

General terms and conditions



Provision and maintenance of UNISERV Standard Software by Uniserv GmbH, Rastatter Str. 13, 75179 Pforzheim As of April 2017

1. Scope of application and formation of contract

- 1.1. In all contractual relations in which UNISERV GmbH (hereafter UNISERV) provides to other companies juristic persons under public law or special assets under public law (hereafter „Client“) UNISERV software or the maintenance thereof, these GTC shall, unless otherwise provided for, apply exclusively to the version valid at the time of contract formation. The regulations shall also apply to pre-contractual relations.
- 1.2. For any third-party software provided by UNISERV, the following regulations for UNISERV software shall apply unless otherwise regulated in these GTC or in UNISERV's offer.
- 1.3. The ordering of services governed by this contract shall be effected exclusively via written UNISERV Offer signed by the customer („UNISERV Offer“) or by means of the Client's written order and the receipt of UNISERV's confirmation of order („UNISERV Confirmation of Order“) by the Client.
- 1.4. Appendices shall form part of the agreement only where they are explicitly referred to in these GTC, the UNISERV Offer or the UNISERV Confirmation of Order.

2. Definitions

- 2.1. In the sense intended by these GTC, Application Programming Interfaces („API“) refers to application programme interfaces that allow other software products to communicate with or invoke UNISERV software.
- 2.2. „Working days“ refers to the weekdays of Monday to Friday (8am to 6pm CET) not including bank holidays in the German state of Baden-Württemberg or 24 or 31 December.
- 2.3. „Documentation“ refers to UNISERV's technical and/or functional documentation relating to UNISERV's software and supplied to the Client together with the UNISERV software.
- 2.4. „Third party software“ refers to (i) all standard software products and related documentation, including content, developed for or by companies other than UNISERV or its affiliated companies and that is not UNISERV software; (ii) all new versions (especially releases, updates, patches and corrections) of this third-party software and (iii) all complete or partial copies thereof.
- 2.5. „Business partner“ refers to a natural or juristic person who, as part of the Client's internal commercial procedures, requires access to UNISERV software (e.g. Clients and their distributors and/or suppliers).
- 2.6. „Instance“ in the sense intended by these GTC is a physical or virtual instance that contains a logical instance with specific configuration and data.
- 2.7. „IP rights“ (or „intellectual property rights“) refers without limitation to all patents and other rights to discoveries, copyrights, brands, registered designs and other trademark rights and all disposal and usage rights associated therewith.
- 2.8. A „named user“ is an employee of the Client entitled to access UNISERV software via access rights registered personally to him.
- 2.9. „Maintenance“ refers to the UNISERV support agreed to for UNISERV software.
- 2.10. A „request“ is a request from an application (Client) to the UNISERV software (server) to, for example, check or correct an address, bank details or the identification of a business partner.
- 2.11. „UNISERV software“ refers to all (i) standard software products, tables and related documentation developed for or by UNISERV or its affiliated companies; (ii) new versions (especially releases, updates, patches and corrections) of this UNISERV software, and (iii) complete or partial copies thereof.
- 2.12. „Software contract“ refers to a specific contract between UNISERV and the Client together with any agreements for the maintenance of UNISERV software and/or third-party software that relates to these GTC.
- 2.13. „Affiliated companies“ are companies that are majority-owned and have majority ownership in the sense intended by §§ 15, 16 of the Stock Corporation Act [Aktiengesetz – AktG].
- 2.14. „Confidential information“ refers to all information that UNISERV and the Client protect from unqualified transfer to third parties or that is to be treated as confidential considering its content or the circumstances surrounding its transfer, such information to be included in the software contract itself. The following UNISERV information shall always be regarded as confidential: information relating to research and development, product offerings, pricing and availability of UNISERV products; and all UNISERV software, programmes, tools, data or other material provided to the Client by UNISERV prior to contract or on the basis of the software contract.

