



# General terms and conditions for MHP Solution Group company services

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June 2021



## SECTION A- GENERAL PROVISIONS

### 1. Scope of application

- 1.1. These General Terms and Conditions ("GTCs") shall apply in their current version to both national and international business for all agreements regarding the provision of services by a company of the MHP Solution Group (hereinafter "MHP"). They shall only apply to entrepreneurs, legal entities under public law or special funds under public law as defined by Section 310 (1) of the German Civil Code (BGB) ("Customer").
- 1.2. These GTCs shall apply in particular to
  - (1) the provision of work and services pursuant to *Section B*, as well as
  - (2) the licensing of standard software pursuant to *Section C*,
  - (3) the licensing of third-party software pursuant to *Section D*,
  - (4) the provision of software maintenance services pursuant to *Section E*,
  - (5) the provision of SaaS services pursuant to *Section F*,
  - (6) the sale of hardware pursuant to *Section G*,
  - (7) the processing of personal data on behalf of third parties pursuant to *Section H*.
- 1.3. These GTCs shall apply exclusively. Additional, deviating or conflicting terms and conditions ("Customer GTCs") shall not become part of the agreement unless expressly agreed in writing by MHP. This shall also apply if the Customer refers to the Customer GTCs in a standard order form or otherwise in connection with an order, or if MHP provides services without reservation despite being aware of conflicting Customer GTCs.
- 1.4. These GTCs and the documents referred to therein shall conclusively regulate the contractual relationship between MHP and the Customer. There are no oral side agreements. Specifications, requirements catalogues and other documents submitted by the Customer to MHP prior to the conclusion of the agreement shall only become part thereof if expressly mentioned in the agreement or if this is otherwise expressly confirmed by MHP in writing.
- 1.5. Should individual provisions of these GTCs be or become invalid either in whole or in part, this shall not affect the validity of the remaining provisions hereof. The same shall apply in the event of a loophole. In place of the ineffective, invalid, contestable or unenforceable provision or to fill the loophole, an appropriate provision shall apply which, as far as legally possible, comes as close as possible

to what the parties would have wanted commercially had they been aware of the loophole.

### 2. Offer and conclusion of agreement

- 2.1. Offers and cost estimates by MHP shall be subject to confirmation and non-binding unless they are expressly designated as a binding offer.
- 2.2. An agreement between MHP and the Customer shall be concluded upon confirmation of the order in writing by MHP or upon mutual signing of an agreement by MHP and the Customer. Silence on the part of MHP in response to offers, orders, requests or other declarations by the Customer shall only constitute consent if this has been expressly agreed in writing. In so far as the order confirmation contains obvious errors, spelling mistakes or miscalculations, it shall not be binding on MHP.
- 2.3. The scope, type and quality of the goods and services to be provided by MHP shall be determined by the respective wording of the agreement in the event of a contractual document signed by both parties, otherwise by the service description contained in the offer or order confirmation of MHP and any further provisions listed hereinbelow. Other details or requirements shall only become an integral part of the agreement if MHP has expressly confirmed this in writing.

### 3. Amendment of the agreement

- 3.1. All agreements that contain an amendment, supplement or concretisation of these GTCs or the other contractual terms agreed between the parties, as well as special assurances and agreements, must be in writing. If declared by representatives or agents of MHP, they shall only be binding if MHP confirms them in writing. Any amendment of this written form requirement must also be in writing.
- 3.2. MHP shall be entitled to modify these GTCs or other contractual terms during the term of the agreement in accordance with the following provisions:
  - a) MHP shall be entitled to modify these GTCs or other contractual terms for good reasons that make an amendment appear necessary and do not adversely affect the Customer in breach of good faith. In this case, MHP shall inform the Customer of the modified contractual terms in writing or by e-mail. The modified contractual terms shall become an integral part of the agreement if the Customer does not object to their inclusion in the contractual relationship in writing or by e-mail within a period of six (6) weeks after receipt of the notice of modification.



- b) Furthermore, MHP shall be entitled to modify agreed maintenance or SaaS fees no more than once per quarter to reflect changes in market conditions or in the event of a significant increase in procurement costs. In the event of price increases that exceed the increase in the official consumer price index for the Federal Republic of Germany (or any index replacing it) by more than two (2) full percentage points, the Customer shall have a right of termination in the event of a price adjustment. In such cases, MHP shall inform the Customer of the right of termination in text form in good time in advance.
- 3.3. Each contracting party may request changes to the agreed scope of services from the other contractual partner in writing. Each contracting party shall examine the feasibility of the requested changes in service in terms of fairness and reasonableness. If a change request by the Customer requires an extensive review, MHP shall inform the Customer of this. If the Customer requests the review after being informed by MHP, this shall be agreed separately. MHP may charge for the cost of this review. The contractual adjustments to the agreed terms and conditions required for a change, including dates and remuneration, shall be specified in writing in an additional amendment agreement or an additional order confirmation.
- 4. Prices and terms of payment**
- 4.1. All prices quoted by MHP are net prices excluding value added tax; value added tax shall be added at the respective statutory rate unless the prices are expressly stated as gross prices including value added tax at the respective statutory rate. Costs for special packaging and transport shall be borne by the Customer unless otherwise agreed. The value added tax shall be invoiced at the rate applicable at the time of performance. If the tax rate should change during the contractual period, the periods of the respective tax rates shall be regarded as separately agreed.
- 4.2. Travel costs and expenses shall generally be borne by the Customer.
- 4.3. Travel times shall be invoiced to the Customer at 50% of the agreed hourly rate.
- 4.4. If MHP is to work for the Customer outside of normal working hours, this shall be agreed separately in writing, together with the additional remuneration accruing for this.
- 4.5. Invoices shall be due for payment immediately following receipt. Payment shall be deemed to have been made at the time when MHP can dispose of the funds.
- 4.6. If the Customer fails to make timely payment, MHP shall be entitled to charge default interest in accordance with the statutory provisions from the time of default. This shall not affect the right to demonstrate and assert further claims for damages.
- 4.7. MHP shall be entitled to carry out or provide outstanding deliveries or services only against advance payment or the provision of collateral security if, after conclusion of the agreement, it becomes aware of circumstances that are likely to substantially reduce the Customer's creditworthiness and which jeopardise payment of MHP's outstanding claims arising from the respective contractual relationship.
- 5. Liability, guarantees**
- 5.1. The liability of MHP - on whatever legal grounds - is always unlimited:
- in case of intent or gross negligence,
  - in case of culpable injury to life, body or health,
  - in so far as an obligation exists under the German Product Liability Act, as well as
  - in the event of a breach of a guarantee assumed by MHP.
- 5.2. Subject to Section 5.1, MHP shall only be liable for slight negligence if material contractual obligations are breached. Material contractual obligations are obligations the fulfilment of which is essential to the due performance of the agreement in the first place and on whose fulfilment the contractual partner may regularly rely. MHP's liability for the slightly negligent breach of other contractual obligations which are not material contractual obligations is excluded.
- 5.3. Notwithstanding the liability pursuant to Section 5.1, MHP shall only be liable for the foreseeable damage typical for the agreement.
- 5.4. In addition, MHP's liability shall be limited, irrespective of the legal grounds, per case of damage to the payments made by the Customer to MHP under the respective individual agreement in the twelve (12) months prior to the case of damage in exchange for the respective service, however, to a maximum of € 25,000.00 per case of damage, in total to € 75,000.00. If the typical, foreseeable damage would exceed the maximum liability of € 25,000.00 per case of damage or a total of € 75,000.00, the Customer must point this out to enable further hedging of the risk.
- 5.5. The liability of MHP may be further limited or agreed differently based on individual contractual agreements.
- 5.6. MHP shall in any case only be liable for the loss of stored data in accordance with the above provisions



if the Customer has ensured by properly performing a data backup that such data can be reconstructed with reasonable effort. The liability shall be limited to the recovery costs incurred.

