Overview

A. Introduction

1. Parties

(1) The parties to the contract in connection with these General Terms and Conditions of Contract and Business (the "Terms") are firstcolo GmbH, Kruppstrasse 105, 60388 Frankfurt am Main, Germany ("firstcolo") and the customer ("Customer").

(2) For the purposes of these Terms, no person or entity can be a customer or party to this contract with firstcolo unless that person or entity is an entrepreneur as defined in Sec. 14 of the German Civil Code (BGB), a legal entity existing under public law, or a public-law special fund.

2. Scope

(1) Terms and conditions of business that deviate from these Terms do not become part of the subject matter of the contractual agreement unless firstcolo confirms this in advance. This also applies if firstcolo does not expressly object to terms and conditions of business of the Customer that deviate herefrom, even where these are appended or attached to quote requests, orders, or declarations from the Customer.

(2) These Terms moreover apply to all future orders, contracts, and other agreements between the Parties, even if they are not expressly agreed again or reference is not made hereto again, unless the Parties agree otherwise in writing.

B. General bases of contract

1. Subject matter of agreement

(1) The content and scope of the services that are the subject matter of the agreement shall be set down in the offer/order form and in the associated service specifications.

(2) In the event of any conflict between the information set down in the offer/order form or between the service specifications and these Terms, or in the event of any written agreement deviating herefrom, these provisions shall take precedence over the Terms.

2. Entry into contract

(1) All offers issued by firstcolo are non-binding and subject to change. The only exception is if they contain an express time limit for which they are binding and by which they must be accepted or the relevant document is expressly designated as a "binding offer."

(2) Unless the Parties agree otherwise in writing, the contract shall come into existence

    a) upon receipt of the order confirmation by the Customer (via e-mail/ticket system) or

    b) at the time mentioned in the offer as the commencement of contract or

    c) upon the Customer's acceptance of the "binding offer" issued by firstcolo.

3. Terms of contracts

(1) The commencement of contract and the term of the services commissioned shall be set down in the offer/order form. Unless otherwise agreed therein, all services are subject to a minimum contractual term (during which ordinary termination is ruled out) of 24 months.

(2) Unless otherwise agreed between the Parties, the notice period for termination for the relevant service is twelve (12) weeks, effective as of the end of the agreed term of the contract. In the event of doubt, notice of termination is valid only with regard to the specific service mentioned.

(3) If no notice of termination of the contractual relationship is given in due time, and unless otherwise agreed, the contractual relationship shall be extended by a further twenty-four (24) months in each case.

(4) Nothing herein shall affect the right of the Parties to terminate the contract by way of extraordinary termination for good cause without observing a particular notice period. Good cause is deemed to exist in the following cases in particular: if

a) the Customer is in default of payment that is due by more than two (2) months, or

b) one of the Parties violates elementary obligations under the contract again after previously having been warned.

(5) Notice of termination may be transmitted via the ticket system or by e-mail (text form is sufficient).

4. General obligations of Parties

(1) The Parties are obligated to notify each other, immediately and on an ongoing basis, of all circumstances arising from their own entrepreneurial sphere that may affect their working relationship (e.g., departure or replacement of employees who are of great significance to the working relationship between the Parties, lack of resources).

(2) During their cooperation, the Parties are required to designate contact persons who are responsible for the relevant defined tasks and roles. Any replacement of a contact person or change in that person's role must always take place in coordination with the other Party. Any costs incurred for this (e.g., for initial training and familiarization of these employees) shall not be borne by the other Party.

(3) In the event that the Parties set specific obligations of cooperation and these are demonstrably not fulfilled or are fulfilled inadequately, any additional time and effort incurred as a result may be charged based on the agreed hourly rates. The Parties are required to notify each other of this beforehand.

5. Payment details

(1) The prices and the amount of the remuneration for the services that are the subject matter of the contract are set down in the relevant offer/order form. All prices and remuneration are to be understood as plus value-added tax (VAT) at the statutory rate.

(2) Requests for payment from firstcolo are due and payable immediately after receipt of the invoice and must be settled within fourteen (14) days after the invoice date unless firstcolo states a different payment deadline in the invoice. If no objection is made by the Customer, stating the reasons, within 30 days after receipt of the invoice, objections to the amount of the invoice are ruled out.

(3) Billing for fixed fees shall take place monthly in advance, and billing for fees that depend on usage shall take place at the beginning of each subsequent month. If a monthly fee that does not depend on usage (fixed fee) is due for only part of a calendar month, that fee is calculated for each day at a rate of 1/30 of the monthly fee.

