



CHANGING DATA INTO KNOWLEDGE

dab: Daten – Analysen & Beratung GmbH

General Terms and Conditions

Governing dab: Daten – Analysen & Beratung GmbH's Deliveries and Services to Customers

as of: 1 December 2016

§ 1 General / Scope

- (1) These terms and conditions apply to all contracts concluded with dab: Daten – Analysen & Beratung GmbH (“dab:GmbH”), which involve deliveries and services of dab:GmbH provided to customers. These terms and conditions in the version available at <https://www.dab-europe.com/en-US/info/gtc/> at the time the customer makes its declaration are also applicable to all future contracts regarding dab:GmbH's deliveries and services provided to customers, even if not expressly agreed.
- (2) Deviating, conflicting or supplementary general terms and conditions of the customer – even with knowledge thereof – are not considered part of the agreement, unless such is expressly approved in writing.
- (3) All dab:GmbH's offers and services are addressed exclusively to merchants acting within the scope of their business in accordance with the German Commercial Code (*Handelsgesetzbuch*, “HGB”), to corporate bodies organized under public law (*juristische Personen des öffentlichen Rechts*) or to special assets under public law (*öffentlich-rechtliche Sondervermögen*).

§ 2 Conclusion of the Contract

- (1) Unless otherwise expressly agreed, offers issued by dab:GmbH are non-binding and subject to change.
- (2) The characteristics of the deliveries and services are based on the characteristics stated in the relevant offer or order confirmation. Product descriptions, presentations, test programs, etc., are performance specifications, not guarantees.



CHANGING DATA INTO KNOWLEDGE

- (3) Contracts come into effect only when signed by both parties or upon the customer's unconditional acceptance of dab GmbH's offer within the deadline stated in the offer and furthermore, only when dab:GmbH confirms the order, whereby the conclusion of the contract must be made in writing (this may also be issued electronically via email).

§ 3 Retention of Title

- (1) The following agreed retention of title serves as security for all currently existing and future claims of dab:GmbH against the customer arising from the existing supply relationship between the parties (including payment balance requests based on a current account restricted to this supply relationship).
- (2) The products delivered by dab:GmbH to the customer remain the property of dab:GmbH until complete payment of all secured claims. The products, as well as replacement items subject to retention of title as per these terms and conditions regarding retention of title, are hereinafter referred to as "Retained Products". The customer stores the Retained Products at no cost to dab:GmbH.
- (3) In the event that dab:GmbH asserts retention of title, the customer's right to further use of the Retained Products is cancelled. Any repossession of the Retained Products by dab:GmbH is conducted as a precautionary measure. By no means does this constitute a withdrawal from the contract, even if partial payments were permitted. dab:GmbH is then also entitled to sell or auction the Retained Products without restriction. Further claims for damages, in particular for loss of profit, remain unaffected.
- (4) The customer is entitled to process and sell the Retained Products until dab:GmbH asserts retention of title within the scope of ordinary and proper business transactions. Security assignments, transfer of rights of use for security purposes and seizure are prohibited.
- (5) In the case of resale of the Retained Products, the customer hereby assigns to dab:GmbH for security purposes all claims against the purchaser arising from the resale; if dab:GmbH holds joint ownership of the Retained Products, the claim is assigned proportionate to the share of joint ownership. This also applies to other claims, which replace the Retained Products or otherwise arise related to the Retained Products, such as insurance claims or claims resulting from an unlawful act



CHANGING DATA INTO KNOWLEDGE

regarding loss or destruction. dab:GmbH authorizes the customer on a revocable basis to collect on claims transferred to dab:GmbH in its own name. Only in the case of an enforcement event may dab:GmbH revoke the authorization to collect.

- (6) Should third parties gain access to the Retained Products, particularly by means of seizure, the customer is obliged to inform the third party of dab:GmbH's ownership and to immediately inform dab:GmbH so that dab:GmbH may enforce its ownership rights. Provided that the third party is not able to reimburse dab:GmbH for court fees or out-of-court expenses in this context, the customer is liable to dab:GmbH for such.
- (7) Upon request and at its own discretion, dab:GmbH undertakes to release the Retained Products subject to retention of title as well as the items or claims replacing the Retained Products, as far as their value exceeds the amount of the secured claims by more than fifty percent (50%).

