

# General Terms & Conditions of Business of Heitmann IT Dienstleistungs GmbH

## 1. Scope

1.1 Supplies and services and any other legal transactions involving any of the business operations of Heitmann IT Dienstleistungs GmbH – hereinafter called for simplicity Heitmann ITD – shall be delivered and performed solely in accordance with the following Terms & Conditions of Business in the version valid from time to time and shall be an integral part of the contract, unless stated otherwise in writing in an individual agreement between Heitmann ITD and the contractual partner or client.  
1.2 These Terms & Conditions shall be deemed to have been accepted at latest once the goods or services concerned have been received, even if they are no longer mentioned in later contracts or performances.  
1.3 Any amendments or supplements to a contract must be in writing.  
1.4 Offers made by Heitmann ITD shall be subject to change and non-binding and shall be subject to the proviso that delivery is made to Heitmann ITD by its suppliers.  
1.5 Heitmann ITD shall be entitled to withdraw from contracts should facts supervene which show that the other contracting party is not creditworthy.

## 2. Supply and service

2.1 Drawings, illustrations, weights and measurements and other performance data shall only be binding if such has been expressly agreed in writing. Reasonable technical and design variations from specifications in prospectuses, catalogues and written documents, as well as changes to models, structures and materials as a result of technical progress and further development, are hereby reserved, nor shall any claims against Heitmann ITD be derived therefrom.  
2.2 Heitmann ITD hereby expressly reserves the right to make reasonable part deliveries or part performances and to invoice the same.  
2.3 Agreed delivery deadlines shall be deemed to have been met if the contractual product is handed over to the carrier at the agreed delivery deadline. Should the dispatch of carriage-ready goods be delayed for reasons for which Heitmann ITD is not culpable, the contractual products may be stored at the cost and risk of the contractual partner.  
2.4 The delivery or performance deadline or the delivery or performance time – hereinafter for simplicity always called the Delivery Deadline – shall be agreed in accordance with the probable capacity of Heitmann ITD and shall be non-binding, and shall be subject to the proviso that Heitmann ITD itself receives deliveries in proper time, and to the proviso that no unforeseen circumstances or obstacles prevent it, irrespective of whether these involve Heitmann or the manufacturer, particularly force majeure, measures taken by government, failure to issue official licences, industrial disputes of all kinds, sabotage, lack of raw materials, and non-culpable delay to deliveries of materials. Such events shall extend the Delivery Deadline correspondingly, even if they occur during a delay which has already begun. Any period of grace set by the contractual partner in this case shall be extended by the period of the unforeseen event. Should such events lead to postponement of performance by more than two months, the contractual partner, irrespective of other rights of withdrawal, may withdraw from contract.  
2.5 Following expiry of a non-binding Delivery Deadline, the contractual partner may require Heitmann ITD in writing to supply or deliver. Upon receipt of this demand, Heitmann ITD shall be in default. Should the contractual partner have a claim to damages for default, such damages shall be limited, in case of minor negligence on the part of Heitmann ITD, to a maximum of 5% of the agreed payment. If the contractual partner is a legal entity under public law, a separate public estate, or a trader acting in pursuance of his commercial or freelance occupation, claims for damages shall be excluded in cases of minor negligence. Should the contractual partner withdraw from the contract, as well as claiming damages for default, or should he claim damages in lieu of performance, on expiry of the foregoing six-week period of grace he must also set Heitmann ITD a reasonable period of grace to supply the goods or service. Liability by Heitmann ITD shall be excluded, however, if the loss would have been suffered even if the Delivery Deadline had been met. Should a bindingly agreed Delivery Deadline fail to be met, notice by the contractual partner shall not be necessary in order to place Heitmann ITD in default. The rights of the contractual partner shall be subject to the foregoing regulations.  
2.6 Heitmann ITD hereby reserves the right to withdraw from the contract should the delay to supply or service caused by one of the above events last more than six weeks and Heitmann ITD is not responsible for the same.  
2.7 The agreement on postponement of the Delivery or Performance Deadline must be in writing.  
2.8 In case of default of acceptance, Heitmann ITD, in addition to its claim for payment, shall be entitled either to set a new Delivery or Performance Deadline, or to withdraw from the contract, as it may choose. In case of failure of acceptance, Heitmann ITD may claim damages amounting to 15% of the contractual payment.

