction is necessary for the contractual use of the HERMOS software. Necessary reproductions are the installation of the HERMOS software from the original data carrier to the mass memory of the hardware used and the loading of the HERMOS software into the working memory of the hardware.

4.2 The customer shall also be authorised to make a machine-readable copy of the HERMOS software for backup purposes. When making the copy, it must be ensured that a copyright notice for HERMOS and/or for the third-party rights holder is affixed to the copy in machine-readable form and in plain text on the data carrier. Containers in which such data carriers and documentation are stored shall be labelled with a clear imprint or sticker firmly attached to the object to indicate the rights of HERMOS and/or the third-party rights holder.

4.3 If, for reasons of data security or to ensure rapid reactivation of the computer system after a total failure, the regular backup of the entire data stock including the computer programs used is essential, the customer may make backup copies of the HERMOS software in the number absolutely necessary. The data carriers concerned shall be stored as described in the above clause 4.1 above. The backup copies may only be used for purely archival purposes.

4.4 The customer shall be obliged to keep complete records of the creation and whereabouts of the copy(s) made by it. HERMOS shall be entitled to inspect these records.

4.5 The customer may use the HERMOS software and the copy(s) exclusively for its own purposes. The customer shall be obliged to keep the HERMOS software and the copy(s) secret from third parties. The customer warrants that no third party and no employee not expressly authorised for the individual case shall have access to the HERMOS software and the copy/s and/or copy them in whole or in part.

4.6 The customer may not make any further copies, including outputting the software code to a printer or photocopying the documentation.

5. Decompilation

5.1 The retranslation of the software code provided into other code forms (disassembly, decompilation) and other types of reverse engineering of the various production stages of the HERMOS software are not permitted, subject to the following clause 5.2 below.

5.2 If the customer requires interface information that is essential for establishing the interoperability of the HERMOS software with other software, it shall inform HERMOS accordingly in text form. HERMOS shall inform the customer within a period of 30 calendar days after receipt of this notification whether it will make the interface information available to the customer or perform the actions required to establish interoperability at the customer's premises itself for a reasonable fee. If HERMOS does not offer either of the above alternatives within this period, the customer may exercise its rights pursuant to Section 69 e UrhG.

5.3 According to the above clause 5.2 above may only be used by the customer for its own internal purposes. Disclosure of this information to third parties, in particular to competitors of HERMOS, is prohibited.

6. Processing

6.1 The removal and/or circumvention of copy protection or similar protection routines is not permitted. The emulation of a dongle or other DRM protection mechanisms is also not permitted.

6.2 Copyright notices, serial numbers and other features serving to identify the software may not be removed or altered under any circumstances.

6.3 Any modification of the HERMOS software is not permitted. This shall not apply if it is necessary to rectify an error and HERMOS is in default with the rectification of the error or has expressly rejected the rectification of the error in text form.

7. Multiple use and network deployment

The customer shall be authorised to use the HERMOS software within a network or other multi-station computer system. The amount of the licence fee to be paid by the customer to HERMOS is set out in the Individual Terms and Conditions.

8. Disclosure to third parties

8.1 The customer may not pass on the HERMOS software to third parties, and in particular may not sell, give away, rent or lend it. § Section 540 (1) sentence 2 BGB shall not apply. The right to transfer in accordance with the following clause 8.2 shall remain unaffected by this.

8.2 Notwithstanding the above clause 8.1 above, the transfer to third parties who are not granted an independent right of use or utilisation and who are

subject to the customer's right to issue instructions regarding the type and manner of use is permitted. This is generally the case in particular with employees of the customer.

9. Access by third parties

9.1 The customer shall be obliged to take suitable precautions to prevent unauthorised access to the HERMOS software by third parties.

9.2 The customer shall store the HERMOS software, including any copies, in a place secured against unauthorised access by third parties and shall expressly instruct its employees to comply with these contractual terms and conditions and to observe the copyright of HERMOS and/or the third-party rights holder. In particular, the customer shall request its employees not to make any unauthorised copies of the HERMOS software.

