



# General Business Terms and Conditions of Hella Gutmann Solutions GmbH

## § 1 General

(1) These General Business Terms and Conditions ("Terms") of Hella Gutmann Solutions GmbH ("HGS") shall apply to all offers, deliveries, repairs and other services (particularly Repair Plus Light, Repair Plus, Update Plus, Call Plus, Pro Package) which HGS renders and/or submits. By no later than the receipt of the respective goods and/or service, the Terms shall be deemed to be accepted by the Customer.

(2) The Terms shall also apply to future business relationships even if they have not once again been expressly agreed.

(3) Even if we are aware of them, any business terms and conditions which are deviating, opposing or supplemental shall not become a contractual component unless HGS has expressly approved their validity in writing.

(4) With regards to continuing contractual relationships such as Repair Plus Light, Repair Plus, Update Plus, Call Plus Flat and Pro Packages, HGS reserves the right to modify these Terms with the exception of the provisions in § 5 Paras. 1 and 6 (Prices, Payment Terms and Conditions, Price Adjustments) and § 10 Paras. 1, 2 and 5 (Database Usage) insofar as this is required for valid reasons – particularly in the case of a change in the legal situation or jurisdiction as well as in the case of technical changes – and the Customer is not inappropriately detrimentally affected by the change.

## § 2 Offer, Conclusion of the Agreement

(1) The offers from HGS shall be considered to be without obligation and non-binding. Any data provided about services and goods (particularly diagnostic devices), e.g. regarding colours, weights, dimensions, utility values, tolerances and technical data as well as depictions of the same (e.g. sketches and illustrations) should be understood as being only approximate values unless the usability for the contractually designated purpose requires precise conformance. They shall not be guaranteed quality features, but rather descriptions or identifiers of the goods or services. Any deviations that are customary for the industry and deviations which are made owing to legal directives or constitute technical improvements as well as the replacement of components with comparable parts shall be permitted unless they restrict the usability for the contractually designated purpose.

(2) A quality feature shall only then be considered to have been guaranteed if it has been expressly agreed as such.

(3) In order to be legally valid, declarations of acceptance and all orders must be confirmed in writing by HGS. With regard to other services to be provided periodically such as Repair Plus Light, Repair Plus, Update Plus, Call Plus Flat and Professional Packages, electronic transmission (e-mail, fax, scan) is sufficient to ensure the written form.

(4) If the Customer orders the goods or services electronically, HGS shall promptly confirm the receipt of the order. However, the confirmation of receipt shall constitute a binding acceptance of the order. The confirmation of receipt may be linked to the declaration of acceptance. On request, the Customer shall be sent these Terms via email.

## § 3 Delivery and Service

(1) Delivery and service timeframes shall be considered to be non-binding and shall apply only subject to being properly and promptly supplied by our own sub-suppliers. The Customer shall be promptly informed of the non-availability of the ordered goods or service. Any counter-performance already rendered by the Customer shall be promptly refunded.

(2) HGS shall not be liable for the impossibility of rendering the delivery or service or for delivery or service delays if they have been caused by force majeure or other events (e.g. operational disruptions of all kinds, difficulties procuring materials or energy, transport delays, strikes, legal lockouts, personnel/energy/raw material shortages, difficulties obtaining the required government-issued permits, government measures or supplying by our own sub-suppliers which fails to be made, is incorrect or untimely) not foreseeable when the agreement was concluded for which HGS is not responsible. If such events make it substantially more difficult or impossible for HGS to render the delivery or service and the hindrance is not just temporary, HGS shall be entitled to rescind the agreement. In the case of temporary hindrances, the timeframes and/or deadlines for rendering the delivery of the goods or the services shall be extended and/or postponed by the timeframe of the hindrance plus an appropriate start-up period.

(3) HGS shall be entitled to render partial deliveries and partial services as well as to separately bill for them if

- the partial delivery or partial service is usable for the Customer in accordance with the contractually prescribed intended usage purpose,

- the delivery of remaining goods that have been ordered and/or the remaining services that have been ordered has been ensured and

- the Customer incurs no substantial additional expenditures or additional costs or HGS declares its willingness to assume these costs.

