

**General Terms and Conditions  
of CUBEWARE GmbH  
(Version 4.61, effective 2019, November 1<sup>st</sup>)**

**1. Scope**

The following General Terms and Conditions (à "GTC") are applicable to all agreements made by and between CUBEWARE GmbH (à "CUBEWARE") and its CONTRACTUAL PARTNERS (à "CP"). The CP is likewise deemed to acknowledge the applicability of these GTC to future contracts. Differing general terms and conditions of the CP shall not be deemed incorporated into the Parties' contract, irrespective of any tacit consent or reference to letters of the CP containing such terms and conditions or acceptance of an offer or performance of services. CUBEWARE hereby explicitly denies acceptance of other GTC.

**2. Provision of service**

- 2.1 CUBEWARE is not obliged to perform where this constitutes a breach of export or import laws and regulations. CUBEWARE shall only bear the risk with respect to bans or restrictions on export which are in effect at the time of conclusion of the contract. With respect to export bans and restrictions becoming effective subsequently, CUBEWARE shall only be deemed to bear the risk of such bans and restrictions in case of conceivable legislation. The CP shall procure a permit for import as well as all licenses, approvals or other required documents in connection with import to the contract territory of destination and possible transit via third countries. The CP shall bear the risk of any import restrictions. The CP is obliged to comply with and implement the relevant export requirements in the event of any resale or export. The CP shall notify CUBEWARE in writing and without delay of the intent to resell or export the software and other incidents related to this paragraph.

With respect to services of software maintenance, CUBEWARE is not obliged to provide software support services to the extent the CP has not also entered into a purchase agreement or other contract for the grant of a right of use with CUBEWARE with regard to the software for which support services are to be provided, in particular, this General Terms and Conditions are applicable. Furthermore CUBEWARE is not obliged to provide software maintenance services to the extent the CP uses software under conditions that vary from those agreed upon (in particular hardware/software requirements) unless the CP demonstrates that such use does not impair the provision of software support services on the part of CUBEWARE. CUBEWARE also denies provision of software maintenance services for system environments that are not supported. In this context, the term "supported system environment" defines a currently supported CUBEWARE product release in connection with the third-party manufacturer product release supported by CUBEWARE.

**3. Purchase of Software**

**3.1 Software**

The subject-matter of this contract is a grant of a right of use to the CP, which is *unlimited in time*. The use of CUBEWARE software shall be governed by the present CUBEWARE's GTC. To the extent a third party is the manufacturer of the software, the use of that software shall be governed by the relevant license terms of that third party (→ 6.1.10, 6.1.11). The

number and identification of the individual products delivered, the amount of compensation payable therefore (plus nonrecurring ancillary charges) and other, special contractual agreements are stated in the relevant offer and/or the confirmation and/or the invoice.

**3.2 Software maintenance**

At the time of purchase of software, CP automatically enters into a maintenance agreement with CUBEWARE. That agreement shall have a minimum term of twelve months.

**3.3 Delivery**

Software will be delivered as a download from the CUBEWARE Info Center. If delivery is carried out through data storage medium, then CUBEWARE's delivery times shall be deemed nonbinding unless otherwise agreed.

**4. Rental of Software**

**4.1 Software**

The subject-matter of this contract is a grant of a right of use to the CP, which grant is *limited in time*. The use of CUBEWARE software shall be governed by the present CUBEWARE's GTC. To the extent a third party is the manufacturer of the software, the use of that software shall be governed by the relevant license terms of that third party (see also sec. 5.1.6). The number and identification of the individual products delivered, the amount of compensation payable therefore (plus nonrecurring ancillary charges) and other, special contractual agreements are stated in the relevant offer and/or the confirmation and/or the invoice.

**4.2 Software maintenance**

The rental fee includes services from a software maintenance agreement, that becomes effective automatically with the rental of the software and that ends automatically with the termination of a rental contract. No explicit termination notice is needed.

**4.3 Delivery**

Software will be delivered as a download from the CUBEWARE Info Center. If delivery is carried out through data storage medium, then CUBEWARE's delivery times shall be deemed nonbinding unless otherwise agreed.

**5. Software Maintenance Agreement**

**5.1 Subject of Software-Maintenance**

**5.1.1 New releases and updates**

CUBEWARE shall provide the CP with new releases (main release and service release) and / or updates related to software modules for which support services have been purchased. CUBEWARE may at its own discretion choose if, when and in which form a release or an update is to be provided. A new release contains new or modified functionality compared to the prior version and/or serves to enable a new operating system to be run with. CUBEWARE makes the status of development visible via release numbers. An update is defined as an updated version of software which includes bug fixes and may, but does not necessarily have to, include new functions.

5.1.2 Support  
Subject of Support is provided in relation to technical and functional defects of the software products provided by CUBEWARE. CUBEWARE shall provide support services for the respectively current service release of the software. Beginning as of the date of providing a new main release, CUBEWARE shall, in addition, provide support services for the last service release of the previous version of the main release, but only for a period of six months following delivery of a new release. For the V6pro product portfolio the support term ends on 30.06.2016.