(4) All prices and payment obligations arising on the part of the Customer shall be stated in euros by firstcolo. Currency or exchange rate fluctuations and any transaction costs shall not be borne by firstcolo, but rather must be borne by the Customer. The invoiced amount actually credited to firstcolo's account is the factor determining whether payment has been remitted in full and as agreed.

6. General price adjustments

(1) The prices of the services are subject to regular adjustment as specified in detail in the offer/order form and/or the service specifications.

(2) Price adjustments shall be made as of January 1 of the following year, but no earlier than twelve (12) months after the contract is entered into. The reference price is always the price as of December 31, i.e., the previous year's price.

7. Energy costs

(1) The prices of the services do not include energy costs; these costs are billed separately to the Customer.

(2) The energy costs to be borne by the Customer are calculated based on the actual electricity purchase prices paid by firstcolo and the ancillary costs incurred by firstcolo for air conditioning, provision of an uninterruptible power supply, power loss due to cable transmission, losses due to conversion by means of transformers, the supply of light, and the operation of further power-consuming equipment that is not installed by the tenant or at the tenant's request, and other operating costs. This also includes the grid and concession fees, metering fees, and statutory charges within the scope of the German Cogeneration Act (KWKG), along with the electricity tax. These ancillary costs are covered by a factor that remains constant over the entire term of the contract as shown in the offer/order form and/or the service specifications.

(3) Changes in the purchase prices paid by firstcolo thus directly increase or reduce the charges to be paid by the Customer. The calculation of the charges to be paid by the Customer taking this factor into account is set out in the offer/order form and/or service specifications.

(4) In the event of a technical defect in an energy meter, firstcolo is entitled to bill based on reference measurements taken using a current clamp if the Customer objects to replacing the meter. In this case, the Customer has no claim to regular updating of the reference measurement. firstcolo shall implement this at its own discretion.

8. Third-party providers and applications from third parties

(1) Costs of third-party services that are commissioned or for which firstcolo acts as an intermediary on the Customer's behalf (e.g., software licenses, procurement of external IT infrastructure) shall be charged separately and must be paid separately.

(2) If firstcolo procures third-party services or acts as an intermediary with regard to such services on the Customer's behalf, firstcolo has no influence on subsequent price changes (e.g., adjustment of licensing fees or subscription costs). In all such cases, firstcolo shall provide notice of the price changes made by these producers or licensors as soon as possible.

(3) In the event of provision or procurement of software licenses by firstcolo, the rights of use,

including the term and scope thereof, shall be granted to the Customer in all cases in accordance with the relevant producer's terms of use and licensing.

(4) firstcolo is entitled but not obligated to remove the systems and IT infrastructure provided, operated, or monitored by firstcolo or third parties from service, monitoring, and maintenance (to terminate support therefor) at the latest if and when the producer discontinues support and maintenance for the relevant systems, IT infrastructure, or software (end of support). There is no need for separate notice of termination from firstcolo in this case unless the Parties agree otherwise in writing. However, firstcolo shall notify the Customer of the end-of-support scenario as soon as possible and shall take the lead times stated by the producer into account in so doing.

9. Delay and default

(1) If the Customer is in default of payment and still does not remit payment within a further payment time limit of not less than two (2) weeks set in response to such circumstance, firstcolo is entitled to withhold performance of the services that are owed under the contract or to discontinue such services in whole or in part until such time as payment is remitted in full, provided that firstcolo provides notice of these consequences. This does not release the Customer from the obligation of payment.

(2) firstcolo is entitled to charge a reasonable reminder fee in the event of any reminder notice occasioned by the Customer as a result of unjustified non-payment. In this case, the Customer always retains the right to demonstrate that firstcolo has not sustained any damage and/or losses, or that the amount of any damage and/or losses sustained is lower than the fee charged.

10. Handling of critical security gaps & zero-day vulnerabilities

(1) Critical security gaps (zero-day vulnerabilities), especially those reported by German and international security authorities (e.g., BSI warnings) often constitute a serious threat to customers and require an immediate response by firstcolo, which cannot be handled through formal inquiries and/or placement of formal orders due to the time-critical nature of these matters. To protect customers, firstcolo has the right to act on warnings and recommendations from security authorities immediately and without prior arrangement with the Customer if any such prior arrangement would lead to a risk to the customer as a result of the loss of time involved and it would otherwise be impossible to guarantee the security of the Customer's data and IT systems or to guarantee it in full.

