

General Terms and Conditions of Meyle+Müller GmbH+Co. KG

as at 09/2013

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I. General conditions

1. Scope

- 1.1 These Terms and Conditions exclusively shall apply to all contractual relationships in which Meyle+Müller GmbH+Co. KG, Maximilianstr. 104, 75172 Pforzheim (hereinafter referred to as "M+M") provides services for other companies, juridical persons under public law or special public fund (hereinafter referred to as "customer"). Moreover, the statutory provisions shall apply.
- 1.2 Contrary and additional conditions from the customer shall not become part of the contract – except in the case of written consent from M+M – even if M+M implements a contract or provides a service without expressly rejecting such conditions.
- 1.3 These contractual and licensing conditions shall also apply to the pre-contractual debt relationship, in particular in respect of the liability limit and duties of confidentiality.
- 1.4 When transferring, servicing and maintaining third-party software, the respective business, contractual and licensing conditions of the manufacturer shall apply.

2. Concluding contracts

- 2.1 Offers from M+M are subject to confirmation and non-binding, unless expressly stated as a binding offer.
- 2.2 M+M can accept orders from the customer with 4 weeks. In case of doubt, the content of the offer or order confirmation from M+M shall apply to the content of the contract, insofar as the customer places an order or does not reject the content of the order confirmation immediately upon receipt.
- 2.3 Additional services for supporting media production, such as software transfer, workflow automation, Online Media Net and data hosting are only contractual content if they have been expressly agreed or promised by M+M.
- 2.4 If the contractually agreed service from M+M cannot be provided through no fault of its own because, for example, a supplier or service provider does not provide its services to M+M, M+M shall immediately inform the customer and suggest a comparable replacement service, if applicable. If no comparable service is possible or if the customer does not want another service, M+M can withdraw from the contract and shall immediately reimburse the customer for payments made.

3. Written form

- 3.1 Contractual guarantees and commitments, in particular if they extend beyond these terms and conditions, require express and written confirmation from M+M.
- 3.2 Amendments and addenda to the contracts between M+M and the customer, as well as all contract-relevant declarations to exercise design rights, in particular terminations, dunning or expiration periods, require the written form. The written form requirement specified

here and at other places in these Terms and Conditions can also be complied with by fax or letter. Section 127 para. 2 and 3 BGB shall not apply, however.

4. Pre-contractual stage

- 4.1 These General Terms and Conditions shall also apply to the pre-contractual debt relationship, in particular in respect of the liability limit and duties of confidentiality. Objects and documents provided before conclusion of the contract (e.g. software, physical and non-physical presentations and proposals) are the intellectual property of M+M. Reproduction or forwarding is not permitted.
- 4.2 If software is provided to the customer for testing, the right of use shall be limited to non-operative testing and shall expire after an appropriate or tangibly agreed test phase of no more than 4 weeks. In particular if a contract is not concluded, all provided data carriers, files, data and documents must be returned or their deletion proved to M+M.

5. Time of service, employees, subcontractors

- 5.1 Deadlines and times of performance are not fixed deadlines, unless expressly agreed in writing as fixed deadlines by M+M.
- 5.2 M+M shall decide how many and which employees are assigned – also freelance employees and subcontractors if appropriate – and which services are provided to third parties.
- 5.3 The customer shall not have right of instruction over employees from M+M. Contact partners at M+M are always the contact partners named within the framework of the cooperation, such as project managers, customer support staff or members of the Management Board.

6. Grace periods

- 6.1 Insofar as the customer sets deadlines or grace periods for subsequent performance or correction of a defect, these periods must be appropriate and must allow M+M at least two attempts at subsequent performance. Depending on the extent and technical difficulty, the period should be typically at least 10 working days, unless a shorter-notice correction is necessary because of a print / delivery date or activation on the internet, taking into account the technical feasibility.
- 6.2 Periods set by the customer as a result of legislation or contract must be at least ten days – except in urgent cases. If the failed expiration of a deadline permits the customer delete the contract (e.g. by withdrawal, termination or compensation instead of performance) or to reduce the remuneration, the customer must threaten these consequences of failed expiration when setting the deadline. After expiration of a deadline set according to sentence 2, M+M can demand that the customer exercises its rights resulting from expiration of the deadline within two weeks of receipt of the demand.

7. Payment conditions

- 7.1 All prices are net of the respective applicable VAT, except sales which are VAT-exempt.
- 7.2 Unless agreed otherwise, services are billed by time (person-days or hours) plus expenses incurred. For media production services, billing shall not be by time but according to the page price agreed with the customer, whereby additional correction steps caused by the customer shall be billed by time. Insofar as the customer is given a price list, the prices agreed therein shall apply as the agreed remuneration. The project management work shall also be billed by time for media production services.
- 7.3 M+M may bill partial services before completion of the overall project.
- 7.4 Invoices are payable within 10 days of invoice date with a 2% discount or net within 30 days. From 30 days after receipt of invoice, default interest is applicable at