9.3 If an employee of the customer infringes the copyright of HERMOS and/or of the third-party rights holder, the customer shall be obliged to co-operate to the best of its ability in clarifying the copyright infringement, in particular to inform HERMOS immediately of the relevant acts of infringement. Further claims by HERMOS shall remain unaffected.

10. Place of use

10.1 The licence is granted for the place of use specified in the Individual Terms and Conditions.

10.2 If the customer intends to move the HERMOS software to another place of use, it shall be obliged to obtain HERMOS's prior consent in text form.

11. Terms of payment

11.1 The licence fee shall be calculated from delivery of the HERMOS software in accordance with the Individual Terms and Conditions. Unless otherwise agreed, HERMOS shall be entitled to demand the respective licence fee in advance. The exact terms of payment and the amount of the advance payment are set out in the Individual Terms and Conditions.

11.2 HERMOS shall be entitled to increase the licence fee appropriately after 12 months. The change in the licence fee shall take effect two months after the end of the month in which the customer was notified of the change in text form. If the licence fee is increased by more than 5% p.a., the customer shall be entitled to terminate the rental licence agreement subject to a notice period of four weeks from notification of the fee increase.

11.3 Payment of the licence fee shall cover the costs of granting the right to use the HERMOS software in accordance with these Terms and Conditions for the Licensing of HERMOS Software for a Fixed Term. In particular, costs for the installation, implementation and parameterisation of the HERMOS software, for the maintenance of the HERMOS software within the meaning of the software support contract and for the instruction and training of the customer's employees shall not be covered. These services shall be the subject of a separate agreement in accordance with the relevant Special Terms and Conditions of Contract.

12. Liability for defects

12.1 HERMOS would like to point out that it is not possible to develop data processing programmes that are completely error-free for all areas of application, even with the care customary in the industry.

12.2 The rectification of a defect in the event of a timely and justified notice of defect shall be deemed equivalent to HERMOS showing the customer a reasonable way of circumventing the defect. The customer shall be obliged to accept a new version as part of the subsequent fulfilment, unless this is unreasonable for the customer.

12.3 The customer may not enforce a reduction in the licence fee by deducting it from the agreed licence fee. Corresponding claims for enrichment or damages on the part of the customer shall remain unaffected.

12.4 The customer's claim for damages due to a defect existing at the time of conclusion of the contract or arising later or due to HERMOS's delay in remedying a defect shall be subject to the general limitations of liability pursuant to Section 9 of the General Terms and Conditions.

12.5 Within the scope of its obligation to provide support in remedying defects in accordance with Section 8.8 of the General Terms and Conditions of Contract, the customer shall in particular be obliged to log the error messages displayed and, in the case of errors that are not readily reproducible, to provide HERMOS with a machine-readable test example with a sufficient error description for the reconstruction of the error.

12.6 Notwithstanding clause 8.7 of the General Terms and Conditions of Contract, HERMOS shall assume liability for defects for the duration of the rental licence agreement.

13. Return and cancellation obligation

13.1 Upon termination of the contractual relationship, the customer shall be obliged to return all original data carriers containing the software as well as all documentation, materials and other documents provided to it. The software and documentation shall be sent to HERMOS free of charge. In the event of transport by third parties, the consignment must be sent by secure means of transport (registered letter, parcel post or similar) and insured for an appropriate amount.

13.2 Proper return shall also include the complete and final deletion of all copies, if any. The customer shall notify HERMOS in text form of the fulfilment of this obligation.

13.3 HERMOS may waive the right of return and order the deletion of the software and the destruction of the documentation. If HERMOS exercises this right of choice, HERMOS shall expressly inform the customer of this. In this case, the customer must affirm the deletion and/or destruction in lieu of an oath.

13.4 The customer is expressly informed that he may not continue to use the software after termination of the contractual relationship and that in the event of non-compliance he will be in breach of the copyright of the rights holder.

14. Property rights of third parties

14.1 If the contractual use of the HERMOS software is impaired by third-party property rights, HERMOS shall have the right, to an extent that is reasonable for the customer, either to modify the HERMOS software at its own discretion so that it falls outside the scope of the property rights but nevertheless complies with the contractual provisions, or to obtain authorisation to use the HERMOS software in accordance with the contract without restriction and at no additional cost to the customer.