(2) The Customer is advised that the time, effort, and expense involved in working on these kinds of security gaps that become known on short notice and the immediate risk of a zero-day attack arising therefrom are not predictable or calculable. Therefore, these items are not covered by the existing remuneration and must be paid separately by the Customer.

(3) Nothing herein shall affect firstcolo's obligation to keep the Customer informed promptly and comprehensively, including in these cases.

11. Change management

(1) Changes in the services that are the subject matter of the contract or quantitative deviations from and adjustments to a contractually owed service that are requested by the Customer (change requests or CRs) must be coordinated between the Parties using the ticket systems intended for this purpose.

(2) firstcolo has the right to perform the review of extensive CRs and CRs that require considerable time and effort to review on the basis of a cost estimate to be prepared and presented to the Customer beforehand. firstcolo shall notify the Customer hereof beforehand in all cases and shall refrain from performing any further development of the CR concept for which charges would apply in such a case unless and until the Customer grants approval.

12. Warranty

(1) The statutory provisions apply in the event of defects. The response times and the time limits for remedying any defects are set down in the relevant **service levels**.

(2) Rights of the Customer with regard to defects are ruled out where the Customer

   a) makes, or permits or occasions third parties to make, any changes in the systems provided, operated, or monitored by firstcolo without the requisite consent from firstcolo; or

   b) fails to implement, or does not wish to implement, the measures provided or recommended by firstcolo for the service and maintenance of the systems or the IT infrastructure (including but not limited to importing, installing, and implementing updates, patches, upgrades, and/or security features); or

   c) continues to use the systems or IT infrastructure beyond the "end of support" period, contrary to prior notice from firstcolo.

(3) firstcolo's claim to remuneration for the underlying orders or services, as the case may be, shall remain unaffected

even in the scenarios mentioned in paragraph (2) above. firstcolo is permitted to charge separately at the agreed hourly rates for additional time and effort demonstrably incurred by firstcolo as a result of actions or omissions on the part of the Customer pursuant to paragraph (2) above. However, firstcolo shall notify the Customer thereof beforehand.

(4) Nothing herein shall affect the right of the Customer to release firstcolo from any and all warranty and liability claims individually in the cases set out in paragraph (2) above. However, this does not give rise to a right of special termination on the Customer's part with regard to the relevant service in the event of such a release of liability.

(5) The following applies to defects and errors originating with and caused by a service provided by a third-party provider (e.g., producer) (such as bugs/errors in the application/errors in the process sequence) and for which firstcolo is thus not responsible, nor is firstcolo obligated to permit these to be attributed to it unless otherwise agreed:

a) If the analysis and evaluation of such defects requires time and effort on firstcolo's part and

b) these defects of the third-party provider have direct effects on firstcolo's own services that are the subject matter of the contract,

firstcolo is permitted to charge for the time and effort involved based on the agreed terms. However, it is a prerequisite for this that the Customer must be notified beforehand with a statement or estimate of the expected cost arising therefrom. If and insofar as the third-party provider compensates firstcolo financially for the defects and errors that have arisen, these payments shall be credited toward the Customer or otherwise taken into account, as the case may be.

(6) Nothing herein shall affect the Customer's rights with regard to defects insofar as the Customer is entitled to make changes, particularly within the scope of its right to remedy defects itself pursuant to Sec. 536a (2) BGB and this has been performed in a workmanlike manner and documented in an understandable fashion. Strict liability for damages (Sec. 536a BGB) for defects present upon entry into the contract is ruled out.

(7) In all other respects, the limitation period for claims arising from material defects is 12 months. Claims for damages due to material defects also become time-barred in 12 months, with the exception of claims due to intentional or grossly negligent conduct and claims based on loss of life, bodily injury, or impairment of health. Nothing herein shall affect claims under the German Product Liability Act (ProdHaftG).

(8) If and insofar as the contract concerns the purchase of a used item, any and all liability for material defects is excluded. In this regard, firstcolo is also not liable for claims for damages – irrespective of the legal grounds therefor – unless firstcolo or any of its statutory representatives or vicarious agents has acted with gross negligence or intent in violating its or their duties.

13. Service and maintenance measures (SLA)

(1) Disruptions affecting the IT infrastructure provided by, and lying within the sphere of responsibility of, firstcolo shall be eliminated within the scope of the applicable **service levels**. Where the Parties have not entered into any separate SLA, disruptions shall be eliminated within a reasonable time limit.