(4) In the case of delivery or service delays, the statutory provisions shall apply. However, HGS shall owe damage compensation only in accordance with the provisions of § 15 (Liability).

(5) If, after receiving a notification that the goods are ready for pick-up/delivery, the Customer remains in default in taking possession of them for longer than two weeks, then HGS shall be entitled, after setting an extension period of an additional two weeks, to rescind the agreement and to demand damage compensation.

## § 4 Shipping and Transfer of Risk

(1) The deliveries of goods shall be made ex warehouse of HGS. **The shipment shall be made at the Customer's expense and risk.** HGS shall, at its due discretion, choose the shipping method and shipping route.

(2) The risk of accidental destruction and accidental deterioration of the goods shall be transferred to the Customer when handover is made, for products with digital content, elements and digital services with the start of the agreed provision period; for a sales shipment, upon the delivery of the goods to the carrier, the shipper or any other person who has been designated to implement the shipment. This shall also apply if freight-paid delivery has been agreed.

(3) If, at the Customer's request, the shipment is postponed, then the goods shall be stored at the Customer's risk beginning from the date that the notification of readiness for shipment is made. The costs incurred as the result of the delay (particularly warehousing costs) must be borne by the Customer.

(4) If transport insurance is taken out for the Customer's benefit, the insurance shall be taken out for the Customer and at its expense. Any complaints for transport damage must be asserted by the Customer itself directly against the transport company within the prescribed timeframe.

## § 5 Prices, Payment Terms and Conditions, Price Adjustments

(1) The prices specified on the order confirmation shall be valid; **in the absence of such information, HGS's price list** that is applicable upon the receipt of the order shall apply. Unless otherwise agreed, the prices shall be understood to be in Euro and "ex works" excluding costs for packaging, shipping and/or customs, which will be invoiced separately. In addition to the prices, the VAT in the statutorily prescribed amount shall also be invoiced.

(2) HGS reserves the right to increase prices appropriately if cost increases occur after conclusion of the contract, in particular due to increases in material and wage costs, e.g. due to collective wage agreements. These cost increases will be proven to the contractual partner upon request.

(3) If the Customer purchases goods from HGS, it shall issue a fee-based repair order in accordance with §§ 631 ff. German Civil Code [BGB] or it contracts other services which require a one-time payment (e.g. Call Plus 30/50), payments must be made to HGS, purely net without HGS incurring any fees in this regard, within 14 days after receipt of the invoice. If the Customer contracts services which require a periodically recurring payment (e.g. Repair Plus Light, Repair Plus, Update Plus, Call Plus Flat), the Customer shall undertake to make the payment in advance at the beginning of the period.

(4) HGS shall also be entitled to demand advance payment.

(5) The Customer shall be considered to have entered into payment default upon the receipt of the initial warning letter or a warning letter 30 days after the payment due date and receipt of the invoice in accordance with § 286 Para. 3 German Civil Code. In the case of payment default, HGS shall be entitled to charge payment default interest in accordance with § 288 German Civil Code as well as a lump-sum amount of EUR 40.00 in accordance with § 288 Para. 5 Clause 1 German Civil Code. The right is reserved to assert more extensive payment default damage claims.

(6) An offsetting with counterclaims of the Customer or the retention of payments owing to such claims shall be permissible only if the counterclaims are undisputed or have been legally upheld.

(7) If, within the parameters of on-going contractual relationships (cf. § 1 Para. 4), the costs (particularly any required maintenance costs, costs for the continued development of the technical infrastructure, licensing fees for third-party work products) incurred by HGS increase, HGS shall be entitled to increase the prices charged to the Customer in the scope of the increased costs. The price adjustment shall be made by providing written advance notice of three months. The Customer shall be entitled to make termination without notice when the price adjustment becomes applicable.