5.1.3 Support via the Online Ticketing System  
CUBEWARE shall provide the CP an online ticketing system by means of which the CP may report technical and functional defects via a web ticket ("Support Case"). The online ticket may only be submitted by the CP. The CP is responsible – to the extent possible and reasonable - to state the problem and questions in detail and to provide CUBEWARE with all technical information and data required by CUBEWARE to correct the defect. The CP shall exercise due care to ensure that online tickets via the online ticketing system are only initiated by the contacts designated by the CP.

5.1.4 Additional services  
The following services are, in particular, not included within the software support agreement:

- Installation of updates and/or releases;
- Consulting and/or training for the CP;
- On-site services at CP locations;
- Customization of CUBEWARE software products;
- Modification of software on account of changes to a CP's hardware and/or software environment;
- User support in the case of operating errors performed by the CP and operating-related technical issues
- User support related to issues affecting the CP's entire software application / software system;
- Evaluation of application errors;
- User support with or after permitted changes of the software itself or the (technical) software-environment.

In the event the CP to mandate CUBEWARE with providing any of the additional services described above, the Parties agree:

- CUBEWARE shall endeavor to provide such services on the basis of a service contract without CUBEWARE being able to assume responsibility for success.
- To the extent no on-site service is agreed to, the CP shall assist CUBEWARE by providing it remote access to the extent necessary for purposes of CUBEWARE providing services.
- To the extent not otherwise agreed, the CP is required to compensate CUBEWARE on an hourly basis by applying CUBEWARE's service prices in effect upon the conclusion of the agreement.

## 5.2 CP's duties of cooperation

### 5.2.1 Access and contact persons

CP supports CUBEWARE with the fulfilment of the contractual duties and tasks. CP undertakes to grant CUBEWARE sufficiently unrestricted access to its IT-infrastructure in order to fulfil any arising contractual obligations out of this

contract. CP is obliged to set out a sufficient level of access-rights and provide CUBEWARE with sufficiently qualified peer personnel and all required information.

### 5.2.2 Measures for data security

The CP is obliged to take appropriate precautions against the possibility for the software failing in whole or in part to work properly, irrespective of the reason therefore, e.g. by undertaking a diagnosis of dysfunction and regularly reviewing the results thereof to a reasonable extent. To the extent that CUBEWARE does not undertake to assume responsibility for storage of data (e.g. data backup) on behalf of the CP, the CP itself shall be responsible for backing up its data in accordance with the state of the art, and such backups must be performed at intervals which are adequate in light of the CP's usage and risk, in such a way that the CP is able to restore the data with reasonable efforts. The CP shall bear all disadvantages and additional expense resulting from having failed to perform its duties of cooperation.

## 5.3 Special terms of payment

5.3.1 The CP commits to pay agreed fees ("Software Maintenance Fees"). The Software Maintenance Fees are billed annually in advance. If the CP rents software, the maintenance fee is included in the rental payments.

5.3.2 The software maintenance term is – to the extent not otherwise agreed – the contractual year, i.e. a period of one year starting with the conclusion of an agreement or the respective period for the following years.

5.3.3 When CUBEWARE is the manufacturer of the software, the annual Software Maintenance Fee is 20% of the list price. Discounts or rebates on the list price are excluded from the calculation of the maintenance fee.

5.3.4 For existing contracts the previous regulation with an annual increase remains unless the CP orders further licences.

5.3.5 If the CP orders new licenses, running software maintenance agreements are converted to an annual maintenance fee of 20 of the list price.

## 5.4 Special terms for third-party software

5.4.1 In the event software is manufactured by a third party, the contractual terms for adjustments to Software Maintenance Fees are based on the particular terms related to such software. CUBEWARE reserves the right to forward any increase in fees being declared by the respective third-party manufacturer and will inform the CP in due course.

5.4.2 CUBEWARE shall deliver notice in textual form to the CP, generally no later than three months before the end of the software maintenance period, of any increase in the software maintenance fees for third-party software ("Notice Period"). In the event the fee increases by more than 5% compared to the prior years' Software Maintenance Fee, the CP may terminate software maintenance for the affected product by providing notice to CUBEWARE within one month of the end of the respective software maintenance term ("Partial Termination").

In the event CUBEWARE does not receive a proper notice of termination within the foregoing Notice Period, the announced fees shall apply upon commencement of the new software maintenance period. The CP's right of ordinary notice of termination remains unaffected.

5.4.3 CUBEWARE announces that other notice and/or termination periods may be contained in software maintenance agreements between CUBEWARE and a third party, in particular with respect to the periods described above. In such cases, CUBEWARE reserves the right to reduce the period in which CUBEWARE must provide notice to the CP or in which the CP must provide notice to CUBEWARE in the respective special terms applicable to the software.