§ 4 Execution of the Contract, Delivery, Transfer of Risk

- (1) All services provided by dab:GmbH are performed – subject to the provisions of Section 5 of these terms and conditions – exclusively in accordance with the content of the order confirmation or the offer submitted by dab:GmbH and any separately concluded written agreement as well as these terms and conditions. In the event of inconsistencies between the content of these contractual bases, the content of the order confirmation or the offer submitted by dab:GmbH or any separately concluded written agreement shall have precedence, followed by the provisions of these terms and conditions.
- (2) dab:GmbH is entitled to modify the delivered item and its services to an extent considered reasonable for the customer, in particular as far as the scope of application and confirmed functionality are not impaired.
- (3) dab:GmbH is permitted to use in part or in full appropriate third parties (subcontractors) to fulfill services according to this agreement.
- (4) All delivery and service dates apply subject to correct and timely delivery by suppliers.



CHANGING DATA INTO KNOWLEDGE

- (5) Unless otherwise expressly agreed, any delivery deadlines and dates included in the offer or in the order confirmation are approximations and thus non-binding estimations made by dab:GmbH; in particular, they are not fixed deadlines. As far as the execution of the delivery requires customer participation or preparation, the delivery deadline begins upon conclusion of these activities. In any other case, the delivery deadline begins upon dispatch of the order confirmation by dab:GmbH.
- (6) Should the delivery of products be delayed for reasons not attributable to dab:GmbH, the risk is transferred to the customer upon notification of readiness for shipment or delivery.

§ 5 Special Provisions regarding Software Developed by dab:GmbH (dab:GmbH Software)

- (1) If the deliveries and services of dab:GmbH include software developed by dab:GmbH, the following apply and have precedence over these terms and conditions in the event of contradictions:
 - the “Provisions regarding the licensing of dab:GmbH software”, which can be retrieved at <https://www.dab-europe.com/en-US/info/gtc/>, in the event that software is rented;
 - the “Provisions regarding the sale of dab:GmbH software”, which can be retrieved at <https://www.dab-europe.com/en-US/info/gtc/>, in the event that software is sold; and
 - the “Provisions regarding maintenance and support services for dab:GmbH software”, which can be retrieved at <https://www.dab-europe.com/en-US/info/gtc/>, in the event that a maintenance and support contract is concluded.

The provisions of any separately concluded written agreement also have precedence in this context.

- (2) With regard to software developed by dab:GmbH (“dab:GmbH Software”, e.g. standard software, software created or adjusted specifically for the Customer, the datasets recorded on machine-decodable data carriers such as data files, databases and database material, updates, upgrades, releases, etc., including corresponding documentation, information and materials), the scope of services is defined in the product documentation as well as separately in the contract by means



CHANGING DATA INTO KNOWLEDGE

of a service description, if applicable. The customer holds no claim regarding a transfer of the source program.

- (3) In deviation from the agreed software version defined at the conclusion of the contract, the newest version of dab:GmbH Software as of the delivery date may be delivered, provided that the field of application and the confirmed functionality of the software is not restricted.
- (4) At dab:GmbH's discretion, dab:GmbH will provide the customer with the software on the machine-decodable data carrier, on which is it recorded as an executable object program, or the customer will be provided with the option of downloading the software via Electronic Software Delivery (ESD) from the server (Download). dab:GmbH Software's product documentation is supplied to the customer either in print form or also on a machine-decodable data carrier or via ESD at dab:GmbH's discretion.
- (5) The customer informs itself about the significant functional features of dab:GmbH Software and is responsible for ensuring that dab:GmbH Software corresponds with its ideas, wishes and requirements. In case of doubt, the customer is to consult dab:GmbH employees or expert third parties before conclusion of the contract. Upon request, dab:GmbH provides the customer with information about the technical fields of application and operating conditions of dab:GmbH Software.