- the amount of the respective applicable statutory interest rate.
- 7.5 The discount shall not include freight, postage, insurance or other disbursements.
 - 7.6 M+M can demand full payment in advance if the delivery is abroad or if the customer is domiciled abroad.
 - 7.7 If remuneration is by time, the information in an offer or order confirmation from M+M is only a calculation, unless a fixed price remuneration is expressly agreed. If the parties agree billing by time, M+M can demand that the customer countersign a time sheet presented by M+M or its employees. The time worked shall be stated on the invoice or in a separate annex to the invoice. If the customer does not lodge a written objection to the statement within 2 weeks, the customer shall bear the burden of proof for its inaccuracy.
 - 7.8 Travel times and costs shall be billed by time and, depending on the place of domicile of M+M, calculated at the tax or statutorily recognised amount, unless expressly agreed with the customer that the costs shall be included in the hourly or daily rates at a flat rate.
 - 7.9 Indexing: M+M can change the flat rates for hosting, SaaS, maintenance and support with 2 months' written notice to the customer at M+M's discretion with effect from the start of the month following this notice period and subject to the following conditions: M+M may change the remuneration by no more than the amount, by which the index of average gross monthly income for full-time employees in Germany changed for the provision of information technology services sector (currently published quarterly by the Federal Statistical Office in Fachserie 16, Reihe 2.4 Gruppe J 62). If this is the first change to the remuneration, the index development between the index level published when concluding the contract and the index level last published at the time of the notification of change shall apply. If the remuneration has already been changed in the past, a change can be made based on the further development of the index since the last change. The first change can only be made after 24 months. If the aforementioned index is no longer published, the index published by the Federal Statistical Office, which most closely represents the development of the average gross monthly income in the above sector, shall apply. The new remuneration shall be considered as agreed if the customer does not terminate the contract, with regard to which M+M wants to change the remuneration, with six months' notice within two weeks of receipt of the notification of change (special right of termination), insofar as M+M refers to the special right of termination in the notification of change.
8. Offsetting
 - 8.1 The customer can only offset undisputed or legally upheld demands. Claims due to material and legal defects shall remain unaffected.
 - 8.2 The customer shall have a right of retention or objection against non-fulfilled contract only within the framework of the respective contractual relationship.
 9. Right of retention, cancellation
 - 9.1 M+M retains ownership of and reserves the right to the contractual service until full settlement of its debts from the contract. The customer reserves the right to resell or transfer within the framework of ordinary business only after written notification to M+M. The customer herewith assigns its debts from the resale or transfer to M+M. M+M herewith accepts the assignment. If the value of the collateral provided for M+M exceeds its debt by more than 20%, M+M shall release collateral to this extent upon demand the customer of a third party affected by the assignment of collateral. If there are several items of collateral, M+M may decide which item provided as collateral shall be released.
 - 9.2 In the case of editing or processing of the services provided by M+M and still owned by it, M+M shall be considered as manufacturer according to Section 950 BGB and at all times of processing shall retain title to the products. If this parties are involved in the editing or processing, M+M is limited to co-ownership at the amount of the invoice amount of the conditional goods. The title acquired in this way shall be considered as retention of title.
 - 9.3 Until full payment, M+M shall grant rights of use to the software provided only revocably. If the agreed remuneration or licence fees are not paid even after expiration of an appropriate, set subsequent deadline, M+M can revoke the right of use granted.
 10. Material and legal defects
 - 10.1 Insofar as the parties do not agree any concrete qualities for services and partial services, liability for defects shall be limited to the service or partial service being suitable for the contractually required, otherwise usual, use and is usual for services of this type. In the case of material defects, M+M can initially provide a new, fault-free service or correct the defect through subsequent performance, depending on the customer's choice.
 - 10.2 In the case of legal defects, subsequent performance shall be by granting a legally perfect possibility to use the service provided or, depending M+M's option, by granting a right to use a modified but equivalent service. If a third party asserts claims against the customer because of a breach of rights in respect of the contractual service, the customer shall immediately inform M+M of this in detail in writing. The customer herewith authorises M+M to manage the dispute with the third party in court and out of court. If M+M exercises this authorisation, which it at its discretion, the customer may not acknowledge the third party's claims without consent from M+M. However, in this case M+M shall defend against the claims at its own cost and shall indemnify the customer from the costs and damages, which are due exclusively to M+M's defence against the claims. The expiration of claims due to legal defects shall remain unaffected hereby.
 - 10.3 If subsequent performance after expiration of an appropriate deadline set by the customer, which permits at least two subsequent performance attempts, finally fails, the customer can reduce the remuneration, withdraw from the contract or (in the case of a permanent debt relationship) declare termination. Compensation or replacement of costs incurred in vain shall be owned by M+M according to the provisions of No. 1.12. Further claims due to material or legal defects are excluded.
 - 10.4 In the case of a unjustified notification of defects, M+M can charge for the time for examining the fault, in particular if a reported material defect cannot be demonstrated or reproduced or is not attributable to M+M.
 - 10.5 The claim for reimbursement of costs according to No. 10.4 shall not exist if the fault has been reported within the guarantee period for material defects relating to services provided by M+M.
 11. Transfer of risk, acceptance
 - 11.1 Insofar as no acceptance has been agreed or the contractual service does not require contractual acceptance under law, risk shall transfer to the customer no later than upon shipping of service or partial service from M+M's plant, even if M+M bears the shipping costs or if the shipping is carried out by another service provider or contractual partner of the customer. If shipping is delayed for reasons not the fault of M+M, risk shall transfer to the customer upon notification of readiness for shipping.
 - 11.2 Within 4 weeks the customer must check the performance results at the user level and report any defects in detail to M+M in writing. After expiration of this period, or in the case of unconditional use with a period of 4 weeks, the service is deemed to have been acknowledged or accepted as in accordance with the contract.