14.2 HERMOS shall indemnify the customer against all third-party claims arising from or in connection with an infringement of third-party rights and industrial property rights by or in connection with the contractual use of the HERMOS software by the customer.

14.3 The contracting parties shall notify each other immediately in text form if third parties assert claims against them for infringement of rights or industrial property rights.

14.4 The customer shall indemnify HERMOS against all third-party claims arising from or in connection with a breach of these General and Special Terms and Conditions by the customer, in particular if the customer makes unauthorised changes to the HERMOS software or uses the HERMOS software in any other unauthorised manner.

15. Duration and termination of the contract

The term of the rental licence agreement is set out in the Individual Terms and Conditions. If there is no term provision in the Individual Terms and Conditions, the term shall be 12 months. The rental licence agreement shall be extended by 12 months in each case unless it is terminated in text form by one of the contracting parties three months before expiry.

D. Special contractual conditions for the licensing of third-party software

1. Subject matter of the contract

1.1 The subject matter of an individual contract based on these terms and conditions (hereinafter "Software Licence Agreement") is the licensing of the third-party software listed in the individual contract together with the associated documentation (hereinafter collectively referred to as "Third-Party Software") for a fee within the scope of use described below. Details of the name and description of the third-party software, number of licences, delivery time and licence fee are set out in the individual contract.

1.2 The installation, implementation and/or parameterisation of the third-party software on the customer's hardware is not part of the software licensing agreement, but is governed by the Special Terms and Conditions for the Provision of Services or Works.

1.3 HERMOS accepts no responsibility for ensuring that the third-party software is compatible with the customer's hardware and software environment.

1.4 Manuals, operating aids and other documentation shall be made available to the customer at HERMOS's discretion as a hard copy or on an electronic data carrier, i.e. online or by e-mail.

2. Content and scope of the right of use

2.1 The licence conditions of the respective manufacturer of the third-party software, which are provided to the customer as an annex to the individual contract or together with the third-party software on the electronic data carrier, shall apply.

2.2 The customer shall have no claim against HERMOS for delivery of the source code or access to the source code.

3. Terms of payment

3.1 The licence fee shall be invoiced to the customer upon delivery.

3.2 Payment of the licence fee covers the costs for licensing the third-party software in accordance with these terms and conditions for the licensing of third-party software. In particular, costs for installation, implementation, parameterisation and maintenance of the third-party software as well as for instruction and training of the customer's employees are not covered. These services shall be the subject of a separate agreement in accordance with the relevant Special Terms and Conditions and shall be remunerated separately by the customer.

4. Liability for defects

4.1 HERMOS would like to point out that it is not possible to develop data processing programmes that are completely error-free for all areas of application, even with the care customary in the industry.

4.2 The rectification of a defect in the event of a timely and justified notice of defect shall be deemed equivalent to HERMOS showing the customer a reasonable way of circumventing the defect. The customer shall be obliged to accept a new version as part of the subsequent fulfilment, unless this is unreasonable for the customer.

4.3 Within the scope of its obligation to provide support in remedying defects in accordance with Section 8.8 of the General Terms and Conditions of Contract, the customer shall in particular be obliged to log the error messages displayed and, in the case of errors that are not readily reproducible, to provide HERMOS with a machine-readable test example with a sufficient error description for the reconstruction of the error as far as possible.

4.4 Any manufacturer's warranty remains unaffected.

4.5 As this is not HERMOS' own software, HERMOS generally does not have the source code of the third-party software and therefore cannot make any changes to it. In this respect, HERMOS is dependent on the software manufacturer's defect rectification measures.

E. Special contractual conditions for the adaptation of software (customising)

1. Subject matter of the contract

1.1 The following terms and conditions apply to all individual contracts (hereinafter referred to as "customising contract") which relate to the adaptation of software to the customer's specific requirements, from development and implementation to licensing of the adapted software and documentation (hereinafter referred to as "HERMOS programme").

1.2 The installation, implementation and/or parameterisation of the HERMOS software on the customer's hardware shall not form part of the customising contract, but shall be governed by the Special Terms and Conditions for the Provision of Services or Works.