3. Supply of UNISERV software

- 3.1. UNISERV shall supply UNISERV software in accordance with the product description in the UNISERV offer within one month of contract formation and in the version current at the time of supply. The UNISERV source code shall not form part of the contract.
- 3.2. For the functional properties of the UNISERV software, the product description shall be definitively relevant. UNISERV shall be under no obligation to provide any additional functionality in the UNISERV software. No such obligation shall be inferred by the Client from any other verbal or written descriptions or representations of UNISERV software or from any sales discussions held with UNISERV, unless such additional functionality has been explicitly agreed in writing by UNISERV. Any guarantees must be accompanied by explicit written confirmation from UNISERV management.
- 3.3. For UNISERV software that provides solutions on the basis of approximation procedures (matching algorithms), the following shall apply: such software can provide logically correct results only within specific probabilities. Such procedures allow information to be classified in cases where the key information to be used for the classification does not match precisely on a character-for-character basis, as is required by usual data processing procedures. The approximation procedures are necessary to reconcile differences in data quality, the various address sources and differing levels of up-to-dateness as well as different forms of representation, incomplete data, abbreviations, etc. The approximation procedures have been and shall be developed from a perspective based on the usual number of correct decisions, i.e. with approximation procedures, the likelihood of reaching a specific quality of results partly depends on the parameters chosen or the underlying data structure or content of the data. This means that, in any specific application, such cases may arise that would have been decided differently if manual decision-making had been involved. Any discrepancies between a possible manual allocation and an actual automated allocation shall not imply any fault or defect. The Client shall not be entitled to require UNISERV to make any amendments to the allocation algorithms that are based on similarities or approximation procedures; amendments to procedures shall not form part of any contractually agreed properties.
- 3.4. UNISERV software is partly based on data and files from third-party suppliers. UNISERV accepts no liability for the accuracy, completeness or up-to-dateness of such data or files. This shall also apply to availability and deadlines for updating.
- 3.5. At UNISERV'S discretion, software shall be provided either by UNISERV sending the UNISERV software on DVD or other data storage media to the Client's agreed delivery address (physical dispatch) or by UNISERV making it available via download (electronic delivery). For adherence to delivery deadlines and the transfer of risk, the relevant date shall, in the case of physical dispatch, be the date on which UNISERV passes the data storage media to the delivery agent and, in the case of electronic delivery, be the date on which the Client's access to the software in question is set up and the Client informed thereof. For the orderly transfer of data via the Internet, for the freedom of data/messages from viruses, UNISERV shall bear no liability for the accuracy of data transfer and for unauthorised access to data by third parties in the context of electronic delivery.
- 3.6. Insofar as individual functions or components of UNISERV software enable the web-based usage of third-party services or access to third-party data or content, UNISERV shall likewise bear no liability for such services, data or content.
- 3.7. Additional services such as installation, implementation, instruction (incl. initial instruction) or training of the Client's staff, adjustment or parameter setting, software settings, modification and consultancy are not included and shall be subject to separate remuneration as part of separate agreements and under different GTC, which UNISERV shall be under no obligation to form.

4. Scope of usage of UNISERV Software

- 4.1. In relation to the Client, all rights to UNISERV software, especially copyright and rights to inventions, as well as technical commercial property and IP rights are reserved exclusively by UNISERV and/or its licensors. This shall also apply where UNISERV software is created on the specification or with the cooperation of the Client. For the usage of the UNISERV software that is the subject of contract, the Client shall be granted only those authorizations specified below. The preceding sentences 1 to 3 shall also apply to all UNISERV software, items, work results and information supplied to the Client as part of the introduction and performance of contract, including subsequent performance and maintenance.
- 4.2. The Client shall have non-exclusive usage rights to the UNISERV software unlimited in time and limited in accordance with the UNISERV Offer (purchase contract). For