- 11.3 After all contractual services or partial services, in particular for individual software services, M+M can request written declaration of acceptance from the customer or creation of a joint acceptance report. In particular, M+M can make the continuation of a project dependent on the consent to the specifications, milestone plan or other specification, insofar as the next performance steps are based on this.
- 11.4 In the case of insignificant defects, the customer may not refuse acceptance, but can declare conditional acceptance.
12. Liability
- 12.1 M+M is liable without restriction
- for culpable or gross negligence,
 - for maliciously concealed defects,
 - for injury to life, limb or health,
 - in accordance with the provisions of the German Product Liability Act, and
 - to the extent of a guarantee assumed by M+M.
- 12.2 In the event of a breach of a duty, which is significant for achieving the contractual purpose, M+M is liable in the case of slight negligence insofar as the damage is foreseeable and typical for the transaction in question, whereby liability is limited to a maximum of € 50,000 for each individual damage case and € 100,000 for the total contractual relationship.
- 12.3 There is no further liability for M+M.
- 12.4 The above liability restriction shall also apply to the personal liability of employees, vicarious agents, representatives and management bodies of M+M.
- 12.5 The defence of customer's joint liability (e.g. approval by the customer despite identifiable defects, omitted or insufficient examination of a work result, insufficient or irregular data back-up, insufficient IT security) remains unaffected hereby for M+M.
- 12.6 The customer is liable for the content of its task and for the data and content provided and shall indemnify M+M from all legal claims, notably all claims under competition, copyright, brand, design, data protection and personal rights by third parties, insofar as these legal infringements are not the fault of M+M. It is exclusively the responsibility of the customer to clarify the legal compliance and the legally relevant matters in respect of the relevant intellectual property before placing an order.
- 12.7 Compensation for the customer is excluded if an individual security concept has been agreed with the customer and M+M complies with these requirements. M+M's liability according to 12.1 shall be unaffected hereby.
- 12.8 The above provisions shall apply correspondingly to M+M's liability for material and legal defects and in respect of reimbursement of costs incurred in vain.
13. Customer's duties of cooperation
- 13.1 The customer shall provide the documents and information required for provision of the services, for IT services the required IT environment (sufficient computer and memory capacity, internet connection, operating systems, software and trained employees) and is exclusively responsible for their operation and maintenance. Instructions from M+M must be followed.
- 13.2 When negotiating the contract the customer shall name a responsible contact partner, who coordinates the customer's cooperation and takes or arranges the necessary decisions.
- 13.3 The customer shall immediately check the work results (including specification and milestone schedule) for completeness and absence of faults, in particular before the work results are used in its operative business.
- 13.4 The customer shall carry out regular data back-ups and IT protection measures corresponding to the current state of technology. M+M can assume that all data, with which employees of M+M come into contact, has been backed up elsewhere by the customer in advance.
- 13.5 The customer shall protect the contractual software against access by unauthorised third parties with appropriate measures (anti-virus software, firewall, etc.), in particular it shall store all copies of the software at a secured location.
- 13.6 The customer's other duties of cooperation derive from the individual contract and the general duties of care and diligence. In the event of a breach of the duties of cooperation, the customer shall bear the risk of damages. M+M does not have to check whether the customer is complying with its duties of cooperation.
- 13.7 The customer shall bear the disadvantages and additional costs of a breach of its duties of cooperation.
- II. Media production services
1. Content of the service
- 1.1 M+M provides pre-press image editing, also for online and other digital applications, in particular page creation, accompanied with optional additional services, such as administration, numbering, keywording and archiving of image and text data as part of the hosting (cf. Section IV.). In particular, M+M provides numerous efficiency-increasing automatic processes for pre-press, which can be created or modified individually for the customer.
- 1.2 The pre-press service generally comprises the insertion of images and text into pages and in image processing, whereby the customer proscribes the format, the images and the text. This is a technical rather than a design activity.
- 1.3 The customer shall specify the colour requirements for colour control and correction according to the usual standards (e.g. HKS) or shall provide colour samples.
- 1.4 With OnlineDigiStoff, M+M provides the possibility for a spectral-photometric comparison against the real material values as a reference, along with the final adjustment of the colour value.
- 1.5 The usual processes of the media industry shall apply, so that, for example, there is no requirement to publish interim results such as layout or correction data, unless agreed otherwise, which is created in order to produce the end product owed.
2. Proof and OnlinePROOF
- 2.1 After production of the pages, M+M calculates the print data by means of a print simulation. The customer receives the simulation file created as a result ("proof") for final checking, either as a binding colour print or as a digital file ("OnlinePROOF").
- 2.2 An OnlinePROOF can be viewed by the customer using a browser, but it is only displayed in the binding colour form on a calibrated screen. The customer can purchase or rent the software and hardware required for calibration from M+M.
- 2.3 The customer shall check the proof or OnlinePROOF for any errors, in particular content or colour errors, immediately upon receipt. Insofar as the print data is forwarded by M+M to a printer, M+M can first demand an express and / or written approval from the customer.

3. Material defects and liability

- 3.1. The following conditions apply in addition to the conditions on liability and material and legal defects (No. I.10. / 12.).
 - 3.2. No. I.12.2 notwithstanding, the maximum liability is limited to twice the order amount.
 - 3.3. For image processing (reproductions in all production processes), slight deviations from the original shall not be deemed to be defects.
 - 3.4. In addition to I.12.2, for pre-media services M+M shall not be liable for consequential damages as a result of typographical and character errors, in particular not for those, which are due to errors in the template that are not the fault of M+M.
 - 3.5. In case of doubt, the current edition of Duden shall apply to spelling.
 - 3.6. Galley proofs are only provided upon request from the customer or at M+M's discretion, but then must be checked carefully by the customer for typographical and other errors and approved as ready for printing. In the case of this approval, M+M shall not owe a separate check.
- ### 4. Arbitration tribunal
- 4.1 In technical disputes, a mutual arbitration opinion or ruling can be obtained from Fogra Forschungsgesellschaft Druck e.V. (www.fogra.org), Streitfeldstrasse 19, 81673 Munich, upon request from one of the contractual parties.
 - 4.2 The costs for an opinion shall be shared between the parties according to the results of the arbitration.

III. Online catalogues and presentation software

1. Content of the service

- 1.1 M+M offers various online catalogues (e.g. Online-KAT), with the help of which a catalogue can also be displayed on the internet in a scrollable format. With the product OnlineFIGURATOR, M+M provides a product, with the help of which a virtual testing on a standardised model is possible.
- 1.2 The service can be provided in conjunction with or independently of the development of a printed catalogue.
- 1.3 The online catalogues and presentation software can be operated either as part of a hosting (cf. Section IV.) or – more typically – on the customer's server.
- 1.4 OnlineKAT can also be installed with a superzoom function.

