

TERMS AND CONDITIONS

GENERAL TERMS

1 DEFINITIONS

The following terms are capitalised in these General Terms and Conditions (these 'Conditions'), both in the singular and in the plural. These terms have the following meanings:

Agreement: The agreement between Dept and the Client concerning provision of the Service.

Annex: Appendix to these Conditions with specific provisions relating to the Service to be provided.

Client: Any legal entity that has concluded, or is going to conclude an Agreement with Dept.

Conditions: These general terms and conditions of Dept including all applicable Annexes.

Dept: Contracted Party: Dept Germany Marketing Holding GmbH and its subsidiaries, acting under the name of Dept, that have declared these Conditions to be applicable.

IP Rights: All intellectual property rights and associated rights such as copyrights, trade mark rights, patent rights, design rights, trade name rights, database rights and related rights, as well as rights to know-how and performances on a par with these rights.

Parties: Dept and the Client.

Personal Data: Any information relating to an identified or identifiable natural person ('data subject' within the meaning of Section 4 (1) of the General Data Protection Regulation (Regulation (EU) 2016/679).

Service: The Services to be provided to the Client by Dept pursuant to the Agreement, including, if applicable, results of these Services.

2 GENERAL

2.1 These Conditions apply to and form an integral part of all offers and quotations of Dept, Agreements and any other legal acts related thereto between Dept and the Client or its legal successor. The specific Annexes also apply as agreed between Dept and the Client. If this general part of these Conditions is contrary or incompatible as regards any aspect with the provisions in the Annex agreed between Dept and the Client, the provisions in the Annex(es) concerned will prevail.

2.2 If these Conditions state that an act must be carried out in writing, this is deemed to refer to email as well. Electronic communication between the Parties will be deemed to have been received on the day it was sent, unless proof to the contrary is furnished.

2.3 Any deviations from these Conditions are only valid if they have been agreed explicitly in writing by Dept and the Client, and they only apply to the specific Agreement for which they were agreed. Any waiver of such written form must be agreed upon in writing as well.

2.4 The Client's generally applied purchase or other conditions do not apply to any legal relationship between the Parties unless their applicability has been expressly confirmed by Dept in writing.

2.5 Once these Conditions have been applied to a legal relationship between Dept and the Client, the Client is deemed to have agreed in advance to the applicability of these Conditions to any Agreements concluded or to be concluded thereafter.

2.6 If and insofar as any provision in these Conditions is declared to be null and void or is annulled, the other provisions in these Conditions will remain in full force. In that case the Parties will consult to determine a new provision to replace the provision that is null and void or that has been annulled, thereby taking the purport of the void or annulled provision into account as far as possible.

2.7 In the event of a conflict between provisions in an Agreement and these Conditions, the provisions in the Agreement will prevail.

2.8 Dept is authorised to amend these Conditions. The Client will be informed to that effect in writing. The amended version of these Conditions will then apply to all subsequent business with the Client.

2.9 Dept considers all assignments as given exclusively to Dept as an entity, also if the explicit or implied intention of the Client is that an assignment is (also) to be carried out by another person.

3 QUOTATIONS AND FORMATION OF THE AGREEMENT

3.1 Quotations and other offers by Dept are without obligation and must be regarded as an invitation to enter into an Agreement, unless Dept has explicitly indicated otherwise in writing.

Offers and quotations lose their validity four (4) weeks after their date, unless otherwise indicated in writing.

3.2 The Client guarantees that the details disclosed by, or on behalf of,

to Dept, on which Dept has based its offer, are correct and complete. If those details should prove not to be correct or complete, Dept is entitled to modify the offer.

3.3 An Agreement is formed by written confirmation from the Client of an unmodified valid quotation and/or offer made by Dept.

3.4 Commissions issued by the Client are irrevocable.

4 PERFORMANCE OF THE AGREEMENT AND DELIVERY

4.1 Dept will perform the Agreement to the best of its knowledge and ability and in accordance with the standards of the profession, such on the basis of the latest scientific and technical knowledge. The obligations of Dept on the basis of the Agreement should be interpreted as a duty to perform, unless and insofar as Dept has explicitly promised a specific result in the Agreement and the relevant result has also been described with sufficient certainty in the Agreement. Any arrangements about a Service level will always be agreed in writing in a Service Level Agreement.

4.2 In the Agreement the Parties will determine the delivery term and delivery dates as well as the place and manner in which the Services will be delivered and/or provided. The duration of an assignment depends on various factors and circumstances, such as the quality of the data and information disclosed by the Client and the cooperation of the Client and relevant third parties. The aforementioned delivery terms are therefore not strict deadlines. In the event that a delivery term or other term is exceeded, or is likely to be exceeded, the Parties will consult with each other as soon as possible in order to take suitable measures. Delay, for whatever reason, with respect to agreed delivery times does not give any entitlement to compensation, unless explicitly agreed otherwise in writing.

4.3 If it has been agreed that the Agreement will be performed in phases, Dept is authorised to postpone the commencement of the Services that form part of a subsequent phase until the Client has approved the results of the prior phase in writing.

4.4 Dept is not obliged to follow instructions that alter or add to the content or scope of the agreed Services; if such instructions are followed, the activities concerned will be paid in accordance with Dept's usual rates and Dept will notify the Client of this situation.

4.5 Dept is entitled to have the Agreement carried out by third parties wholly or in part, or to engage third parties for the performance of the Agreement.

4.6 Services will be deemed by the Parties to have been accepted if the Client has not substantiated in writing and in detail, within five (5) working days after delivery of the Services concerned, the reason(s) why the Services have not been accepted. If the Services are not accepted and the Client can sufficiently demonstrate that the Services provided do not fulfil the Agreement, Dept must replace or adapt the Services within a reasonable deadline. If the Client again does not accept the Services, the Parties will perform the acceptance procedure again. This procedure will be repeated if the Client again substantiates, during the new acceptance test, the reason(s) why the Services provided do not fulfil the Agreement. This procedure shall not be repeated more than three (3) times.

5 PRICES AND TERMS OF PAYMENT

5.1 All prices are exclusive of turnover tax (VAT) and other government levies. The prices are based on performance during normal working hours.

5.2 Work which is not stated in the quotation is not covered by the Agreement and may lead to an overall price increase.

5.3 Unless explicitly agreed otherwise in writing, price indications, estimates, budgets and/or cost estimates issued by Dept are merely for information purposes, and no rights or expectations may be derived from them. Only if the Parties have so agreed is Dept obliged to inform the Client when a cost estimate or estimate will be exceeded.

5.4 All prices indicated in writing or electronically by Dept are subject to programming and typing errors or spelling mistakes. Dept is not bound by such errors and/or spelling mistakes.