- tables intended for reference data management, a simple, time-limited usage right shall exist only in combination with the latest version of UNISERV software for the purposes of address management („table subscription“) (rental contract). Transfer of the data contained in the tables to any third party and usage without UNISERV software is not permitted.
- 4.3. The Client shall use the UNISERV software only to the extent contractually specified in the UNISERV Offer. The authorisation to use UNISERV software shall be limited to the extent agreed, even if the software is provided without any technical restrictions and even if the Client can thereby technically access or install other or additional elements.
- 4.4. **Single-user licence:** The Client shall install the UNISERV software only on one computer (central unit) and may use it only at this workstation. Should the Client change the hardware concerned, it must delete the UNISERV software from the hardware used up to that point. Any contemporaneous saving, holding in reserve, usage on more than one piece of hardware, installation on a server or usage within a network is not permitted.
- 4.5. **Network licence:** The Client may install and use the UNISERV software within a network. Parallel installation on multiple physical or virtual servers or in multiple instances is not permitted. However, for real-time UNISERV software, parallel installation on multiple physical or virtual servers, and usage on multiple servers or in multiple instances, shall be permitted provided that the UNISERV software is managed by the same licence server.
- 4.6. **Special licence:** Any usage of UNISERV software that exceeds that provided for by the licences referred to in 4.4. and 4.5 shall be subject to special agreement with UNISERV, which UNISERV shall be under no obligation to conclude, and to special remuneration.
- 4.7. In regard to third-party software that is the subject of contract, the Client shall only have such rights as are required for its usage in conjunction with UNISERV software. Details of the licence governing third-party software can be found in the product description or the UNISERV Offer.
- 4.8. Unless explicitly provided for in these GTC, the Client shall not copy, duplicate or modify UNISERV software.
- 4.9. The Client shall use UNISERV software only for internal operational purposes. All additional rights, especially the right to distribute, lease, translate or modify UNISERV software or make it publicly accessible, shall remain the exclusive reserve of UNISERV. The processing of third-party data, especially at a data centre or by affiliated companies, is strictly prohibited. Further details shall be determined by UNISERV's Offer or Confirmation of Order.
- 4.10. Prior to any decompilation of UNISERV software, the Client shall, in writing and with an appropriate period of notice, request UNISERV to provide the information and documents necessary for the creation of interoperability. Only after the expiry of the notice period without success, shall the Client be entitled to carry out decompilation within the limits of § 69e of the Copyright Act [Urheberrechtsgesetz – UrhG]. Prior to the engagement of any third party (e.g. under the terms of § 69e para. 1 no. 1, para. 2 no. 2 UrhG), the Client shall provide UNISERV with a written declaration from the third party to the effect that the third party assures UNISERV that it shall adhere to the provisions of Section 4.
- 4.11. Should the Client receive a new version of UNISERV software (e.g. as part of ongoing improvement or software maintenance) that replaces a previous version of the software, the Client's usage rights shall cover only the most recent version. Usage rights to the previous version shall expire as soon as the Client starts to use the new version on its productive systems, although the Client may use the new version for three (3) months for test purposes alongside the old productively used version. The replaced version shall be subject to the provisions of Section 9.
- 5. Provision to third parties**
- 5.1. Only in its whole and intact form may UNISERV software acquired from UNISERV under a purchase contract (including UNISERV software acquired through additional purchases or as part of maintenance) be supplied by the Client to any third party. Provisional or partial provision to third parties and provision to multiple third parties are forbidden. The restrictions imposed by sentences 1 and 2 shall further apply to corporate restructuring and legal successors (e.g. under the Corporate Restructuring Act [Umwandlungsgesetz]).
- 5.2. In cases of the Client's permitted whole and intact provision of UNISERV software to a third party (new user), the following shall apply: The Client shall give up in full and definitively its usage of UNISERV software and shall transfer all copies to the new user or put them beyond use. The Client shall allow the new user access to the usage and provision conditions contained in the contract for the UNISERV software provided. The parties shall provide UNISERV with written confirmation thereof.
- 5.3. The Client shall not provide to any third party any UNISERV software acquired by the Client in any way other than via a purchase contract.
- 6. UNISERV software maintenance with additional regulations Rental contract**
- 6.1. For rental contracts (table subscriptions), maintenance is included in the service and can be ended only with the rental contract. For UNISERV software acquired under a purchase contract, maintenance is provided on the basis of a separate maintenance contract.
- 6.2. UNISERV maintenance services for UNISERV software encompass only the following services:
- 6.3. **Update/release service:** this includes the provision of the latest developed programme version of the UNISERV software and the table subscription. New versions may rectify errors in previous versions and/or alter and/or improve existing functions or contain new functions. The update/release service does not contain:
- separately offered additional functions for standard UNISERV software;
 - redevelopment of standard UNISERV software in the sense of a new product or product cycle, but rather the same or similar functions on another technological basis;
 - the provision of versions for operating systems not specified in the UNISERV Offer or Confirmation of Order;
 - third-party operating systems, databases or other middleware components no longer maintained by their manufacturers as part of standard maintenance.
- 6.4. **Hotline support:** this includes user support over the phone
- for operating or usage queries;
 - for fault analysis, work-arounds and fault avoidance.
- The UNISERV hotline is available to the Client during normal working hours.
- 6.5. Not included in maintenance is individual fault rectification for the Client following expiry of the period allowed for claims and rights pertaining to software faults. Such rectification shall be provided either
- before the expiry of the aforementioned period as part of agreed liability for faults;
 - as part of separate agreements.
- 6.6. Services not provided as part of maintenance, and especially those not provided as part of the update/release service, shall be provided by UNISERV only against additional remuneration that forms part of separate agreements, which UNISERV shall be under no obligation to form.
- 6.7. UNISERV reserves the right to adapt its maintenance service offering in light of developments in its software and latest technical developments. If such service modification may adversely affect the Client's legitimate interests, UNISERV shall provide the Client with a written or electronically sent notification and shall refer the Client to its right to terminate as set out below and to the consequences of not exercising such a right. The Client shall be entitled to terminate the service contract early subject to two months' notice prior to the date on which the modification is due to come into effect (special right of termination). If the Client does not avail itself of its right to terminate, maintenance will continue to be provided with the service as modified. The same shall apply for the modification of these GTC in relation to rental contracts, provided such modification does not result in changes to the rental contract that would have a material effect on the *quid pro quo* between the parties and provided the change is reasonable for the Client.
- 6.8. UNISERV shall, in accordance with its release strategy and as part of the life-cycle of its software, provide maintenance services for the current version of the software concerned as well as for older versions. Maintenance of third-party software by UNISERV may require the involvement of support services from the third-party supplier concerned. If third-party providers can no longer provide UNISERV with the support services required, UNISERV reserves the special right to terminate that part of the maintenance contract that relates to the third-party software in question, such right to be subject to an appropriate notice period of at least three months to the end of a calendar quarter.
- 6.9. For the material and legal defects of software provided as part of maintenance or rental contracts, Section 11 shall apply. Withdrawal from contract shall be replaced by extraordinary termination of the maintenance or rental contract. The subject of any potential right of reduction shall be the remuneration owed under the maintenance or rental contract. Strict liability for faults already existing, as per § 536 para. 1 of the Civil Code [Bürgerliches Gesetzbuch – BGB], at the time of contract formation shall be excluded in the case of rental contracts.
- 6.10. Unless otherwise specified in the UNISERV Offer, every maintenance contract and rental contract shall be valid for at least twelve (12) months from the date of its formation („minimum contractual period“). Thereafter, both the rental contract and the software maintenance contract shall renew automatically for a further year („extension“).
- 6.11. Maintenance contracts and rental contracts can be terminated in writing subject to three months' notice to the end of the extension period but not until the minimum period has expired. The right to extraordinary termination and to terminate for cause is reserved.
- 6.12. Termination for cause must be made in writing. The provisions for grace periods in Section 14.1 shall apply. UNISERV reserves the right to terminate for cause especially in the event of repeated or gross dereliction of essential contractual obligations. In such cases UNISERV shall be entitled to claim remuneration arising up to the point of termination and can claim immediate lump-sum compensation of up to 60% of the fee that would have been payable up to the date on which the client would have first had the opportunity to terminate. The Client reserves the right to prove a lesser loss by UNISERV.
- 6.13. UNISERV shall provide maintenance remotely via remote desktop sharing HTTPS or via another secure access. The Client shall for this purpose provide stable remote access via a secure Internet connection from UNISERV to the UNISERV software concerned. For this purpose, UNISERV shall require, and the Client shall provide, administrative rights to the server, functioning and unrestricted Internet access and a suitable hardware and software infrastructure. Performance of service at the Client's premises is not covered by the remuneration.