## 3. Term and termination

Providing no express written contractual regulation governing claim to performances by Heitmann ITD is agreed elsewhere, claim to performance for an indefinite time is hereby excluded. The contract may be terminated by either Party, giving notice of 6 months to the end of the year. Termination must be in writing.

## 4. Check and transfer of risk

4.1 Upon delivery, the contractual partner must check the goods following receipt to ensure that they are complete and in accordance with the invoice. Should a written complaint fail to be made, to be received by Heitmann ITD within six calendar days following receipt, the goods shall be deemed to have been properly and fully delivered, unless the matter at issue is a concealed defect. Returns of goods delivered will not be accepted without prior written agreement by Heitmann ITD, even if a complaint has been issued about the goods so returned. The contractual partner shall bear the costs and risk of carriage.  
4.2 Minor defects, not diminishing the functional capability of the item of supply or service, shall not entitle the contractual partner to refuse acceptance.  
4.3 Risk shall pass to the contractual partner upon handover of the contractual product to the carrier, his agent or other persons appointed by Heitmann ITD. Should shipping be delayed or become impossible through no fault of Heitmann ITD, risk shall pass to the contractual partner upon notice being issued that goods are ready for dispatch.

## 5. Prices; terms and conditions of payment

5.1 The prices shown at all points or in the individual offer shall be fixed prices ex Bremen. Value Added Tax and other statutory charges in the country of delivery shall be billed separately, as shall packaging, costs of carriage, insurance in transit, and blanket environmental and administrative charges.  
5.2 Heitmann ITD hereby reserves the right to raise prices appropriately if, following conclusion of contract, Heitmann ITD suffers rises in costs, particularly rises due to price increases on the part of suppliers or to fluctuations in foreign-exchange rates. Proof of these cost increases will be supplied on demand.  
5.3 Unless agreed otherwise in writing, all invoices shall be payable without deduction immediately upon receipt. Invoices will be issued with the supply or service.  
5.4 The contractual partner may offset counterclaims against claims by Heitmann ITD only if such counterclaims are undisputed or have been successfully asserted at law; a claim for retention may only be brought if it is based on rights under the contract by virtue of which Heitmann ITD is entitled to the receivable concerned.  
5.5 Insofar as the other contractual party fails to meet the foregoing terms and conditions of payment, Heitmann ITD may at any time require performance or delivery versus cash payment (DVP), advance payment or surety, as it may choose. All outstanding receivables, including those for which Heitmann ITD has accepted bills of exchange, or for which instalments have been agreed, shall be payable immediately.

## 6. Reservation of title

6.1 The contractual product shall remain the property of Heitmann ITD until fulfilment of all claims under the contract; should the contractual partner be a legal entity under public law, a separate public estate, or a trader acting in pursuance of his commercial or freelance occupation, it shall remain so beyond the current business relationship until payment of all claims to which Heitmann ITD is entitled in connection with the contract.  
6.2 Should the contractual partner be in default of payment, including payment due for other and future supplies or services provided by Heitmann ITD, or should the contractual partner become insolvent, Heitmann ITD may withdraw from the contract and, should damages be claimed in lieu of performance, Heitmann ITD shall be entitled to enter the business premises of the contractual partner and seize the goods which are subject to reservation of title. Should payment be made following seizure, Heitmann ITD and the contractual partner hereby agree that this shall be made at the normal market value of the said reserved goods at the time of seizure. The contractual partner shall pay all the costs of seizure and realisation; realisation costs of 5% of the normal market value without proof are hereby agreed, although this sum may be raised or lowered upon proof being supplied by Heitmann ITD or by the contractual partner.  
6.3 Neither exercise of reservation of title nor a lien taken by Heitmann ITD on the goods delivered shall be deemed to be a withdrawal from contract, providing the contractual partner is a trader.