5.4.4 Unless otherwise agreed or stated above, the general terms of payment apply.

#### 5.5 Reactivation

In case of terminated software maintenance, the CP may reactivate and get to the most current version by declaring such intention within a period of three months after such termination becoming effective. In this case the ordinary amount of software maintenance fees must be subsequently paid for that period. The CP remains eligible for reactivation within a further term of three months for the price of triple the ordinary maintenance fees since the effective date of a termination. After 6 months of a termination of the software maintenance agreement becoming effective, any reactivation is excluded.

#### 5.6 Discontinuation of Products and/or Support Services

5.6.1 To the extent CUBEWARE is the manufacturer of the software and completely discontinues support of a software product ("End of Life"), CUBEWARE shall provide the CP with notice within a reasonable period without acceptance of a legal obligation to do so. CUBEWARE remains obliged to provide maintenance services through the end of the term of the software maintenance agreement. In addition, with respect to software manufactured by CUBEWARE, it may discontinue maintenance services for software versions other than the most current main release at any time within its discretion to the extent the current main release was provided to the CP at least six months in advance.

5.6.2 To the extent a third party is the manufacturer of the software and such third party completely discontinues support of a software product ("End of Life") and support from such third party is necessary for CUBEWARE to provide maintenance services to the CP, CUBEWARE shall use its best efforts to replace the discontinued products. In the event that the replacement would impose a disproportionately large expense to CUBEWARE which, taking into account the substance of the maintenance agreement and the requirement of good faith is grossly disproportionate to the CP's interest in performance, CUBEWARE shall have the right to discontinue supplying updates and maintenance services for such products. A disproportionately large expense for CUBEWARE exists if, for example, the license fees for the replacement product that CUBEWARE would have to procure from the third-party provider exceed the original license fee for the discontinued product by more than 30%. The CP, however, is free to supply or

identify a cheaper replacement product. If CUBEWARE discontinues the service for the foregoing reason, the maintenance fee shall also be reduced pro rata.

5.6.3 CUBEWARE points out, that CUBEWARE can provide maintenance (subscription and support) for licensed bundled third-party software only as long as the third party is indentured to provide maintenance towards CUBEWARE.

5.6.4 The CP has no right to be provided with software maintenance services by CUBEWARE after termination of the software maintenance agreement.

#### 5.7 Term and Termination

5.7.1 The software maintenance agreement is concluded for an indefinite period of time, unless the Software Maintenance Agreement was concluded together with a Software Rental Agreement. In this case the term of the Software Maintenance is as long as the term of the Software Rental Agreement.

5.7.2 Each party may terminate the agreement by providing notice within three months prior to the end of the respective contractual year, unless the Software Maintenance Agreement as concluded together with a Software Rental Agreement. In this case no ordinary termination of the Maintenance Agreement independently from the Software Rental Agreement is permitted.

5.7.3 The foregoing is without prejudice to the right to terminate this agreement for cause. In particular, cause is present in cases where the CP unlawfully violates copyrights or trademark rights associated with the software.

5.7.4 In the event of a delegation of rights and duties on the part of CUBEWARE, the CP has an extraordinary right of termination with a notice period of three months.

#### 5.8 Processing of personal data

CUBEWARE might possibly get access to personal data controlled by the CP when providing software maintenance services (Art. 28 GDPR, processing). Such kind of data processing is only allowed with adequate contractual regulations for data protection. CUBEWARE ex gratia provides a model agreement with CUBEWARE as processor. CP is obliged to enter into this or a similar DPA with CUBEWARE before CP grants access to personal data.

### 6. **Grant and terms of License**

#### 6.1 Grant of License

6.1.1 The software covered by this agreement (including documentation) is protected by German copyright law and international treaties. Rights to commercial use of the software are held by CUBEWARE and/or third parties.

6.1.2 CUBEWARE grants to the CP a license based on a software purchase agreement or a software rental agreement for the sole usage by the CP, or a license based on a software purchase agreement for the sole usage by third parties.