(2) The Customer is obligated to report disruptions as soon as possible and to support firstcolo to a reasonable extent in remedying them and identifying the source(s) of the error(s). This includes but is not limited to the Customer depicting disruptions that arise understandably and in sufficient detail and communicating the report to the relevant firstcolo ticket and support system.

(3) Should it transpire within the scope of investigating and processing the disruption report that the disruption did not lie within firstcolo's sphere of responsibility, firstcolo is entitled to charge the Customer for the time and effort expended on investigating the disruption in accordance with firstcolo's then-applicable price list if, during the troubleshooting process, the Customer could have recognized to a reasonable extent that the disruption had not been caused by firstcolo.

(4) Interruptions in operation by firstcolo to service and maintain systems and work on the IT infrastructure must be tolerated where these are reasonable and appropriate for the Customer. This service work is not relevant in terms of SLAs or shall be assessed as times of availability when availability is measured, as the case may be. The Customer shall have no claim for damages or to reduce the agreed remuneration as a result hereof. The terms of the **service level agreement** apply. firstcolo shall endeavor to minimize adverse impact on the Customer wherever possible and announce such impacts with adequate lead time at all times. Nothing herein shall affect the possibility and right of firstcolo to take action at any time, including outside the service window, to remedy acute disruptions or avert impending disruptions and security risks. Service work of this kind is also not relevant with regard to the SLA.

14. Liability

(1) The Parties are liable to each other at all times and without limitation for damage and/or losses caused through intent or gross negligence, pursuant to the German Product Liability Act (ProdHaftG), based on an express warranty

that has been given, or arising in the case of loss of life, bodily injury, or impairment of health. Nothing in the limitations of liability that follow shall affect this liability.

(2) Liability on the part of the Parties and of their statutory representatives and vicarious agents for ordinary negligence is ruled out. The only exception is if the matter concerns culpable breach of elementary contractual duties, meaning those whose fulfillment renders the proper performance of the contractual relationship possible in the first place or whose breach would jeopardize the achievement of the purpose of the contract. In these cases, however, the Parties' liability is limited in amount to the foreseeable damage and/or losses typical of the contract.

(3) However, unless otherwise agreed, firstcolo's liability for ordinary negligence is limited in amount to a maximum of two (2) months' net sales that firstcolo has earned with the Customer with reference to the month and order in which the damage and/or losses has or have occurred.

(4) There is no further liability beyond the amount mentioned in Sec. 7 (3) in the event of ordinary negligence. This also applies to lost profit, unrealized savings, and other consequential damage and/or losses. The foregoing limitations of liability also apply to the personal liability of the employees, representatives, and directors and officers of the Parties.

(5) firstcolo's liability in the event of data loss or of data recovery or restoration is limited in all cases to the amount of the damage and/or losses that would have been sustained by the Customer even in the event that the Customer had prepared regular and proper data backups (making backup copies at least every half a day).

(6) Where services are obtained for the Customer directly from third-party providers (such as Microsoft® services), the third-party provider's provisions shall take precedence. These include any and all agreements – particularly on warranty and liability – that the third-party provider enters into based on its contract terms with its customers. firstcolo shall advise the Customer of the third-party provider's rights.

(7) firstcolo is not responsible if firstcolo is unable to meet obligations arising from this contract as a result of circumstances for which firstcolo is not responsible. In particular, firstcolo cannot guarantee the availability of energy or telecommunication services (provided by third parties) or assume liability for the performance (technical performance) of such third parties. This applies accordingly in the event that firstcolo is unable to perform as a result of force majeure (e.g., pandemic; natural disaster; war, including its domestic effects).

15. Provision of security and retention of title

(1) firstcolo has the right to require that the Customer provide security (e.g., in the form of an absolute guarantee from a German bank). In this case, the guarantee must cover, at a minimum, the regularly recurring or expected one-time receivables for a period of two months. Should these receivables change in the course of the contractual relationship, the Parties can request that the security provided be adjusted.