6.4 Goods supplied for test and demonstration purposes shall remain the property of Heitmann ITD. They may only be used by the contractual partner for purposes beyond those of testing and demonstrating following a separate written agreement with Heitmann ITD.

## 7. Guarantee

7.1 The Parties are aware and in agreement that, given the current state of technology, it is not possible to preclude defects in software and hardware under all conditions of use.  
7.2 This being so, all claims by the contractual partner in pursuance of statutory regulations shall expire two years following transfer of risk in the case of a new item of purchase, or one year following transfer of risk in the case of a used item of purchase, in accordance with the following terms and conditions.  
7.2.1 Heitmann ITD hereby guarantees that all contractual products shall be accurately described in their product information and shall be basically operational within this framework. This guarantee, however, shall extend only insofar as the manufacturer of the goods recognises the same. An assurance of characteristic features shall only be deemed to have been given if the specifications in question have been confirmed by Heitmann ITD in writing.  
7.2.2 Heitmann ITD can undertake no guarantee that the program functions will satisfy the contractual partner's requirements or that they will work together in the selection which he has made.  
7.2.3 In particular, guarantee shall not include defects or damage which are due to operational depletion and normal wear and tear, improper usage, operating errors and negligence on the part of the customer, operation using the wrong kind of electricity or voltage, connection to unsuitable sources of electricity, fire, lightning strike, explosion or surges of current on the electrical mains, dampness of any kind, incorrect or defective programs, software and/or processing data, and any expendable items, unless the contractual partner can prove that these circumstances did not cause the defects of which complaint has been made. Guarantee shall further be void if the serial number, designation of type or other labels have been removed or rendered illegible, or should Third Parties other than Heitmann ITD, or Third Parties not authorised by Heitmann ITD, have interfered with the goods during the guarantee period.  
7.2.4 Guarantee claims are non-transferable.  
7.2.5 Notwithstanding the foregoing, should the manufacturer issue any further guarantees, Heitmann ITD shall pass them on to the contractual partner in full, without itself assuming them.  
7.2.6 Goods delivered, or the result of the service supplied, must be inspected immediately following receipt. Complaints must be made in writing, to be received by Heitmann ITD within six calendar days following receipt.  
7.2.7 Should a claim be made under guarantee, a repair shall be made or a replacement supplied, as Heitmann ITD may choose. The contractual partner shall have a duty to accept a replacement delivery, in exchange for return of the defective item. Parts so replaced shall become the property of Heitmann ITD. Should Heitmann ITD fail to repair defects within a reasonable period of grace, to be set in writing, the contractual partner shall be entitled either to rescind the contract or to require a reasonable abatement of price. All further claims are hereby excluded. In particular, Heitmann ITD shall not be liable for any damage not suffered by the article of sale itself, for loss of profit, or for other pecuniary loss on the part of the contractual partner.  
7.2.8 Should a repair be undertaken, Heitmann ITD shall pay the costs of the work. All other costs of repair, and all ancillary costs associated with a delivery – in particular, costs of carriage for the replacement item – shall be paid by the contractual partner, insofar as these other costs are not disproportionate to value.  
7.2.9 Should it transpire, on investigation of a complaint, that there can be no claim under guarantee, Heitmann ITD shall be entitled to require reimbursement of all expenses and to issue an invoice to this effect.

## 8. Limitation of liability

Should Heitmann ITD have a duty under statutory regulations to pay damages in accordance with these Terms & Conditions, its liability shall be limited, should the loss have been caused through minor negligence, as follows: Heitmann shall be liable only if essential contractual duties have been breached, and such liability shall be restricted to foreseeable, typical damages. The foregoing limitation shall be void in cases of loss to life, limb or health. Should the loss be covered by an insurance policy taken out by the contractual partner, Heitmann ITD shall be liable only for the detriment suffered by the contractual partner as a consequence of the loss adjustment, such as higher insurance premiums or interest penalties. Liability is hereby excluded for loss caused by way of minor negligence through a defect in the contractual item. The liability of Heitmann ITD shall remain unaffected, irrespective of whether culpability is present, in cases of fraudulent concealment of a defect, the assumption of a guarantee, or under the Product Liability Act. The consequences of a default of delivery are regulated in Section 2 of these Terms & Conditions. Personal liability by the directors of Heitmann ITD, and by the vicarious agents and servants of Heitmann ITD, for any loss which they have caused due to minor negligence, is hereby excluded.