7. Additional purchase

- 7.1. UNISERV must be informed in writing of any use of UNISERV software exceeding contractual agreement. Such use requires a separate contract to be concluded with UNISERV for the additional scope of use („additional purchase“).
- 7.2. UNISERV reserves the right to carry out an annual inspection of the use of its software in the form of a written declaration by the Client. As an exception, UNISERV may also perform remote evaluation insofar as the Client fails to provide a declaration or insofar as the declaration fails to provide any meaningful insight and there are objective grounds for suspecting a breach of obligation by the Client. The Client shall provide UNISERV with appropriate cooperation in the carrying out of such assessments, especially by providing the requisite access to systems during remote and on-site assessments. For on-site assessments, UNISERV shall provide appropriate notice. Due allowance will be made for the confidentiality of the Client's interests and the protection of its commercial operations from impairment. If the assessment results indicate non-contractual usage, the reasonable costs incurred by UNISERV as part of the assessment shall be borne by the Client.
- 7.3. Should it become apparent from the Client's declaration or in another way that the Client's usage of UNISERV software exceeds the contractually agreed usage, a contract of sale is to be concluded with UNISERV, to which extent UNISERV reserves the right in such cases not to apply any agreed discounts in excess of the contractually agreed volume discounts. Section 7.1 sentence 2 shall apply. The right to compensation and to charge default interest as per Section 8.4 is reserved.

8. Remuneration, payment, reservation

- 8.1. The Client shall pay UNISERV the contractually agreed remuneration for the provision and maintenance of UNISERV software. Discounts are not guaranteed.
- 8.2. The Client may offset amounts payable only against uncontested or legally upheld claims and may base the right to retain payment solely on uncontested or legally upheld claims. The Client shall not, without prejudice to the provisions of § 354 a of the Commercial Code [Handelsgesetzbuch – HGB], assign its claims to any third party.
- 8.3. UNISERV reserves all rights to its software, especially versions provided as part of the maintenance contract, until full and complete settlement of its claims under the software contract. The Client shall inform UNISERV immediately in writing of any attempt by a third party to access UNISERV services that are subject to reservation and shall inform the third party or parties concerned of UNISERV's rights.
- 8.4. Payment is due within 14 calendar days of invoice date. Late payments will incur interest at the statutory rate for default. For software purchase contracts, invoices are submitted following delivery of the software. For software maintenance contracts and software rental, payment is due when the contract commences. Payment is due annually in advance.
- 8.5. After the third contractual year or the corresponding extension, UNISERV reserves the right at its discretion to adjust its fees for maintenance and rental, subject to two months' written notice and adherence to the following provisions:
 - 8.5.1. UNISERV may adjust its fees to the extent to which the index specified in 8.6.2 has changed (adjustment limit). For the first fee adjustment, the adjustment limit shall be the difference between the index level published at the time of contract formation and the most recently published index level at the time of the adjustment declaration. If a fee adjustment has already taken place, the adjustment limit shall be defined by the difference between the most recent index level at the time of the previous adjustment declaration and the most recent index level at the time of the new adjustment declaration.
 - 8.5.2. The adjustment level shall be based on the index of average gross monthly wages for full-time employees in Germany in the IT services sector (currently published quarterly by the Federal Statistics Office [Statistisches Bundesamt] as Fachserie 16, Reihe 2.4, Gruppe J 62. Should this index no longer be published, the adjustment level shall be based on whatever index is published by the Federal Statistics Office that shows the most recent growth of average gross monthly wages in the aforementioned sector.
- 8.6. In the event that remuneration is adjusted by 10% or more, the Client reserves the right to terminate the agreement within two weeks of receipt of the adjustment declaration, the termination to take effect at the end of the contractual period (special right of termination). UNISERV shall refer to this right in the adjustment declaration.
- 8.7. All prices are subject to sales tax at the statutory rate applicable at the time.

9. End of usage rights

- 9.1. In all cases of the ending of usage rights (e.g. withdrawal, expiry of agreed contract duration or termination), the Client shall immediately cease use of the UNISERV software and confidential information and take steps to secure and transfer its data. The Client shall not be entitled to retain the software intended for the usage of data. The Client shall within one month of the end of its usage entitlement destroy all copies and all forms of the UNISERV software and confidential information in such a way that they cannot be retrieved or reproduced, or shall at UNISERV's request transfer to UNISERV all copies of UNISERV software and the confidential information, unless retention for a longer period is prescribed by law, in which case, the return or destruction shall take place at the end of this period.
- 9.2. The Client shall assure UNISERV in writing that it and all its affiliated companies have satisfied the obligations provided for here in Section 9.