(2) firstcolo retains title to all objects sold until such time as the agreed payment in full has been received. Up until the transfer of title, the Customer is obligated to treat the objects sold under the contract properly and with care. The Customer is permitted to resell the goods subject to retention of title in the ordinary course of business. However, the Customer is not permitted to pledge the goods subject to retention of title or to transfer ownership thereof by way of security. In this case, however, the Customer hereby assigns to firstcolo, in the amount of the invoiced value of the receivables, all receivables arising from any such resale, regardless of whether the resale occurs before or after any possible processing of the goods delivered subject to retention of title. firstcolo accepts such assignment. Regardless of the authorization to collect on the receivable yourself, you remain authorized and empowered to collect on the receivable even after the assignment. In this context, firstcolo undertakes not to collect on the receivable insofar as, and for as long as, the Customer is complying with its payment obligations, no petition for opening of insolvency or similar proceedings with regard to the Customer's assets has been filed, and the Customer has not discontinued payments. Where the above-mentioned items of security exceed the receivables to be secured by more than 10%, firstcolo is obligated to release items of security of its own choosing upon request.

16. Secrecy and confidentiality

(1) The Parties undertake to maintain secrecy with regard to all confidential information (including business and/or trade secrets) learned by them in connection with this contract and the performance hereof and not to disclose such information to third parties, share it with others, or otherwise utilize it. This obligation shall survive termination of the contract by a period of two years.

(2) "Confidential information" means information that is designated as confidential or whose confidential nature is apparent from the circumstances, regardless of whether it has been communicated in written, electronic, physical, or oral form, particularly information concerning operational procedures, business relationships, and know-how.

(3) This obligation does not include confidential information that

    a) was demonstrably already known to the recipient at the time of entry into the contract or becomes known to the recipient thereafter from an outside source without any confidentiality agreement, statutory provisions, or orders issued by government agencies being violated thereby;

    b) is public knowledge when the contract is entered into or is publicly announced thereafter, insofar as this is not based on a breach of this contract; or

    c) must be disclosed based on a statutory obligation or on the orders of a court or other government agency. Where permissible and possible, the recipient that is obligated to disclose the information shall notify the other Party in advance and give that Party the opportunity to take action against the disclosure.

(4) Each of the Parties shall also impose these obligations on that Party's employees and any third parties whose services may be utilized and shall ensure that the services that are the subject matter of the contract are made accessible to employees and third parties only to the extent necessary for the contractual use thereof.

(5) Nothing herein shall affect the rights of the Parties to declare information as trade secrets within the meaning of Sec. 2 of the German Act on the Protection of Trade Secrets (GeschGehG). Any confidentiality agreements beyond the foregoing that may have already been entered into by and between the Parties shall continue to apply or take precedence, as the case may be.

17. Data protection and data security

(1) Each Party is responsible for ensuring that its employees and other vicarious agents comply with the relevant statutory provisions, particularly those of the EU General Data Protection Regulation (GDPR) and the national data protection laws.

(2) Each of the Parties undertakes to take and maintain, within that Party's sphere of organization, the necessary technical and organizational measures and necessary security precautions to protect personal data from unauthorized use, access, disclosure, modification, or destruction.

(3) Where necessary, the Parties shall enter into an agreement on the processing of data on behalf of another entity in accordance with Article 28 GDPR.

C. Particular bases of contract with regard to colocation and data center services

1. General provisions

The rights and obligations mentioned in Part C shall apply in addition to the general provisions set forth in Part B. It is a prerequisite for this that the services that are the subject matter of the contract specify in the offer/order form the provision of IT infrastructure at the firstcolo data center (e.g., floor space, racks, and IaaS).

2. Particular obligations of Parties

(1) firstcolo shall provide the Customer, for the term agreed in the offer/order form, with data center space (including but not limited to racks, floor space, cages, and connections) so the Customer can operate its own IT infrastructure using these. Unless otherwise contractually agreed, installation, setup, service, and maintenance of the IT infrastructure in the rented data center space shall take place at the Customer's expense.

(2) The entire IT infrastructure must comply with any statutory provisions and the **technical specifications** of firstcolo and must not cause any adverse impact on or risk to other customers and/or their IT infrastructure. The **technical specifications** are subject to ongoing adjustment and may be changed by firstcolo at any time. Any change shall be announced to the Customer with adequate lead time. In addition, the Customer is obligated to observe the valid and posted **terms of entry** for the relevant data center.

(3) firstcolo has the right to enter the data center space on legitimate grounds if and insofar as this is necessary for technical, safety, or security reasons.

(4) The Customer is not permitted to provide the rented data center space to third parties ("subleasing") except with firstcolo's prior consent.