## 9. Industrial property rights and copyrights of Third Parties

9.1 Cession of software programs shall be made in accordance with the terms and conditions of the respective licensor's licence. The scope of performance will be shown in the licensor's terms and conditions and in the specifications and other user's instructions printed in the relevant users' handbooks or supplied as an electronic file. This shall also apply, and in particular, to restrictions on use.

## 10. Terms & conditions of leasing

The contracting party – hereinafter called the Lessee – hereby offers Heitmann ITD – hereinafter called the Lessor – the conclusion of a leasing contract. It has concluded a purchase contract with the suppliers governing the designated hardware, or a contract governing grant of use of the designated software, in return for payment of a single fee, and hereby commissions the Lessor, by agreement with the suppliers, to enter in its place upon the purchase contract governing the hardware or the contract governing grant of use of the software, on the terms and conditions which it has negotiated, including the supplier's terms and conditions of delivery, which it has accepted. Should the Lessee not have concluded a purchase contract or contract governing grant of use, it hereby commissions the Lessor to conclude corresponding contracts with the suppliers governing the hardware or software – hereinafter also called the Leasehold Item – on the terms and conditions negotiated between itself and the suppliers and confirmed by the Lessee to the Lessor in writing. The Lessee shall be bound to its contractual offer for a period of four weeks following submission of all documents required for the decision on its contractual offer. The leasing contract shall be created only upon written acceptance by the Lessor. Following acceptance, the Lessor shall send the supplier an offer to enter upon the purchase or grant-of-use contract, or to conclude such contracts. The Parties may terminate the leasing contract if a supply contract between the Lessor and the supplier fails to be concluded in a reasonable time.

### 10.1 Breach of duty through failure to deliver or failure to deliver on time

Should the Leasehold Item fail to be delivered, or fail to be delivered on time, the Lessee shall enjoy no claims against the Lessor for fulfilment under tenancy law. Instead thereof, the Lessor hereby cedes to the Lessee his claims against the supplier for failure to deliver, arrears of delivery, and claims and rights arising from guarantees governing the delivery or the characteristics of the Leasehold Item, even if these were given by Third Parties. Not ceded hereby are any claims for reimbursement of payments already made by the Lessor, or claims by the Lessor arising from a rescission of the supply contract and compensation for loss incurred by the Lessor. The Lessee shall have a duty to assert and enforce these ceded rights and claims immediately and at its own cost, even before the courts. Insofar as rights and duties are not transferred to him, he is hereby empowered and bound to assert them in his own name and for his own account, always providing that payments arising from such rescission and against a loss by the Lessor be paid only to the latter. The Lessee must inform the Lessor immediately and constantly about the assertion of any rights. Should the Lessee, on the grounds of the claims ceded, withdraw effectually from the contract, or should the contract be rescinded in connection with a claim for damages in lieu of performance, the Parties shall be entitled to terminate the leasing contract. Should the leasing contract be terminated, the Lessor must reimburse the Lessee for payments which the latter has made on the leasing contract, DVP in return for surrender of the Leasehold Item.

### 10.2 Release

The Lessee shall release the Lessor from all claims under private and public law brought against him by Third Parties as proprietor of the hardware or proprietor of user's rights to the software for transfer of both to the Lessee, or for any other reasons, such as import, delivery, set-up, assembly or use of the Leasehold Item, and shall reimburse the Lessor for any payments already made hereon.

### 10.3 Protection of Lessor's rights

10.3.1 The Lessee shall maintain the Leasehold Item at his own cost in an operationally ready and usable state. He must store a duplicate of the software in such a way as to secure it from fire and theft.