1.3 The specific scope of services is set out in the Individual Terms and Conditions. These include information on the following points:

1.3.1 Description of the customer's requirements and objectives.

1.3.2 Description of the customer's existing hardware and software environment.

1.3.3 Description of the programme, in particular the requirement profiles.

1.3.4 Description of the technical requirements.

1.3.5 Preparatory work, provision of materials and other necessary co-operation by the customer.

1.3.6 Acceptance checklist, attached to the individual contract as an acceptance booklet.

The descriptions according to the above paragraphs 1.3.1 and 1.3.2 are based on the information provided by the customer. The customer shall be responsible for ensuring that the information provided is complete and correct. The customer may separately commission HERMOS to carry out a corresponding analysis in accordance with the conditions for the provision of services or works.

1.4 HERMOS accepts no responsibility for ensuring that the programme is compatible with the customer's hardware and software environment.

1.5 The programme will be developed and implemented in accordance with the milestone plan described in the Individual Terms and Conditions.

1.6 Manuals, operating aids and other documentation shall be made available to the customer at HERMOS's discretion as hard copies or by electronic means, i.e. online or by e-mail.

2. Project management

2.1 HERMOS shall appoint the project manager and deputy project manager listed by name in the Individual Terms and Conditions of Contract.

2.2 The customer shall designate the project manager and deputy project manager listed by name in the Individual Terms and Conditions.

2.3 A change in the person of the project manager is only permitted with the prior consent in text form of the respective other contracting party; the latter may only refuse its consent to the change of project manager if there are important reasons.

2.4 The project managers shall provide each other with all information required for the fulfilment of the contract.

2.5 The project managers are authorised to agree the details of the contractual implementation within the framework of these terms and conditions. The project managers are not authorised to amend the remuneration or to establish additional rights and obligations. The management of the contracting parties reserve the right to make such changes.

2.6 A meeting of the project managers (hereinafter "project manager meeting") shall take place at regular intervals, but at least once a month. Details of the time and place of the Project Manager Meeting are set out in the Individual Terms and Conditions of Contract. The purpose of the project manager meetings is to determine and promote the progress of the project and to discuss and resolve problems. At each project manager meeting, the HERMOS project manager shall provide the customer's project manager with a presentation in text form regarding the status of the project and the expected completion date, which shall be included as an annex to the minutes.

2.7 The participation of other persons in the project manager meetings is possible with the prior consent of both project managers.

2.8 The HERMOS project manager shall take minutes of each project manager meeting (hereinafter referred to as "minutes") and send these to the customer's project manager in signed form within five working days of the date of the project manager meeting. Within five working days of receipt, the customer's project manager shall either countersign the minutes or notify HERMOS of any requests for changes by sending a corresponding complete set of minutes of the meeting with different content to the HERMOS project manager by fax. The HERMOS project manager shall sign amended minutes within five working days of receipt or inform the project manager and the customer's management that no agreement has been reached on the content of the minutes.

2.9 Once the protocol has been signed by both project managers, it becomes an annex and part of the customising contract.

2.10 In the event of a dispute between the project managers within the period specified in section 2.8 If no agreement on the content of the protocol has been reached between the project managers within the period specified in clause 2.8, both project managers are obliged to inform their respective management of this circumstance immediately and in text form. The management of the contracting parties shall endeavour to reach an agreement within 10 working days.

2.11 If the project managers agree that a project manager meeting is not necessary, this may be omitted in individual cases. However, under no circumstances may two consecutive project manager meetings be cancelled.

3. Milestones

3.1 The development and implementation of the programme described in the Individual Terms and Conditions is based on milestones. The milestone plan is

part of or an annex to the respective Individual Terms and Conditions of Contract. The milestone plan describes in detail the performance time and scope of performance for the individual milestones.

3.2 Unless acceptance in accordance with the following clause 4 below, the realisation of the programme is completed with the handover of the installed, implemented and parameterised programme at the completion time specified in the Individual Terms and Conditions or in the milestone plan. Insofar as acceptance in accordance with clause 4 below, the realisation of the programme is completed with the declaration of acceptance.