(5) The Customer must insure its IT infrastructure for the duration of the use of the data center space under a liability and operating insurance policy specifically for electrical installations with coverage of three million (3,000,000) euros at a minimum. The insurance policy must be presented to firstcolo upon request.

(6) The persons at the Customer's end who are authorized to enter the space must be designated to firstcolo, and any changes must be communicated to firstcolo without delay. The Customer is obligated to keep the access authorizations received from firstcolo strictly confidential and to protect them from unauthorized access. The Custo-

mer must notify firstcolo without delay if any access authorizations have been lost or made accessible to third parties.

3. Return of colocation space

(1) Upon the expiration of the contract, the Customer must dismantle and remove its equipment at its own expense within one (1) week and must return objects owned by firstcolo and provided to the Customer without delay at the Customer's own risk and expense. Beyond that, the data center space must be returned clean and in the condition in which it was provided to the Customer. All access authorizations must be turned over without delay. A record of the return must be prepared with regard to this and signed by the Parties. Moreover, firstcolo is entitled to discontinue all services upon expiration of the contract without any further announcement or right of objection on the Customer's part. firstcolo is not liable for any damage and/or losses arising therefrom, such as loss of revenue or data.

(2) firstcolo reserves the right to impose a lien on objects brought in by the Customer and present in the data center space. This does not include personal data and data storage media on which personal data are stored.

4. Hosting

(1) The Customer is obligated not to abuse or misuse the IT environment and/or the services associated therewith, not to import, use, or store any data and/or content that is or are in violation of any law or regulation, and, in particular, not to infringe any third-party industrial property rights or copyrights or other rights of third parties.

(2) firstcolo must be indemnified and held harmless from and against any and all claims of third parties based on unlawful use of the IT environment by the Customer or with the Customer's approval. This includes but is not limited to claims of third parties pertaining to data protection and/or privacy laws or copyright or other claims of third parties that are associated with the use. If the Customer realizes or should realize that such a violation is impending, the Customer is obligated to notify firstcolo without delay. firstcolo shall notify the Customer of the assertion of any claims and give the Customer an opportunity to defend against the claims asserted where legally possible.

(3) The Customer is obligated to treat the access information (especially usernames and passwords) as confidential, and to keep it secret, in its dealings with unauthorized third parties. The Customer must take suitable internal measures to ensure that the access information is not shared with unauthorized third parties.

(4) If there is sufficient suspicion of a violation of the Customer's duties as set forth in the foregoing paragraphs, firstcolo may, in the event of imminent danger, temporarily suspend the service in question (e.g., the affected websites) and/or secure the affected data until such time as the matter has been clarified. There is no obligation on the part of firstcolo to investigate whether there is any unlawful content of the Customer. In all cases, the suspension must, insofar as technically possible with reasonable effort and insofar as reasonable, be limited to the allegedly infringing content and services. The Customer must be notified without delay of the suspension, with a statement of the reasons, and asked to remove the allegedly infringing content and to substantiate for itself the necessary safeguarding and documentation measures and/or the lawfulness of the content and, where applicable, to prove this.

(3) The suspension of the service shall not lead to the loss of firstcolo's claim to remuneration.

(4) If and insofar as the Customer manages, sets up, or distributes usage rights for software (licenses) itself on the servers and/or in the hosting environment, exclusively the Customer is obligated to license these correctly.

D. Final provisions

1. Terms subject to change; applicable law and place of jurisdiction

(1) Amendments or addenda to the contract terms are not valid unless set forth in written form. The same applies to any waiver of this written form requirement.

(2) This contract and the agreements and provisions entered into under this contract in the annexes hereto are subject to the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods (CISG) is ruled out.

(3) The place of jurisdiction is Frankfurt am Main.

2. Severability

(1) The Parties are aware of the risk that one or more provisions of this contract may prove to be invalid or null and void, contrary to the present understandings of the Parties. The Parties wish to rule out any doubt as to the validity of this contract in such a case as well. Should one or more provisions of this contract be or become invalid or null and void in whole or in part, or should there be any gap in the provisions hereof, the cooperation agreement shall, notwithstanding the provisions of Sec. 139 of the German Civil Code BGB), therefore remain valid not merely in case of doubt, but in all cases.

(2) The Parties agree to replace the invalid provisions or fill the gap with provisions that most closely approximate the desired economic outcome. Should this replacement be impermissible for legal reasons, the statutory provisions shall apply instead of the invalid provisions or to fill the gap left by the missing provisions, as the case may be.