5.5 The Parties will set down in the Agreement the date or dates on which Dept will charge the fee for Services to the Client. The Client will pay invoices in accordance with the terms of payment stated on the invoice. In the absence of a specific arrangement, the Client will pay within fourteen (14) days after the invoice date. All payments will be made without any deduction, suspension or set off.

5.6 The payments made by the Client will first be used to pay all due interest and costs, and then the payable invoices which have been

- outstanding the longest, even if the Client states that the payment relates to a later invoice.
- 5.7 If the Client does not pay the amounts due on time, the Client will be in default and will owe statutory commercial interest on the outstanding amount, without any demand or notice of default being required. If after a demand the Client still fails to pay the claim, Dept may refer the debt for collection, in which case the Client will be obliged to pay, in addition to the total amount due, all judicial and extrajudicial costs, including costs of external experts.
- 5.8 Dept is entitled to retain Services that have not yet been fully performed if the Client does not comply with its payment obligation, regardless of whether the arrears are related to the Services retained by Dept.
- 5.9 Comments or complaints about invoices, bills and fee statements must be made known in writing within fourteen (14) days after receipt of the invoice, bill or fee statement concerned, failing which they will be deemed to have been accepted. Such complaints do not suspend the obligation to make payment.
- 5.10 Dept is entitled to send the Client interim invoices and/or to invoice on the basis of advance payments, to offset or to require security for compliance by the Client.
- 5.11 The Client agrees to electronic invoicing by Dept.
- 6 CHANGES TO THE ASSIGNMENT AND/OR EXTRA WORK**
- 6.1 The Client accepts that the time schedule of the Agreement may be affected if the scope of the Agreement is expanded and/or altered while the Agreement is still being performed. If the interim alteration affects the agreed remuneration, Dept will report this as quickly as possible to the Client.
- 6.2 If on the basis of an alteration to the Agreement as a result of extra requests or wishes on the part of the Client Dept must carry out extra work (additional work), this work will be charged to the Client on the basis of actual costs at the usual rates that apply at that time, unless explicitly agreed otherwise in writing.
- 7 OBLIGATIONS OF THE CLIENT**
- 7.1 The Client will ensure that all data and/or information that Dept has indicated are necessary, or which the Client reasonably ought to understand will be necessary for the performance of the Agreement, including information about legislation or regulations to be complied with by Dept that applies specifically to the Client's field of work, are disclosed to Dept in good time, and the Client will cooperate with Dept insofar as the latter requires. Quotations and offers issued by Dept as well as the Agreement concluded afterwards are based on the information disclosed by the Client. Dept is not liable for loss or damage which arises due to it basing work on inaccurate and/or incomplete details and information provided by the Client.
- 7.2 If data needed for the performance of the Agreement is not disclosed to Dept in good time, Dept is entitled to suspend performance of the Agreement and/ or to charge to the Client the extra costs arising from the delay at the usual rates that apply at that time.
- 7.3 Insofar as, within the framework of the Agreement, Dept discloses user names and/or passwords, the Client is responsible for these user names and/or passwords, also from a data protection perspective, and is entirely liable for any misuse made of the user names or passwords, unless such misuse is the result of intent or gross negligence on the part of Dept.
- 7.4 Insofar as Dept discloses user names and/or passwords within the framework of the Agreement, the Client is prohibited from disclosing these user names and/or passwords to third parties without Dept's consent.
- 8 TERMINATION, PREMATURE TERMINATION AND THE RELATED CONSEQUENCES**
- 8.1 An Agreement takes effect on the date stated in Article 3 for the period agreed in writing between the Parties and ends by operation of law on the date agreed by the Parties or when the provision of Services has been completed.
- 8.2 Unless explicitly agreed otherwise in writing, the Parties can terminate the Agreement prematurely in writing due regard for a period of notice of three (3) months. If the Client terminates the Agreement prematurely, Dept is entitled to charge cancellation costs.
- 8.3 Dept is entitled to terminate the Agreement wholly or in part with immediate effect, without judicial intervention and without being obliged to pay any compensation, if the Client is declared bankrupt or is granted a suspension of payments, as well as if the Client's business is closed down or liquidated other than for the purposes of reconstruction or merger of companies, or if the decisive control of the Client's business changes.
- 8.4 The Agreement may only be terminated on the basis of attributable failure after a written notice of default has been sent that is as detailed as possible, with a reasonable term being set for fulfilment or remedy of the failure after all, unless these Conditions or the law provide otherwise.
- 8.5 If the Agreement is terminated, anything that Dept has delivered and/or carried out as well as the related payment obligation will not be undone, unless the Client proves that Dept is in default with regard to the material part of those Services. Amounts which Dept has invoiced before the termination, in connection with that which it has already and properly carried out or delivered for the performance of the Agreement, will continue to be payable, with due regard for the provisions of the previous sentence, and will become immediately due and payable at the moment of termination.
- 8.6 If the Agreement is terminated, all rights granted to the Client will lapse, except for the Intellectual Property Rights that have been transferred to the Client or of which it has been agreed in writing at the time of termination of the Agreement that these will continue. In the event of termination of the Agreement, the Client is no longer entitled to use the Service.
- 8.7 Articles that, by their nature, are intended to continue to apply after the end of the Agreement will remain fully effective after the Agreement is terminated.
- 9 IP RIGHTS**
- 9.1 Unless explicitly determined otherwise in the Agreement, all IP rights to all the Services provided within the framework of the Agreement, as well as all other materials or information which Dept has made available will be vested exclusively in Dept and/or its licensors.
- 9.2 Nothing in these Conditions and/or the Agreement implies a transfer of IP Rights from Dept to the Client. Unless expressly stated otherwise in writing, the Client will obtain solely the non-exclusive, non-transferable, and up to the moment that the Client has fully complied with all its payment obligations towards Dept under the Agreement, revocable right of use to the Services for the purposes stipulated in the Agreement and on the conditions stipulated in the Agreement. Unless explicitly stipulated otherwise in writing, the right of use granted applies only for Germany.
- 9.3 The Client is not permitted to remove and/or alter any identifiers concerning IP Rights from the results of Services.
- 9.4 Where applicable, Dept explicitly does not relinquish any of its employees' personality rights referred to in Section 13 of the German Copyright Act (*Urheberrechtsgesetz*).
- 9.5 Dept is permitted to use the Services and the materials used for the implementation of the Agreement, such as designs, drawings, films, software, files whether electronic or otherwise, reports, formats and interviews, for purposes of its own promotion and/or publicity, unless otherwise stipulated in the Agreement.
- 9.6 Dept reserves the right to introduce technical protective measures into the Services. The Client is not permitted to circumvent these technical protective measures or to offer means to do so.
- 10 PRIVACY**
- 10.1 If within the framework of performing the Services, Dept has to process Personal Data of the Client or of customers of the Client (such as name, address, e-mail address, interests, etc.), Dept must be deemed to be the 'processor' within the meaning of the General Data Protection Regulation (GDPR) and the Client must be deemed to be the 'controller'.
- 10.2 The Client guarantees to Dept that the Personal Data are not unlawful and that they do not infringe the rights of third parties. The Client indemnifies Dept against all legal action or claims by third parties, including supervisory authorities and data subjects, on any basis whatsoever, in connection with the processing of this Personal Data within the framework of the Agreement.
- 10.3 Pursuant to the legislation on the processing of Personal Data (such as the GDPR and the German Federal Data Protection Act), the Client has obligations to third parties, such as the obligation to have a legal basis for the processing, to disclose information, and to allow data subjects to inspect, correct and remove their Personal Data. The responsibility for complying with these obligations lies fully and solely with the Client. To the extent technically possible, Dept will cooperate with the obligations to be complied with by the Client, including transmitting requests from third parties within the framework of the Client's obligations. The costs associated with such cooperation will be fully borne by the Client.
- 10.4 The Client grants Dept a general authorization to appoint sub-processors. Dept will notify the Client in advance of the appointment of sub-processors, in which case the Client will be entitled to object to this within four weeks. After the four-week period has expired without objection, the Client is deemed to have given permission to engage those sub-processors if these sub-processors are subject to the same obligations as Dept itself according to these Conditions and this Article 10.
- 10.5 Dept will only transfer the Personal Data to a country outside the European Union if it observes all applicable legal regulations.