## § 6 Contractual Term and Termination of On-Going Contractual Relationships (particularly Repair Plus Light, Repair Plus, Update Plus, Call Plus Flat)

(1) The agreement shall come into force the first day of the month which follows the date stated on the order form. Example: If the order form were signed on 15/07/2021, the agreement would come into force on 01/08/2021.

(2) The agreement shall have a minimum term of 12 months and shall be respectively extended by 12 months if it is **not terminated by one of the contractual parties in writing while providing three months' notice with the termination** to become effective at the end of the respective contractual term.

(3) If additional licence components are ordered, a contractual conversion shall be made with a resulting new contractual term and termination notice period. (with the exceptions of Call 30, Call50 and HGS Plus licences which are purchased via leasing) Example: The agreement shall come into force for the first licence on 01/08/2021 so that the agreement runs until at least 31/07/2022. If the Customer books an additional licence as of 01/10/2021, the

agreements for already existing licences shall always be adapted with regards to their contractual term to the most recently acquired licence and/or licence extension, thus to the contractual term until 30/09/2022.

(4) The right to termination for cause shall remain unaffected by the provisions in Paras. 2 and 3. Cause entitling HGS to make termination shall particularly then be considered to exist if

- a) the Customer is in arrears with payments despite having received a warning letter in this regard,
- b) the Customer and/or the parties with user rights in accordance with § 10 Para. 1 uses/use the HGS online database or the diagnostic software in violation of the agreement or provides/provide the access data to unauthorised third parties,
- c) **in the case of the essential deterioration of the Customer's financial circumstances which make it appear likely** that the Customer will not be able to fulfil its payment obligations – particularly if the Customer discontinues the payments or compulsory debt enforcement proceedings are opened regarding its assets.

#### § 7 Reservation of Ownership

(1) HGS reserves the ownership rights to the goods purchased by the Customer until settlement in full has been made of all payment claims from the on-going business relationship with the Customer.

(2) The Customer shall undertake to handle the goods with due care until ownership is transferred. If maintenance and inspection work is required, then the Customer must implement this work at its own expense upon a regular basis.

(3) While HGS continues to reserve its ownership rights to the goods, the Customer shall be forbidden from pledging or assigning the goods by way of security. The Customer shall undertake to promptly notify HGS if any third-party claims are asserted to the goods, e.g. in the case of a seizure as well as any damage to or destruction of the goods. HGS must also be promptly notified of any change in possession of the goods as well as if the Customer moves its registered office.

(4) In the case of the violation of the aforementioned obligations, HGS shall be entitled to rescind the agreement and demand the return of the goods.

(5) The Customer shall be entitled to resell the goods during proper business dealings. However, it shall already now assign to HGS all payment claims in the invoiced amount which it obtains through the resale against a third party. HGS hereby accepts the assignment. After the assignment, the Customer shall be authorised to collect the payment claim. However, HGS reserves the right to collect the payment claim on its own as soon as the Customer does not properly fulfil its payment obligations and enters into payment default. The Customer shall undertake to issue to HGS at any time the requested information regarding the goods subject to HGS's **reservation of ownership** and the claims assigned to HGS. Upon HGS's **demand**, the Customer must notify the debtors of the assignment. The Customer must, immediately and while providing the required information, make notification to HGS of any **interventions or claims asserted by third parties to the goods subject to HGS's reservation of ownership or the assigned payment claims**. The costs for the warding off of such claims shall be assumed by the Customer. The Customer shall, at the same time, notify the third party of the extended reservation of ownership.

#### § 8 Software on HGS's Devices

If the Customer purchases devices from HGS with software already downloaded onto them, it shall receive a right to use the software that has been downloaded on the devices whereby this right shall be saleable, non-exclusive, and non-sublicensable. The contractual usage shall encompass the installation as well as the downloading, displaying and running of the installed software on the HGS device for which it is intended. In this context, a nature of the software contractually agreed with HGS always takes precedence over the objective requirements for the software.

