General Terms and Conditions of Business of Genius Bytes Software Solutions GmbH

As of May 2019

§ 1 Subject Matter of the Contract and Scope

1.1 The following Terms and Conditions of Business contain the provisions under which Genius Bytes Software Solutions GmbH (hereinafter referred to as Genius Bytes) provides all kinds of deliveries and services in its dealings with companies. The type of service (sales contract, contract for work and services, maintenance or service contract, use of licence) is generally indicated as such in the order documents.

1.2 Deliveries and services from Genius Bytes are exclusively subject to the Terms and Conditions of Business of Genius Bytes. The validity of Terms and Conditions of Business of the Customer is expressly rejected, unless Genius Bytes has expressly agreed to the validity of such.

1.3 A contract comes into effect with the signing of the offer by the Customer and Genius Bytes or by means of written order by the Customer and receipt of a corresponding order confirmation from Genius Bytes by the Customer, at latest however on the provision of the deliveries and services.

1.4 Further details with respect to deliveries and services – e.g. service description, schedule, fee – are regulated in the order document. This may result in additional terms and conditions, which shall be provided by Genius Bytes and shall become part of the respective contract in the form of annexes or order documents.

1.5 In the event of any conflict between the terms and conditions of the different contract documents, the provisions contained in the annexes have precedence over the provisions of these Terms and Conditions of Business. Provisions contained in an order document have precedence over the provisions of annexes and the provisions of these Terms and Conditions of Business.

§ 2 Payment Terms, Price

2.1 Deliveries and services will be invoiced on a time and material basis or at a fixed price. Additional charges may apply (e.g. travel expenses). Genius Bytes shall inform the Customer of such additional charges in advance on a case by case basis.

2.2 The amount payable for a program licence is a specified fee for a fixed licence period, unless otherwise agreed, for a period of 60 months. One-time fees, where appropriate, must be explicitly agreed upon.

2.3 The monthly rate for software leasing contracts contains the license and maintenance fee for this month. Unless other conditions are explicitly agreed upon, a software leasing contract renews automatically for the same term when the entered subscription term according to the pricelist expires, unless the leasing contract is cancelled in written form by one of the parties. Genius Bytes may make a software leasing contract or its renewal dependent on a SEPA direct debit authorisation.

2.4 For services charged on a time and material basis, the work and journey times and possibly waiting periods shall be added to the respective agreed rates of payment in addition to the parts used at the respectively valid prices at the time of performance. Other expenses, including accommodation and travel costs are charged separately.

2.5 Prepaid services must be called off within the agreed contract period. Unless otherwise agreed, the Customer does not receive any credit or refund for services not used.

2.6 Invoices shall be issued with partial billing to the end of the respective calendar month for ongoing projects or otherwise following rendering of the service.

2.7 For customized development tasks (contract for work and services) a part of 30% of the total remuneration will be invoiced immediately upon acceptance of the order by Genius Bytes, a further part of 30% upon delivery, and the remaining 40% upon customer acceptance.

2.8 Invoices are payable without discount upon receipt. After the due date, due date interest is charged at a rate of 5% and following occurrence of default, interest for default at the legally stipulated rate. Genius Bytes reserves the right to claim any damages over and above this in the case of a delay of payment.

2.9 Value Added Tax shall be invoiced separately at the Value Added Tax rate valid at the time of rendering of performance. Should further taxes be incurred, e.g. foreign taxes, these shall also be invoiced.

2.10 If payment terms are not met or if circumstances become known, which upon proper consideration from the commercial point of view of Genius Bytes, lead to justified doubts about the creditworthiness of the Customer, and also such facts that were already present on conclusion of the contract, but which were not known to or ought not to have been known to Genius Bytes, then all claims under the business relationship shall be declared due immediately. Without prejudice to any further legal claims, in such instances Genius Bytes is entitled to demand prepayment or the putting up of acceptable securities for outstanding deliveries and services and if these securities are not presented after expiry of a reasonable period of grace, Genius Bytes is entitled to withdraw from the contract or to demand damages for breach of contract. Furthermore, Genius Bytes is entitled to prohibit the resale or processing of goods that are owned or co-owned by Genius Bytes and to demand that such be returned to Genius Bytes or that co-ownership be granted at the expense of the Customer. Such demands shall not constitute withdrawal from the contract.

2.11 The Customer only has rights of retention or offsetting rights with respect to such counterclaims that are not disputed or legally established; this does not apply to counterclaims arising from the same contractual relationship.