- 6.1.3 CUBEWARE grants to the contractual partner of a **software purchase agreement** a non-exclusive, *timely unlimited* right to use the software acquired from CUBEWARE within their own business operations for own purposes according to the contractual provisions.
- 6.1.4 CUBEWARE grants to the contractual partner of a **software rental agreement** a non-exclusive, *timely limited* right to use the software acquired from CUBEWARE within their own business operations for own purposes according to the contractual provisions.
- 6.1.5 In case of the **purchase of software for the usage by third parties**, CUBEWARE grants a license not for own purposes but only to run the software as a service for third parties ("Software as a service").
- 6.1.6 The CP may create databases solely for own use pursuant to the provisions of the relevant agreement.
- 6.1.7 To the extent CUBEWARE is the manufacturer of the software, CUBEWARE grants to the CP the non-exclusive, timely unlimited right to use the software acquired from CUBEWARE in the business operations of such enterprises, and subject to the provisions of the applicable contractual provisions, being affiliated with the CP within the meaning of the German Stock Corporation Act ("AktG") at the time of such agreement ("Group Companies"). To the extent third parties are the manufacturers of the Software, the grant of a license to Group Companies requires a separate agreement.
- 6.1.8 To the extent not otherwise agreed, the grant of a license is conditional to the full payment of the purchase price.
- 6.1.9 To the extent CUBEWARE is the manufacturer of the software, and to the extent not agreed otherwise, the CP is required to activate the software via CUBEWARE's website in order to be able to use the software.
- 6.1.10 To the extent that CUBEWARE is not the manufacturer of the software, any grant of licenses is subject to notice and acceptance of applicable third party license agreements (e.g. Microsoft End User License Agreement; EULA). The relevant terms and conditions of third party licenses are distributed with the respective software and are available from CUBEWARE upon request. All terms regarding the use of third party manufactured software become effective and a part of the agreement also between CUBEWARE and the CP in their current version.
- 6.1.11 To the extent that CUBEWARE delivers its products in a bundle with products manufactured by a third party, CP shall not be entitled to use such third party products, unless explicitly stated otherwise, for other purposes than the originally intended use in combination with CUBEWARE products. Third party license agreements may overrule this provision.
- 6.2 Scope of Use
- 6.2.1 The CP may use the Software on any hardware being supported by the Software. The right of use of the respective product is governed by the type and amount of purchased licenses and the [End User License Agreement \("EULA"\)](#) being displayed and agreed during the installation process in combination with the [Licensing Reference](#).
- 6.2.2 Any use beyond the purposes set forth above, especially modification, decompiling or reengineering is not permitted to the extent not provided otherwise in Sec. 69d or 69e of the German Copyright Act ("UrhG"). CUBEWARE reserves the right to specify supplemental provisions in the additional contractual license terms.
- 6.2.3 It is the sole responsibility of the CP to comply with 3<sup>rd</sup> parties license terms when extracting data from their IT-systems.
- 6.3 Rights of Reproduction and Access Protection
- 6.3.1 The CUSTOMER may only reproduce the delivered software to the extent as reproduction is mandatory for the use of the software. Necessary reproductions include the installation of the software from the original medium to the mass storage of the hardware used, as well as the loading of the software to the RAM, the loading, displaying and running of the software and other related saving processes related to the intended use of the software.
- 6.3.2 In addition, the CUSTOMER may prepare one duplicate for back-up purposes. For the reasons of data safety or quick reactivation of the computer system where a total failure demands the regular back-up of the entire computer system including all data and all software used, the CUSTOMER may prepare back-up copies in an essential amount. The back-up copies shall be used exclusively for archive storage.
- 6.3.3 The CUSTOMER may sell or giveaway the software in total (including in particular documentation and including any software acquired at a later date or received via maintenance services) permanently to third parties as far as
- the CUSTOMER has provided written notice to CUBEWARE setting out the software license to be transferred, the date of the transfer and the third party to which the software is to be transferred and
  - the CUSTOMER has declared to CUBEWARE in writing a complete and final termination of use of the software at the latest at the time of transfer; and
  - the CUSTOMER provides to CUBEWARE a written declaration by the third party to which the software is transferred such third party accepting the application of the General Terms and Conditions for Use of Software of CUBEWARE GmbH in the place of the CUSTOMER.
- 6.3.4 The temporary or partial transfer of a license to a third party or the transfer of a license to multiple third parties is prohibited unless explicitly stipulated (→ 6.1.5).
- 6.3.5 Removal of a copy protection or similar protection routines is only allowed if such protection routine should impair or prevent from the use of the software. The full onus of proof therefore lies with the customer.
- 6.3.6 The use of the licensed software in form of an ASP model (Application Service Providing) or SaaS model (Software as a Service), hosting-services or for rent is not allowed. For this type of use separate contractual regulations have to be agreed with CUBEWARE.

## 6.4 Protection against unauthorized third party access

The CUSTOMER is obliged to prevent unauthorized access by third parties to the software as well as the documentation by taking appropriate technical and procedural measures. The originally delivered media as well as back-up copies, if any, shall be kept at a place secured against unauthorized third-party access. The CUSTOMER's employees shall be expressly informed in order to comply with these provisions as well as the provisions of copyright law.

## 7. **Trainings**

### 7.1 Subject-matter of services

The subject-matter of the services is the performance of training services in the form of product training sessions and performance of certification testing. The scope of services and the rates charged as well as any other separate contractual agreements are shown in the specific offer and/or the order confirmation. With respect to individually tailored training programmes, our General Terms and Conditions for Services apply.

### 7.2 Standard product training

Standard product training sessions take place at CUBEWARE's in-house training centres, on site at the CP's location or as online training sessions.

7.2.1 Training sessions at training centers are held from the hours of 9.00am to 5.00pm. Details on the content and the duration of each training sessions are set out in the session descriptions and may be viewed on CUBEWARE's website. The maximum class size is limited to eight. Our training session fee covers beverages, lunch and training documentation. Our classrooms at the training centres are equipped with one training notebook per participant and an overhead projector.