#### § 9 Pre-Requisite for the Booking of Miscellaneous Services

(1) The Customer must hold a current Update Plus licence (cf. § 12) in order to be able to book other miscellaneous services. Example: A booking of Repair Plus is possible only if the Customer holds an Update Plus licence.

(2) The provision in Para. 1 shall not apply to the booking of a Repair Plus Light Stand Alone licence. In this case, no current Update Plus licence shall be required.

#### § 10 Online Database Usage (Particularly via Repair Plus Light or Repair Plus Licences)

(1) Accessing the online databases operated by HGS shall be undertaken via the Internet while using the access data (Repair Plus Light) provided by HGS or while using the special software (Repair Plus) which has been installed on certain diagnostic devices (e.g. mega macs 66). In addition to the Customer itself, those parties with access rights shall be exclusively the natural persons associated with the Customer within the parameters of a service, employment or training relationship. The Customer shall undertake to ensure the fulfilment of the following Usage Terms and Conditions in its dealings with these parties with usage rights.

(2) The HGS online database shall enable the Customer to do research on its computer via a search interface (e.g. with Repair Plus Light) provided by HGS or via certain HGS diagnostic devices (e.g. mega macs 66 in conjunction with Repair Plus). HGS wishes to point out that it is dependent on the supplying of correct data and information by third parties – primarily by the vehicle manufacturers. In order to keep the information in the database as up-to-date as possible, HGS reserves the right to make changes which serve the following purposes:

- a) to improve the online database and its usage forms or to adapt it to the current state-of-the-art technology,
- b) to change the contents in the online database if this is required for the correction of errors, for the completion or the updating of the contents,

- c) to optimise the online database from a program technology perspective or
- d) to realise a conformance with the licensing law guidelines.

If one of the possible changes mentioned under a) – d) results in a substantial, negative restriction of the scope of service for the Customer, the Customer may either demand a reduction of the price or to terminate the agreement without notice. The Customer shall be entitled to this right of termination only for a timeframe of six weeks after the change specified under a) – d).

(3) However, an obligation to update with regard to products with digital content, elements and digital services only exists if this has been expressly agreed with HGS in writing prior to provision.

(4) The usage right shall permit access to the HGS online database, the researching of the database, the downloading and the printing-out of the research results. Any more extensive usage shall be forbidden unless it encompasses a one-time and non-systematic reproduction or other exploitation of an element of the database which is non-essential based upon its type and scope.

(5) Subject to the proviso that it has paid the fee owed, the Customer shall acquire, for itself and the other parties with usage rights in accordance with Para. 1, the right of usage to the HGS online database which is non-exclusive, non-sublicensable, non-transferrable to third parties and which is for the fixed duration of the contractual term of the agreement. This shall not be associated with an acquisition of rights to the contents or products themselves. HGS shall continue to hold all copyrights (particularly arising from §§ 2, 4 Para. 2, 69a ff. and 87a Para. 1 German Copyright Act [UrhG]) and other rights to the contents, products and supplemental documentation.

(6) For the usage of the online database via a computer that is customarily used for commercial operations (particularly for the usage of Repair Plus Light), the following provisions shall apply upon a supplemental basis: The respectively required technical requirements – for whose fulfilment the Customer itself is responsible – shall be retrievable on HGS's website which is currently at [www.hgs-data.com](http://www.hgs-data.com). The right is reserved to make changes with regards to the technical requirements for the usage of the HGS online database. The provisions in Para. 2 shall apply on a supplemental basis. The Customer must keep the access data confidential and must ensure that the other parties with usage rights in accordance with Para. 1 also fulfil this obligation. The Customer must prevent the usage of the access data by unauthorised third parties. If the Customer becomes aware of a misuse of the access data, HGS must be promptly notified of this. HGS shall be entitled to block the access to the HGS online database until the unauthorised usage has been discontinued against documentation. During the blocking timeframe, the Customer shall be released from its payment obligation in accordance with § 5 Para. 2. However, it shall nonetheless be liable to pay damage compensation to HGS for any unauthorised usage by third parties for which it is responsible.