§ 3 Deployment of Personnel

3.1 The Customer and Genius Bytes will each utilise employees who are qualified to fulfil the contractual obligations incumbent on each party with respect to the other party. Apart from that, the parties are responsible for the selection and deployment in addition to the supervision, control, monitoring and remuneration of the employees it each deploys.

3.2 Genius Bytes is entitled to commission third parties (e.g. suppliers) or affiliated companies as subcontractors for the provision of the agreed services or parts thereof.

§ 4 Genius Bytes Business Partner

4.1 Genius Bytes has entered into agreements with certain partners ("Genius Bytes Business Partner") to market and support certain products and services. Insofar as a Genius Bytes Business Partner provides products and services offered by Genius Bytes, solely the terms and conditions of the agreement reached between the Customer and Genius Bytes are valid in the relationship between the Customer and Genius Bytes. Genius Bytes is not responsible for the business activities of Genius Bytes Business Partners, nor for any kind of promises that the Business Partner makes to the Customer or for products or services which the Genius Bytes Business Partner offers under its own contract.

4.2 In case Genius Bytes has negotiated individual pricing directly with a customer, but has the services obliged to provide rendered by a Genius Bytes Business Partner, this Genius Bytes Business Partner must not apply any other pricing for this customer, than the prices agreed upon by Genius Bytes and its customer. No partner price list is applicable in this case. The same applies for any company affiliated to Genius Bytes by possession of company shares.

§ 5 Acceptance of Work Performance

5.1 In the case of all performances where acceptance is available, Genius Bytes can require a written declaration of acceptance from the Customer. The Customer accepts performances without delay pursuant to § 5. An acceptance protocol may be created to be signed by the Customer.

5.2 If a contract for work and services comprises several individual works that are operable separately, a separate acceptance procedure shall be carried out for each separate work.

5.3 If separate parts are defined in the contract for work and services, Genius Bytes may present the separate parts individually for acceptance. In subsequent new acceptance procedures, inspection shall only concern the functioning of the new separate parts in addition to the correct interaction of the previously accepted parts with the new part.

5.4 If the contract includes the creation of a concept, in particular with respect to the form, amendment or extension of standard software, Genius Bytes can demand a separate acceptance procedure for the concept.

5.5 It is not permissible to extend the acceptance test or refuse acceptance due to errors in the machines and programs of other manufacturers, which are not delivered under the contract, and/or operator errors, which are not the responsibility of Genius Bytes.

5.6 The Customer shall inspect the performance outcome within 15 working days and through the contact person shall declare acceptance in writing or communicate the deficiencies discovered giving an exact description and information with respect to error symptoms. If the Customer does not declare its acceptance within this time limit or if the Customer uses the product or services without complaint, the work and services shall be deemed to be accepted. Minor defects do not entitle the Customer to refuse acceptance. The productive deployment or the productive start-up of (part) performances by the Customer shall be taken to imply the acceptance of the respective (part) performance.

5.7 Genius Bytes shall rectify the defects notified in accordance with Section 6 within a time period appropriate to the type and seriousness of the defect. Following notification of rectification of defects, the Customer inspects the performance outcome within five working days. For the remainder Section 6 applies accordingly.

5.8 The obligation of Genius Bytes to rectify defects in accordance with the provisions of these Terms and Conditions of Business remains unaffected.

§ 6 Content of Rights of Use for Standard Programs (Licences)

6.1 The program is the property of Genius Bytes and is subject to copyright and licensed but not sold. The Customer receives a non-exclusive right to use the program (licence) from Genius Bytes, if it has been legally acquired. The Customer is entitled to 1.) utilise the program to the extent defined below and 2.) create and install copies of the program, including a backup copy to support this use. The terms and conditions of this licence shall apply to each copy.

6.2 If the program is purchased as an upgrade, after this upgrade has been installed the previous version may not be used any longer nor may it be passed on to third parties.

6.3 The Customer is obliged to ensure that all users utilise the program (regardless of whether access is realised locally or from a remote system) in accordance with the intended purpose and heed these Terms and Conditions of Business.

6.4 The Customer is not entitled:
(a) To copy or otherwise reproduce the software or parts thereof. Each authorised user may however make backup copies of the software for the duration of its usage period, if such is required to safeguard future use.
(b) To modify, decode, reconvert, decompile or disassemble the software or parts thereof.
(c) To create products derived from the software in terms of copyright law or to make copies, translate or alter written material or creating products derived from the written material.

6.5 Transfer of rights and obligations
The Customer may only transfer a program and all licence rights and obligations to third parties, if these third parties accept the conditions of these Terms and Conditions of Business. If the program is transferred, the Customer is obliged to include a copy of these Terms and Conditions of Business. Following the transfer, the Customer is no longer entitled to utilise the program.