- 10.6 Dept will take appropriate technical and organizational measures, including confidentiality obligations of its own employees, or have them taken by third parties, and will maintain them and if necessary adjust them, to protect the Personal Data that it processes on the instructions of the Client within the framework of the respective contractual relationship in order to prevent unlawful processing. Dept will not process the Personal Data obtained from the Client for its own purposes. Dept is expressly permitted to use sub-contractors, as long as these sub-contractors are subject to the same obligations as Dept itself according to these Conditions and this Article 10. Upon termination of the contractual relationship between Dept and the Client or in case of a respective instruction by the Client, Dept will delete Personal Data provided by the Client if there is no legal obligation for further storage of such Personal Data.
- 10.7 Dept will discuss with the Client the appropriate technical and organisational measures to be taken for the protection of Personal Data from loss or from any other form of unlawful processing and will make it possible for the Client to monitor conformity with the provisions of this Article 10 in this way.
- 10.8 The Client acknowledges that it has full knowledge of the technical and organisational measures to be carried out by Dept and herewith declares that these measures will guarantee a suitable level of protection, taking into consideration the state of the art and the costs of implementation and having regard to the risks involved in the processing and the nature of the data to be protected.
- 10.9 If, despite the fact that Dept has implemented the agreed appropriate measures, a security incident occurs involving i) destruction, ii) loss, iii) falsification, iv) unauthorised distribution of and/or access to, or v) any other form of unlawful processing of Personal Data, the Client cannot hold Dept liable for any damage sustained as a result of such incident.
- 10.10 If the Client explicitly requests measures which, in the opinion of Dept, cannot be regarded as suitable technical and organisational measures, the implementation thereof will be entirely for the account and risk of the Client, and Dept does not accept any liability for any damage suffered by the Client or third parties.
- 10.11 The Client indemnifies Dept in full against all claims by third parties, including but not limited to penalties imposed by regulators that are in any way based on the assertion that the technical and organisational measures taken by Dept as referred to in Article 10.10 are not appropriate and/or are otherwise not adequate.

11 CONFIDENTIALITY

- 11.1 The Parties will treat all information they obtain from one another, in any form whatsoever - written, verbal, electronic or physical - including but not limited to software, (source) codes, programs, applications, customer details, knowhow, technical specifications, documentation ('Confidential Information') as strictly confidential, and will keep it secret during the term of the Agreement and for five (5) years after the end of the Agreement, unless it follows from the nature of the information that the temporal limitation as mentioned in the previous sentence does not apply.
- 11.2 The Parties will only use the Confidential Information for the purposes for which it was disclosed and in doing so will observe at least the same duty of care and safeguards that apply to their own internal confidential information. The Parties will only disclose the Confidential Information to employees. They may also disclose the Confidential Information to the employees of affiliated businesses and sub-contractors insofar as is necessary within the framework of the (implementation of the) Agreement. Comparable provisions in relation to confidentiality must be imposed on these employees and sub-contractors.
- 11.3 The obligations to maintain secrecy with regard to the Confidential Information do not apply insofar as the receiving Party can demonstrate that the information concerned:
- i) was already known to it when it was received;
 - ii) was already publicly known when it was received;
 - iii) became publicly known after receipt and this is not attributable to the receiving Party;
 - iv) was received in a lawful manner from third parties along with the right to communicate it publicly without any obligation to maintain secrecy;
 - v) must be disclosed pursuant to legislation or regulations or pursuant to a court order, and the disclosing Party has informed the other Party of such an obligation to communicate it to the public;
 - vi) was made public with the approval of the Party disclosing it.

12 NON-SOLICITATION

For the duration of the Agreement and one (1) year after it terminates, except with the prior consent of the other Party, neither Party will solicit away employees of the other Party who are or were involved in the implementation of the Agreement, nor have them

work for them in some other manner, directly or indirectly.