(7) In the case of the expiration of the Repair Plus Light or Repair Plus licences, any usage right shall be expire both for the online services as well as also the usage right for the technical data stored locally on the device.

#### § 11 Telephone Hotline Support for Vehicle Repairs (Particularly Call Plus 30/50 Call Flat)

(1) HGS shall offer a fee-based hotline which provides the Customer with technical support for technical inquiries regarding vehicle repairs (so-called **"call" services**).

(2) If the Customer books a certain number of hotline inquiries (e.g. Call Plus 30 or Call Plus 50), each vehicle-related call from the Customer shall count as an inquiry. If the Customer books Call Flat, it shall be entitled to make an unlimited number of hotline inquiries.

(3) The fee-based hotline in accordance with Para. 1 can be reached in Germany during the timeframe of Mon.-Fr. from 8.00 a.m. – 5.00 p.m. except for legal holidays throughout Germany as well as 24/12 and 31/12.

#### § 12 Updating the Software for Diagnostic Devices (Particularly Update Plus)

(1) HGS shall provide the Customer with the updated software versions for passenger vehicle and motorbike diagnostics as well as for ET devices (emissions testing). The updates shall not serve the purpose of the elimination of software defects, but rather constitute above all continuous program-related technological improvements or new changes in the software. However, an obligation to update products with digital content, elements and digital services or an obligation to provide an earlier version only exists if this has been expressly agreed with HGS in writing before provision or is technically possible and available.

(2) On its release, the Customer shall install the updated software on its diagnostic device via the download authorisation provided by HGS. For devices of the GM3 model, the supplying of the updates can also be made via the exchange of the Customer's **ET data carrier** from its GM3 device.

(3) If a Customer initially purchases no Update Plus, but decides to book Update Plus at a later point in time, it must pay a fee that shall be calculated upon an individual basis by HGS for those updates which have been released between the purchase of the diagnostic device and the purchase of Update Plus. Example: When purchasing the diagnostic device, it has in its possession Software Version 1. At the point in time when the Customer opts for Update Plus, Software Version 10 is already available. The Customer must pay a fee for the updates 2 – 9.

#### § 13 mega macs X Licences

With the mega macs X, the range of functions cannot be selected and acquired through updates as described in § 12, but through licences. In the mega macs X, hardware and software are contained in one unit, which enables vehicle diagnosis as with the previous diagnostic devices via a display unit (tablet, PC, etc.). Various licences are available for selecting the scope of functions.

#### § 14 CSC Tool Digital

With CSC Tool Digital, the large-format calibration targets for front cameras are provided digitally by HGS and projected onto the screen of the CSC Tool in the workshop via the associated short-distance beamer. Different purchase and subscription options can be booked in the App Store. The actual calibration process is the same as for the CSC-Tool, CSC Tool SE or CSC Tool Mobile.

#### § 15 Combined Service Packages (e.g. Repair Plus Flat and Pro Packages)

If the Customer purchases service packages which have as their object several of the services described in §§ 10 – 12, then the provisions of §§ 10 – 12 shall apply accordingly.

#### § 16 Warranty

(1) Unless agreed otherwise in these Terms or in the individual case, the warranty shall be based upon the statutory directives. The provision of a warranty in the legal sense shall always require in each case a special written agreement.

(2) For the purchase of goods, fee-based repair orders and software updates in accordance with § 12 Para. 1, the following provisions shall apply:

(a) The warranty for wear parts shall only apply to obvious manufacturing defects. For wear as the result of normal usage as well as for defects caused by improper usage, improper warehousing or improper processing, HGS shall provide no warranty. Wear parts shall be considered to be the following: batteries, accumulators, fuses, protective foils, rubber housings, filters, membranes, valves, lamps, O2 sensors, fan filters, seals and hoses.

(b) A nature of the devices and products with digital elements, content and digital services agreed with HGS always takes precedence over the objective requirements for these products.