- 5.7. Guarantees in the legal sense shall only be granted by MHP if they are expressly designated as such.
- 5.8. The above-mentioned limitations of liability in Article 5 shall apply mutatis mutandis to all employees, representatives, bodies and vicarious agents of MHP.

## 6. Confidentiality and data protection

- 6.1. The parties undertake to treat as confidential, not to disclose to unauthorised third parties and to use only for the contractual purpose, all confidential information, documents, business processes and data communicated to them by the other party or that otherwise come to their knowledge prior to or during the performance of the agreement (collectively "**confidential information**"). In doing so, the parties shall exercise the same care as they exercise with respect to their own confidential information, but at least the care of a prudent businessman. Companies of the MHP Group and their employees as well as consultants of the parties who are professionally bound to secrecy shall not be considered third parties within the meaning of this provision.
- 6.2. Not deemed confidential is information (i) which is generally known or lawfully made publicly available, (ii) which was lawfully known to the receiving party before it obtained it from the disclosing party, (iii) which was independently developed by a party without recourse to or use of the information obtained, (iv) which a party lawfully obtained without an obligation to maintain confidentiality from third parties who in turn lawfully acquired such information without an obligation to maintain confidentiality, (v) which a party is required to disclose by law, governmental or judicial order; in which case the receiving party shall inform the other party of the disclosure and limit the scope of such disclosure to the extent possible. Disclosure of the confidential information to employees shall only be permitted to the extent necessary for the performance of the contractual obligations incumbent upon the party.
- 6.3. Unauthorised third parties within the meaning of Article 6.1 do not include consultants of the parties and/or employees and/or consultants of affiliates of the parties who need the information to carry out their activities in relation to the relevant agreement ("**Authorised Third Parties**"). The parties shall require each Authorised Third Party in writing to comply with the provisions of this agreement to the extent that they are not already otherwise required to do so. The

duty of confidentiality of the Authorised Third Parties shall continue to apply even after the employees have left one of the parties.

- 6.4. The parties shall observe the data protection provisions applicable in each case and shall swear all employees deployed in connection with this agreement and its performance to data secrecy, unless they are already generally obliged to do so.
- 6.5. If the Customer collects, processes or uses personal data in connection with the performance of the agreement, the Customer warrants that it is authorised to do so in accordance with the applicable provisions, in particular the provisions of data protection law, and, in the event of a breach, shall exempt MHP from all third-party claims. If MHP processes personal data on behalf of the Customer, the Customer is responsible for the lawfulness of the data transfer to MHP. If necessary, the parties shall set down the data protection details in a separate agreement on order data processing.
- 6.6. The Customer agrees to be included in MHP's list of references. The Customer shall also permit MHP to use its trademarks, logos and the like for this purpose until revoked.

## 7. Set-off, assignability of claims, right of retention

- 7.1. The Customer may only set off claims which are undisputed by MHP and which have been legally established. The above limitation of the Customer's right of set-off does not apply in the case of contracts for work and services.
- 7.2. MHP may assign agreements to any other company within the MHP Group. Otherwise, any assignment of rights or transfer of obligations under an agreement subject to these provisions, except in cases of Section 354a of the German Commercial Code (HGB), shall require the prior written consent of the Customer and MHP. Consent may not be unduly refused.
- 7.3. The assertion of a right of retention pursuant to Section 273 BGB by the Customer is excluded. The Customer may only assert a right to refuse performance pursuant to Section 320 BGB on the basis of undisputed, legally established claims or claims ready for decision.

## 8. Export and import restrictions

- 8.1. The parties acknowledge that the software licensed under the agreement or other services to be provided under the agreement may be subject to export and import restrictions, e.g. in the form of licence requirements or other restrictions on the use of the software or other services abroad.
- 8.2. The Customer is obliged to comply with all applicable export and import control regulations of the Federal



Republic of Germany, the European Union, the United States of America, and other relevant export and import control regulations. MHP's obligation to perform the agreement is subject to the proviso that performance is not prevented by obstacles based on national or international export and import law and that no other conflicting statutory provisions exist.

## **9. Final provisions, place of jurisdiction and choice law**

- 9.1. Should differences of opinion arise from the present business relationship, the business partners shall endeavour to settle them amicably.
- 9.2. The exclusive place of jurisdiction for all disputes arising in the course of the execution of the contractual relationship is the registered office of MHP Solution Group GmbH as the parent company of all companies of the MHP Group in Neustadt am Rügenberge. In addition, MHP may also sue the Customer at its general place of jurisdiction.
- 9.3. The agreement shall be governed exclusively by the law of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

## **SECTION B - SERVICES AND WORKS**

### **10. Area of application**

The following provisions of this *Section B* shall apply in addition to the provisions of *Section A* to the provision of work and services by MHP relating to information technology in the field of software, in particular in the context of shipment processing, foreign trade, transport management systems and warehouse logistics applications. This includes in particular the development and adaptation of software-based optimisation processes, as well as the training, consulting and support of the Customer.

### **11. Provision of services**

- 11.1. MHP shall perform the services owed in accordance with the state of the art applicable at the time of order placement.
- 11.2. The services shall be provided by suitably qualified personnel of MHP or of companies of the MHP Group, or by other third parties engaged by MHP as subcontractors for the performance of the contractual obligations under the individual agreement. MHP is expressly entitled to use subcontractors within the framework of the General Data Protection Regulation ("GDPR").
- 11.3. MHP shall be responsible for the manner in which and by whom the individual agreement is performed

within the framework agreed in each individual agreement. In this respect, the Customer has no rights to issue instructions to the personnel employed.

- 11.4. Agreed delivery and performance dates are only binding if they have been expressly agreed as binding, MHP shall inform the Customer in good time of any impending delays in the provision of services of which MHP becomes aware. MHP shall not be liable to the Customer for delays for which MHP is not responsible (e.g. due to force majeure, strike, war, riots, catastrophes or comparable events). In such cases, MHP may request a reasonable postponement of the deadline, including reasonable periods for the resumption of the owed activities.