10. Client's duty of cooperation

- 10.1. The Client shall inform itself of the essential functional characteristics of the UNISERV software and its technical requirements (e.g. in relation to database, operating system, hardware and data storage media). It shall bear the risk of the UNISERV software failing to conform to its requirements and circumstances. In case of doubt, the Client may consult a UNISERV consultant or third-party specialist prior to contract formation.
- 10.2. The Client shall be responsible for the environment in which the UNISERV software operates („IT infrastructure“), where necessary in accordance with UNISERV's specifications. It shall ensure the orderly operation of the requisite IT systems, where necessary by concluding maintenance contracts with third parties. The Client shall especially observe the specifications of the product description and any notices issued by UNISERV.
- 10.3. The Client shall cooperate in the performance of contractual services to the extent required and without remuneration, such cooperation to take the form, for example, of providing staff, working areas, IT systems, data and telecom equipment. The Client shall ensure UNISERV has access, both directly and via data transfer, to UNISERV software and IT systems.
- 10.4. The Client shall nominate an employee to be the main contact for UNISERV. The contact must be able to take or immediately procure the necessary decisions for the Client. The contact shall ensure the partnership with UNISERV is productive and cooperative.
- 10.5. Prior to operational use, the Client shall test the UNISERV software to ensure it is free of defects.
- 10.6. The Client shall put in place appropriate precautions (e.g. data security, fault diagnosis, regular inspection of results) for the eventuality that the UNISERV software either wholly or partly does not work properly. Unless explicitly informed otherwise in writing in any individual case, all UNISERV staff engaged in the provision of services shall assume that all data, with which they come into contact, is secure.
- 10.7. With respect to all supplies and services provided by UNISERV, the Client shall assume responsibility for inspection and notification of faults as per § 377 HGB. Faults must be declared by the Client in writing with an exact description of the problem. Only the contact (see 10.4) may provide notice of faults.
- 10.8. The Client's duty to cooperate is a cardinal contractual duty and a prerequisite for the orderly performance of service by UNISERV.
- 10.9. Any disadvantage or additional cost incurred by the Client's breach of its obligations shall be borne by the Client.

11. Material and legal defects, miscellaneous disruptions to service

- 11.1. UNISERV guarantees the agreed properties (Sections 3.2 - 3.4) of its software in accordance with sales law and that the transfer of the agreed usage authorisations to the Client does not infringe any third-party rights.
- 11.2. In the event of proven material defects, UNISERV guarantees it will by way of subsequent performance provide the Client with a new, defect-free software version or rectify the fault, the choice being at its discretion. Fault rectification may also consist of UNISERV explaining to the Client how the Client can reasonably avoid the effects of the fault. In the event of proven legal defects, UNISERV shall guarantee by way of post performance that it shall provide the Client with the opportunity to use the UNISERV software legally and defect-free or shall provide substitute or modified software of equal value, the choice being at its discretion. The Client shall accept and use a new software version if the contractual functional scope is the same and the acceptance and usage of the new software is not unreasonable.
- 11.3. If two attempts at subsequent performance fail, the Client shall be entitled to specify a reasonable deadline for the rectification of the fault. The Client shall state explicitly and in writing that, in the event of further failure, it reserves the right to terminate the contract or to reduce remuneration. If, following expiry of this deadline, subsequent performance fails definitively, the Client shall be entitled to affect the extraordinary termination of the contract or to a reduction in remuneration. The requirements of Sections 14.1 and 14.6 must be observed during subsequent performance. Any compensation or reimbursement of failed expenditure paid by UNISERV as a result of a fault shall be subject to the restrictions of Section 12.
- 11.4. The expiry period for claims brought under Sections 11.1 to 11.3 shall be one year and shall commence with the delivery of the UNISERV software. This shall also apply for claims brought as a result of termination or reduction as per Section 11.3 sentence 1. The shortening of the expiry period shall not apply in the event of malice or gross negligence on the part of UNISERV, of intentional concealment of a fault, or of personal injury or legal defects in the sense intended by § 438 para. 1 no. 1 a BGB. Strict liability for defects already in existence on formation of contract as per § 536 a para. 1 BGB is hereby excluded.
- 11.5. For defects in the subsequent performance of services, work-arounds or new deliveries supplied by way of subsequent performance, claims shall expire at the point specified in Section 11.4. If, with the Client's agreement, UNISERV is in the process of inspecting a fault or providing subsequent performance, the expiry period shall however be held in abeyance until UNISERV notifies the Client of the result of the inspection or declares subsequent performance to be complete or declines to provide subsequent performance. Expiry shall then be no sooner than three months after the end of the abeyance period.
- 11.6. Should UNISERV, in the course of searching for or rectifying faults, provide services without being obliged to do so, it reserves the right to be paid a fee in accordance