§ 6 Special Provisions for Third-party Software

If the customer obtains another manufacturer's software ("Third-party Software") via dab:GmbH, the customer is obliged to comply with the license provisions and provisions governing rights of use of this third party. In the event of contradictions, these shall take precedence over the "Provisions regarding the licensing of dab:GmbH software" in the event of a software rental, as well as the "Provisions regarding the sale of dab:GmbH software" in the event of a sale of software, as well as over these general terms and conditions. The provisions of any separately concluded written agreement shall also take precedence. The license provisions and provisions governing rights of use of these third parties shall be provided to the customer upon request. With the order of Third-party Software, the customer confirms acceptance of the scope of services and the license provisions of the Third-party Software.



CHANGING DATA INTO KNOWLEDGE

- (1) The delivery of Third-party Software is conducted according to the stipulated third party's license provisions and provisions governing rights of use. Until each due fee is paid in full, the customer is entitled to use the Third-party Software solely on a revocable basis; the customer receives the irrevocable right of use to copyrighted services of such third party not subject to a time limit, particularly with regard to Third-party Software, only upon full payment of the agreed fee. If the provision of the Third-party Software is based on a continuing obligation, in deviation from the provisions set out in the above sentence the customer is only granted a revocable right to use Third-party Software for the period between the due date and full payment of the usage fee. If the customer is in default with regard to the payment of fees, dab:GmbH is entitled to revoke the right of use to Third-party Software for the duration of the default. Further rights of dab:GmbH based on payment default by the customer remain unaffected.
- (2) In the case of a defect in product performance or in title regarding Third-party Software or other damages caused by Third-party Software, the parties agree to the following: (i) dab:GmbH transfers to the customer all rights held by dab:GmbH against the third party in such case. The customer hereby accepts such transfer. (ii) In such case, the customer will first assert all claims against the third party to the full extent and enforce all assigned rights against the third party (also in court proceedings). (iii) Only thereafter and as far as the assertion of claims against the third party is unsuccessful (e.g. due to insolvency or an inability to locate), the customer is entitled to assert claims against dab:GmbH according to the provisions of these terms and conditions regarding warranty (liability for defects) and liability.
- (3) If the customer obtains software which is qualified as public domain, freeware or as shareware and which was not developed by dab:GmbH, dab:GmbH assumes no warranty or liability, unless dab:GmbH fraudulently conceals the existence of a defect. The customer is to observe the respective right holder's license provisions and provisions governing the right of use to such software.
- (4) The customer indemnifies and holds harmless dab:GmbH from and against claims based on infringements of its obligations pursuant to this Section 6 to the full extent as well as claims arising therefrom by third parties.



CHANGING DATA INTO KNOWLEDGE

§ 7 Assignment of dab:GmbH Employees and Third Parties on the Customer's Premises

With regard to all employees assigned to work by dab:GmbH on the customer's premises, dab:GmbH retains the unrestricted right to instruct and manage with regard to the relationship with the customer. dab:GmbH particularly has the right to

- make decisions regarding the selection and number of assigned employees,
- determine working hours and any overtime,
- grant vacation and leisure time, and
- conduct work inspections and monitor the proper performance of operations.

§ 8 Customer's Duty to Co-operate

- (1) The customer must make every effort at its own costs to make it possible for dab:GmbH to provide its services without difficulty and to refrain from any actions that could make performance more difficult or impossible. Additional agreements regarding type, scope, dates and other details regarding the customer's duty to co-operate and to provide services are concluded in each respective order.
- (2) The customer's general duty to co-operate includes the following duties:
 - a) The customer will make available to dab:GmbH the documentation and information in its possession that is required by dab:GmbH to perform services immediately and at no charge.
 - b) The customer authorizes dab:GmbH employees to access the customer's buildings and premises and grants them access to the customer's IT systems, as far as such is necessary for performing services. Further information in this context is regulated in each order.
 - c) The customer provides for the appropriate security of its own data, materials and programs. dab:GmbH informs the customer if pending work or other services performed by dab:GmbH could lead to a loss of data, so that the customer can ensure that it has up-to-date and sufficient data security in place.



CHANGING DATA INTO KNOWLEDGE

- d) If the customer becomes aware that the documents or information provided by dab:GmbH are incorrect, incomplete, or not clear, the customer is to notify dab:GmbH of such immediately.
- (3) In the event that the duty to co-operate or to provide services is not fulfilled pursuant to the contract, dab:GmbH will attempt to ensure that the deliveries are made on time without being obligated to do so. dab:GmbH is entitled to charge for the resulting additional expenses in addition to the agreed fee (particularly in cases involving a maximum or fixed price agreement). Furthermore, in such cases, agreed deadlines or dates for services are postponed for a period of time which is necessary and appropriate in order to eliminate the consequences of the improper fulfillment of the contractual duty to co-operate or provide services.