2. Operation on the customer's server

- 2.1 The customer receives the software electronically for integration into its website. The technical system requirements are agreed separately with the customer.
- 2.2 With regard to the conditions of use and the extent of the service, the conditions in Section VII apply. The conditions of Section VI apply to individual modifications.
- 2.3 The flash online catalogues can be viewed with all agreed browsers with a Flash PlugIn (in the current version at the time the contract is concluded). The HTML5 online catalogues can be viewed with all agreed browses, which support HTML5 as web standard.

IV. Hosting services

1. Content of the service

- 1.1 M+M provides the hosting for the administration and archiving of image and text data, as well as for the operation of software solutions to support media production as part of the hosting and SaaS (Software as a Service). When hosting its own software solutions from M+M (e.g. OMN software), M+M provides additional

support and maintenance services. Of these are agreed, the conditions in No. IX. in conjunction with the service levels, Annex 1, apply.

- 1.2 In consultation with the customer, the data and software for this are stored and operated on M+M servers or in external computer centres.
- 1.3 The customer provides M+M with the data to be hosted online by upload using a web browser, FTP etc. or on standard data carriers.
- 1.4 M+M can allocate and name the data according to a system agreed with the customer and create browser-supported access for the customer. The criteria for this access can be modified specifically for the customer.
- 1.5 In addition, a rights-roles concept can be devised with the customer and installed, in which the users and their access rights, user names and passwords are specified (for uploading, downloading and processing the data).

2. SaaS (Software as a Service)

- 2.1 Insofar as the contractual parties agree an SaaS solution, the current version of the agreed M+M software and the agreed version of the third-party software to be installed, updated at M+M's discretion, is owed.
- 2.2 After prior announcement, M+M can use a new software version, as long as the contractually owed functionalities are retained and the new software version does not lead to considerable drawbacks for the customer.

3. Liability and guarantee

- 3.1 In addition to Section I, the following conditions apply to hosting and SaaS services:
- 3.2 The customer is exclusively responsible for setting up, maintenance, accuracy, speed and costs of the internet connection and the customer's access software to the router exit from the host server (= transfer of services).
- 3.3 The customer shall maintain confidentiality in respect of all identification and authentication security and shall take all suitable, appropriate measures to protect these against third-party access. The customer must immediately inform M+M if there is a suspicion that the security is known to third parties or that there has been unauthorised third-party access to the hosted data or to the SaaS system.
- 3.4 The customer shall report any defects to the contractual service to M+M immediately. Insofar as M+M is unable to provide assistance due to an omitted or delayed notification of defect, the customer shall not be entitled to claims from liability due to defects. Instead, delayed notification of defect represents contributory negligence or joint fault by the customer in terms of responsibility. To this extent, the customer shall document that it was not at fault for the omitted or delayed notification of defect.
- 3.5 Fault-independent liability according to Section 536a para. 1, 1st Old BGB due to defects, which existed at the time the contract was concluded, is excluded.
- 3.6 Insofar as M+M develops an IT system concept and/or security concept with the customer and complies with and fulfils the resulting duties, liability for a data or system loss is excluded. Liability according to No. I.12.1 shall remain unaffected hereby.

4. Availability

- 4.1 Insofar as M+M promises a percentage availability, this refers to the average annual availability.
- 4.2 Unless agreed otherwise, an annual average availability of 98.5% is owed. Unavailability of 1.5% shall remain without sanction.
- 4.3 Regular and scheduled maintenance work (data backup, audits and inspections, maintenance, software updates) are excluded from the owed availability, insofar as this work is notified to the customer with appropriate notice. For maintenance work of up to 4