with its most recent price list. This shall especially apply if a material fault of which notice has been provided cannot be proved or is not attributable to UNISERV or if the UNISERV software has been used in a way that does not conform to the product description or contractual agreement. Especially to be remunerated is the extra expense incurred by UNISERV in the rectification of faults caused by the Client's failure to conform to its duty of cooperation, by the Client's improper usage of the software or by the Client's failure to avail itself of the UNISERV services that UNISERV has recommended.

- 11.7. Should a third party bring a claim against the exercise of the contractual authority of usage, the Client shall immediately provide UNISERV with full written details. Should the Client cease to use the UNISERV software on the grounds of damage limitation or other significant grounds, it shall inform the third party that such cessation does not imply any acknowledgement of the claimed infringement of rights. The Client shall enter into court proceedings with the third party only with the agreement of UNISERV or only on authorising UNISERV to conduct the proceedings.
- 11.8. Should UNISERV fail to provide services beyond the scope of its liability for material or legal defects, or fail to provide such services properly, or should UNISERV commit any other breach of obligation, the Client shall inform UNISERV in writing and allow a period for subsequent performance that allows UNISERV the opportunity to properly perform the service or to procure the necessary assistance. Section 14.1 shall apply. For compensation or the reimbursement of failed expenditure, the restrictions specified in Section 12 shall apply.

12. Liability

- 12.1. In all cases of contractual and non-contractual liability, the compensation paid by UNISERV or its reimbursement of failed expenditure shall be limited as follows:
- (a) In the event of malice, UNISERV shall bear full liability. In the event of gross negligence or the failure of a function that UNISERV has guaranteed, UNISERV shall be liable for the foreseeable damage that the duty that has been breached or the guarantee should have prevented;
 - (b) for other cases, only in the event of the breach of an essential duty (cardinal duty) and up to the liability limits specified in the following sub-paragraph. A cardinal duty in the sense intended by Section 12.1 (b) shall be deemed to have been breached with the breach of a duty whose performance makes the orderly performance of contract possible or whose breach jeopardises the attainment of the contractual purpose and on adherence to which the Client ought regularly be able to rely. In cases provided for by Section 12.1 (b), liability shall be limited to EUR 200,000 per loss event and to a total of EUR 500,000 for the contract.
- 12.2. The objection of contributory fault shall be allowed. The liability limits specified by Section 12.1 shall not apply in cases of liability for personal injury or for liability under the Product Liability Act [Produkthaftungsgesetz – ProdHaftG].
- 12.3. For all claims brought against UNISERV for compensation or the reimbursement of failed expenditure in the event of contractual or non-contractual liability, the expiry period shall be one year, the expiry period to commence at the time specified in § 199 para. 1 BGB. It shall come into force at the latest within five years of origin of claim. The provisions of sentences 1 to 3 of this paragraph shall not apply in cases of liability for malice or gross negligence or personal injury or for cases covered by the Product Liability Act. The derogating expiry period for claims brought as a result of material or legal defect (Sections 11.4 and 11.5) shall remain unaffected by the provisions of this paragraph.