7.2.2 Training sessions on site at CP's location are held from the hours of 9.00am to 5.00pm. The maximum class size is limited to eight participants. The training fees cover the training documentation. With respect to training sessions held on site at the CP's location, CUBEWARE offers the option to rent training-notebooks subject to additional charges.

7.2.3 Online training fee covers training documentation and online access. It is required for online training is the CP's corporate IT security guidelines to permit RDP (Remote Desktop Protocol) access to a non-default port. Online access is valid for and specific to a single person and may not be provided to third parties. The name of the user must be indicated at the time of booking. The online access period starts to run from the moment, access is granted and ends automatically with expiry.

### 7.3 Certification

It is possible to pass a certification exam at CUBEWARE to become a CUBEWARE Certified Professional (hereinafter "CCP"). Details of the contents and the duration of each such examination session may be viewed on CUBEWARE's website. The examination is carried out in each case from 9.00am to 5.00pm at CUBEWARE's Darmstadt or Rosenheim training centres. The CCP exam is carried out based on a case study. It is not mandatory for examinees to previously attend stand-

ard product training sessions in order to take part in the certification exam. The certification fee covers the certification exam, beverages and lunch.

### 7.4 Training documentation

Our training documentation is not sold separately. CUBEWARE holds the copyright to its training documentation. Our training documentation may not be copied or used for other training events.

### 7.5 Registration and delivery

Registration and content delivery Registration/orders should be made in writing by using our online registration form/order form. Upon completing registration, the CP will receive a registration/booking confirmation. Upon receipt of a CP order for online training, CUBEWARE will forward the documents to the CP by post and the access data by e-mail.

### 7.6 Special terms of payment

The training and certificate fees are shown in the training session price list valid at the time of placing an order, unless otherwise agreed.

### 7.7 Schedule changes

CUBEWARE reserves the right to modify training session or exam dates. CPs shall notify CUBEWARE in writing with any requests for date changes. In addition, the following notice periods apply:

- A confirmed scheduled service may be re-scheduled free-of-charge up to fourteen calendar days prior to the date of the scheduled service.
- In the case of later rescheduling requests, CUBEWARE shall charge 50% of the agreed consultant's daily rate.

### 7.8 Terms of cancellation

CUBEWARE reserves the right to cancel scheduled training sessions in the event that the minimum number of participants is not reached. CPs shall notify CUBEWARE in writing with any cancellation requests. In addition, the following notice periods apply:

#### 7.8.1 Cancellations of product training sessions at training center

Training sessions at CUBEWARE's training centre may be cancelled free-of-charge up to fourteen calendar days prior to the commencement of the training session. In the event of a later cancellation and in the event of a failure to attend, CUBEWARE will invoice the CP for 100% of the training fee. This fee will not be charged if another participant attends the training session in place of the absent participant.

#### 7.8.2 Cancellation of scheduled certification

Scheduled certification exam places may be cancelled free-of-charge up to fourteen calendar days prior to the certification exam. In the event of later cancellation and where an examinee fails to attend, CUBEWARE will invoice the CP for 50% of the certification fee. This fee will not be charged if another examinee attends the certification exam in place of the absent examinee.

7.8.3 Cancellation of online training or product training session on site at CP's location  
Online training sessions and product training sessions on site at the CP's location may not be cancelled. The CP merely has the option of re-scheduling.

7.9 Term  
The term of the Parties' contract (which is the period of the training services and the times and number of the training days to be provided) is shown in the specific offer and/or the order/schedule confirmation.

## 8. Services

8.1 Consultancy services  
The subject-matter of consultancy services within the meaning of these General Terms and Conditions for Services is the provision of guidance and supporting consultancy services in introducing and integrating CUBEWARE's software into the CP's IT structure, and may be provided either on site at the CP's location or remotely. The scope of services and the compensation payable are set out in each case in the respective offer and/or order or deadline confirmation. Schedules are deemed non-binding unless otherwise agreed.

8.2 Duty of notification  
The CP shall alert CUBEWARE to particularly sensitive and critical data, which are or maybe the subject of the consultancy services, and to particular security mechanisms and requirements.

8.3 Order of consultancy days  
The services are offered either in the form of consultancy days. One consultancy day constitutes eight hours in general. Contracting for performance of services occurs when the CP accepts the consultancy days offered to it.

Alternatively, services may be contracted for by written enquiry of the CP to CUBEWARE by letter, fax, e-mail or CUBEWARE's Online Ticketing System. The contract is then deemed to arise with legal effect at such time as CUBEWARE accepts the offer by letter, fax, e-mail or its Online Ticketing System.

8.4 Service contract  
The consultancy services constitute a service contract within the meaning of secs. 611 *et seq.* BGB. CUBEWARE shall endeavour to the best of its abilities to render the consultancy services, but it does not warrant any particular outcome in the sense of a contract for works and services, nor does it undertake to carry out any project with concrete, predefined results. CUBEWARE does not warrant availability of its consultancy staff. The CP shall have no claim for performance of the consultancy services on a date specified by the CP. In particular, the CP shall have no right of selection with respect to the CUBEWARE consultant deployed to it.