(c) The warranty shall be rendered invalid if the Customer, **without HGS's approval, alters the goods, or has them altered by third parties**, and which thus makes the elimination of the defects impossible or unreasonably difficult. In each case, the Customer must assume the additional costs for the elimination of the defects which are created through such a modification.

(d) The supplied goods and/or the software updates must be examined by the Customer immediately after their delivery and/or supplying. If/they shall be considered to have been approved if HGS does not receive a notification of defects in writing or by telefax with regards to obvious defects or other defects which are recognisable during a prompt, careful examination, but nonetheless by no later than within seven working days after the delivery and/or supplying or otherwise promptly, but nonetheless by no later than within seven working days after the discovery of the defect or any earlier point in time in which the defect was recognisable for the Customer during normal usage **and/or usage without any detailed examination. Upon HGS's request**, the goods about which a notification of defects was made must be sent back freight-paid to HGS. This Para. 2 (c) shall not apply to fee-based repair orders.

(e) For a justified and timely notification of defects, HGS shall rectify the defect, as it so chooses, either by making a free-of-charge replacement delivery or repairs (subsequent performance). If the subsequent performance is impossible, fails or is not undertaken within an appropriate extension period set by the Customer, the Customer may demand the reduction of the purchase price or rescission of the agreement or – only in the case of a failed fee-based repair order – a reimbursement of expenditures. This shall also apply if HGS refuses to render subsequent performance owing to disproportionately high costs. If the costs for the fulfilment of the warranty obligations thus increase because the goods about which a notification of defects has been made have been moved after their **delivery to another location than the Customer's** registered office, the Customer shall assume the additional costs. The Customer shall assume the costs created owing to an unjustified notification of defects.

(f) The Customer shall be entitled to assert damage compensation claims only in accordance with § 17 (Liability).

(g) A delivery of second-hand goods that has been agreed with the Customer in the individual case shall be made subject to the exclusion of any warranty.

(3) For the services rendered by HGS that are described in §§ 10 and 11 (Database Usage and Telephone Hotline Support), the following provisions shall apply:

(a) The Customer shall notify HGS promptly of any defects, disruptions or damages which it discovers.

(b) If HGS, through its own knowledge or owing to the notification by the Customer, becomes aware of defects or disruptions in the HGS online database or the Call Centre, HGS shall eliminate the defect or the disruption within an appropriate timeframe.

(c) If an elimination of the defects within an appropriate timeframe is not possible, the Customer may proportionally reduce the fee or, after expressly setting an extension period with the threat of rejecting the delivery which ultimately proves fruitless, terminate the affected agreement. If HGS is responsible for the defect or the disruption, it shall be liable to pay damage compensation in accordance with § 17.

(d) HGS shall provide a warranty only for technical defects within its sphere of responsibility: that is to say, for its online database and the telephone hotline. HGS shall neither be liable for the proper functioning of the hardware and computer software used by the Customer nor for its Internet or telephone connection.

(e) During the selection and maintenance of the data in the HGS online database, HGS shall exercise the due care that is customary for the industry. However, HGS shall provide no warranty for the content-related correctness, currentness and completeness of the data contained in the HGS online database because HGS is dependent in this regard on the supplying of data by third parties and it can examine these data only via random sampling. The provision shall apply accordingly to information provided from the hotline support service.

(4) A nature of the devices and products with digital content, elements and digital services agreed with HGS always takes precedence over the objective requirements for these products.

(5) The statute of limitations period for claims for defects shall amount to one year. It shall begin to run

- In the case of a purchase, at the point in time when risk is transferred (see above § 4 Para. 2), but nonetheless by no later than the delivery of the goods to the Customer;

- In the case of a fee-based repair order, upon the acceptance of the repaired goods by the Customer;

- In the case of a product with digital content, elements and digital services with the start of the agreed provision period, in the case of updated software version with provision of the new version;

- In the case of the hotline support, with the affected telephone call;

- In the case of the usage of the HGS online database, with the affected research.