§ 9 Acceptance

The performance of services or mere delivery of devices or standard programs does not constitute acceptance. As far as dab:GmbH performs works services as per the order, or the order confirmation or any other separately concluded written agreement, or the parties expressly agree to acceptance for other services, the following provisions apply:

- (1) The readiness for acceptance of the works services will be reviewed. With regard to software, this is determined by means of a trial run. As far as the services to be accepted correspond with the contractual agreements, the customer immediately confirms acceptance on the respective acceptance protocol, unless a significant defect exists. Any defects are to be recorded and specified in the acceptance protocol. Acceptance declared to the manufacturer or the supplier also applies to dab:GmbH.
- (2) For insignificant defects, the provisions set out in these general terms and conditions regarding liability for defects (“Warranty”) apply. If there are significant defects and the customer refuses acceptance, dab:GmbH is entitled to remedy or replace, and then newly declare readiness for acceptance; thereafter, the provisions as stipulated in the above Paragraph (1) are to be followed.
- (3) Should the customer not declare acceptance within two (2) weeks after readiness for acceptance is determined by dab:GmbH, and if the customer has not issued any complaint regarding significant defects in the meantime, the service is deemed



CHANGING DATA INTO KNOWLEDGE

accepted. Acceptance also takes place if the customer uses the service without declaring to dab:GmbH that use is significantly impaired.

- (4) If the parties have agreed to milestones or similar projects phases, in particular a schedule, the customer is obliged to assess the result of each phase immediately and to issue approval for dab:GmbH's further work – within two (2) weeks at the latest. The approval also constitutes partial acceptance. The risk of any errors is transferred to the customer upon declaration of approval, as far as this does not involve errors which arose or which were first able to be identified in the context of services provided after issuance of approval.

§ 10 Prices and Payment Terms

- (1) All prices are ex works, net amounts and do not include packaging, transportation and transportation insurance, other taxes, customs duties, fees and applicable value added tax.
- (2) Payments are to be made in euro within fourteen (14) days after receipt of the invoice without deduction and at no cost to dab:GmbH. In the event that payment deadlines are exceeded, without prejudice to other rights, dab:GmbH is entitled to charge interest for default in the statutory amount.
- (3) The customer is entitled to exercise rights to offset or withhold payment only to the extent that its counterclaims have been declared legally binding, are uncontested or are recognized by dab:GmbH. Furthermore, the customer is entitled to exercise a right to withhold only to the extent that its counterclaim is based on the same contractual relationship.
- (4) If the customer is in default with regard to payments, dab:GmbH is entitled to withhold the delivery of other orders placed by the customer. As far as the overdue amounts are paid, dab:GmbH is entitled to stipulate a new delivery deadline under consideration of its other delivery obligations at its own discretion.

§ 11 Liability for Defects (“Warranty”)

- (1) Provided that this does not pertain to mere services, dab:GmbH warrants that the delivered item has the agreed-upon characteristics. With regard to the delivery of dab:GmbH Software, dab:GmbH warrants that the software corresponds with the



CHANGING DATA INTO KNOWLEDGE

description in the product documentation and the description in a separately concluded written agreement, if applicable.