### **12. Remuneration**

- 12.1. The remuneration agreed for the work or services to be provided by MHP shall be invoiced in accordance with the contractual agreements as a fixed price or on a time and material basis on the agreed dates, at the latest upon completion or acceptance of the services.
- 12.2. The agreed calculation rates for work and services on a time and material basis may be changed by MHP subject to three months' notice, for the first time four months after the conclusion of an agreement. If the increased price is 20% or more above the agreed price, the Customer shall have the right to withdraw from the agreement. This right must be asserted immediately after notification of the increased price.
- 12.3. Estimated prices for work and services stated by MHP on a time and material basis shall not be binding. The estimated quantities used to prepare an estimate are based on an assessment of the scope of services provided to the best of MHP's knowledge.
- 12.4. MHP is entitled to make partial deliveries, each of which may be invoiced after their completion. MHP expressly reserves the right to demand payments on account. This applies in particular in cases where the agreement also includes the adaptation of the software to the Customer's system or the creation of special software, as well as for individual programming sections.
- 12.5. The remuneration for the creation of software does not include installation and initial training or any error-independent software customisation; nor does it include any adaptations to hardware other than the agreed hardware and/or other software. Such services must be ordered separately by the Customer and shall then be charged separately; separately charged instruction provides information about the most important performance features of a delivered item but does not replace detailed training. MHP



offers the Customer services, maintenance and training that will be charged for separately.

- 12.6. In the case of adaptation and consulting services as well as software development, the services rendered by MHP shall be invoiced on a monthly basis at the respectively applicable or agreed hourly rates.

### 13. Obligations of the Customer to cooperate

- 13.1. The Customer shall cooperate to the extent that can be reasonably expected. This includes in particular (i) the appointment of a contact person for the specific project who is authorised to make statements on behalf of the Customer and to take project-related decisions, as well as (ii) to the extent necessary, handle the timely and complete provision of all necessary operational and project organisation-related information, documents and resources. The Customer shall provide suitable rooms for the MHP employees working for it, in which documents, documentation and data carriers can also be stored. Furthermore, the Customer will provide MHP with all necessary work equipment and, in the case of programming work, provide computer time, test data and data acquisition capacities in good time and to a sufficient extent.
- 13.2. The Customer shall inform MHP of all circumstances relevant for an effective provision of services without being requested to do so. Upon MHP's request, the Customer shall confirm in writing the completeness of the information and documents provided.
- 13.3. The parties may agree on further obligations to cooperate in individual agreements.
- 13.4. All obligations to cooperate listed herein or agreed in the agreement are essential primary duties of the Customer and are agreed as such.
- 13.5. If the Customer fails to perform one of its obligations to cooperate as agreed or does not do so on time and if, as a result, deadlines cannot be met according to the previous planning, correspondingly agreed deadlines shall no longer apply. In this case, the parties are obliged to agree on new performance dates, taking into account MHP's resource planning. The Customer is obliged to compensate MHP for any additional expenses incurred due to the breach of the obligation to cooperate. Further rights of MHP due to the breach of obligations to provide materials and cooperate remain unaffected.

### 14. Acceptance

- 14.1. Unless MHP and the Customer expressly agree the contractual obligations in an agreement for work and services, such contractual obligations shall be deemed to be services and no acceptance shall be

required; they shall be deemed to have been performed upon execution.

- 14.2. MHP will release work and services expressly or implicitly by making them available for acceptance testing. After release by MHP, the Customer is obliged to immediately check, on the basis of the contractually agreed assumptions and requirements, acceptance criteria, test data and test scenarios, whether the work and services have the contractually agreed quality. Should it become apparent in the course of the acceptance test that the work and services are defective, the Customer shall inform MHP of this in writing or document it in the acceptance certificate.
- 14.3. Acceptance may not be refused due to insignificant defects.
- 14.4. In the absence of an express declaration of acceptance, acceptance shall also be deemed to have taken place if the Customer (i) has commissioned or otherwise productively used the work or service in whole or in part, or (ii) has neither declared nor justifiably refused acceptance within a period of ten (10) working days following provision.

### 15. Right of use

- 15.1. Unless otherwise agreed in an individual agreement, MHP shall grant the Customer the right to use the results of the services in accordance with the following provisions:
- 15.1.1. In the case of work and services in the form of adaptations or supplements to standard software of MHP ("**program supplements**"), MHP shall grant the Customer a simple, non-exclusive right of use in accordance with the provisions of the licence agreement for the licensed standard software. Otherwise, all rights shall remain with MHP.
- 15.1.2. In the case of service results which are not program supplements within the meaning of Article 15.1.1, MHP grants the Customer an irrevocable, non-exclusive right, unlimited in time and space, to use all service results specifically created for the Customer. The right of use includes the authority to edit and modify the service results. The right of use is granted subject to the condition that the Customer has paid the due and correct remuneration for the respective service results to MHP in full. The right of use granted may only be transferred with the written consent of MHP. MHP shall only refuse such consent if there are justifiable reasons against such transfer.
- 15.1.3. With regard to the rights to open source components and/or third-party software that are incorporated into any service results or otherwise transferred within the scope of the provision of services, the licence conditions applicable to the respective



- components shall apply. These shall be handed over to the Customer by MHP.
- 15.2. In the case of a programming services agreement, MHP shall only owe delivery of the programming in the object code version and the Customer shall not be entitled to provision of the source code, unless the parties have expressly agreed otherwise.
- 15.3. If, in the case of training, the Customer receives training material, MHP shall grant the Customer a non-exclusive right to use such documents for the Customer's own business purposes for an unlimited period of time. The right of use granted may only be transferred with the written consent of MHP. MHP shall only refuse such consent if there are justifiable reasons against such transfer.
- 15.4. The following applies to inventions created or developed during the provision of services by one of the contracting parties and for which industrial property rights have been or may be applied for: Inventions by employees of the Customer shall be claimed by the Customer and those by employees of the company MHP shall be claimed by MHP. The contracting parties grant each other a non-exclusive, irrevocable, worldwide and royalty-free licence to these inventions and to industrial property rights granted in respect thereof for the period of the contractual cooperation. In the event of termination of the contractual cooperation, both contracting parties shall enter into negotiations regarding the extent to which a non-exclusive, (ir)revocable, worldwide and royalty-free licence shall continue to be granted.
- 15.5. Inventions made jointly by employees of the Customer and MHP and industrial property rights granted in respect thereof shall be jointly owned by both contracting parties. Each contracting party shall have the right to grant licences to third parties for such inventions or to transfer its rights without notifying the other contracting party or making payments to it. MHP shall have the right to apply for joint inventions.
- 16. Warranty**
- 16.1. MHP warrants that services, in particular training, consulting and support services, will be provided by suitably qualified personnel with reasonable care and in a proper manner. MHP shall be liable for any breach of this obligation within the scope of the agreed limitation of liability.
- 16.2. Insofar as MHP provides work or services to which sales law applies, MHP warrants that the service results have the contractually agreed quality and that the contractual use of the work or services by the Customer is not prohibited by any third-party rights.
- 16.3. In the event of a material defect in relation to an agreement for work and services, MHP shall, after due notification of the material defect, first be entitled to subsequent performance at its option by remedying or circumventing the defect or by delivering a service result that is essentially free of defects. Claims for subsequent performance are excluded in the case of minor deviations which are reasonable for the Customer.
- 16.4. If the subsequent performance fails within a reasonable period of time, the Customer may demand a reduction of the remuneration for the defective part. If there is a significant deviation from the contractually agreed quality, the Customer also has the right to withdraw from the agreement, provided it has threatened to do so in writing beforehand. Furthermore, the Customer may - if the legal requirements are met - also demand compensation for damages. Any right of self-performance is excluded.
- 16.5. In the case of programming services, the ability to reproduce or detect the defects is a prerequisite for warranty claims. The Customer shall report defects without undue delay, stating the information known to it and which may be useful for identifying the defect, and shall take the necessary measures to facilitate the determination of the defects and their causes.
- 16.6. The warranty claims shall lapse if the Customer interferes with the service result in a way that renders elimination of the defect impossible or unreasonably difficult. The assertion of warranty claims is also excluded if operating or maintenance instructions are not followed, the delivered products are modified, parts are replaced or consumables are used that do not comply with the original specifications. In the event of a warranty claim, the Customer shall, upon request, send the rejected goods to MHP carriage paid, stating the exact nature of the complaint and the invoice number. In the event of a justified complaint, MHP shall reimburse the costs of the least expensive means of shipping. If a notice of defect is unjustified, MHP is entitled to demand reimbursement of the expenses incurred from the Customer, unless the Customer proves that it is not at fault with regard to the unjustified notice of defect.
- 16.7. The limitation period for claims based on material defects is twelve (12) months.
- 16.8. In the event of a defect of title, MHP shall, at its own option, provide the Customer with the legally unobjectionable ability to use the work or service or with an equivalent service free of defects of title. The Customer shall inform MHP in writing without undue delay if third parties assert a claim for the infringement of property rights to the service against