6.6 Restriction on Use
The right to use the program is subject to the condition of full payment of the fee agreed by the parties (§ 2.2). Should the Customer fall into arrears with the fee, after a reasonable period of grace has elapsed Genius Bytes is entitled, without prejudicing its other rights, to forbid use of the program until full payment has been made.

6.7 Special licensing conditions
Due to third party agreements, Genius Bytes may apply specific licensing conditions and/or obligations on parts of its software to the license holder. These will be made available to the license holder in advance and must be accepted by the license holder in written form, where necessary.

§ 7 Other Property Rights and Rights of Use

7.1 The order document specifies the materials which are transferred to the Customer in accordance with the agreed scope of supply and services. Materials (deliverables) are written materials or other works protected by copyright in written, machine-readable or other display formats, such as for example programs, program lists, utilities, documentation, protocols, drawings, training materials and similar items.

7.2 All rights to deliverables – in particular the copyright, the rights to inventions and industrial property rights – belong exclusively to Genius Bytes with respect to the Customer, even in instances when the deliverables came into being as a consequence of the Customer's instructions or in co-operation with the Customer. Unless otherwise agreed in writing, the Customer is granted a simple right of use to the deliverables for the purposes of processing its internal business transactions or to have these processed by companies that are connected to him in the context of § 15 AktG (German Stock Corporation Act) ("group companies") at the same level as the Genius Bytes standard software with full payment up to and including acceptance of partial amounts due. Usage solely for test purposes is permissible to the extent required prior to acceptance. The Customer is entitled to create backup copies of the deliverables. Each backup copy is to be marked as such and also to be marked with the copyright notice that appears on the original data medium.

§ 8 Special Conditions for Servicing and Maintenance Work for Standard Software

I. Definition of Terms

(1) "Software": the program detailed in the service contract in its executable form (Executable) including the respective documentation. The software code that underlies the executable program does not form part of "Software" for the purpose of these conditions.
(2) "Error (in) the Software": a significant negative deviation in the actual mode of operation of the software as against the mode of operation documented to the Customer, provided that the software is being used professionally, there are no errors in any other system components and use is in accordance with the operating conditions stipulated by Genius Bytes. Thus, for example, errors which are the result of operating errors, hardware malfunction or wilful damage, do not represent errors for the purpose of these conditions.
(3) "Software Release": is a version of the software officially released by Genius Bytes for use under production conditions. A release has a distinguishing version number; this means that every copy of the software can be clearly assigned to a release by the version number under which it is registered.
(4) "Update": a new release of the software, which serves to rectify one or more errors in the previous software release.
(5) "Upgrade": a new software release, which offers improved and/or additional functions as against the previous software release.
(6) "Licence holder": the natural or legal person, who entered into a proper licence agreement for the software with Genius Bytes.
(7) "Maintenance contract": the written agreement concerning the maintenance of a special installation (licence number) of software between Genius Bytes and the licence holder.
(8) "First Level Support" or also User Help Desk: This is provided by the end user (generally not the licence holder). First Level Support is responsible for the full identification of the problems including the required additional information, in addition to the direct solution of user, application and operating problems.
(9) "Second Level Support": Second Level Support supports First Level Support, both through training at the workplace and also through taking over the more complex queries. Newly-established solutions are entered into knowledge-bases, in order to make the knowledge available to First Level Support. If the complexity of the request exceeds the know-how or the technical possibilities of Second Level Supports, this is then passed on to

Third Level Support. When errors occur within a complex system environment, Second Level Support is in particular responsible for precisely identifying the responsible software module. Second Level Support is generally the responsibility of the licence holder.

(10) "Third Level Support": The support for licence holders with software errors identified by the licence holder according to § 2 (2), and which Second Level Support can clearly attribute to a software module, and for which maintenance is agreed in the service contract.

II. Conclusion of a Maintenance Contract

(1) The Maintenance contract contains the following details: Identification of the software to be maintained and the licence number of the software, commencement date of service contract, period of cancellation, signatures of the contracting parties.

(2) The software comes under the Maintenance contract on delivery to the licence holder,

(3) If the licence holder does not enter into a Maintenance contract with Genius Bytes within three months after delivery, a Maintenance contract can be created at a later stage following fee-based inspection and back payment of 100% of the service charges from the date of delivery. The licence holder does not however have a legal right to this.