- (2) The customer immediately inspects the delivered item to ensure contractual compliance as well as any forwarded preliminary and interim results. This also applies to delivered items, which are received in the framework of the warranty, or maintenance and service activities. The customer must issue notification in writing without undue delay, providing a description of the symptoms experienced. The customer is particularly obliged to issue notification in writing after detection of obvious defects within a ten (10) day deadline, which commences upon receipt of the delivered item; otherwise, the assertion of the warranty claim is excluded. To comply with the deadline, the timely dispatch of the complaint regarding a defect is sufficient. The customer also informs dab:GmbH after expiration of the warranty period without undue delay if third parties assert claims based on the infringement of protective rights by the delivered item.
- (3) If a defect exists, dab:GmbH shall remedy the defect (with regard to software by means of elimination of error or work-arounds, for example) or supply the item free of defect ("Supplementary Performance", *Nacherfüllung*) at its own choice. In the event that it has been determined in a legally binding manner that an item delivered by dab:GmbH has infringed upon third-party protective rights, at its own discretion dab:GmbH will either obtain the required right of use for the customer at its own expense or modify the services in a manner that prevents the infringement of protective rights, yet continues to correspond with the contractual arrangements. The details regarding Supplementary Performance are also based on the provisions of a maintenance and service contract concluded between the parties, if applicable. dab:GmbH is entitled to refuse Supplementary Performance if such is only possible at unreasonable cost. In the case of supply of an item free of defect, dab:GmbH carries the cost for such action, particularly transportation costs, insofar as costs do not increase because the defect free item must be provided to a location other than the contractually agreed upon location. Should dab:GmbH provide an item free of defect for the purpose of Supplementary Performance, the customer must return the originally delivered item.
- (4) Should dab:GmbH be unwilling or not able to provide Supplementary Performance, or should dab:GmbH delay such beyond a reasonable period of time based on reasons caused by dab:GmbH, or if the Supplementary Performance fails for any other reason, the customer is entitled as set out under the law to assert its rights



CHANGING DATA INTO KNOWLEDGE

to withdraw or reduce payment or claim damages. Supplementary Performance is deemed failed when three (3) attempts have been made without success.

- (5) Further claims by the customer beyond the rights to Supplementary Performance, to withdraw or to reduce payment, in particular claims for damages including lost profit or other pecuniary damages, exist only within the scope of the liability provisions of these general terms and conditions.
- (6) The warranty period consists of one (1) year, which begins with the standard statutory limitation period. The above does not apply to claims based on the German Product Liability Act (*Produkthaftungsgesetz*, "ProdHaftG") as well as to damages to life, body or health and to intentional or grossly negligent breaches of duty that expire within the standard limitation period.
- (7) Guarantees in the legal sense or assurances regarding specific characteristics of the delivered item are only deemed issued by dab:GmbH if they are expressly designated as such in the offer or order confirmation of dab:GmbH.
- (8) dab:GmbH has no obligations if a defect is attributable to the customer's conduct. This particularly includes – unless not the cause –
 - improper use, servicing, repair or modification not performed by dab:GmbH, or
 - the use of Software delivered by dab:GmbH on inappropriate hardware according to the product description and product documentation, or
 - the incorrect installation by the customer or a third party, improper operating conditions as well as atmospheric or static discharge, natural wear and tear, modified operating system components, interfaces and parameters, use of inappropriate organizational materials and data carriers, or
 - where the delivered item was created pursuant to the customer's specifications, in particular drawings provided by the customer, and the defect is based on these specifications,
 - as well as defects which are attributable to the transportation of the delivered item.

The customer's contributory negligence is to be attributed to the customer.



CHANGING DATA INTO KNOWLEDGE

§ 12 Liability

The following regulations shall apply to the liability of dab:GmbH as well as liability for dab:GmbH's employees, assistants in performance, and vicarious agents – irrespective of reason:

- (1) dab:GmbH's liability for damages is limited as follows:
 - a) Subject to a less severe standard of liability stipulated in statutory provisions (e.g. for diligence exercised in own matters), the liability of dab:GmbH shall be limited to such losses which would be typically foreseeable at the time of the conclusion of the contract for the simple negligent breach of essential obligations (i.e. essential obligations for which dab:GmbH owes performance and which are significant for the attainment of the contractual objective or with which dab:GmbH is obligated to comply and a breach of such compliance could endanger the attainment of the contractual objective); in particular, liability for loss of data is limited to typical recovery efforts that would be required if backup files are made on a regular basis and in accordance with the level of threat.
 - b) dab: GmbH shall not be liable for the simple negligent breach of non-essential obligations.
- (2) In cases of initial impossibility, dab:GmbH shall be liable if the obstacle to performance was known to it or the lack of knowledge is based on gross negligence.
- (3) Claims for damages against dab:GmbH shall be subject to a limitation period of one (1) year. The limitation period begins with the start of the statutory period of limitation.
- (4) If claims for damages are raised, they must be asserted in a court of law within six (6) months of dab:GmbH's written rejection. Assertion at a later date is excluded, unless independent proceedings for taking evidence are initiated within the deadline.
- (5) The aforementioned liability exclusions, restrictions, and limitations, including the provisions regarding time limits, shall not apply to claims based on the German Product Liability Act as well as compensation for damages to life, body or health and intentional or grossly negligent breaches of duty.