the Customer. The limitation period for claims based on defects of title is two (2) years.

## SECTION C - SOFTWARE LICENCE FOR STANDARD SOFTWARE

### 17. Area of application

The following provisions of this *Section C* shall apply in addition to the provisions of *Section A* to agreements between MHP and the Customer for the licensing of standard software solutions of MHP ("**Software**") for the purpose of use for an unlimited period of time (purchase licence).

### 18. Scope of service

- 18.1. Upon conclusion of the agreement, MHP undertakes vis-à-vis the Customer (i) to provide the Customer with the agreed software modules, including user documentation (together "**Licensed Product**") in accordance with Article 19, and (ii) to grant the Customer the right to use the **Licensed Product** in accordance with Article 20.
- 18.2. By placing an order or signing an agreement, the Customer confirms that the essential functional features of the Licensed Product are known to it at the time of conclusion of the agreement and that the agreed specification corresponds to its wishes and needs.

### 19. Delivery

- 19.1. In the event that the Customer does not obtain SaaS services in accordance with *Section F* with regard to the software, the software shall be delivered by transferring the software, installing the software remotely or providing the Customer with the information required to download the software.
- 19.2. The Licensed Product shall be delivered or made available in the object code version. The Customer has no right to provisions of the source code of the Licensed Product.
- 19.3. Information on delivery and performance dates shall only be binding if they are expressly designated as such in the agreement.
- 19.4. If expressly agreed by the parties, MHP shall also install the Subject of the Purchase Licence for a separate fee in accordance with the provisions of *Section B*. Otherwise, the installation of the Subject of the Purchase Licence is not part of the service owed by MHP.

### 20. Rights of use

- 20.1. Upon full payment of the agreed licence fees, MHP shall grant the Customer the non-exclusive right, unlimited in time, to use the Licensed Product to the contractually agreed extent in accordance with the following provisions. The right of use includes the right (i) to install the Licensed Product and (ii) to register and use the software with the number of licences acquired in accordance with the agreement. The Customer has the right to print out the user documentation supplied, provided that it has been sent to it on a data carrier.
- 20.2. The right of use pursuant to Article 20.1 is limited to the intended use of the Licensed Product for the purpose of supporting the internal business operations of the Customer and its affiliated group companies. Use for the purpose of supporting the business operations of a third party is not covered by the right of use granted and must be agreed separately. Further rights are not granted. In particular, the right of use granted does not include the right to distribute or make the Licensed Product publicly available.
- 20.3. The granting of rights pursuant to Article 20.1 does not apply to the source code of the Licensed Product. Conversion of the object code version of the Licensed Product into source code and/or editing thereof is not permitted. The Customer is exclusively entitled to decompile and reproduce the machine-readable Licensed Product to the extent that this is legally necessary within the scope of mandatory copyright law in order to establish interoperability with other programs; however, this shall only apply in so far as MHP does not make the necessary information available to the Customer upon request within a reasonable period of time.
- 20.4. The Customer is entitled to make a copy of the Licensed Product exclusively for backup or archiving purposes or to transfer the software to hard disk, provided that it keeps the original exclusively for backup or archiving purposes. The Customer is obliged to visibly affix the note "Backup Copy" as well as a copyright notice of MHP on the backup copy created.
- 20.5. The Customer is not permitted to assign or transfer the granted rights of use to third parties, to grant sub-licences, to publicly reproduce the Licensed Product by wire or wirelessly, to rent, lease or lend it or otherwise to make it accessible for use to a third party, e.g. by way of application service providing or as software-as-a-service. Notwithstanding the foregoing, the Customer is entitled, with MHP's prior written consent, to permanently transfer the Licensed Product to a third party, handing over the licence certificate and the documentation. MHP shall only refuse such consent if there are justifiable





reasons against such transfer. In the event of a transfer, the Customer shall completely cease using the Licensed Product, remove all installed copies of the Licensed Product from its computers and delete all copies on other data carriers or hand them over to MHP, unless the Customer is legally obliged to retain them for a longer period of time. At MHP's request, the Customer shall confirm to MHP in writing that the aforementioned measures have been implemented in full or, if applicable, explain the reasons for any longer period of retention. Furthermore, the Customer shall expressly agree with the third party the observance of scope of the granting of rights according to this agreement. A splitting of acquired licence volume packages is not permitted.

- 20.6. If the Customer uses the Licensed Product to an extent that qualitatively exceeds the acquired rights of use (with regard to the type of use permitted) or quantitatively (with regard to the number of licences acquired), the Customer shall immediately acquire the rights of use necessary for the permitted use. If it fails to do so, MHP shall assert the rights to which it is entitled.
- 20.7. The Customer shall not remove or alter the copyright notice or other features serving to identify the program from the Licensed Product.

## **21. Material defects**

- 21.1. MHP warrants that the Licensed Product essentially fulfils the functions described in the agreed product description, if applied and used in accordance with the specifications in the user documentation. Any warranty for program parts which the Customer modifies or which it does not apply and use in the manner specified in the user documentation is excluded, unless the Customer proves that the modification or non-intended use was not the cause of the defect.
- 21.2. In the event of a material defect, MHP shall initially have the obligation and the right of subsequent performance. If the subsequent performance fails, the Customer may reduce the purchase price or, in case of substantial defects, withdraw from the agreement.
- 21.3. Subsequent performance may, at MHP's option, be effected by delivery of a new item or by rectifying the defect. In case of software malfunctions, the rectification may also be carried out or supported by supplying or installing an update or patch.
- 21.4. The Customer shall appropriately support MHP in the fault analysis and defect rectification and shall describe problems occurring with the Licensed Product in detail and inform MHP thereof immediately and in full. MHP is entitled to eliminate any defects by means of remote maintenance or

remote diagnosis, as far as this is reasonable for the Customer.