10.3.2 The Lessee shall not, without the Lessor's permission, make changes to the Leasehold Items which harm their essential character or diminish their value, nor shall he cause Third Parties to do so, whether for payment or free of charge. The Lessee shall make knowledge of the software available only to such staff in his business as require it for their jobs.

10.3.3 The Lessor shall be entitled during normal business hours to check on the Leasehold Item and to label it as its own property.

10.3.4 Any movable item which the Lessee may install in the hardware shall become the Lessor's property; the leasing contract shall extend to these installations. The Lessee shall be entitled to restore the Leasehold Item to its original state.

10.3.5 The Lessee shall inform the Lessor immediately of any distraints taken upon the Leasehold Item or the landed property on which it stands. The intervention costs thus incurred by the Lessor shall be paid by the Lessee, insofar as the Lessor is not reimbursed for them.

#### 10.4 Property and price risk

10.4.1 The Lessee shall bear the risk of accidental destruction, loss, total write-off, impairment and destruction of serviceability of the Leasehold Item, for whatever reasons, insofar as the Lessee is culpable. He shall further bear the risk of non-applicability of the software, even if this is due to a defect in the hardware. Should one of these events occur, the Lessee shall have a duty, subject to the following regulations, to continue making the payments which he owes.

10.4.2 Should an event occur as set out in Section 10.4.1, the Lessee shall have a right and duty immediately – and irrespective of whether an insurance or a Third Party must answer for the event – either to repair the Leasehold Item at its own cost, or to replace it by a similar item of similar value and to continue the leasing contract unchanged, or to dissolve the leasing contract prematurely, as it may choose. The Lessee shall inform the Lessor immediately and in writing of the choice which it has made.

10.4.3 Should the Lessee choose premature dissolution, he must pay the Lessor the total leasehold instalments still outstanding up to the next termination date under Section 10.9 and the corresponding final payment, each discounted to present values, plus Value Added Tax. The interest rate governing the discount shall correspond to that set out in Section 10.7.2.a. The sum owed by the Lessee hereunder shall be reduced by any expenditure saved by the Lessor in the further administration of the leasing contract. Title to the hardware shall pass to the Lessee DVP in return for payment of the dissolution charge; software shall be governed by Section 10.10.1 Clause 2 mutatis mutandis.

10.4.4 Should the Lessee choose repair, he must put the Leasehold Item into a proper contractual state and prove this to the Lessor. Should he choose replacement, he must procure title thereto for the Lessor insofar as he does not purchase the replacement hardware from the supplier and must ensure that the supplier of the said replacement software has agreed to the Lessor entering upon the grant-of-use contract in place of the Lessee.

10.4.5 Should the Lessee fail to make his choice immediately, or should he fail within a reasonable period to dissolve the leasing contract, to repair the Leasehold Item or to replace it, as his choice may be, the Lessor shall be entitled to require the Lessee to make premature dissolution of the contract; in such case legal succession shall apply mutatis mutandis as set out in Section 10.4.3.

#### 10.5 Insurance

10.5.1 The Lessee shall insure the hardware during the leasing period at his own cost to replacement value against loss, destruction and damage, by taking out an electronics policy.

10.5.2 The Lessee hereby cedes to the Lessor his rights and claims under such hardware insurance and his claims to compensation for damage to the Leasehold Item.

10.5.3 The Lessor must offset all insurance benefits and compensation paid to it in the case of Section 10.4.3 against the Lessee's liabilities of payment, up to the level of the sum which he owes – such payment to be made in the case of Section 10.4.4 to the Lessee, in return for submission of corresponding vouchers or, should the Lessee have failed to pay the repair or purchase sum, or have failed to pay it in full, such payment to be made wholly or in part to the workshop or supplier of the replacement item.

10.5.4 Insofar as the Lessee has fulfilled his duty to dissolve the leasing contract or to repair or replace the Leasehold Item, the Lessor must re-transfer to the Lessee the insurance claims arising from an event designated in Section 10.4.1 to the sum of the performance which the latter has supplied.