CHANGING DATA INTO KNOWLEDGE

- (6) If dab:GmbH provides technical information or advice and this information or advice does not fall within the scope of performance expressly agreed-upon and owed in accordance with the offer or order confirmation, this technical information or advice is provided free of charge. In such cases, dab:GmbH shall be liable exclusively for grossly negligent, intentional or malicious conduct; however, in the event of gross negligence, liability is limited to compensation for damages that is typical and foreseeable with regard to these types of contracts.

§ 13 Third-party Rights

- (1) The customer is responsible for ensuring that the resources provided by it are not subject to third-party rights (e.g. copyrights, license rights, patent rights or other industrial property rights) prohibiting dab:GmbH's contractual performance of services and that the resources are legally and contractually compliant; however, dab:GmbH is not obligated to check the provided resources for any possible legal violations. If dab:GmbH becomes aware of the apparent unlawfulness of the resources provided by the customer to dab:GmbH for the purpose of the contractual performance of services, dab:GmbH will notify the customer of this immediately. In this case, dab:GmbH is entitled, but not obligated, to reject the resources provided by the customer.
- (2) If a third party asserts a claim against dab:GmbH based on possible legal infringements related to a resource provided by the customer to dab:GmbH for the purpose of the contractual performance of services, the customer undertakes to indemnify and hold harmless dab:GmbH against any liability in this respect and to reimburse dab:GmbH for the costs incurred related to possible legal infringements. This obligation also includes the duty to indemnify and hold harmless against all legal defense costs required by dab:GmbH (e.g. court and attorney fees). The parties must notify one another immediately in writing if claims of this type are asserted against them.

§ 14 Cancellation and Withdrawal from Training Seminars and Events

- (1) The customer will not be charged for cancellations of training seminars and dab:GmbH events which are subject to charge if cancellations are submitted up to four weeks before the event begins. If cancellations are submitted thereafter or if the participants fail to attend, the full registration fee will be charged.



CHANGING DATA INTO KNOWLEDGE

- (2) In the event that the customer does not pay the due registration fee within a reasonable grace period, dab:GmbH is entitled at its own discretion to withdraw from the order related to the training or event, or to claim compensation for damages based on non-fulfillment.
- (3) Furthermore, based on objectively justifiable reasons dab:GmbH is entitled to withdraw from the training or event if force majeure or other circumstances, for which dab:GmbH is not responsible, render impossible the fulfillment of the contract. In such case, the customer will be reimbursed for any registration fee already paid; if applicable, a registration fee which has not yet been collected will not be charged.
- (4) If dab:GmbH's withdrawal is justifiable, the customer is not entitled to claim compensation for damages.

§ 15 Access to Online Systems

The customer is obliged to keep confidential its access data (login and password) to all of dab:GmbH's online systems and to make such inaccessible to third parties. The customer is liable for improper use of its access data.

§ 16 Copyright, Rights of Use

- (1) Unless otherwise regulated in a provision that has precedence and provided that no mandatory legal provisions require otherwise, the following provisions shall apply.
- (2) The intellectual property, in particular copyright as well as all industrial protection rights, and business secrets are not transferred to the customer, but remain with dab:GmbH. The legal ownership includes in particular the results of work performed by dab:GmbH within the framework of the contract as well as the entire know-how, resource and development reports, recommendations, ideas, drafts, arrangements, samples, models, concepts, etc.
- (3) The customer receives a simple, non-exclusive and non-transferrable right of use to deliveries and services protected by copyright limited to the agreed term within the framework of the contractual purpose for its own business purposes.