13 LIABILITY

- 13.1 Unless otherwise stated in these Conditions including the following stipulations of this Article 13, Dept shall be liable in the event of a breach of contractual and non-contractual obligations in accordance with the statutory provisions of law. Dept shall be liable for damages and compensation for futile expenditure - irrespective of the legal grounds - within the scope of the fault-based liability (*Verschuldenshaftung*) in the event of wilful misconduct and gross negligence on the part of the legal representatives, employees or other vicarious agents of Dept in accordance with the statutory provisions of law. In the case of slight negligence of the legal representatives, employees or other vicarious agents of Dept, Dept shall only be liable, subject to statutory limitations of liability (e.g. care in its own affairs; minor breach of duty), for (i) for damages resulting from injury to life, body or health; (ii) for damages resulting from the breach of an essential contractual obligation (an obligation the fulfilment of which makes the proper execution of the contract possible in the first place and on the observance of which the Client regularly relies and may rely); in this case, however, Dept's liability is limited to the compensation of the foreseeable, typically occurring damage. Dept's liability according to the Product Liability Act (*Produkthaftungsgesetz*) remains unaffected by this.
- 13.2 The exclusions and restrictions of Dept's liability, as described in the above paragraphs of this Article 13, do not in any way prejudice the exclusions or restrictions of Dept on account of this general part of these Conditions and the Annexes.
- 13.3 Unless fulfilment by Dept is permanently impossible, liability on the part of Dept due to attributable failure in the fulfilment of an Agreement will only arise after the Client has immediately placed Dept in default in writing, whereby a reasonable deadline for rectification of such failure has been set and Dept continues, even after such deadline, to fail culpably in the fulfilment of its obligations. The notice of default must include as complete and detailed a description of the failure as possible, so that Dept has the opportunity to respond adequately.
- 13.4 The use of the Services by the Client is Client's responsibility. Client has to ensure that its use of the Services is in accordance with the contractual terms and conditions and does not violate any legal provisions applicable to the Client. If claims are made against Dept by third parties due to a culpable breach of contract or law by the Client when using the Services, the Client shall hold Dept harmless against such claims of third parties and indemnify Dept for the damages and expenses incurred by Dept due to such claims.
- 13.5 The Client indemnifies Dept against all third-party claims due to product liability as a consequence of a defect in a product or system supplied by the Client to third parties and which consisted partly of equipment, software or other materials supplied by Dept, unless and insofar as the Client proves that the damage was caused by said equipment, software or other materials.
- 13.6 The provisions in this Article, as well as all other liability restrictions and exclusions referred to in these Conditions, also apply for the benefit of all legal entities which Dept serves during the performance of the Agreement.

14 CHANGE OF PERSONNEL

- 14.1 If the Agreement has been entered into with regard to Services to be provided by a specific person, Dept is always entitled to replace this person by one or more other persons who are equally qualified.
- 14.2 Insofar as the Services are provided at the Client, the Client will ensure an adequate and safe workplace. The Client will ensure that Dept employees are informed of any local health and safety regulations.

15 FORCE MAJEURE

- 15.1 In the event of force majeure, no attributable failure will apply in the performance of the Agreement by the Parties.
- 15.2 Force majeure includes, among other things, disruptions in the supply of electricity, strikes, riots, government measures, fire, natural disasters, floods, failure on the part of Dept's suppliers, failure on the part of third parties enlisted by the Parties, disruptions in the Internet connection, malfunctions in equipment and/or (telecommunication) networks and other unforeseen circumstances.
- 15.3 If the force majeure lasts at least thirty (30) days, the Parties are entitled to terminate the Agreement without being obliged to reimburse any damage, undo any work or to pay any compensation for such dissolution.
- 15.4 If Dept can still perform in part at the time of the force majeure, or if it has performed, it is authorised to perform this Service and to invoice it separately, as if it concerned a separate Agreement.

16 TRANSFER OF RIGHTS AND OBLIGATIONS

Dept can license, sublicense or transfer the rights and obligations arising from the Agreement to third parties. The Client is not authorised in this respect.

17 SETTLEMENT AND MEDIATION

If a dispute between the Parties cannot be settled amicably, the dispute will, before it is submitted to the court, be submitted to competent representatives of the Parties in order to assess the settlement possibilities.

18 APPLICABLE LAW AND COMPETENT COURT

18.1 These Conditions, the Agreement and the Annexes are exclusively subject to German law.

18.2 The applicability of the Vienna Sales Convention (CISG) is expressly excluded.

18.3 Disputes that arise between Dept and the Client within the framework of, or in connection with, these Conditions, the Annexes and/or the Agreement will exclusively be submitted to the competent courts of Berlin.

DEVELOPMENT OF WEBSITES AND APPS

1 APPLICABILITY

In addition to the general provisions of the General Terms and Conditions, the provisions set out in this Annex apply if Dept develops, on the Client's instructions, a website (hereinafter referred to as the 'Website') or application (hereinafter referred to as 'App') and/or executes a related Service (hereinafter referred to as the 'Service'). The other capitalised terms used in this Annex are defined in the general provisions of the General Terms and Conditions.

2 DEVELOPMENT OF WEBSITES AND/OR APPS

- 2.1 Dept will make an effort to develop the Website and/or App or perform the Service pursuant to the specifications included in the Agreement.
- 2.2 For the development of the Website and / or App, Dept can use already existing or yet to be developed generic software on which it has or will have intellectual property rights ("Background IP"). Background IP is distinguished from the intellectual property rights to the custom software that is developed for the execution of the Agreement on behalf of the Client ("Foreground IP"), without which the Website and / or App cannot exist. Background IP can never (also) be Foreground IP.
- 2.3 Dept is entitled to demand a written agreement to a design and/or draft of the Website and/or App and/or Service before starting the development, and to suspend the development and to charge the Client any costs resulting from the delay in accordance with the Client's usual rates until this agreement has been received.

3 CLIENT'S RIGHT

- 3.1 Unless otherwise stipulated in the Agreement, Dept hereby, subject to and upon receipt of payment of all outstanding amounts from the Client, assigns all Foreground IP to the Client, and the Client hereby accepts this assignment. Dept grants to the Client, for the period from delivery of the Website and / or App until the moment of receipt of payment of the last outstanding invoice, an exclusive, non-sublicensable, revocable, free of charge, worldwide license to use the Foreground IP.
- 3.2 The intellectual property rights to the Background IP rest and will remain at all times with Dept. Insofar as the Background IP is necessary to use the Website and / or App, Dept grants to the Client a non-exclusive, sublicensable, worldwide, free and for an unlimited time right to use that part of the Background IP.
- 3.3 Unless agreed otherwise, the source code of the Website and/or App and/or Service and the technical documentation used or produced upon developing the Website will be made available to the Client.
- 3.4 The Client itself is at all times responsible for the use of the Website and/ or App and/or Service. The Client may not use the Website and/or App and/ or Service for actions and/or conduct contrary to the Agreement, applicable laws or regulations, public order or morals, or use it in any other unlawful manner. The Client indemnifies Dept against all third-party claims and other damage relating to violation of the above.
- 3.5 If the IP Rights to (part of) the Website and/or the App and/or Service belong to licensors of Dept, the Client may be bound by the licence provisions and the terms and conditions of these third parties, including but not limited to content management software or restrictions relating to the issuing of licences, which may influence Article 3.1 and Article 3.2.

4 DELIVERY, INSTALLATION AND ACCEPTANCE

- 4.1 Dept will make an effort to deliver the Website and/or App and/or Service in the manner determined in the Agreement.