- hours, notice shall typically be 3 days. If the maintenance work is carried out in the off-peak hours of use (18.00 – 08.00 hrs), 48 hours' notice shall suffice.
- 4.4 Downtimes caused by force majeure are also excluded from the availability. This includes, in particular, power outages, fire, labour dispute of more than 6 weeks and technical problems with the internet which M+M cannot influence, as well as problems with or because of the condition of parts of the technical infrastructure not provided by M+M or its vicarious agents, which are important for the implementation of the provided system.
- 4.5 Additionally, M+M shall not be responsible for problems or events, which are not (jointly) caused by M+M or its vicarious agents, for example exceeding an agreed permissible load for the provided system.
- 4.6 An only inconsiderable reduction in the suitability of the contractual use shall not entitle the customer to assert claims due to defects.
5. Contractual term
- 5.1. Unless the parties have agreed a separate term or notice period, the contractual term for hosting services starts upon set up of the hosting for the customer and with six months' notice to the end of the month, and can be ordinarily terminated initially to the 36th month.
- 5.2. Insofar as it is not terminated – or not on time – the contractual relationship shall be automatically extended by one year without the contractual partners having to submit a corresponding declaration. In this subsequent period the contractual relationship can also be terminated with three months' notice to the end of the term.
- 5.3. The right to extraordinary termination for good reason shall remain unaffected hereby. Good reason is, in particular, if the customer seriously breaches the agreed conditions of use.
6. End of contract
- 6.1 After the contract's end, M+M shall delete all hosted image and text data. Insofar as the customer wants the hosted data to be returned on a data carrier or by data transmission, it must request this in writing before the end of the contract and state its commitment to cover the costs. M+M can charge the required costs for this at standard market hourly / daily rates and for documented material costs.
- 6.2 Moreover, No. XI.1.4 shall apply.
7. Remuneration
- 7.1 Hosting services shall be paid for separately by the customer. No. I.7 shall apply to this extent, whereby the disbursements depend on the memory capacity required.
- 7.2 The hosting services and / or disbursements for the hosting shall only be settled by the agreed page prices or turnover or exclusive agreements, if this is expressly promised by M+M.
- V. Services (process consultancy, system configuration, software customising, data migration, training)
1. Content of the service
- 1.1 M+M offers services (process consultancy, system configuration, software customising, data migration, training) in addition to the pre-press and media management solutions. Services as defined in this Section (X) are typically provided within the framework of workshops or training courses and – in contrast to consultancy for customer acquisition – only for a fee.
- 1.2 The services are provided on the basis of the desired objective and information provided by the customer. With regard to IT services, M+M supports the customer, with the customer bearing the system and project responsibility.
- 1.3 The precise content and extent is determined by the services required by the customer and confirmed by M+M.
- 1.4 The customer shall provide the required information and equipment (hardware and software, network capacity, telecommunications equipment, internet connection) according to the information from M+M, along with remote access according to No. IX.4.
- 1.5 Insofar as work results (e.g. specification, software) are protected according to the German Copyright Act (UrhG), upon handover and payment in full of the remuneration, M+M shall grant to the customer a simple, permanent right to use the work results, which M+M transfers to the customer within the framework of the services, and which it developed for and with the customer. Insofar as the work results are software, the right of use is restricted to the purpose of the contract in terms of content and location – as is the case with the original licences for standard software. The customer may only use the software for its own purposes in its own company. Moreover, M+M shall hold all rights to the work results in relation to the customer, also insofar as the work results are derived from requirements or cooperation from the customer.
- 1.6 Within the framework of the services, M+M shall only owe the electronic handover of the work results and – for software – only in the form of machine-readable object code, which may be changed by the customer in respect of parameterisation and configuration, but otherwise may only be amended by the customer in statutorily standard cases. If the customer concludes a hosting contract with M+M, M+M shall only hand over the work results to the customer, insofar as these involve software, at the end of the hosting contract. The customer is not owed a physical data carrier or installation.
2. Training
- 2.1 In consultation with M+M, the customer shall provide premises and technical equipment for training courses.
- 2.2 The customer can only terminate an agreed training date for good reason.
- 2.3 In the case of the customer's justified dissatisfaction, M+M shall have the opportunity to remedy this by repeating the training course.
- 2.4 The regulations regarding change requests according to No. VI.2 shall apply correspondingly.
3. Remuneration
- 3.1 The remuneration shall be billed at the end of each month. The remuneration shall be charged by times, unless agreed otherwise.
- 3.2 An offer or the order confirmation from M+M is merely a calculation, unless a flat rate fee is expressly agreed.
- 3.3 Upon request from M+M or its employee, the customer shall confirm the provision of the respective services by signing of proof of work.
- VI. Individual software programming/development
1. Content of the service
- 1.1 M+M provides individual software programming/development solutions (including extensions and Plugins) – also within the framework of OMN – as part of media production services and media management.
- 1.2 In addition to the conditions relating to software transfer according to No. VII, the conditions of this section also apply to individual software programming/development.
- 1.3 The customer shall specify the task, whereby the solution and the detailed content-related and technical implementation of complex projects shall be devised jointly by the parties (e.g. in workshops). The details are contained in the individual contract and its annexes (e.g. specifications, milestone plan), or in the order correspondence if there is no individual contract. The customer shall be responsible here for ensuring that the

- services stated in the order – as detailed in the individual contract or other documents – correspond to its ideas and requirements.
- 1.4 The customer's cooperation in respect of the wording of the requirements is a main contractual duty.
 - 1.5 All rights, in particular copyright, to the work results provided to the customer by M+M (except third-party software) shall be held exclusively by M+M in relation to the customer, also insofar as the work results are created as a result of requirements or cooperation from the customer.
 - 1.6 M+M shall only owe user documentation and user support if this is expressly agreed. This shall also apply to process descriptions and interface documentation. Insofar as documentation is agreed, this shall be owed with the content and formats typically created by M+M, examples of which may be provided to the customer in advance. Electronic transfer of the documentation is sufficient.
 - 1.7 Apart from transferring the software solution and granting the right of use, additional services (commissioning, legacy data transfer, training, etc.) are only owed in the case of an express agreement regarding these services.
 - 1.8 Insofar as the M+M standard software is amended by the individual programming/development, M+M shall not guarantee that future software updates can be implemented within the framework of maintenance without additional changes.
2. Change Requests
 - 2.1 If the customer wants a change during a current project (known as a Change Request), within a reasonable period M+M shall check and report whether the change is possible and how it will impact on the content of the contract, the schedule and the agreed remuneration.
 - 2.2 The customer shall then have 10 working days to decide and to report in writing as to whether the change is to be implemented. The examination of the change request can be charged separately by M+M by time.
 - 2.3 Insofar as M+M recommends a change, the customer shall also have 10 working days to state in writing within 10 days of the recommendation as to whether it accepts the change. An objection against the change can only be raised in the justified interests of the customer.
 3. Customer's duties of acceptance and examination
 - 3.1 In addition to No. I.11 and VII.5, the following duties of acceptance and examination apply to customers of individual software solutions.
 - 3.2 Within the framework of the acceptance examination, the software shall be tested in non-productive operation for one day and a fault report created. Insofar as the software is to be operated in productive operation in a system to be provided by the customer, the customer shall also provide the system for the testing. Otherwise, M+M shall provide the system for the test – insofar as this is reasonable and technically possible.
 - 3.3 Acceptability exists in any case of a functioning software is provided with the agreed features and can be used by the customer for 2 weeks without significant faults. Only faults that hinder or prevent operation are significant. The customer may not refuse to declare acceptance unreasonably because of only insignificant faults or because only insignificant functions are defective.
 - 3.4 Irrespective of the contractual acceptance, at the user level the customer shall immediately check to a reasonable and technically feasible extent the work results and interim results (including the specifications) provided during a current project for completeness and freedom from defects, in particular before the work results are used in productive operation.
4. Project management
 - 4.1 Upon demand from M+M, the customer shall cooperate in project management. The customer shall also appoint a project manager and deputy project manager, who shall be authorised to accept all declaration in conjunction with content, technical and contractual matters and who can make or quickly arrange binding decisions.
 - 4.2 Upon demand from one of the contractual parties, the project manager and deputy project manager shall personally hold project meetings, at regular intervals if required. If a disputed matter cannot be clarified within a project meeting, a contractual party can arrange a personal meeting at board level with appropriate notice.
- VII. Software transfer
 1. Extent of the right of use
 - 1.1 Unless expressly promised otherwise by M+M in writing, the customer shall only receive a single, non-exclusive right to use software provided or created by M+M.
 - 1.2 In terms of content and location, the right of use is restricted to the contractual purpose. The customer may only use the software for its own purposes in its own organisation.
 - 1.3 In addition, the right of use for long-term debt relationships (e.g. SaaS, ASP) is limited to the term of the contract and is not transferrable.
 - 1.4 All servers, on which the software is partly or fully operated, must be located in the customer's premises and be in its direct possession. Exceptions from this (e.g. outsourcing, hosting in an external computer centre) require written consent from M+M.
 - 1.5 If the customer receives updated versions from M+M (e.g. within the framework of enhancements or guarantee), the right of use granted to the customer shall apply exclusively in respect of the updated version of the software received. The right of use in respect of the previously provided copy shall lapse 3 months after the new software has been installed for use on productive systems.
 - 1.6 If there are named user licences, use is limited in terms of numbers to the number of named users and use may only be by the users named in the OMN customer solution. If saved named users leave the customer's company or if their area of work changes so that they no longer work with Online Media Net, they can be replaced by other persons.
 - 1.7 Any excessive use of the licence must be reported by the customer in writing in advance. M+M reserves the right to check the use of the contractual software provided at least once a year, whereby the customer shall cooperate to a reasonable extent with the check. The costs of the check shall be born by the customer to a reasonable extent if the check reveals use not in accordance with the contract. A contract to purchase a licence shall also be concluded in the case of quantitatively excessive use. Further claims for compensation remain reserved.
 2. Scope
 - 2.1 M+M only owes the electronic transfer of the contractual software and only in the form of machine-readable object code. The physical transfer of data and installation for the customer is not owed. The transfer of source code, documentation or operating instructions is only owed if expressly agreed in writing, and then only if the software has been created individually for the customer.
 - 2.2 If the transferred software is third-party software from another manufacturer, the customer shall also confirm to M+M that it shall comply with the respective manufacturer licence conditions.