CHANGING DATA INTO KNOWLEDGE

- (4) The customer's use is granted on a revocable basis until the respective fee is paid in full. dab:GmbH is entitled to revoke the right of use to services for which the customer is in arrears with payment for the duration of the default in payment.
- (5) Copies, transmissions, public disclosures and processing require prior written consent from dab:GmbH.
- (6) Copyright notices, serial numbers as well as other program identification or protection rights serving as features and reservations of rights may not be removed or changed.

§ 17 Confidentiality, Business Documents

- (1) The contract partners are obliged to maintain absolute secrecy and keep confidential also after the term of each respective order all business and operational secrets as well as all information, documentation and other information that is expressly designated as confidential or recognizable as such, which is received from the other contract partner in the context of executing the contract (hereinafter referred to as "Confidential Information"). Documents created by the contract partners, which contain Confidential Information from or about the other party, are also to be kept confidential in the same manner. Disclosure to third parties is only permitted provided that a mandatory obligation based on legal regulations exists pertaining to the disclosure of information, in particular to public authorities, as well as to persons; this particularly applies to a contract partner's assistants in performance, for which access to the Confidential Information is necessary in the context of their activities performed to fulfill the contract and who were previously obliged in writing to maintain confidentiality in the same manner. Furthermore, the disclosure of Confidential Information requires prior written consent from the other contract partner.
- (2) The contract partners are obliged to store with due care all documentation, files and other forms of Confidential Information which are received from the other contract partner. The contract partners remain owners of their own business documents.

§ 18 Data Protection and Data Security

- (1) The legal provisions governing data protection and data security are to be observed. The customer is responsible for compliance with the laws and regulations regarding data protection and data security when transmitting data to dab:GmbH.



CHANGING DATA INTO KNOWLEDGE

- (2) In the event that dab:GmbH collects, processes or uses personal data in the course of order data processing as instructed by the customer (§ 11 of the German Data Protection Act, "BDSG") for the purpose of fulfilling the contractual services, or if dab:GmbH conducts the "inspection or maintenance of automated procedures or data processing systems" within the meaning of § 11 Para. 5 BDSG, the contract partners will conclude an "Agreement regarding Order Data Processing" in accordance with § 11 BDSG or with the applicable future legal requirements in this context, which dab:GmbH will make available to the customer.
- (3) dab:GmbH will delete personal data provided by the customer upon expiration of the contractual relationship, provided that further storage is not required to fulfill dab:GmbH's legal obligations (in particular the duty to store) or to provide evidence of the proper fulfillment of the contractual obligations to the customer.

§ 19 Final Provisions

- (1) This contract is subject to the laws of the Federal Republic of Germany excluding the conflict of law provisions. The United Nations Convention on Contracts for the International Sale of Goods (CISG) does not apply.
- (2) The customer may not - subject to the assignment of debt according to § 354a HGB - transfer individual rights of this contract or the contract as a whole to third parties unless dab:GmbH expressly agrees to such in writing.
- (3) Failure to exercise a contractual right is not a waiver of the respective right, unless the other contract party receives express written notification of this from the right holder.
- (4) The place of performance for all obligations arising from this contract shall be the registered seat of dab:GmbH. Unless otherwise agreed in writing in individual cases, this also applies to the place of Supplementary Performance. Insofar as the customer is a merchant as defined by the German Commercial Code (*HGB*), a corporate body organized under public law (*juristische Personen des öffentlichen Rechts*), or a special fund under public law (*öffentlich-rechtliches Sondervermögen*), the exclusive place of jurisdiction for all disputes directly or indirectly arising from the contractual relationship is the registered seat of dab:GmbH. The same applies to persons who have no general place of jurisdiction in Germany, as well as to persons who have moved their place of residence or usual whereabouts



CHANGING DATA INTO KNOWLEDGE

abroad since conclusion of the contract, or whose place of residence or usual whereabouts is unknown at the time the action is filed. In addition, dab:GmbH is entitled to file suit at the statutory venue.

- (5) Oral side-agreements are not valid. Deviating or supplementary conditions as well as modifications of this agreement, including this written requirement clause, are only valid if agreed upon in writing and expressly marked as a modification or supplement.
- (6) These terms and conditions were prepared in English and German; however, the German version is the legally valid and exclusively binding version.
- (7) If one or more provisions of these terms and conditions is ineffective, the validity of the remaining provisions shall remain unaffected.