13. Confidentiality, data protection

- 13.1. The parties shall, without limit in time, treat in confidence all confidential information provided by the other party prior to and during performance of contract and shall use such information solely for the performance of contract. The duplication of confidential information in any form is forbidden unless it is duplicated for the purposes of contract performance. Duplications of the confidential material of the other party must contain all the notes and comments relating to its confidential or secret nature that are contained in the original. In relation to the other party's confidential information, each party shall (a) take all reasonable measures (as defined below) to treat all confidential information in confidence and (b) allow access to the other party's confidential information only to such persons who need it for the purposes of performance of contract. In the sense intended by this agreement, 'reasonable measures' are such measures that the recipient takes for the protection of its own comparable confidential information and that at least represent due care; for the Client, this shall include careful custody and the protection of the confidential information against misuse.
- 13.2. The above Section 13.1 shall not apply for confidential information that (a) the recipient has developed independently without recourse to the disclosing party's confidential information or that it has acquired lawfully from a third party without any obligation to confidentiality, subject to the third party being entitled to provide this confidential information; (b) has become publicly accessible without any breach of contract on the part of the recipient; (c) was without restriction known to the recipient at the time of the disclosure; or (d) is exempted from the above provisions following the written permission of the disclosing party.
- 13.3. The Client shall treat the provisions of this contract, especially the prices contained therein, in confidence. Neither party shall use the name of the other party in publicity, advertising or similar material without the other party's express prior written permission. In derogation herefrom, UNISERV shall nonetheless be per-

mitted to use the client's name in sample client lists and produce analysis (e.g. for requirements forecasting) based on the contractual content and – subject to mutual agreement – use the Client's name in other UNISERV marketing activities.

- 13.4. The parties shall be bound by the applicable data protection laws. The concluding provisions regarding the parties' obligations under data protection law shall be separately agreed in the event of possible order data processing.

14. Closing provisions

- 14.1. Partnership requires a high degree of trust, cooperation and willingness to agree. Any statutory or contractual deadlines stipulated by the Client must, except in cases of urgency, allow for a period of at least ten working days. Should the unsuccessful expiry of a deadline entitle the Client to dissolve the contract (e.g. by withdrawal, termination or compensation in place of performance) or to reduce remuneration, when setting the deadline, the Client must provide written warning of these consequences of unsuccessful expiry. Following the expiry of a deadline stipulated under sentence 2, UNISERV can require of the Client that any rights resulting from the expiry of the deadline be exercised by the Client within two weeks of receipt of the requirement.
- 14.2. UNISERV can accept offers from the Client within four weeks. Offers from UNISERV are non-binding unless agreed otherwise in writing. In cases of doubt, the Offer or Confirmation of Order issued by UNISERV shall be decisive for the content of the contract.
- 14.3. Dates are non-binding unless expressly agreed in writing as binding. Should UNISERV have to wait for the cooperation of the Client or for information from the Client, or is impeded in its performance by strike, lock-out, official intervention or other circumstances for which it is not responsible, delivery and performance deadlines shall be considered extended by a period equivalent to the duration of the impediment plus an appropriate ramp-up period following the end of the impediment. UNISERV shall inform the Client of the impediment.
- 14.4. UNISERV software is subject to the export control laws of Germany. The Client shall not export it to countries or to natural or juristic persons who are subject to export bans under the applicable export laws. The Client is further responsible for adhering to all applicable regulations in the country where its head office is located and in other countries in relation to the use of UNISERV software by the Client and its affiliated companies.
- 14.5. For all contractual and non-contractual claims, German law shall apply exclusively with the exclusion of UN sales law. Conflict-of-laws rules shall not apply. The exclusive jurisdiction for all disputes arising from and pertaining to the contract is UNISERV's head office. This jurisdiction agreement shall also apply to foreign Clients.
- 14.6. Amendments and addenda to contract and all declarations of intent relevant to the contract and all declarations of the exercise of the right to alter a legal relationship, and especially terminations, warnings or the stipulation of deadlines, must be made in writing. This requirement shall also apply to the rescission of the requirement for the written form. The requirement for the written form can be satisfied by the exchange of letters or (apart from in the case of terminations) by electronically conveyed signatures (fax, scanned signatures sent via email or other agreed electronic process for the formation of contracts). § 127 Abs. 2 and 3 BGB shall otherwise not apply.
- 14.7. Conditions of the Client that contradict or add to the contract, especially general terms and conditions, shall not be deemed part of contract even if UNISERV concludes a contract without explicitly rejecting such conditions.
- 14.8. Other services not covered by the explicit descriptions of service of this contract are to be agreed separately. In the absence of any derogating agreement, such services shall be governed by UNISERV's general terms and conditions for services as of 2012 and remuneration shall be governed by the UNISERV list of prices and conditions applicable at the time.