10.5.5 Should an insurer or an originator of loss fail to meet their duties of payment, the Lessee shall have a duty at his own cost and in his own name to enforce against the insurer or originator of loss the rights and claims transferred to the Lessor, such enforcement to include action before the courts, by claiming payment to the Lessor.

#### 10.6 Liability for material defects and deficiencies of title

10.6.1 Whereas the choice of supplier and of Leasehold Item is made solely by the Lessee, claims by the Lessee against the Lessor for material defects and deficiencies of title, or for deficient serviceability of the Leasehold Item, or for the supplier's inability to meet its financial obligations, or for the supplier's insufficient performance, are hereby excluded.

10.6.2 By way of settlement, the Lessor hereby cedes to the Lessee, along with the rights and claims already ceded in Section 10.1 Clause 2, his claims against the supplier, under any purchase or work contract, for failure of contractual performance, particularly the right to subsequent fulfilment, to withdrawal from the supply contract, to abatement or damages, and to claims arising from the breach of contractual and/or pre-contractual ancillary duties. Such assertion of rights and claims shall be governed by Section 10.1 mutatis mutandis. Not hereby ceded, along with the claims set out in Section 10.1, are claims for price abatement and subsequent delivery. Should damages be paid, the Lessor shall have a duty to pay out to the Lessee the sums which he has received insofar as such sums exceed his interest in case of withdrawal from contract.

10.6.3 The Lessee may refuse payment of the leasing instalments as a result of a material defect or deficiency of title (in case of abatement, only pro rata) if it can be proven that the efficacy of the withdrawal or abatement notice is justifiably not disputed by the supplier, or if the supplier justifiably recognises the claim for damages in lieu of performance, otherwise only after he has petitioned the courts for rescission of the supply contract, damages in lieu of performance, or abatement of purchase price. Should the Lessee as a consequence (partially) suspend payment of instalments, and should he continue to use the Leasehold Item, he must either pay the leasing instalments into a trustee account, or submit a bank guarantee for fulfilment of the leasing contract, as the Lessor may choose. Assertion of claims for subsequent fulfilment, including the assertion of such claims before the courts, shall not release the Lessee from his duties of payment.

10.6.4.1 Should the Lessee successfully enforce the claim to supply of a defect-free Leasehold Item, the Lessor hereby agrees that the previous item shall be replaced by a new one of equal value, insofar as title to the new item is transferred to him. The Lessee shall notify the Lessor immediately of the intended replacement of the Leasehold Item. Should the Lessee obtain title to the replacement item from the supplier, the Parties agree here and now that title to the item shall pass in such case to the Lessor. This transfer may be replaced by the Lessor granting the replacement item to the Lessee for use as a Leasehold Item under the terms and conditions of this contract. Should a Third Party be in possession of the replacement item, transfer may be replaced by the Lessee ceding to the Lessor his surrender claim against the said Third Party.

10.6.4.2 In such case the leasing contract shall not commence until transfer of the replacement item. The Lessor shall reimburse the Lessee for leasing instalments paid prior to subsequent delivery, following deduction of a reasonable compensation for use, which must equal at least the compensation for use claimed by the supplier. In lieu thereof, the Lessee may require that the leasing contract be continued as originally agreed. In such case the Lessee must pay the leasing instalments from commencement of contract plus any compensation for use payable by the Lessor to the supplier. Commencement of contract in such case shall be deemed to be the time when the original Leasehold Item was transferred. By way of settlement, when realising the Leasehold Item after the ending of the leasing agreement, the Lessor shall allow the Lessee a reasonable share in the increased proceeds resulting from subsequent delivery under the terms of the regulation set out in Section 10.9.3.

10.6.4.3 The Lessee must inform the Lessor, when notifying him of the intended subsequent delivery, whether he wishes to begin again or to continue the leasing agreement. Should he fail to do this, the Lessor may set him a two-week period of grace to exercise his right of choice, notifying him that, should this period of grace expire without avail, the leasing agreement will be continued in pursuance of Section 10.6.4.2.