- 21.5. In the event of a material defect, the Customer shall not be entitled to rectify the defect itself or to be reimbursed for the necessary expenses.
- 21.6. The Customer must notify MHP of obvious defects without undue delay, but no later than four (4) weeks after delivery. Other defects must be reported immediately after discovery. The notification must include a comprehensible description of the defect. If the defect is not duly reported, the Licensed Product shall be deemed approved with regard to this defect. The assertion of warranty claims is excluded in this respect.
- 21.7. MHP shall not assume any warranty and liability (i) if the Customer fails to comply with its duty of notification or the failure of the Licensed Product is due to misuse or incorrect application, nor (ii) for the error-free interaction of the Licensed Product with third-party software which the Customer uses without authorisation at its own request.
- 21.8. The limitation period for claims due to material defects shall commence upon delivery of the service to the Customer and shall be one (1) year.

## **22. Defects of title**

- 22.1. MHP warrants that the contractual use of the Licensed Product by the Customer does not conflict with any third-party rights. In the event of a defect of title, MHP shall, at its own option, provide the Customer with a legally unobjectionable ability to use the Licensed Product or with an equivalent service free of defects of title.
- 22.2. The Customer shall inform MHP in writing without undue delay if third parties assert a claim for the infringement of property rights to the Licensed Product against the Customer.
- 22.3. The limitation period for claims based on defects of title shall commence upon delivery of the service to the Customer and shall be two (2) years.

## **23. Remuneration**

- 23.1. In exchange for the transfer of the Licensed Product and for granting the rights of use, the Customer shall pay to MHP a remuneration in the amount of the one-off fee specified in the order confirmation or the agreement.
- 23.2. The remuneration shall be invoiced on the dates specified in the order confirmation or the agreement. Invoices are payable without deduction within fourteen (14) days of the invoice date.
- 23.3. In all other respects, the provisions of Clause 4 in *Section A* shall apply.



#### **24. Obligations of the Customer to cooperate**

- 24.1. The Customer shall cooperate to the extent that can be reasonably expected. This includes in particular the provision of all necessary operational and project organisation-related information.
- 24.2. The Customer shall ensure the functionality of the working environment in which the Licensed Product is to be used.
- 24.3. The Customer shall take reasonable precautions in the event that the Licensed Product does not function properly. In connection with the use of the Licensed Product, the Customer shall in particular be obliged to regularly back up data and to use software to defend against viruses and other malware in accordance with the current state of the art.
- 24.4. Obligations to cooperate within the meaning of this Article 24 are essential primary duties of the Customer and are agreed as such.

#### **25. Right of inspection, prohibition of use**

- 25.1. The Customer grants MHP the right to inspect compliance with the agreed licence terms once every six months or if there is good cause, i.e. in particular if there is reasonable suspicion that the software provided is not being used in accordance with the licence conditions. The Customer shall support MHP or the expert with the inspection to the extent necessary and ensure that the inspection can be carried out without hindrance. MHP shall give the Customer at least five (5) working days' notice of the inspection by an expert or by remote access and shall ensure that this does not affect the Customer's normal business operations more than necessary. If the inspection reveals a licence violation, the costs of the inspection shall be borne by the Customer. For each case of infringement of the provisions of a licence agreement existing between MHP and the Customer, the Customer undertakes to pay any licence fees in arrears on the basis of MHP's price list valid at the time.
- 25.2. MHP is entitled to prohibit the use of the Licensed Product in case of good cause. Good cause is in particular a continued violation of the regulations on the right of use according to the agreement after the fruitless expiry of a period of ten (10) days after a warning.
- 25.3. The Customer acknowledges that the software may regularly transmit metadata about the use to an MHP web service. This may not be prevented by the Customer. If the metadata transmission fails or is interrupted, MHP shall be entitled to investigate the cause on the Customer's premises. If the investigation reveals that the Customer is responsible for the interruption of the data

transmission, the Customer shall bear the costs for this as well as for any necessary recovery measures.

### **SECTION D - SOFTWARE LICENCE: THIRD-PARTY SOFTWARE**

#### **26. Area of application**

The following provisions of this *Section D* shall apply in addition to the provisions of *Section A* to agreements between MHP and the Customer for the licensing of third-party software solutions ("**Third-Party Software**") for use by the Customer.

#### **27. Third-Party Software Licence Terms**

- 27.1. MHP obtains the right to resell or sublicense the Third-Party Software from a third-party provider ("**Third Party Software Provider**").
- 27.2. To the extent that supplementary licence terms for the Third-Party Software ("**Third Party Software Licence Terms**") have been communicated to the Customer by MHP in the context of the offer or otherwise prior to the conclusion of the agreement, these take precedence over the agreement on the use of the Third-Party Software. Upon conclusion of the agreement, the Customer shall acknowledge the validity of these Third-Party Software Licence Terms communicated to it prior to the conclusion of the agreement, unless the parties expressly agree otherwise.
- 27.3. To the extent that the Third-Party Software Provider requires a direct declaration by the Customer to the Third-Party Software Provider regarding the applicability of the Third-Party Software Provider's licence terms ("**End User Licence Terms**") and MHP has informed the Customer thereof prior to the conclusion of the agreement by submitting or referring to the relevant End User Licence Terms, the Customer shall be obliged upon conclusion of the agreement to agree to these End User Licence Terms by declaration to the Third-Party Software Provider before starting to use the Third-Party Software and to comply with them. The Customer must inform itself about the content of the End User Licence Terms prior to the conclusion of the agreement.

#### **28. Supplementary provisions**

- 28.1. The provisions of Section E shall apply mutatis mutandis to the agreement between MHP and the Customer for the licensing of the Third-Party Software.
- 28.2. In so far as, in the case of Section 27.2, there are inconsistencies between individual provisions of the Third-Party Software Licence Terms and the



provisions of *Section C*, the provisions of the Third-Party Software Licence Terms shall prevail.

## SECTION E - SOFTWARE MAINTENANCE

### 29. Area of application

- 29.1. The following provisions of this *Section E* shall apply in addition to the provisions of *Section A* to agreements between MHP and the Customer for the provision of maintenance services in respect of the standard software solutions. The parties may conclude a separate maintenance agreement for the individual programming created for the Customer by MHP.
- 29.2. In the event that the Customer also obtains or licenses third-party software and/or infrastructure from MHP, such as databases, operating systems, networks, these are not subject to maintenance by MHP, but are subject to the terms and conditions of the respective manufacturers.

### 30. Scope of service

- 30.1. The maintenance includes
  - a) troubleshooting outside of any warranty obligation in respect of the software which is subject to software maintenance ("**Maintenance Item**"), including the expedited provision of bug fixes in urgent cases, pursuant to Article 31,
  - b) the further development of the Maintenance Item and the provision of new program versions (updates) pursuant to Article 32, and
  - c) the provision of a hotline pursuant to Article 33, if so specified in the order confirmation or agreement.
- 30.2. MHP shall provide the maintenance services for the duration of the agreement, commencing upon conclusion of the agreement and the commencement of the operational use of the Maintenance Item by the Customer.
- 30.3. MHP shall provide the maintenance services in accordance with the respective state of the art and in such a way that they are oriented towards the interests of all the software users.
- 30.4. Maintenance services shall be provided by MHP only in relation to the current program version of the Maintenance Item delivered by MHP immediately beforehand. The maintenance services shall not extend to the interfaces to third-party systems, such as the Customer's ERP system.
- 30.5. In order to receive the maintenance services, the Customer is obliged to keep its third-party systems

(such as ERP system) up to date. Flat-rate maintenance services only relate to third-party systems that are state of the art at the time of service provision, i.e. in the case of SAP systems, that these are included in SAP's mainstream maintenance.