- 4.2 By way of an acceptance test, it has been agreed that the Website and/or App and/or Service will be deemed to be accepted on the first day after the test period or, if Dept receives a test report before the end of the test period as referred to in Article 4.5, at the moment at which the errors referred to therein have been rectified, without prejudice to the presence of errors which, according to Article 4.8, do not prevent acceptance.
- 4.3 Contrary to the above, the Website and/or App and/or Service will be deemed to be fully accepted from the time that the Client puts it online or uses it in another way for productive or operational purposes before it has been accepted.
- 4.4 If, during the performance of the agreed acceptance test, it transpires that the Website and/or App and/or Service contains errors that obstruct the progress of the acceptance test, the Client will provide detailed written information of this to Dept, in which case the test period will be interrupted until the Website and/or App and/or Service has been modified in such a way that the obstruction has been removed.
- 4.5 If, during the performance of the agreed acceptance test, it transpires that the Website and/or App and/or Service contains errors, the Client will inform Dept of the errors by means of a detailed written test report no later than on the last day of the test period. Dept will use its best endeavours to remedy the errors within a reasonable period, whereby Dept is entitled to introduce temporary solutions or software bypasses or problem-evading restrictions into the Website and/or App and/or Service.
- 4.6 The Client may not withhold acceptance of the Website and/or App and/ or Service for (i) reasons other than those that are connected with the specifications explicitly agreed between the Parties and/or (ii) due to the existence of minor errors, i.e. errors which would not reasonably preclude putting the Website and/or App and/or Service into operation, notwithstanding Dept's obligation to remedy these minor errors on the basis of the guarantee arrangement set out in Article 5 of this Annex, if applicable.
- 4.7 Dept is not obliged to rectify any errors as referred to in Article 4.5 and Article 4.6 if these have come about as a consequence of:
 - i) a modification to the Website and/or App and/or Service, of any nature whatsoever, which has not been made by Dept;
 - ii) use of the Website and/or App and/or Service in a manner which is not allowed on the basis of the Agreement;
 - iii) incorrect use of the Website and/or App and/or Service, by the Client or another party; or
 - iv) input errors or errors connected with the data used by the Client.
- 4.8 If the Website and/or App and/or Service is delivered and tested in phases and/or parts, non-acceptance of a particular phase and/or part will not affect any acceptance made of a previous phase and/or different part.

5 GUARANTEES

- 5.1 Unless agreed otherwise in writing, Dept does not guarantee that the Website and/or App and/or Service functions, or functions properly, in combination with all software (including web browsers, and/or equipment) nor does Dept guarantee that the Website and/or App and/or Service functions and/or is accessible without malfunctions, interruptions, or other errors.
- 5.2 If Dept delivers a Website and/or App and/or Service to the Client which Dept has obtained from its suppliers, Dept will not be obliged vis-à-vis the Client to provide any additional guarantee than that which Dept can claim from its supplier.

ADVERTISEMENT CREATION AND ADVERTISEMENT SALES

1 APPLICABILITY

The provisions referred to in this Annex apply, in addition to the General Terms and Conditions, to Services to be purchased by the Client of Dept in the field of advertisement creation and online advertisement sales and campaign management, with the exception of services not related to Advertisement Sales, including but not limited to work in the field of Consultancy, SEO and Analytics, hereinafter referred to as 'Advertisement Services'.

2 PROGNOSSES AND ADVICE

Insofar as Dept has given any advance prognoses regarding possible results of advertising campaigns given, these are merely estimates and are not binding upon Dept.

3 CLIENT'S OBLIGATIONS

- 3.1 The Client will provide all cooperation reasonably requested by Dept and will promptly supply Dept with all information that is reasonably required in order to perform the Agreement, including information about laws and regulations specific to the Client's sector which Dept must comply with, including information about advertising bans and information obligations.
- 3.2 If the Client supplies - via third parties or otherwise - advertising material to Dept, the Client guarantees that such advertising material has always been prepared in accordance with the applicable laws and regulations, including but not limited to the German Act Against Unfair Competition (UWG) and the Client also guarantees that this advertising material does not infringe any rights (including intellectual property rights) of third parties. If the above does not apply, the Client indemnifies Dept against all claims by third parties and other damage which results from such claims.
- 3.3 If the Client supplies advertising material to Dept, via a third party or otherwise, the Client guarantees that such advertising material meets the technical specifications communicated by Dept to the Client in advance, that it is free of technical defects and that it is sufficiently suitable for placing measuring systems. If the above does not apply, the Client indemnifies Dept against all claims by third parties and other damage which results from such claims.
- 3.4 All orders by the Client relating to Advertisement Services must be paid, without withdrawal or cancellation being possible. Dept will charge the cost of Advertisement Services in advance, unless the Parties agree otherwise. If no timely payment has taken place, Dept will not carry out the Advertisement Services. The Client cannot be reimbursed for the media budget paid by the Client for Advertisement Services in relation to advertisements placed, and neither can the Client be credited for these.
- 3.5 The Client must perform all obligations with regard to third parties insofar as these affect the performance of the Agreement by Dept.

4 DEPT'S OBLIGATIONS

- 4.1 At the Client's request Dept will specify, within a reasonable period after the budget made available by the Client for Advertisement Services has been spent, which part of the budget was spent on the purchase of media and which part was spent on campaign management costs.
- 4.2 If Dept independently prepares advertising material on the Client's instructions, Dept will guarantee that the advertising material corresponds to the applicable law and regulations, and that the advertising material does not infringe any rights (including intellectual property rights) of third parties, whereby any liability by Dept will lapse in the event that the Client has not provided information, or has provided incorrect or incomplete information which is contrary to the provisions of Article 3.1.

5 ACCESS TO THIRD-PARTY ACCOUNTS

- 5.1 Insofar as is necessary within the framework of execution of the Agreement, the Client will provide Dept with all information required for read access to the accounts with third-parties/service providers.
- 5.2 Dept will comply with reasonable instructions and guidelines provided by the Client with regard to the use of the Client's accounts with third-parties/ service providers.

- 5.3 Insofar as the Client uses accounts of Dept with third-parties/service providers, the Client will always strictly comply with the instructions issued by Dept in that regard, including but not limited to payment periods. The Client is liable for and indemnifies Dept against all damage resulting from any failure by the Client to comply with such instructions in a timely manner.