#### § 17 Liability

(1) The liability of HGS to pay damage compensation – regardless of the legal reason, but particularly arising from the impossibility of making the delivery, delay in making the delivery, defective or incorrect delivery, a contractual violation, violation of obligations during contractual negotiations or tortious acts insofar as culpability respectively exists – be restricted in accordance with this § 17.

(2) HGS shall not be liable in the case of simple negligence on the part of its bodies, legal representatives, salaried personnel or other vicarious agents unless it encompasses a violation of essential contractual obligations. Obligations shall be considered to be contractually essential obligations whose fulfilment only then enables the proper implementation of the agreement at all and on whose fulfilment the contractual partner may regularly rely. These shall be:

- In the case of a purchase of goods or the supplying of updated program versions, the obligation to make timely delivery of goods and/or program versions which are devoid of major defects as well as consulting, protection and custodial obligations which are supposed to enable the Customer to use the goods contractually or are intended to protect the life and limb of the **Customer's personnel or protect its property** from substantial damage;

- In the case of fee-based repairs, the obligation to produce and supply the work product;

- In the case of the accessing of the HGS online database, the obligation to implement reliable operation thereof;

- In the case of telephone hotline support, the obligation to operate the Call Centre with trained personnel in accordance with the contactability policies prescribed in the agreement.

(3) If HGS, based upon the respective merits, is liable to pay damage compensation in accordance with § 17 Para. 2, this liability shall be restricted to the damage which HGS, on the conclusion of the agreement, had anticipated as a potential consequence of a contractual violation, or would have had to have anticipated such a potential consequence of a contractual violation by applying the customary due care required during commercial dealings. Damage compensation must be paid for indirect damage and consequential damage only if such damage would be typically expected during the contractual usage of the goods and/or the usage of the data or information provided by HGS.

(4) If, despite the aforementioned restrictions, HGS does have liability, the liability shall be restricted to an amount of € 20,000.00 per individual case.

(5) The aforementioned liability exclusions and liability restrictions shall apply in the same scope to the benefit of the bodies, legal representatives, salaried personnel and other vicarious agents of HGS.

(6) Insofar as HGS provides technical information or acts in a consulting capacity and this information or consulting has not been stipulated as being in the contractually agreed scope of services, this shall be done upon a free-of-charge basis and subject to the exclusion of any warranty.

(7) HGS shall not be liable for any damage which falls into the technical sphere of responsibility of the Customer or third parties – particularly not for disruptions of the Internet or telephone connection or of the servers.

(8) The restrictions in this § 17 shall not apply to liability owing to intentional wrongdoing, for guaranteed quality features, arising from the loss of life, physical injury or damage to health or in accordance with the German Product Liability Act.

#### § 18 Data Protection

The Customer consents to the storage and processing of its personal data for the purposes of the implementation and winding-up of the contractual relationship. Personal data about the Customer shall be passed on by HGS only if the statutory provisions permit this or the Customer has approved this.

#### § 19 Final Provisions

(1) The law of the Federal Republic of Germany shall apply. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

(2) All agreements must be made in writing. This shall particularly apply to any ancillary agreements, assurances of any kind as well as subsequent contractual amendments and contractual supplements. This shall also apply to the waiver of the written form requirement. With regard to other services to be provided periodically such as Repair Plus Light, Repair Plus, Update Plus, Call Plus Flat and Professional Packages, electronic transmission (e-mail, fax, scan) is sufficient to ensure the written form.

(3) The exclusive place of jurisdiction for all disputes arising from the legal relationships to the Customer shall be Freiburg im Breisgau.

(4) In the event that individual provisions of the agreement with the Customer – including these Terms – should, in whole or in part, be or become ineffective, the effectiveness of the provisions as a whole shall not be affected. The

provision that is ineffective in full or in part shall be replaced by an effective provision whose economic purpose comes as nearest as possible to the economic purpose of the ineffective provision.

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