- 30.6. If the Customer acquires further licences in relation to the Maintenance Item during the term of the agreement, e.g. for the use of further modules or additional workstations, an existing maintenance agreement shall automatically extend to the part of the software covered by the extension from the time of conclusion of the agreement for the licence extension. For the additional licences acquired during the term of the agreement, maintenance will be charged separately in the first calendar year. In subsequent periods, MHP may switch to an overall invoice.

### 31. Troubleshooting

- 31.1. MHP shall remedy errors and defects (collectively "**Errors**") to the Maintenance Item occurring during the term of the maintenance agreement in accordance with the following provisions.
- 31.2. MHP shall commence the troubleshooting upon notification of an error by the Customer to MHP in writing or, if contractually agreed, otherwise within the contractually agreed time limits.
- 31.3. MHP shall eliminate errors within the scope of the maintenance agreement as quickly as possible, as a rule by providing patches.
- 31.4. If the elimination of errors requires a serious - and for the respective program status - risky program modification, MHP reserves the right to eliminate an error only within the scope of the next program version (update), in order to exclude consequential and accompanying errors. In this case, MHP shall, upon request, provide the Customer with an interim solution ("**workaround**") for the period until the next update within the framework of the maintenance agreement.
- 31.5. A prerequisite for the elimination of errors within the scope of maintenance is that the error is reproducible.
- 31.6. MHP is entitled to carry out the elimination of errors by means of remote maintenance or remote diagnosis.

### 32. Further development, updates

- 32.1. If required, MHP shall provide new program versions ("**Updates**") within the scope of the maintenance. Updates may include functional or technological adaptations of the software.



32.2. MHP shall grant the Customer rights of use to the updates to the extent agreed between MHP and the Customer in the respective licence agreement for the Maintenance Item.

### 33. Hotline or self-service portal

MHP shall provide the Customer with a hotline and/or a self-service portal online for reporting errors within the scope of the maintenance as well as for advising the Customer by telephone on questions arising during the use of the software. The hotline can generally be reached during MHP's business hours at the telephone number provided to the Customer by MHP. Exceptions to this are short-term downtimes typical of the service (e.g. in the case of system maintenance or if several calls are received at the same time). The Customer shall use the hotline only for the aforementioned purposes covered by the maintenance agreement and shall limit the use of the hotline to the extent necessary.

### 34. Business hours

- 34.1. MHP's business hours are currently Mondays to Thursdays 9.00 a.m. - 5.00 p.m., and Fridays 9.00 a.m. - 2.30 p.m. with the exception of public holidays at MHP's registered office.
- 34.2. MHP reserves the right to change the business hours within reasonable and customary limits (e.g. in order to adapt to changed market conditions). In this case, MHP shall duly inform the Customer about the change, however at least four (4) weeks in advance.

### 35. Services not included

- 35.1. The following services are not included in the maintenance agreement:
- Training,
  - on-site services and remote services (e.g. the installation of updates and patches on-site),
  - the reporting of defects and troubleshooting outside the specified hotline hours,
  - the migration of individual adaptations to new program versions, patches,
  - program maintenance for individual interface programs, and/or
  - the elimination of defects due to incorrect operation by the user, the influence of third parties or force majeure,
  - the creation of individual customisations, custom software and interfaces,

unless this has been expressly agreed by the parties, including the additional remuneration due for this.

35.2. If the Customer requests the provision of other troubleshooting and customisation services that are not covered by the maintenance agreement, MHP shall review these and, if necessary, perform them on the basis of a separate order in accordance with the provisions of *Section B*.

### 36. Maintenance fees

- 36.1. The annual maintenance fees are set out in the order document and are calculated on the basis of the current list price at the time of the order. The maintenance fees are payable in advance at the beginning of each agreement year for the respective agreement year.
- 36.2. If the Customer acquires further licences with regard to the Maintenance Item during the term of an existing maintenance agreement (e.g. further workstation licences or additional modules), the maintenance agreement shall also extend to the newly acquired Licensed Product from the time the new Licensed Product is made available. The annual contractual maintenance fees shall be increased from this point in time by the maintenance fees for the supplemented licences, whereby the current list prices at the time of the subsequent order plus the workstation factor shall also be used to calculate the maintenance fees for the new licences.

### 37. Obligations of the Customer to cooperate

- 37.1. The Customer shall support MHP to the extent that can be reasonably expected in the provision of the maintenance services and, if a defect is determined, shall take the necessary measures to determine and isolate the defect and provide MHP with all necessary documents.
- 37.2. The Customer shall grant MHP's personnel or persons commissioned by MHP access to its IT systems to the extent necessary for the performance of the maintenance services owed. Furthermore, the Customer for its part shall make the technical equipment required to perform the maintenance ready for use and shall make this available free of charge to a reasonable extent.
- 37.3. The Customer shall ensure that the persons entrusted with the operation of the Maintenance Item have sufficient knowledge of the program.
- 37.4. Obligations to cooperate within the meaning of this Article 37 are essential primary duties of the Customer and are agreed as such.



### 38. Term of agreement, notice of termination

- 38.1. Unless the parties have agreed otherwise in an individual agreement, the term of the agreement shall be indefinite and may be duly terminated by either party, for the first time after three (3) years with a notice period of three (3) months effective on 31 December of the year.
- 38.2. This shall not affect termination for good cause. Good cause for MHP exists in particular if the Customer is more than two (2) months in arrears with the payment of a due remuneration despite a reminder. If the Customer is responsible for the reason for termination, the Customer shall be obliged to pay MHP the agreed remuneration less expenses saved by MHP until the date on which the agreement would have ended at the earliest in case of an ordinary notice of termination.
- 38.3. Any notice of termination must be in writing in order to be effective. Fax and e-mail do not satisfy the written form requirement.

## SECTION F - SAAS

### 39. Area of application

The following provisions of this *Section F* shall apply in addition to the provisions of *Section A* to agreements between MHP and the Customer for the provision of Software-as-a-Service ("**SaaS**"). SaaS refers to software applications offered by MHP that are executed on a cloud platform ("**cloud server**") operated by a commissioned provider ("**Cloud Provider**") and which the Customer can access remotely via an internet connection during the term of the agreement.

### 40. Subject matter and scope of services

- 40.1. MHP shall provide the Customer with the agreed SaaS services on the cloud server for the period of use agreed in the individual agreement. The nature of the services is conclusively set out in the service description. The SaaS services are provided without Customer-specific functions.
- 40.2. The Customer is not authorised to use the SaaS services beyond the contractually permitted scope or to have them used by third parties or to make them accessible to third parties. In particular, the Customer is not permitted to reproduce, decompile, redesign, sell or temporarily transfer the SaaS services or parts thereof, especially not to lease, rent or lend them.
- 40.3. Except for the limited use expressly granted herein, no copyright, ownership or rights of use to the SaaS services (including any intellectual property rights

thereto) and any enhancements, modifications and extensions thereof are granted or transferred by MHP. The Customer shall not remove or alter any notices or specifications relating to copyright, trademark rights, patent rights and other intellectual property rights to the SaaS services.