4. Acceptance

4.1 If acceptance is required by law or has been expressly agreed in the Individual Terms and Conditions, the customer shall be obliged to declare acceptance in accordance with the acceptance checklist or to refuse acceptance within 10 calendar days of handover of the installed, implemented and parameterised programme.

4.2 The customer is not entitled to refuse acceptance due to insignificant defects.

4.3 If the customer declares its refusal of acceptance, it must inform HERMOS of the reasons for this in text form and - as far as possible - state the changes required for acceptance. If a defect actually exists, HERMOS shall make the contractually owed changes and deliver and install the modified programme within 30 calendar days of receipt of the customer's declaration in text form. The customer shall be obliged as set out in Clause 4.1 above.

4.4 If the customer again declares a refusal to accept the goods, the same procedure as in section 4.3 shall be followed again.

4.5 If the customer refuses acceptance even after the second rectification, the customer may declare acceptance subject to reservation with a reduction in HERMOS's claims. This conditional acceptance shall then be deemed acceptance within the meaning of § 640 BGB. HERMOS may refuse a request by the customer for further rectification.

4.6 Declarations of acceptance must be made in text form, refusals of acceptance must be made in text form with reasons in text form.

4.7 If partial acceptances have been agreed in the Individual Terms and Conditions, the above provisions shall apply accordingly to the respective partial acceptance.

4.8 The services of HERMOS shall be deemed to have been accepted - even without an express declaration and without a request for acceptance by the customer,

4.8.1 when the customer puts the work into use, or

4.8.2 upon payment, unless the customer has justifiably refused acceptance, or

4.8.3 if the customer within the period specified in Clause 4.1 neither declares nor refuses acceptance.

5. Granting of rights of use

5.1 HERMOS grants the customer the non-exclusive right, unlimited in time, to use the HERMOS programme within the scope of and in accordance with the following licence conditions from the time the HERMOS programme is handed over.

5.2 The licence conditions of the ciphers 2 - 10, 13 of the Special Terms and Conditions for the Licensing of HERMOS Software on a Permanent Basis shall apply accordingly.

6. Liability for defects

6.1 HERMOS would like to point out that it is not possible to develop data processing programmes that are completely error-free for all areas of application, even with the care customary in the industry.

6.2 The rectification of a defect in the event of a timely and justified notice of defect shall be deemed equivalent to HERMOS showing the customer a reasonable way of circumventing the defect. The customer shall be obliged to accept a new version as part of the subsequent fulfilment, unless this is unreasonable for the customer.

6.3 Within the scope of its obligation to provide support in remedying defects in accordance with Section 8.8 of the General Terms and Conditions of Contract, the customer shall in particular be obliged to log the error messages displayed and, in the case of errors that are not readily reproducible, to provide HERMOS with a machine-readable test example with a sufficient error description for the reconstruction of the error as far as possible.

6.4   HERMOS accepts no liability for defects that are attributable to incomplete or incorrect information provided by the customer in relation to its hardware and software environment.

7.   Duty to co-operate

7.1   In addition to the duties to co-operate under section 3 of the General Terms and Conditions of Contract, the customer shall provide HERMOS with an appropriately equipped workplace for HERMOS employees on the customer's premises if the services to be provided by HERMOS have to be performed on the customer's premises.

8.   Terms of payment

8.1   If the Individual Terms and Conditions or the milestone plan provide for instalments, these shall be invoiced to the customer when the respective

F. Special contractual conditions for software support

1.   Subject matter of the contract

1.1   The object of an individual contract based on these terms and conditions (hereinafter "Software Support Contract") is the maintenance of the software programmes (hereinafter "Programmes") listed conclusively in the individual contract. The maintenance serves to maintain the operational readiness of the programmes, but does not include any guarantee that the programmes will always work without malfunctions.

1.2   The specific scope of services and the service level are specified in the Individual Terms and Conditions.

1.3   It is agreed that, given the state of IT technology, errors cannot be ruled out even when applying the care customary in the industry.