6 COOKIES AND DATA ANALYSIS

- 6.1 Insofar as the activities of the Client, or the party with which agreements are concluded for the Client within the framework of Advertisement Services, imply the placement and reading of information on the peripheral equipment of end users (hereinafter referred to as Cookies), the Client acknowledges that it is fully responsible for compliance with all applicable legislation when placing and reading Cookies or any of the data analysis and acknowledges that, within this framework, Dept does not bear any responsibility.
- 6.2 The Client guarantees that the Client will always act in complete accordance with all laws and regulations with regard to Cookies. In particular, the Client guarantees that, in accordance with the applicable laws and regulations, it will (i) not place or read any Cookies (or have them placed or read) before the Client has received satisfactory permission from the end user in this regard, and (ii) provide end users with satisfactory information in the form of a cookie policy, before the Client places and reads Cookies. At the request of Dept the Client must always be able to demonstrate this satisfactorily in writing.
- 6.3 The Client is liable for all damage (to be) suffered by Dept as a consequence of the non-fulfilment of this Article 6 and/or violation by the Client of applicable legislation and regulations, and indemnifies Dept completely against all claims by third parties, including but not limited to penalties imposed by supervisory authorities, which are the consequence and/or of are connected to a violation by the Client of this Article 6.

7 MEASUREMENTS

- 7.1 Dept's administrative and measuring systems will be used as the basis for calculating the agreed fees, unless a calculation made using the Client's measuring systems results in a higher value, in which case the Client's measuring systems will be used as the basis for such calculations.
- 7.2 In the event of an interruption, presumable tampering with the measuring systems or a discrepancy of more than 10% between the measuring systems of Dept and the Client, Dept will be entitled to calculate the fee owed on the basis of a reasonable estimate of measurement results, gauged according to previous measurement results or otherwise.

8 MISCELLANEOUS

- 8.1 Surcommissions (Surcos), amounts still to be received, other discounts and/ or offsetting will accrue to Dept.
- 8.2 Dept is not, in any way, liable for any damage as a consequence of advertisements placed on the Client's instructions.
- 8.3 In the event that the Advertisement Services relate to the creation of advertisements, the Client will notify Dept in writing no later than five (5) days after the delivery of the advertisement that the advertisement is in accordance with the assignment. If such a message is not received within the aforementioned period, the advertisement is deemed to have been delivered in accordance with the order. If the Client notifies Dept in writing within the term that the advertisement does not (fully) comply with the order, the Client will refrain from publishing the advertisement until the advertisement has been adjusted in accordance with the order. Unless Dept has demonstrably not complied with instructions from the Client, Dept will charge the Client reasonable costs for the work related to the adjustment of the advertisement.
- 8.4 The Client fully indemnifies Dept against all costs related to claims, damages, fines and third party liability, including reasonable lawyer's fees, in connection with the content of or publication of the advertisement.

HOSTING

1 APPLICABILITY

In addition to the General Terms and Conditions, the provisions set out in this Annex apply if, on the Client's instructions, Dept saves and passes on information via and/or provides access to a communications network, hereinafter referred to as 'Hosting'.

2 AVAILABILITY OF HOSTING SERVICES

- 2.1 The Client is responsible for the availability of the equipment and software, connections and other preconditions of the Client for making access to the system possible.
- 2.2 Arrangements regarding Service levels will be set out in a Service Level Agreement (SLA).
- 2.3 Dept will endeavour to enable the Hosting Services to be used with as little disruption as possible.
- 2.4 Dept is not liable for the non-availability or reduced availability of the Hosting Services as a consequence of a power cut or power disruption, disruptions in telecommunications or the Internet, defects to the Client's equipment or software and all other causes beyond Dept's control.
- 2.5 Dept has the right to temporarily close down the Hosting Services or to limit the use of them for maintenance work or for adjustments to the system, and it will inform the Client of this in advance. In that case the Client will not be entitled to compensation.
- 2.6 If the amount of the allowed data traffic and disc space is exceeded, Dept will be entitled to charge reasonable additional costs without further notice.
- 2.7 If, after the end of the term of the Agreement, the Client does not wish to continue the collaboration with Dept, Dept will cooperate with a transfer to third parties for the applicable Dept rates.

3 THE CLIENT'S OBLIGATIONS

- 3.1 The Client is expressly prohibited from distributing information or offering facilities or functionalities through or via websites hosted by Dept if and insofar as this information is contrary to:
 - i) applicable laws and regulations, including regulations of self-regulating bodies;
 - ii) the Agreement; or
 - iii) reasonable directions and instructions issued by Dept.
- 3.2 The Client will at all times adopt the attitude and conduct itself in the manner that may be expected of a careful user with regard to the information it communicates to the public and the use of the Internet. In this regard it will, among other things, comply with all statutory regulations and observe 'netiquette' and will, among other things, refrain from behaviour which is contrary to morals or public order, spamming, infringing IP Rights of third parties, communicating to the public or distributing pornography, including child pornography, sexually intimidating or harassing third parties in any other way, violating the privacy of third parties or compromising the honour or reputation of third parties, hacking, carrying out DDoS or other kinds of attacks and spreading viruses, worms or other programs which could damage individual systems or disrupt the operation of the Internet.
- 3.3 The Client is obliged to use the Hosting Services in such a way that does not hamper the correct operation of the communication network or the use of the Hosting Services by other clients.
- 3.4 In the event that the Client does not observe the provisions in Articles 3.1, 3.2, 3.3 and/or if Dept receives notification from third parties that this is the case, Dept will be entitled, without any additional notification, to suspend or discontinue the Hosting Services, block connections or remove content. In instances in which this is justified in view of the seriousness of the violation, Dept is entitled to terminate the Agreement with immediate effect. In the event of such suspension, cessation, blockage, removal and/or termination, the Client will not be entitled to receive any compensation from Dept.
- 3.5 The Client indemnifies Dept from all third-party claims, including but not limited to claims due to information and/or data published by or via the Client's websites and claims by a supplier or suppliers of Dept resulting from the non-fulfilment by the Client of one of its obligations from the Agreement, more particularly from this Article.

TERMS FOR FACTOR-A SERVICES

1 APPLICABILITY

In addition to the part General Terms of the General Terms and Conditions, the provisions set out in this Annex (hereinafter referred to as "Terms for factor-a Services") apply if Dept provides "factor-a Services". factor-a Services are consulting services Dept provides assisting the Clients in their operative tasks in cooperation with Amazon (hereinafter referred to as "factor-a Consulting Services") and the provision of access to certain software programs (hereinafter referred to as "factor-a Software") for use by the Clients. The provision of access for using the factor-a Software is hereinafter also referred to as "SaaS". The respective factor-a Consulting Services and the functionalities of the factor-a Software the Client is permitted to use are stipulated in the respective Agreement (Article 3.3 of the General Terms).

2 PROJECT FOR THE PROVISION OF FACTOR-A SERVICES

- 2.1 In order to provide the factor-a Services a cooperation between the Parties is necessary. For that reason the Parties will set up a joint project.
- 2.2 For coordination and guidance of the project, each Party shall appoint a project manager. The respective project managers shall be entitled, on behalf of the Party they represent, to submit and receive all declarations necessary for the execution of the project. The following tasks shall be covered by the project managers, whereas the list is not definitive:
 - Timely procurement of necessary approvals;
 - Provision of necessary documents and information;
 - Appointment of contact persons for clarifying project-specific questions.