- 2.3 The customer reserves the right to make necessary backup copies of the work results to an appropriate extent, insofar as no copyright information is changed, omitted or suppressed during the copying.
- 2.4 Software updates shall only be transferred on the basis of a separate agreement – except to correct faults.
3. Software modifications
- 3.1 The customer may only decompile the contractual software and parts thereof (such as interface information) within the restrictions of Section 69e UrhG and only after unsuccessful expiration of a reasonable period, which the customer has set in writing for M+M, stating its intention to decompile the software in order to transfer the required information.
- 3.2 Information about the source code is subject to strict confidentiality irrespective of whether it has been provided by M+M or a third party or has been obtained by means of decompiling.
- 3.3 Moreover, changes to and processing of the contractual software as defined in Section 69c No. 2 UrhG (modification, revision, deciphering, decoding, translating, etc.) require prior written consent from M+M.
4. Forwarding the software
- 4.1 Insofar as the customer has purchased the contractual software from M+M by means of a purchase, it can forward the software to third parties in compliance with the following conditions by means of a resale or gift. Use of rights – whether for a fee or free – such as the renting, lending, cabled or wireless public reproduction or provision, use of the contractual software by and for third parties (e.g. outsourcing, computer centre activities, Application Service Providing) or other sub-licensing are not permitted without written consent from M+M.
- 4.2 Insofar as the customer has been provided with the software with time-limited rights, any forwarding or transfer of use of the software by the customer to third parties is prohibited.
- 4.3 Moreover, forwarding the contractual software requires at least prior written notification to M+M and the written agreement from the purchaser in respect of the agreed conditions of use and forwarding. M+M may refuse the forwarding if the use of the contractual software by the new user damages the justified interests of M+M.
- 4.4 In addition, the forwarding by the customer must be standardised and with complete cessation of its own use.
5. Testing the software
- 5.1 Before use in the operative system, the transferred software must be tested appropriately by the customer. The contractual software and any documentation provided must be examined immediately after delivery and any identified defects reported in detail in writing. Section 377 HGB shall apply correspondingly.
- 5.2 This obligation also includes software that the customer receives within the framework of the guarantee or maintenance.
- 5.3 If this immediate notification is omitted, the service shall be deemed to be approved, except in cases of concealed defects. If such a defect is detected later, the complaint must be made immediately after discovery; otherwise the service shall also be deemed to be approved despite this defect. If M+M has maliciously concealed the defect, it cannot claim that the customer's notification of defect was late.
6. Special guarantee conditions
- 6.1 In addition to the conditions in Section I, the following conditions apply to the liability for material and legal defects in the transferred software.
- 6.2 The customer shall grant M+M or a third party charged by M+M access to the software, either directly and / or

by means of remote access, as chosen by M+M, for fault searches and corrections.

- 6.3 M+M also reserves the right in this case to check whether the transferred software is being used in compliance with the conditions of use.
- 6.3 Insofar as M+M provides the customer with a new software version after providing the service in order to correct material or legal defects, the customer shall accept this new software version, insofar as the contractual functionalities remain and the transfer does not lead to considerable disadvantages.
7. End of the right of use
- 7.1 In all cases of termination of the right of use (e.g. end of the contractual term, withdrawal, revocation), the customer shall return all software and shall delete all software files and copies, insofar as it is not statutorily required to retain them for longer.
- 7.2 The customer shall confirm completion of this according to No. 1 in writing to M+M.