- 40.4. The Customer is obliged to protect the usage and access authorisations as well as identification and authentication safeguards assigned to it or to the authorised users against access by third parties and not to pass them on to unauthorised users. The Customer is obliged to inform MHP immediately as soon as it has evidence that the usage and access authorisations have been illegally obtained by a third party or could be misused.
- 40.5. The cloud server used for the provision of the service is operated by the Cloud Provider in the EU, unless the parties agree by individual agreement to use a cloud server operated in another country.
- 40.6. MHP warrants that the SaaS services will have the agreed quality during the term of the agreement and that no third-party rights will prevent their use in accordance with the agreement. MHP shall remedy any defects in the SaaS services within a reasonable period of time.
- 40.7. The warranty does not cover downtimes during which the cloud server cannot be accessed due to technical or other problems beyond MHP's control (e.g. cases of force majeure or the fault of a third party who is not a vicarious agent of MHP). The Customer acknowledges that access to the SaaS services may moreover be restricted if the security of network operation, the maintenance of network integrity, in particular the avoidance of serious disruptions to the network, the software or data operated or stored on the cloud server so require.
- 40.8. The Customer shall be informed of the technical standards and security measures used by the Cloud Provider upon request. The technical standards and security measures may be changed at any time, provided that this does not result in any significant disadvantages for the Customer.
- 40.9. MHP shall not owe any telephone or e-mail support or other technical support for the administration of the cloud server or otherwise in connection with the SaaS services beyond the support services that may be agreed in individual agreements.
- ### 41. Obligations and responsibilities of the Customer
- 41.1. The Customer undertakes not to wilfully interfere with the proper operation of the cloud server.
- 41.2. The Customer is responsible for other persons that it authorises to use the SaaS services.



- 41.3. The Customer shall notify MHP without undue delay if it becomes aware that the SaaS services are unavailable or are otherwise not being properly provided and shall provide MHP with reasonable support to determine and rectify the fault.
- 41.4. The Customer is responsible for all customer data stored and processed in the SaaS services. The Customer is obliged to create regular backups of the customer data stored on the cloud server independently and on its own responsibility, to retain backup copies thereof and to take other reasonable precautions to prevent the loss of the customer data.
- 41.5. The Customer undertakes not to store any data on the cloud server that is unlawful or in breach of official requirements or regulations, (i) contains pornographic or obscene material, (ii) glorifies war, terror and other acts of violence, (iii) is capable of causing serious moral harm to children or young people, (iv) portrays people in a way that violates human dignity and/or depicts an actual event without there being an overriding legitimate interest in precisely this form of reporting, (v) incites hatred against sections of the population or against a national, racial, religious or ethnic group, incites violence or arbitrary action against them or attacks the human dignity of others by insulting, maliciously disparaging or defaming any section of the public or any of the aforementioned groups, (vi) depicts cruel or otherwise inhuman acts of violence against humans or animals in a manner that glorifies or trivialises such acts of violence or portrays the cruelty or inhumanity of the act in a manner that is injurious to dignity, (vii) that is likely to repudiate, insult, threaten or defame others.
- 41.6. MHP shall not take any cognizance of the customer data, nor shall it check the contents thereof. In particular, MHP is not obliged to check the customer data stored on the cloud server for possible legal violations. In the event that MHP learns of such a legal violation, MHP is entitled to immediately block the Customer's access to the cloud server and to maintain the block for the duration of the legal violation. In this case, MHP shall inform the Customer about the blocking without undue delay.
- 41.7. Obligations to cooperate within the meaning of this Article 42 are essential primary duties of the Customer and are agreed as such.

#### **42. Data security, data protection**

- 42.1. The Customer expressly acknowledges that complete data security for data transmissions in open networks, such as the internet, cannot be completely guaranteed according to the current state of the art. The Customer is aware that the Cloud Provider can view the Customer's data stored on the cloud server

at any time from a technical point of view. Other internet users may also be able to technically interfere with network security without authorisation and manipulate communication traffic. The Customer is fully responsible for the security and backup of the data it transmits via the internet and stores on web servers.

- 42.2. The Customer acknowledges that technical providers of some products commissioned by the Cloud Provider may have to remotely access the physical servers on which the cloud server is located and thus also their contents in exceptional cases and to remedy technical faults. In this case, the providers are only permitted to carry out the work necessary to rectify the problems. They may not use this work or the data they access for any other purpose.
- 42.3. The Customer is the data controller pursuant to the GDPR for all data it stores on cloud servers of MHP. It must ensure the necessary legal basis for the data processing. The Customer shall indemnify MHP against all claims of third parties and shall compensate all damages based on the lack of a corresponding legal basis for data processing.

#### **43. Remuneration**

In exchange for the SaaS service, the Customer shall pay MHP the SaaS fees agreed in the respective individual agreement in accordance with the respective agreed payment schedule.

#### **44. Term and termination of the agreement**

- 44.1. Unless the parties have agreed otherwise in an individual agreement, the term of the agreement shall be indefinite and may be duly terminated by either party, for the first time after three (3) years with a notice period of three (3) months effective on 31 December of the year.
- 44.2. Both parties reserve the right of extraordinary termination for good cause if the legal requirements are met. Good cause for MHP exists in particular if the Customer is more than two (2) months in arrears with the payment of a due remuneration despite a reminder. If the Customer is responsible for the reason for termination, the Customer shall be obliged to pay MHP the agreed remuneration less expenses saved by MHP until the date on which the agreement would have ended at the earliest in case of an ordinary notice of termination.
- 44.3. Any notice of termination must be in writing in order to be effective. Compliance with this formal requirement is a prerequisite for the effectiveness of the termination. Fax and e-mail do not satisfy the written form requirement.



- 44.4. Upon termination of this agreement, the rights of the Customer granted under the SaaS agreement with respect to the SaaS services and the Client shall lapse.

## SECTION G - HARDWARE

### 45. Area of application, applicable provisions

- 45.1. The following provisions of this *Section G* shall apply in addition to the provisions of *Section A* to agreements between MHP and the Customer for the purchase of hardware ("Hardware") by MHP's Customer.
- 45.2. The individual contractual provisions agreed between the parties shall apply to the purchase agreement with priority. In addition and, in the event of an inconsistency, the following provisions in Sections 47 - 49 shall apply to the purchase agreement with subordinate effect.

### 46. Scope of delivery, transfer of risk

- 46.1. Details of the service and the scope of delivery are described in the offer, the order confirmation or the delivery note.
- 46.2. Unless the parties have expressly agreed otherwise, set-up, installation, instruction, training, maintenance of any operating system software as well as maintenance and repair of the hardware are not the subject matter of the agreement.

### 47. Material defects

- 47.1. MHP warrants that the Hardware essentially fulfils the functions described in the agreed product description, if applied and used in accordance with the agreement. In the event of a material defect, MHP shall initially have the obligation and the right of subsequent performance. If the subsequent performance fails, the Customer may reduce the purchase price or, in case of substantial deviations from the agreed quality, withdraw from the agreement. Subsequent performance may, at MHP's option, be effected by delivery of a new item or by rectifying the defect. In case of malfunctions of the software contained in the Hardware, the rectification may also be carried out or supported by supplying or installing an update or patch.
- 47.2. The Customer shall appropriately support MHP in the fault analysis and defect rectification and shall describe problems occurring with the Hardware in detail and inform MHP thereof immediately and in full. In the event of a material defect, the Customer

shall not be entitled to rectify the defect itself or to be reimbursed for the necessary expenses.