10.6.5 Should the Lessee enforce abatement against the supplier, the leasing instalments shall be reduced from the beginning, and the final payment be reduced in accordance with Section 10.9, to the extent that the purchase price is abated. The Lessor shall reimburse the Lessee for any overpayments.

10.6.6 Should the Lessee enforce withdrawal from contract or rescission of supply contract against the supplier due to a claim for damages in lieu of performance, the commercial basis of the leasing contract will be void. The Parties shall be entitled to terminate the contract. In both cases the Lessor must reimburse the Lessee for any overpayments; on the other hand, the Lessor's claim to surrender of the benefits derived by the Lessee shall not be affected thereby.

10.6.7 The Lessee shall have a duty to return the defective Leasehold Item to the supplier, in consideration of the supply of a non-defective item due to withdrawal or in connection with damages in lieu of perform-

ance, only DVP in return for fulfilment of the supplier's or Third Party's duties to the Lessor of payment or of production of title. In relation to the Lessor such return shall be at the risk and cost of the Lessee.

#### 10.7 Leasing period, extraordinary termination

10.7.1 Ordinary termination of the leasing contract before expiry of the agreed leasing period is hereby excluded. The heirs of the Lessee shall have no right of termination. The right of both contracting parties to extraordinary termination of the leasing contract, should there be good reason, shall not be affected thereby. The Lessor shall be entitled to make extraordinary termination of the leasing contract in particular if

- a) the Lessee, not being a consumer under the terms of Section 500 of the Civil Code, is either in default of payment of the leasing instalments for two successive due dates, or has been in default for at least two months to a sum amounting to one leasing instalment;
- b) the Lessee, being a consumer under the terms of Section 500 of the Civil Code, is in default of at least two successive instalments wholly or in part and amounting to at least 10% of the nominal value – should the leasing period be more than 3 years, amounting to at least 5% of the nominal value – and the Lessor has previously set him a two-week period of grace without avail for payment of arrears, with a notification that it will demand the whole residual debt should payment fail to be made within this period,
- c) a major deterioration takes place, following conclusion of contract, in the commercial circumstances of the Lessee and the Lessor's claim to fulfilment of obligations under the leasing contract is thereby endangered;
- d) the Lessee, despite warning, continues a use of the Leasehold Item which is in breach of contract, breaches major duties under this contract, or fails to reverse the consequences of action in breach of contract, thus significantly infringing the Lessor's rights;
- e) the Lessee has made false statements regarding his assets, of a kind liable significantly to endanger the Lessor's commercial interests;
- f) the Lessee suspends his payments, initiation of proceedings in bankruptcy against him is dismissed due to lack of assets, or proceedings for issue of a statutory declaration are brought against him.

10.7.2 Should extraordinary termination be made of the leasing contract, the Lessee shall have a duty to surrender the Leasehold Item immediately. Section 10.10.1 shall apply mutatis mutandis. The Lessor will realise the Leasehold Item freely, as it shall deem fit. The Lessee shall have a duty to compensate the Lessor for any loss sustained through non-fulfilment of the contract. This loss shall be calculated on the difference between

- a) the total of the leasing instalments still outstanding until the next termination date under Section 10.9 and the corresponding final payment without VAT, discounted by the interest rate which would have had to be paid to take up a corresponding loan on the money and capital markets at the time when the leasing contract was concluded – if the leasing rate was amended in accordance with the amendment regulation under "Level and due date of leasing instalments", such interest rate at the time of the amendment – and
- b) the expenditure saved by the Lessor, plus 90% of the net proceeds from the realisation of the Leasehold Item, less the realisation costs. The Parties shall be free to prove that the loss was greater or less than stated.

10.7.3 Should termination be made before acceptance (leasing contract under "Acceptance"), the Lessee must repay the Lessor for outgoings on the purchase price and release the Lessor from all obligations under the supply contract and leasing contract. Title to the hardware shall pass to the Lessee DVP, payment versus release.

#### 10.8 Cession, joint and several debtors

10.8.1 Cession of the Lessee's rights and claims under the leasing contract shall require the written permission of the Lessor.