8.5 Documentation  
Documentation shall be the CP's responsibility, but may be separately contracted for and in such a case is deemed a chargeable service. The CP is obliged to notify CUBEWARE expressly in the event it wishes to obtain documentation and, in line with its specific needs, to notify CUBEWARE expressly of its requirements in terms of the scope and type of documentation.

8.6 Time estimate / Quote  
The number of consultancy days offered may be based on a time estimate performed in advance by CUBEWARE. CUBEWARE shall prepare a time estimate at the CP's request, based on the information received from the CP. The purpose of this time estimate is solely to better enable the CP to orientate itself as to the time required and to make its own determination as to the number of consultancy days. However, the estimate is not binding and actual time required may fall short of or indeed exceed the estimate. The time spent by CUBEWARE in preparing a time estimate likewise constitutes consultancy services time and will be charged to the CP upon provision of the billing narrative.

## 8.7 Rights of use

8.7.1 The CP is granted an irrevocable, exclusive right of use to work product generated specifically for the CP during CUBEWARE's performance of the consultancy services. 'Work product' shall not be deemed to include existing tables, samples, documentation, procedures, functions and other work aids ("Tools") used or deployed by CUBEWARE itself.

8.7.2 CUBEWARE grants the CP a simple right of use, in such scope as is needed in order to use the work product in the CP's production operations, with respect to work product which was already at CUBEWARE's disposal prior to rendering the consultancy services and/or with respect to existing Tools which CUBEWARE did not develop for this CP but rather uses generally, and to extensions to the foregoing Tools generated in connection with projects, but only to the extent that the CP requires such Tools in order to utilise the work product. This grant of rights is made on an irrevocable basis and shall also apply to any documentation which may have been prepared, e.g. data flows, descriptions of results and reporting etc.

8.8 Schedule changes  
A confirmed scheduled service may be re-scheduled free-of-charge up to fourteen calendar days prior to the date of the scheduled service. In the case of later rescheduling requests, we will charge 50% of the agreed consultant's daily rate.

8.9 Term  
The contractual term, i.e. the period of the consultancy days to be performed, the periods of consultancy services and the number of consultancy days, are set out in the specific offer and/or order/schedule confirmation. In all further and other respects, the service contract shall end upon expiry of the term for which it was made.

## 9. Liability

9.1 CUBEWARE shall bear liability without contractual limitation according to applicable law

- for damages based on a breach of an express warranty assumed by CUBEWARE;
- for damages due to intentional acts or omissions;
- for damages based on fraudulent concealment of any defects by CUBEWARE;
- for damages arising from harm to life, body or health, which are based on an intentional or negligent breach of CUBEWARE's obligations or otherwise based on intentional or negligent conduct of a statutory agent or vicarious agent of CUBEWARE;

- with respect to damages other than those listed under the 4th bullet point, where such are based on an intentional or gross negligent breach by CUBEWARE or otherwise on intentional or gross negligent conduct of a statutory agent or vicarious agent of CUBEWARE
  - under the German Product Liability Act (ProdHaftG).
- 9.2 In cases other than those listed in sub-sec. 8.1 hereof, CUBEWARE's liability shall be limited to compensation for such damages being typical for the contract and foreseeable, provided that the damages is based on a negligent breach of material obligations by CUBEWARE or by its statutory agent or vicarious agent. Such obligations shall be deemed 'material' where their performance is the prerequisite to proper performance of the contract, and where a CP regularly relies and is entitled to rely on compliance with such obligations.
- 9.3 In all cases other than listed in sub-secs. 8.1 and 8.2 hereof, CUBEWARE hereby denies all liability for negligence.
- 9.4 The defence of contributory negligence shall remain unaffected by the foregoing.
- 9.5 The foregoing provisions on limitation of liability shall apply to all contractual and extra-contractual claims for damages against CUBEWARE, irrespective of their legal basis, and shall apply *mutatis mutandis* with respect to CUBEWARE's liability for reimbursement of frustrated expenditures accordingly.

## 10. General Provisions

### 10.1 General terms of payment

- 10.1.1 The CP shall pay the compensation agreed by contract.
- 10.1.2 The prices are in each case quoted net of the statutory rate of VAT, in such amount as is currently in force, and, where applicable, net of the cost of travel from the consultant's CUBEWARE business office (branch). Claims for payment shall be due for payment and payable at such time as the CP receives the invoice. Payment prior to the due date stated on the invoice shall not entitle the CP to make any deductions.
- 10.1.3 Consultancy services are invoiced precisely to the quarter of an hour, in accordance with the actual time expended as per the billing narrative document. The billing narrative document is an itemisation of the consultancy services rendered, which CUBEWARE shall prepare and which can be countersigned by the CP upon request. CUBEWARE may freely select the format to be used, and for efficiency reasons it may forward the billing narrative document by e-mail. The CP shall, in addition, receive a daily or weekly proof of work document upon request, which it may likewise countersign.
- 10.1.4 Consultancy services and travel expenses are invoiced on a basis of the pricelist for services valid on the date of ordering, unless there is a deviating agreement.
- 10.1.5 The statutory rules on default interest shall apply (sec. 288 German Civil Code, § 288 BGB). CUBEWARE reserves the right to assert default damages in excess thereof.