- 47.3. The Customer must notify MHP of obvious defects without undue delay, but no later than four (4) weeks after delivery. Other defects must be reported immediately after discovery. The notification must include a comprehensible description of the defect. If the defect is not duly reported, the Hardware shall be deemed approved with regard to this defect. The assertion of warranty claims is excluded in this respect. MHP shall not assume any warranty and liability if the Customer fails to comply with its duty of notification or if the defectiveness of the Hardware is due to misuse or incorrect application
- 47.4. The limitation period for claims due to material defects shall commence upon delivery of the service to the Customer and shall be one (1) year.

### 48. Defects of title

- 48.1. MHP warrants that the contractual use of the delivered item by the Customer does not conflict with any third-party rights. In the event of a defect of title, MHP shall, at its own option, provide the Customer with a legally unobjectionable ability to use the delivered item or with an equivalent delivered item free of defects of title.
- 48.2. The Customer shall inform MHP in writing without undue delay if third parties assert a claim for the infringement of property rights to the delivered item against the Customer.
- 48.3. The limitation period for claims based on defects of title shall commence upon delivery of the service to the Customer and shall be two (2) years.

## SECTION H - ORDER DATA PROCESSING

### 49. Preamble

If the Customer uses services provided by MHP which constitute order data processing within the meaning of Article 28 of the GDPR, the terms and conditions set out in this section shall apply.

### 50. Subject matter and duration of the order data processing

- 50.1. The subject matter of the order data processing results from the agreement concluded for the services.
- 50.2. The duration of the order data processing corresponds to the term of the agreement concluded for the services.



## **51. Details of data processing**

- 51.1. The following categories of personal data are processed: Names, addresses, contact details, bank details, order data, contractual data. Further categories of data may be agreed individually.
- 51.2. The following categories of data subjects are processed: Employees and business partners of the Customer. Further categories of data subjects may be agreed individually.

## **52. Technical and organisational measures**

- 52.1. To protect personal data, MHP shall take appropriate technical and organisational measures in its area of responsibility pursuant to Article 32 of the GDPR.
- 52.2. Documentation of the technical and organisational measures currently implemented by MHP can be viewed at the following link:  
  
[www.doing-logistics.com/data\\_protection](http://www.doing-logistics.com/data_protection)
- 52.3. The agreed technical and organisational measures are subject to technical progress and further development. In this respect, MHP is permitted to implement alternative adequate measures. In doing so, the security level of the specified measures may not be undercut.

## **53. Obligations of MHP**

- 53.1. To perform the work, MHP shall only use employees who are sworn to secrecy and who have previously been familiarised with the data protection provisions relevant to them. MHP and any person employed by MHP who has legitimate access to personal data shall process such data only in accordance with the Customer's instructions, unless they are required by law to process it.
- 53.2. Upon request, MHP and the Customer shall cooperate with the supervisory authority in the performance of its duties.
- 53.3. MHP shall inform the Customer without undue delay about investigations and measures of the supervisory authority, insofar as they relate to this order. This shall also apply insofar as a competent authority conducts investigations with regard to the processing of personal data in the context of the order data processing at MHP as part of administrative offence or criminal proceedings.
- 53.4. MHP shall support Customer to the best of its ability in so far as the Customer is subject to an investigation by the supervisory authority, administrative offence or criminal proceedings, the liability claim of a data subject or a third party, another claim or a request for information in connection with the order data processing at MHP.

## **54. Support by MHP**

- 54.1. MHP shall take reasonable steps to assist the Customer in its duty to protect data subjects' rights. To the extent that a data subject contacts MHP directly in this regard, MHP shall forward such request to the Customer without undue delay.
- 54.2. MHP shall report personal data breaches to the Customer without undue delay
- 54.3. MHP shall, taking into account the nature of processing and the information available to it, support the Customer in its legal obligations under Art. 33 to 36 of the GDPR.

## **55. Use of sub-processors**

- 55.1. Subcontracting relationships within the meaning of these provision are services relating directly to the provision of the main service. This does not include ancillary services used by the Contractor (MHP), e.g. telecommunications services, postal/transport services, cleaning services or guard services. Maintenance and testing services shall constitute a subcontracting relationship if they are provided for IT systems which are provided in connection with a service of the Contractor.
- 55.2. The Customer agrees to the commissioning of the subcontractors designated under the following link subject to the conclusion of a contractual agreement pursuant to Art. 28 (2) - (4) of the GDPR with the subcontractor:  
  
[www.doing-logistics.com/data\\_protection](http://www.doing-logistics.com/data_protection)
- 55.3. A change of subcontractors is permissible, provided that MHP informs the Customer thereof in advance with at least six (6) weeks' notice, so that the Customer has the opportunity to object within this period. If there is an important reason for the objection from a data protection perspective and if (1) MHP is not willing or able to continue the order data processing without changing subcontractors, and/or (2) the parties do not reach an amicable solution on how to proceed, the Customer is entitled to a special right of termination without notice with regard to the entire order data processing. If no objection is made in due time, the consent to the change of subcontractors shall be deemed granted.
- 55.4. MHP shall structure the contractual agreements with the subcontractors such that they comply with the data protection provisions in the relationship between MHP and the Customer.
- 55.5. Disclosure of personal data of the Customer to the subcontractor and its initial activity are only permitted once all requirements for subcontracting have been met.





## **56. Customer's rights of inspection**

- 56.1. The Customer has the right to carry out inspections or to have them carried out by auditors to be appointed in the individual case. The Customer has the right to satisfy itself of MHP's compliance with this agreement at its business premises during normal business hours by means of spot checks, for which notice must generally be given in good time.
- 56.2. MHP shall ensure that the Customer can satisfy itself of MHP's compliance with its obligations under Article 28 of the GDPR. MHP undertakes to provide the Customer with the necessary information upon request and, in particular, to provide evidence of the implementation of the technical and organisational measures.

## **57. Customer's authority to issue instructions**

- 57.1. MHP shall process personal data only on the basis of documented instructions from the Customer, unless MHP is required to do so pursuant to the law of the member state or the European Union; in such a case, MHP shall notify the Customer of such legal requirements prior to the processing, unless the relevant law prohibits such notification due to an important public interest.
- 57.2. MHP shall inform the Customer without undue delay if MHP is of the opinion that an instruction violates data protection regulations. MHP shall be entitled to suspend implementation of the relevant instruction until it has been confirmed or amended by the Customer.

## **58. Deletion and return of data**

- 58.1. Copies or duplicates of the personal data shall not be made without the Customer's knowledge. This does not include backup copies, in so far as they are necessary to ensure proper data processing, as well as data required to comply with statutory retention requirements.
- 58.2. Upon completion of the contractually agreed work or earlier upon request by the Customer - but at the latest upon termination of the service agreement - MHP shall hand over to the Customer all personal data that has come into its possession as well as data related to the contractual relationship or, after prior consent, destroy them in accordance with data protection law, unless there is a legal obligation to store them or they are routine backup copies of electronic data traffic. The deletion log must be submitted on request.

## **59. International data transfers**

The provision of the contractually agreed data processing shall take place exclusively in a member state of the European Union or in another state party to the Agreement on the European Economic Area. Any transfer to a third country may only take place if the specific requirements of the provisions of Chapter V of the GDPR are met.