VIII. Development of Apps

1. Content of the service
- 1.1 In the New Media Apps department, M+M develops Apps, in particular, for iPhones and iPads (User devices).
- 1.2 The conditions in Sections VI (Individual software programming/development) and VII (Software transfer) shall also apply, provided that they do not contradict the (higher ranking) conditions of this Section (VIII).
2. Placing orders and project development
- 2.1 Apps are developed in two stages. Firstly, the customer specifies its requirements regarding the Look & Feel and the desired functions. Before placing the order, the customer has to decide which smartphone and tablet PC operating systems the App to be developed is to run on, and in which App stores and other sales channels (e.g. social networks) it is to be offered.
- 2.2 M+M checks the feasibility and draws up a rough concept with suggestions for content and implementation, as well as a costs estimate. The customer has to approve this rough concept by means of a provisional acceptance. If approval is not given, despite any changes, M+M shall charge for the work so far according to No. 1.7.
- 2.3 After provisional acceptance, M+M shall realise the rough concept and concretise it into a final concept. At its discretion, M+M can provide the customer with interim results and test versions at any time for testing and provisional acceptance, in order to correspond to the customer's requirements in terms of content, style and functions of the App as well as possible.
- 2.4 For final acceptance, the customer receives the App as a test version, which the customer can install and test on its user device. After acceptance, M+M shall send the App electronically as an enclosed file in the form of a compiled file (e.g. IPA file for Apple Apps).
- 2.5 Insofar as M+M or the customer wants changes to an approved concept / interim result, this shall be made within the framework of the change request procedure.
- 2.6 Unless agreed otherwise, a period of 4 weeks is assumed for the development of the App.
- 2.7 The development is performed according to the technical standard applicable at the time the order is placed. Insofar as changes / updates to user devices are made during the development phase, and this causes additional costs for M+M, the customer shall bear these.
3. Uploading to an App store / a network
- 3.1 The App is uploaded to an store or other marketplace by the customer, with support and advice from M+M.
- 3.2 Except in cases of justified technical complaints, M+M shall not assume responsibility for the developed App being accepted by a store or social network.

3.3 In addition to the liability conditions in these Terms and Conditions, the customer shall also be liable, in particular, for the legal compliance of the content and the ordered App functions in respect of data protection and the conditions of the German Telemedia Act.

IX. Support / maintenance services

1. Content of the service

1.1 M+M provides support and maintenance services for the transferred software solutions, whereby the services may also be provided by support partners of M+M.

1.2 To this end, the contractual parties conclude a Service Level Agreement (or support and/or maintenance contract).

1.3 The maintenance services include the provision of software updates (without installation) to M+M standard software (without customizing and customer-specific developments). Support services include support for the customer in defect correction. Unless agreed otherwise, support times are all working days (Mon-Fri, apart from statutory public holidays in Baden-Württemberg and 24.12 and 31.12.), between 8.00 am and 6.00 pm (CET). A helpdesk with a hotline is available to the customer during these hours.

1.4 The customer can report faults and defects by e-mail or telephone. Demo-data about the fault should be provided with the notification, from which the fault can be examined. The notification must also precisely describe the symptoms so that M+M can fulfil its obligation to provide support and correct the fault effectively.

1.5 The customer must report serious faults in writing. If the fault also affects this system, the report must first be made verbally, but must be repeated in writing after access to the helpdesk system has been restored.

1.6 Section VII applies correspondingly to the rights to use software updates to the software, which are provided to correct faults.

1.7 The updates may contain additional functionalities, whereby the customer shall be not entitled to the implementation of specific functionalities as part of the update.

1.8 If customer's software solution includes additional customer-specific development or changes (which exceed the configurations and parameterisations of the M+M standard software), M+M shall not guarantee that updates to the standard software can be used or will run without defects. If necessary, the customer charge M+M with an individual modification to the update or an individual maintenance for a separate fee.

2. Service levels

2.1 The support services only refer to the software named in the Service Level Agreement and provided by M+M, unless otherwise detailed.

2.2 The support includes advice and support in the event of software faults and – insofar as the customer orders an allocation of hours from M+M – also user questions.

2.3 Unless agreed otherwise, the First-Level-Support is provided by the customer itself, so that generally only technically more complicated questions from the 2nd and 3rd levels are escalated to M+M support. Escalation may only be through first-level support. The customer's corresponding employees must have sufficient IT skills and training and must be named to M+M in advance. In support cases, M+M is not required to communicate with other customer employees.

2.4 Insofar as concrete response times or service levels are agreed, the fault search shall be started within these times, not the restoration of the functioning system. With regard to compliance with the response times, only the expired periods within the agreed support times shall be taken into account.

2.5 If the service levels are not observed, the customer shall reserve the right to reduce the agreed monthly

support fee. The reduction shall be reasonable, depending on the gravity, number and frequency, but only based on the respective period, calculated in full months. In case of dispute, the reduction can be examined for appropriateness in the courts. In an extreme case, the reduction can be up to 100%, whereby further claims due to non-compliance with the service levels are excluded, however – apart from the case of unlimited liability according to No. 1.12.1.

2.6 Unless agreed otherwise, the service levels according to Annex 1 to these Terms and Conditions shall apply.

2.7 Apart from the support fee, M+M shall be entitled to charge for additional services according to the work, if the reported fault is due to mis-operation by the customer, but is not due to a software defect covered by the scope of the maintenance and / or if the reported fault is due to defective or insufficient IT infrastructure, and for additional work by M+M resulting from the provision of the contractual support and maintenance services.

2.8 The claim for reimbursement of costs according to No. 2.7 shall not exist if the fault has been reported within the guarantee period for material defects relating to services provided by M+M.

3. Contractual term

3.1 Unless the parties have agreed a separate term or notice period, the maintenance contract starts upon transfer of the software to be maintained. The support contract starts with the GoLive. The contractual relationships regarding maintenance and support can be ordinarily terminated with six months' notice to the end of the month, initially to the 36th month. If M+M provides the hosting for the software solution for the customer, maintenance and support cannot be terminated as long as the hosting contract is in force (unless the customer waives the hosting services being provided by M+M).