3 COOPERATION OBLIGATIONS OF THE CLIENT

- 3.1 The Client shall provide Dept with the information and documents necessary to provide the factor-a Services as agreed between the Parties in the Agreement or during the project and shall provide Dept with other necessary cooperation services required for the execution of the factor-a Services. This includes with regard to the factor-a Software that the Client provides Dept with the necessary information requested by factor-a in order to set up the user account. This concerns, in particular, access to the corresponding Amazon Vendor account.
- 3.2 The Client shall provide these information and cooperation services punctually at the agreed time.
- 3.3 Dept is exempt from such obligations of the Agreement which are depending on information and cooperation obligations of the Client, for that period of time in which the Client does not fulfill its information and cooperation obligations.
- 3.4 Additional expenditure incurred by Dept because the Client culpably (i) fails to fulfil its information and cooperation; or (ii) does not fulfil them as agreed or (iii) because the Client is in default with the information and cooperation obligations, shall be reimbursed to Dept by the Client. Furthermore personnel resources already made available shall be remunerated as stipulated in the Agreement as far as they cannot be allocated to other tasks by Dept.
- 3.5 The Client is aware that search engine optimization (Amazon SEO), in particular, is an ongoing process and that search engine placement depends on a large number of factors that are subject to constant change and are not announced by Amazon.
- 3.6 Dept requires that the Client is able to supply Amazon at all times with the products (ASINs) managed by factor-a and that the goods delivered to Amazon comply with Amazon's profitability guidelines

4 FACTOR-A CONSULTING SERVICES

- 4.1 As specified in detail in the Agreement Dept advises the Client in operational matters, which can have a positive influence on the performance of the Client and its products on Amazon. This factor-a Consulting Service can also include the concrete implementation of optimisation measures.

5 SAAS

- 5.1 Dept will starting with the date agreed between the Parties make the current version of the factor-a Software available for use of the functionalities agreed between the Parties on a central data processing system or several data processing systems (hereinafter, also in the case of multiple "Server") at a site of Dept or a service provider of Dept (hereinafter the "Hosting Service Provider").

5.2 The factor-a Software enables the Client to obtain analyses, evaluations, comparisons of competitive products and recommendations for action. The analyses, evaluations, and recommendations action are prepared, based on algorithms in the factor-a Software. Nevertheless, the recommendations are proposed by the algorithms and the implementation of the proposed steps may lead to an increase in turnover for the benefit of the Client but a success is not owed by Dept.

5.3 Dept provides storage space for data created by the Client with the factor-a Software (in the following the "Application Data") on the Server. Dept will take standard industry measures to back up the factor-a Software and the Application Data on the Server regularly, however the Client is responsible to keep a separate back-up copy of all data uploaded by Client onto the Server or generated by the Client through the use of the factor-a Software. Client is furthermore responsible for compliance with the retention periods under commercial law, tax law or any other law applicable.

5.4 The "Transfer Point" for the provision of the factor-a Software and the Application Data is the router output of Dept's site where the Server is installed or Dept's Hosting Service Provider.

5.5 Dept reserves the express right to extend, modify or improve the SaaS at any time. The Client will be informed about such changes within the scope of updates at regular intervals by email and via the website factor-a.de. Restrictions on the scope of services are only possible if they are unavoidable for legal reasons or if the Client agrees to them. The consent of the Client is deemed to have been given if the Client does not object to a corresponding notice from factor-a within a period of six weeks from receipt of the notice in textform. Dept shall draw the Client's attention to the aforementioned time limit and the legal consequences of its expiry if the Client does not exercise his right to object.

5.6 Dept strives to realise all relevant data points of the factor-a software as promptly as possible after their change. Due to the technical conditions, no guarantee can be given that the data is always up-to-date and correct. Similarly, due to changes that are beyond the influence of factor-a (e. g. due to changes and modifications on Amazon), individual data points may no longer be mapped. Liability for this is expressly excluded as long as factor-a has not caused this through gross negligence or willful misconduct.

5.7 Dept shall owe an annual average availability of the factor-a Software and the Application Data of 95% at the Transfer Point (Article 5.4). Dept is entitled to temporarily limit the contractual services with regard to capacity limits, maintenance work as well as system- and security-related measures, but this will not limit the availability according to sentence 1 of this Article 5.7.

5.8 With regard to the availability defined in Article 5.7 above, periods in which the SaaS is not available due to circumstances that do not fall within the scope of Dept's responsibility (e.g. external power outage, disruption of the Internet, DDOS at-tacks, failure of Amazon's servers) are not taken into account.

6 RIGHTS OF THE CLIENT

6.1 Subject to the payment of the agreed fee and any further restrictions which may be agreed between Dept and the Client in the Agreement, the Client shall be granted a non-exclusive, non-sublicensable and non-transferable right to access the factor-a Software via the Internet with up to three users and to use the functionalities of the factor-a Software as specified in the Agreement during the term of the Agreement.

6.2 The Client is not entitled to access and use the factor-a Software in any other way than specified in Article 6.1. The Client is in particular by no means entitled to

- excess the use described herein or to make the factor-a Software available to third parties either at a charge or at no charge
- rent out the factor-a Software or to sub-license it any form,
- to copy the factor-a Software, unless such is necessary for the use described in Article 6.1,
- to publish it or make it accessible in either a local or wireless network.

The Client's rights according to § 69 d) para. 2 and 3 UrhG (German Copy Right Act) and § 69 e) UrhG (German Copy Right Act.) are excluded.

7 OBLIGATIONS OF CLIENT BY USING THE SAAS

7.1 For the use of the factor-a Software, Dept provides the Client with access data (up to three users) after conclusion of the Agreement. The

receipt of personal log-in data shall be confirmed by the Client at the request of Dept.