1.4   Unless otherwise specified in the Individual Terms and Conditions, HERMOS shall provide the following services within the scope of this software support contract:

1.4.1   rectification and/or workaround of reproducible errors that significantly impair the use of the programmes and are reported by the customer to the office specified in the Individual Terms and Conditions. Instead of rectifying errors, HERMOS shall also be entitled to provide a reasonable replacement solution. HERMOS may rectify errors that affect the use of the programmes only insignificantly or not at all in the context of a new software release, which the customer shall receive from HERMOS at reasonable intervals if necessary.

1.4.2   Answering questions by telephone or answering questions in text form (e.g. support database) that arise during the use of the programmes, insofar as the use relates to the applications provided for when the programme was created. The hotline is available during the working hours specified in the Individual Terms and Conditions of Contract at the registered office of HERMOS and at the telephone number specified in the Individual Terms and Conditions of Contract.

1.4.3   Remote diagnosis of problems via online connection.

1.5   Unless otherwise expressly agreed in text form, the support contract does not include upgrades, i.e. the updating of the customer's existing software version with a new programme version.

1.6   Maintenance, extensions and/or modifications which the customer orders from HERMOS during the term of the software support contract and which go beyond the scope of services described above and specified in more detail in the individual contract shall be charged additionally in accordance with the prices agreed in the Individual Terms and Conditions.

2.   Obligations of the customer to co-operate

2.1   The assumption of the listed services by HERMOS is subject to the following conditions:

2.1.1   The customer undertakes not to make any changes to the programmes or to the hardware and/or software environment and/or to have them made by third parties unless such changes have been agreed with HERMOS and HERMOS has consented to the change in text form.

2.1.2   The customer undertakes to notify HERMOS immediately of any disruptions in the use of the programmes.

milestone is reached. Otherwise, the customer shall be invoiced for the amount upon handover of the installed, implemented and parameterised program.

8.2   Insofar as acceptance in accordance with the above clause 4 above, the amount shall be invoiced upon declaration of acceptance and/or the partial amount upon declaration of partial acceptance.

8.3   Payment of the total amount stated in the Individual Terms and Conditions of Contract shall cover the costs for the development, realisation, installation, implementation and parameterisation of the program as well as for the granting of the right to use the program. In particular, costs for the instruction and training of the customer's employees and for the maintenance of the programme are not included. These services are the subject of a separate agreement in accordance with the relevant Special Terms and Conditions of Contract.

2.1.3   The customer shall appoint a suitable employee as a contact person who is familiar with the programmes, the hardware and software environment and the applications.

2.1.4   If necessary, the customer shall grant HERMOS the right to use copies of the programmes and other software during the term of the contract and to store test data on HERMOS data carriers and use them within the scope of this contract. HERMOS shall delete the test data immediately after the error has been successfully rectified.

2.1.5   The customer undertakes to provide HERMOS with suitable test data for carrying out tests immediately upon request.

2.1.6   The customer must have the latest operating system release released by HERMOS (including other system software required for HERMOS software) installed.

2.1.7   The customer undertakes to use the latest release of the programmes.

2.1.8   The customer's operating system, database and basic software must be up to date

2.1.9   The customer undertakes to create the technical conditions necessary for remote diagnosis and to grant HERMOS access to its IT system in order to carry out the remote diagnosis.

3.   Terms of payment

3.1   The service fee shall be calculated from the start of the software support contract in accordance with the Individual Terms and Conditions. Unless otherwise agreed, HERMOS shall be entitled to demand the respective service fee in advance. The exact terms of payment and the amount of the advance payment are set out in the Individual Terms and Conditions. HERMOS shall be entitled to adjust the service fee appropriately after 12 months. The fee change shall take effect two months after the end of the month in which the customer was notified of the change in text form. If the service fee is increased by more than 5% p.a., the customer shall be entitled to terminate the service contract subject to a notice period of four weeks from notification of the fee increase.

4.   Liability for defects

4.1   Unless liability for defects is mandatory by law, HERMOS shall not assume any liability for defects for the services rendered in accordance with these terms and conditions.

5.   Duration and termination of the contract

5.1   The term of the software support contract is set out in the Individual Terms and Conditions.

5.2   If there is no term provision in the Individual Terms and Conditions, the term is 12 months.

5.3   The software support contract shall be extended by 12 months in each case unless it is cancelled in text form by one of the contracting parties three months before expiry.

Status December 2023