- 10.1.6 CUBEWARE uses electronic invoicing. Bills are sent in a PDF file by e-mail. The CP communicates a special mail address if applicable.

### 10.2 Set-off and right of retention

- 10.2.1 The CP may (without contractual limitation) set off according to law any claims for payment arising from this agreement against CUBEWARE's claim to payment of its compensation, where such set-off is asserted due to a failure to perform or defects in performing duties of advice or consultation or due to defects in performance of such duties. The CP may only set off claims against CUBEWARE's receivables (other than those referenced in the first sentence hereof) where such claims are undisputed or have been determined by *res judicata* judgment or are ripe for judicial decision.
- 10.2.2 The CP shall only be entitled to assert a right of retention on the basis of counterclaims arising out of this contractual relationship. CPs are not permitted to assert rights of retention based on previous or other transactions.

### 10.3 Delegation of rights and duties

Delegation of rights and duties under this agreement shall require the written prior consent of the other Party in each case. In the event of a delegation of CUBEWARE's rights or duties under this contract to third parties, CUBEWARE hereby assumes liability to the CP for proper performance of all contractual obligations.

CUBEWARE shall be entitled to delegate rights and obligations under this agreement to an enterprise affiliated with CUBEWARE within the meaning of Sec. 15 et seq. German Stock Corporation Act ("AktG"). CUBEWARE shall notify the CP in advance of the identity of the entity to which rights and obligations are to be delegated and the effective date of such delegation. At the earliest, the delegation shall be effective three months following the receipt of proper notice by the CP. The provisions of Section 10.11.2 are applicable to the foregoing.

### 10.4 Defending against infringements

CUBEWARE shall, at its own cost and expense, defend against claims asserted against the CP by third parties for breach of intellectual property rights on the basis of the products delivered or services performed by CUBEWARE. The CP may not independently accept liability for such claims. The CP hereby authorises CUBEWARE to assume sole responsibility for handling the dispute with the third party both judicially and extra judicially. CUBEWARE shall indemnify and hold the CP harmless against all claims, provided that such claims are not based on circumstances for which the CP bears responsibility.

The CP hereby undertakes to support CUBEWARE in CUBEWARE'S pursuit of its rights, at CUBEWARE's cost and expense, and to defend against infringements of CUBEWARE's intellectual property rights.

### 10.5 Duty of information

The CP shall inform CUBEWARE without delay, in writing and in a comprehensive manner, wherever third parties assert claims based on the products or services provided by

CUBEWARE. The CP shall bear the disadvantages and additional expenses wherever these are the result of a failure of the CP to perform its duties of cooperation.

#### 10.6 Confidentiality and secrecy

The Parties hereby undertake to treat as confidential all information referring to the business operations of the other Party hereto, to use such information exclusively for the purposes specified by this agreement and, in particular, not to disclose such information to third parties. Within the meaning hereof 'third parties' shall not include persons who have been properly engaged by a Party to perform the duties and obligations owing under this agreement or advisors engaged by either Party in connection with questions with respect to this agreement (e.g. lawyers, accountants or experts).

In respect of confidentiality, the Parties shall exercise at least the same degree of care as they use in protecting their own business or trade secrets. They shall only disclose the information to such employees, vicarious agents or advisors as are engaged with performing the duties or obligations under this agreement and on whom a corresponding duty of confidentiality has been previously imposed. Each Party shall additionally take all such measures as are necessary in order to ensure compliance with the foregoing obligations by its constitutive bodies, employees, subcontractors or other vicarious agents. The Parties shall impose an obligation in line with the data secrecy requirements within the meaning of sec. 5 German Federal Data Secrecy Act on persons entrusted with processing personal data.

The foregoing duty of confidentiality shall not apply if and to the extent the information in question

- is proven to have been in the public sphere or, without any fault by a Party and without any breach of this agreement, becomes publicly known,
- is or becomes the state of the art,
- is already known to the receiving Party at the time of transmission, which must be proven by documentation evidencing such knowledge,
- was or is legally communicated or disclosed to the receiving Party by a third party,
- was passed on with the prior written consent of the other Party hereto or
- is required to be disclosed based on provisions of applicable law, enforceable orders of public authorities or court decisions.

The recipient of the information in question shall bear the burden of proof for showing the existence of one of the foregoing exceptions. In each case, the affected Party must, to the extent possible, be informed in a timely manner prior to disclosure of the information to third parties.

#### 10.7 Software Escrow

CUBEWARE offers the option to escrow the source code of the purchased software. Choosing the escrow option is subject to a separate escrow agreement to be made between the CP, CUBEWARE and an escrow agent to be designated by CUBEWARE. The escrow agreement to be made will govern the right of use to the source code in the event of disclosure.