- 7.2 The Client shall immediately change the initial password received for access and thereafter shall change existing passwords regularly. The Client furthermore shall take all necessary measures to protect the access data and passwords from unauthorised access and shall in no case pass on the passwords to third parties.
- 7.3 The Client is responsible for the condition of the necessary hardware and software on the part of the Client and for the telecommunication connection between the Client and Dept up to the Transfer Point. The Client also undertakes to regularly update the access software used by the Client, e. g. in the form of a browser, to keep it up-to-date in order not to favour unauthorised access and manipulation by third parties.
- 7.4 The analyses, evaluations, data and recommendations for action from Dept and the factor-a Software may only be used by the Client for internal purposes. The Client is prohibited from selling, passing on or transferring Dept's analyses, evaluations and recommendations for action in any form whatsoever.
- 7.5 The Client shall ensure that the use of the factor-a Software does not violate existing contracts with Amazon. In addition, the Client refrains from using the knowledge generated by Dept or the factor-a Software to exploit this knowledge for the purpose of influencing Amazon's ranking in a way that is relevant under criminal law.
- 7.6 The Client shall be liable for ensuring that the factor-a Software is not used for racist, discriminatory, pornographic, youth protection endangering, politically extreme or otherwise illegal purposes or in violation of official regulations or requirements, or that corresponding data, in particular Application Data, is not created and/or stored on the Server.
- 7.7 Furthermore the Client shall
- not retrieve or let retrieve information or data of Dept or Dept's Hosting Service Provider other than those permitted by the functionalities of the factor-a Software,
 - not interfere with or cause to be interfered with any program operated by Dept or Dept's Hosting Service Provider,
 - not penetrate or facilitate the penetration of data networks operated by Dept or Dept's Hosting Service Provider without authorisation,
 - respect all rights of third parties used by the Client (e.g. when transmitting texts/data of third parties to the Server);
 - before sending data and information using the factor-a Software, check them for viruses or other malware and use state-of-the-art virus or other malware protection programs.
- 7.8 Users authorised by the Client are deemed to be the Client's vicarious agents in accordance with § 278 BGB (German Civil Code).
- 7.9 The Client shall indemnify and hold Dept harmless against claims of third parties which are based on a culpable breach of Client of Articles 7.2, 7.3 sentence 2, 7.5, 7.6 and 7.7. This shall not affect any further rights which Dept may have against the Client due to a breach of the Articles mentioned in sentence 1 or any other breach of the contractual and non-contractual obligations by the Client.

8 BLOCKING OF THE SAAS

- 8.1 If the Client either intentionally or negligently violates the provisions of Articles 7.5, 7.6 and 7.7, Dept may, after prior written notification of the Client, block Client's access to the factor-a Software if the violation can be demonstrably remedied thereby.
- 8.2 If the Client unlawfully violates Article 7.6, Dept is entitled to delete the data or Application Data affected thereby.
- 8.3 Articles 8.1 and 8.2 do not limit the possibility of asserting further rights to which Dept is entitled as a result of the violation according to the law or the Agreement and the General Terms and Conditions including these provisions regarding the Terms for factor-a Services.

9 DEFECTS OF THE SAAS

- 9.1 Quality Defects of the SaaS
- i) Dept warrants that the SaaS is of the agreed condition and does perform properly in accordance with the Agreement and the documentation.
 - ii) Dept will remedy defects, whereby the remedy has to take place within a reasonable time, independent of the number of attempts.
 - iii) If the remedy fails twice and the Client has set a reasonable time limit, the Client shall be entitled to claim legal warranty rights, in particular to terminate the Agreement pursuant to § 543 BGB (German Civil Code) and additionally to demand compensation and repayment of expenses in accordance with Article 10. Setting a time limit is superfluous, if such cannot be expected from the Client. This is in particular the case, if Dept definitely and seriously refuses to remedy the defects.
 - iv) Dept provides on 7 days per week, 24 hours per day a ticket-system through which defects shall be reported. Dept will within 48 hours (beginning with the time of the time stamp on creation of the ticket in the ticket system) initiate measures to remedy the defect and give via the

ticket-system a feedback that measures have been started.

- v) When identifying, localizing and reporting defects of the SaaS for remedy, the Client has to comply with any instructions provided by Dept. The Client shall within reasonable bounds take all necessary measures to identify, localize and report defects. This includes as far as possible the creation of an error report, system protocols and error analysis dumps, the provision of the affected input and output data, interim and test results and other materials documenting the defect.

9.2 a) Title Defect of the SaaS

- i) Dept shall supply the SaaS free from rights of third parties, which conflict with the Agreement and the provisions of these Terms for factor-a Services.
- ii) If third parties assert corresponding claims, the Parties shall notify each other about such claims in writing (whereby text form according to § 126b BGB (German Civil Code) is sufficient) without undue delay. On request of Dept the Client shall let Dept take actions against the claimed violation. The Client will use its best endeavours to support Dept, particularly by submitting the required information on the use of the SaaS, if possible in written form, and any other documents required.
- iii) If the SaaS violates third-party rights, Dept may in its reasonable discretion undertake the defect remedy by either:
 - obtaining a right of use from the person entitled to dispose of the intellectual property right for the benefit of the Client to the extent of Dept's obligations from the Agreement and these Terms for factor-a Services, or
 - modifying the part of the SaaS that violates third-party rights as far as this has no effect on the use of the functionalities of the SaaS or only a minor effect that the Client can be reasonably expected to accept, or
 - replacing the part of the SaaS that violates third-party intellectual property rights with a replacement that does not violate third-party intellectual property rights, as far as the Client can be reasonably expected to accept this replacement and the changes in functionality associated therewith.
- iv) The provisions of Article 9.1. iii) shall apply accordingly to defects in title.

10 LIABILITY

Article 13 of the part General Terms of the General Terms and Conditions shall apply to the liability of Dept with the following addition:

The liability without fault of Dept pursuant to § 536a para. 1, 1st alternative BGB (German Civil Code) due to defects is excluded.

11 TERM

The term of the factor-a Services is stipulated in the Agreement. The right of both Parties to terminate the Agreement without notice for cause remains unaffected.

12 FEES

- 12.1 The fees of Dept for the factor-a Services are stipulated in the Agreement. In addition to the provisions of the part General Terms of the Terms and Conditions the following Articles 12.2, 12.3 and 12.4 shall apply.
- 12.2 The Client shall reimburse Dept for reasonable travel and accommodation costs incurred in connection with the provision of the factor-a Services. All external costs and cash expenses shall be agreed upon with the Client before their implementation and shall be reasonable.
- 12.3 If fees are based on time and material and an estimation is given for the time and material needed, such is only deemed to be an approximate estimate based on the circumstances known at the time of the conclusion of the Agreement. Such estimation is not binding and can be exceeded by Dept; Dept will however inform the Client as far as possible in advance when it is foreseeable for Dept that the estimated time and material will be exceeded.
- 12.4 Marketing and media budgets for Sponsored Ads or the Amazon DSP are initially planned between Dept and the Client and used for individual measures by Dept after prior consultation with the Client. These media and/or marketing budgets accrue in addition to Dept's remuneration and are provided in advance by the Client to Dept for the entire term of the Agreement

13 PUBLISHING CLIENT REFERENCE

Dept is entitled to use the Client's company name for the online and offline marketing of the factor-a Services offered by Dept as a customer reference.