3.2 The right to extraordinary termination for good reason shall remain unaffected hereby.

4. Remote access

4.1 The customer shall grant M+M remote access via VPN to the system requiring support for fault diagnosis and correction, and shall cooperate to an appropriate extent in the remote diagnosis, in particular to acquire and install the customer-side remote maintenance software required (RDP, VNC or SSH, depending on the system).

4.2 The M+M support shall not include local services on the customer's site.

4.3 The customer shall bear all costs connected with the procurement, installation and communication in order to be able to take advantage of the M+M support services.

5. Support restrictions

5.1 Insofar as the supported contractual software communicates with third-party software (e.g. QuarkX-Press) or hardware within the framework of the workflow, M+M can advise the customer of the respective minimum software version and hardware requirements. If the customer does not have these or only has an older software version, M+M shall not have to comply with the agreed service levels.

5.2 If the customer does not install an update to the contractual software provided by M+M within an appropriate period (typically 2 months), M+M can refuse support services in respect of the old software version.

5.3 If the customer has made changes to the supported software, it shall notify M+M and explain the changes in detail in writing. In respect of the altered software, M+M shall not longer have to comply with the service levels and may terminate the support contract extraordinarily for good reason in the case of significant software code changes.

XI. Concluding conditions

1. Confidentiality, data protection, reference
 - 1.1 The customer shall treat as confidential all information received from or disclosed by M+M before or during implementation of the contract (e.g. software, documents, information), which contain business or operating secrets or which are marked as confidential, also after the end of the contract.
 - 1.2 The customer processes the data required for the business in compliance with data protection provisions. The customer guarantees that it has procured all necessary requirements, that M+M can provide the agreed services, also without breaching data protection provisions.
 - 1.3 After successful completion of the services, M+M may name the customer as a reference customer.
 - 1.4 Objects provided by the customer, such as templates, data carriers, copier films or colour extracts, are retained and archived after the services have been provided only after prior express agreement and in return for separate remuneration from M+M. If objects to be archived are insured, this must be provided by the customer or agreed separately with M+M.
2. Expiration
 - 2.1 In the case of claims for compensation or reimbursement of costs due to culpable or gross negligence, guarantee, malice and in the case of personal injury and claims under the Product Liability Act, the statutory expiration periods shall always apply.
 - 2.2 Otherwise, the expiration periods are:
 - 2.2.1 For claims to repayment of the purchase price from withdrawal of reduction, 1 year from delivery of the contractual software, but not less than 3 months from submission of the valid declaration of withdrawal or reduction for properly reported defects;
 - 2.2.2 For other claims due to material defects, 1 year;
 - 2.2.3 For claims due to legal defects, 2 years, if the legal defect is not a third party's material right, on the basis of which it can demand the return of the objects provided within the framework of the contract (contractual software, documentation);
 - 2.2.4 For other claims for compensation or reimbursement of costs in vain, 2 years starting from the time when the customer learned of the facts justifying the claim or should have known without gross negligence.
 - 2.3 The period shall expire no later than upon expiration of the maximum periods specified in Section 199 BGB.
 - 2.4 The expiration period is suspended for the examination of a material or legal defect and during subsequent performance, until the subsequent performance is completed or finally refused or finally fails. The period shall then commence no earlier than 3 months after the start of the suspension.
3. Governing law, place of jurisdiction
 - 3.1 The law of the Federal Republic of Germany shall apply exclusively to the exclusion of UN Convention of the International Sale of Goods and Conflict of Laws.
 - 3.2 Insofar as the customer is a merchant, a juridical person under public law or a public-law special asset, Pforzheim shall be the exclusive place of jurisdiction for all disputes deriving from and in conjunction with the contractual services. In case of legal disputes, M+M can also select the customer's general place of jurisdiction.
 - 3.3 Place of performance is Pforzheim.
4. Amendments to these Terms and Conditions
 - 4.1 M+M may amend these Terms and Conditions in the future. The new version of the General Terms and Conditions shall apply to future contracts.
 - 4.2 The new version shall apply to current contractual relationships if M+M sends them to the customer, whereby the transmission can be post or notification of

an internet path for online access, and the customer does not object to the validity of the new Terms and Conditions within 4 weeks. This shall also apply only insofar as M+M advises the customer of the objection period and the legal consequences of an omitted objection when sending the new Terms and Conditions.

5. Saving clause

- 5.1 If a condition of these General Terms and Conditions is invalid or impracticable, this shall not affect the validity of the remaining conditions.
- 5.2 The contractual parties shall endeavour to find a valid condition to replace the invalid condition, which comes closest to the commercial content of the invalid condition.

– End of the Terms and Conditions –

Annex 1: Service levels

Within the framework of the service levels – irrespective of the priority of the defect – M+M owes a response time according to the table below, last column, within which M+M shall start the defect search and correction by the latest.

Priority	Impact & urgency	Description of the fault	
1 (critical)	Shutdown and high urgency	A defect which disrupts the operating capacity of the complete software; operation is completely prevented and the use cannot use the software.	2 hours
2 (high)	Significant impact and high urgency	A defect which massively disrupts the operation of the processes or which results in a two-part failure of the entire system or the failure of individual program components or program modules.	4 hours
3 (medium)	Reduced operation and medium urgency	A defect, which restricts the use of important parts of the software, but which does not generally make operations impossible, and a defect which affects only parts / functions of the software, which are not essential for the operating capability, but which constantly disrupts the process, including for more than one user.	8 hours
4 (low)	Limited impact	A defect, which disrupts the operating process and functioning of the software, but which can be classed as comparably limited in respect of the impact and frequency or in respect of the number of users affected as a whole, in particular if only a single user is affected.	2 working days
5 (very low)	No affect	A defect without significant important for operation and functioning	3 working days