#### 10.8 Retention of title

10.8.1 CUBEWARE hereby reserves title to the subject-matter of contract until such time as all of its receivables under this agreement as well as any other agreements made with the CP are completely settled. Unless otherwise

agreed, the right of use granted to the CP is subject to the proviso that the CP has fully paid the purchase price.

10.8.2 In the event of a payment default, CUBEWARE may demand that the CP redelivers the software in which CUBEWARE has retained title within a reasonable time, make alternative dispositions with respect to the products and, following payment, provide replacement to the CP within reasonable time.

10.8.3 In the event that a third party claims any right to the subject-matter of contract by seizure, confiscation or in any other way, the CP shall be obliged to notify CUBEWARE thereof in writing without delay.

#### 10.9 Warranty

10.9.1 The CP shall inspect the supplied subject-matter of contract within eight business days from the date of delivery. Where a right to use software has been granted, the CP's duty to inspect is specifically deemed to include completeness of the data storage media and documentation delivered as well as the functionality of the basic functions of the software.

10.9.2 The CP shall notify CUBEWARE in writing within a further term of eight business days of defects being identified at this time or which are capable of being identified. The CP's complaint of defects must contain a description of the defects, which the CP must describe in detail far as possible.

10.9.3 The CP shall give notice of defects which are not detectable by means of the above-referenced proper inspection within eight business days of discovery thereof, and such notice must likewise comply with the substantive requirements as to complaints (sub-sec. 8.2).

10.9.4 In the event of a breach of the CP's duty to inspect and assert complaints, the contract products delivered shall be deemed approved notwithstanding the defect in question.

10.9.5 The period for asserting warranty rights is one year. The period shall begin to run at such time as the software is provided to the CP by means of electronic communications media (e.g. via the Internet) when the software leaves CUBEWARE's sphere of influence (e.g. in the case of downloading), and in all other cases at such time as the software and/or the goods are delivered to the CP.

10.9.6 It shall be at CUBEWARE's discretion either to bugfix a software defect or to replace the software. Where CUBEWARE does not succeed in bugfixing the software defect within a reasonable time and where it fails to do so even after a further reasonable grace period set by the CP or where CUBEWARE gives a written waiver to its right to perform bugfixing, the CP shall be entitled to claim statutory warranty rights. In particular, CP shall be entitled to reduce the relevant purchase price, to recede from the contract or to demand supplementary performance (sec. 437 German Civil Code).

10.9.7 CUBEWARE shall be entitled to perform a 'workaround' of any possible defect if the defect itself can only be bug-fixed by undertaking unreasonable efforts and where

the runtime or response time of the software is not substantially affected.

in light of their commercial objectives if they had been aware of the contractual gaps at the time of signing these Terms.

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10.9.8 CUBEWARE shall no longer be obliged to accept any warranty if modifications have been made to the software being subject-matter of contract without CUBEWARE's express prior written consent. However, the CP shall be entitled to prove that the modifications are non-causal to the defect which has occurred and that such modifications do not materially impede analysis or bugfixing of the defect.

10.9.9 The CP shall support CUBEWARE in error detection and bugfixing defects, and at CUBEWARE's request, shall prepare/print out information which is of assistance in this regard and shall support CUBEWARE's error analysis and bugfixing of defects by providing any further information and by permitting inspection of documents showing the more detailed circumstances in which the defect arose without delay.

#### 10.10 Choice and Place of Jurisdiction

10.10.1 Contracts with CUBEWARE are governed by the law of the Federal Republic of Germany, but excluding the United Nations Convention for the International Sale of Goods (CISG) and excluding the German choice-of-law rules under international private law.

10.10.2 Unless otherwise agreed, the place of performance for the delivery of goods, services and payment shall be CUBEWARE's registered office. Exclusive jurisdiction with respect to all disputes arising directly or indirectly from this contractual relationship with merchants, public-sector legal entities or special fund entities under public administrative law shall lie with the courts at CUBEWARE's registered office; at its option, CUBEWARE shall also be entitled to issue proceedings in the courts at the CP's registered office.

#### 10.11 Form requirements

10.11.1 Amendments and addenda to the terms of the Parties' contracts must be recorded in writing for evidentiary purposes. The foregoing also applies to any derogation from this clause. Either Party may demand that any amendment or addendum with respect to the Parties' contractual agreements be recorded in writing.

10.11.2 Notices and declarations to be given by the CP to CUBEWARE (e.g. dunning notices, deadlines, other declarations etc.) shall only be effective if made in writing. The requirement of a written form is deemed satisfied by facsimile or e-mail transmission by telecommunications media and – in the case of a contract – by exchange of letters. In all further and other respects, sec. 127 (2) German Civil Code shall not apply.

#### 10.12 Severability clause

If any of the provisions of these Terms should be or become ineffective or unenforceable as a whole or in part, the effectiveness or the enforceability of the remaining provisions of these Terms shall not be affected thereby. To the extent that the contractual terms contain gaps, then for purposes of filling such gaps the Parties shall be deemed to have agreed to such legally valid provisions as the Parties would have made