10.8.2 Lessees and co-responsible parties shall be liable as joint and several debtors.

#### 10.9 Ending the leasing contract

10.9.1 The leasing contract shall be concluded for an indefinite term. The Lessee may not terminate the leasing contract in writing before the end of the month after commencement of leasing designated in the leasing contract, and thereafter only at a date six months later in each case. The period of notice shall be three months.

10.9.2 Should termination be made, the final payments shall be due as agreed in the leasing contract in terms of percent of the net purchase price at each termination date. Statutory VAT must be charged on the final payment.

10.9.3 An offset, amounting to 90% of the proceeds gained from a realisation of the hardware, shall be made against the final payment, up to the amount of the sum due. Should the Lessee, no later than one month after the ending of the leasing contract, conclude a new similar leasing contract with the Lessor, the said realisation proceeds shall be offset fully against the final payment. Realisation proceeds which exceed the final payment shall be offset against the new contract as a bonus. A deficit must be cleared within two weeks following written demand.

#### 10.10 Return, waste disposal of Leasehold Item, reassignment of claims

10.10.1 Following ending of the leasing contract, the Lessee must return the hardware, at his own cost and risk and insured for carriage, to the Lessor at the latter's address: Julius-Faucher-Str. 28 in 28307 Bremen, or to another place designated by the Lessor within the Federal Republic of Germany, or, should the Lessor so require, dispose of it at his cost, in pursuance of statutory regulations. The Lessee must wipe the software and surrender all materials, data carriers, documents and papers belonging to the software to the Lessor himself or to the software supplier, as the Lessor may direct.

10.10.2 Should the Lessee be in continuation of use, leasehold relations shall not be extended beyond the time of the ending of the contract.

10.10.3 Upon the ending of the leasing contract, the Lessee shall cede to the Lessor all claims ceded to him under Section 10.1 and Section 10.6.2 which he has not already pursued before the courts at the time of ending. He shall offset any benefit accruing to the Lessor therefrom against the Lessee's obligations.

#### 10.11 Information, particularly submission of annual financial statements

The Lessee shall have a duty to disclose his commercial circumstances to the Lessor during the leasing period upon demand, and in particular to submit his annual financial statements.

#### 10.12 Data processing

The Lessor shall be entitled, upon commencement of business relations with the Lessee and with a joint and several debtor or guarantor, to store data – including personal data – internally (Section 28 of the German Data Protection Act) insofar as such data are relevant to the handling (e.g. Lessee, joint and several debtors, guarantor, leasing instalments, term of contract, beginning of leasing payments) and execution of the contract (e.g. premature dissolution of contract, termination without notice, institution of legal proceedings, distraints), [and] to use them for handling the contract or offer. The Lessee may at any time require disclosure with regard to the use of such data. Following the ending of the contract, the Lessor shall delete from his databases the data with which he has been supplied, insofar as the Lessee so desires.

#### 11. Subornation of staff

11.1 The client hereby agrees not to suborn any employees of Heitmann ITD during the execution of the order and for one year afterwards, irrespective of whether this is done following inducement by the employee or by the client.

#### 12. General provisions

12.1 The contracting party shall not be entitled to cede his rights under this contract without the prior written permission of Heitmann ITD.

12.2 The place of fulfilment and sole place of jurisdiction for all legal disputes arising directly or indirectly from these contractual relations – insofar as may be effectively agreed in pursuance of statutory regulations – shall be Bremen.

12.3 The law of the Federal Republic of Germany shall apply.

12.4 Orders will be handled within Heitmann ITD using automatic data processing. The contracting partner hereby grants Heitmann ITD his express agreement to storage and processing of data disclosed in the course of contractual relations and required for handling the order, in pursuance of statutory regulations on data protection.

12.5 Should one or more provisions in these General Terms & Conditions of Business be or become ineffective, or should the text of this contract contain a lacuna, the contracting parties shall replace or supplement such ineffective or incomplete provisions by suitable and effective regulations reflecting the commercial intention of the intended regulation. The efficacy of the remaining provisions shall not be affected thereby.

Status: October 2004