III. Scope of Service

(1) The following services are included in the flat-rate service charges without additional charges:

   (a) The elimination of reported errors in the current software release and free delivery of software updates. The update service provides for the continuous elimination of faults in the software. Within the scope of the update service, the licence holder receives free new software releases in addition to the related documentation, provided that this forms part of the standard scope of delivery of the software version purchased by the licence holder.
   In comparison, upgrades are fundamentally subject to a fee. This also applies to software upgrades within the scope of a platform change, provided these are not agreed on separately by means of a dedicated upgrade regulation in the service contract. Genius Bytes can however release upgrade versions of the software for the upgrade service free of charge and in doing so deactivate new and/or improved program attributes.
   Both the updates and the upgrades may alter the performance, operation and user friendliness of the new release vis-à-vis the previous official release, as long as the performance, operation and user friendliness of the new release is comparable to that of the previous official software release. A reduction of speed is permissible, provided that the speed reached by the new release does not significantly restrict use.

   (b) Third-Level-Support by email. Third Level Support offers the licence holder email support for problems that have been identified. This support presupposes advanced knowledge of the software, i.e. good knowledge of the manuals, participation in training courses by Genius Bytes in addition to comprehensive practical experience with installation and work with the software. The email support services in the context of Third Level Support can be utilised Monday to Friday from 9:00 to 17:00 by well-trained employees of the licence holder (except for public holidays in North Rhine-Westphalia).

   (c) Access to the support website of Genius Bytes. The support website offers the licence holder the opportunity for fast data exchange with Genius Bytes. Genius Bytes makes new software releases available via the support website. The support website can be reached at the address (URL) specified in the service contract. Differing usage rights can be assigned to different users (licence holder) on the website. All charges with respect to access (line connection costs, internet access charges) are borne by the user.

(2) The following services are not included in the flat-rate service charges and are provided for a separate fee:

   (a) Services for software that is not used under the operating conditions stipulated by Genius Bytes, in particular the rectification of faults that are not errors for the purposes of this contract. This work is charged according to expenditure of time and based on the current Genius Bytes Price List for Services.

   (b) Special support such as on-site support for end customers can be provided on the basis of the current valid Genius Bytes price list for services if requested by the licence holder following joint scheduling of appointments.

   (c) Third Level support by telephone will be provided exclusively as a charged service, during service hours stated in (1)(b) above.

(3) Software upgrades or a platform change of the target operating system required by the licence holder as well as services in First and Second Level Support do not form part of the contract.

(4) Support requests and/or bug-fixes that the customer is responsible for (e.g.by applying improper configuration settings, or misuse) may be invoiced by Genius Bytes to the customer.

IV. Payment Terms, Price

(1) Unless otherwise agreed, the service charges for the maintenance performances shall be charged in advance for the contract period. Genius Bytes can adjust the charges for the first time 12 months after the beginning of the contract. The licence holder will be informed in writing of the adjustment at latest 3 months before the increase in charges comes into effect.

(2) The licence holder is entitled to extraordinary cancellation of the maintenance contract, if the charges are increased by more than 5% within 12 months or by more than 12 % within 36 months. The right of cancellation can be exercised within 8 weeks of receipt of the communication of price increases. The cancellation comes into effect at the beginning of the maintenance period when the increase takes effect.

V. Obligations of the Licence Holder

(1) In establishing, restricting and reporting errors, the licence holder is to heed the documentation belonging to the system and notes from Genius Bytes. In particular, log files and descriptions for reproducibility are to be provided.

(2) The licence holder provides Genius Bytes with a contact person, who reports all relevant data for maintenance at regular intervals.

VI. Obligations of Genius Bytes

(1) Genius Bytes is obliged to eliminate software errors reported by the licence holder and defects in the service performance within a reasonable period of time.

(2) Genius Bytes provides the licence holder with a contact person, who accepts all reports relevant for maintenance and is responsible for ensuring that these are answered.

§ 9 Warranty

9.1 Genius Bytes warrants that in the case of contract for work and services, the contractually agreed performance features are fulfilled and correspond with the scope of service. Genius Bytes warrants that with respect to the use of standard programs (licences), the program corresponds with the specifications in the specified operating environment; such a warranty only applies to the unchanged part of the program. For services there is no entitlement to warranty claims.

9.2 Without prejudice to the warranty rights of the Customer, it is advised that given the current state of technology it is not possible to entirely exclude errors in information technology programs and materials under all (possible) application conditions. Thus, Genius Bytes neither warrants an uninterrupted nor an error-free use of a program or service.

9.3 The warranty period is twelve months from provision of service or delivery or acceptance, with the exception of the cases regulated under § 10.8.

9.4 In the case of purchase agreements, the Customer shall inspect the goods without delay after receipt and notify defects in writing without delay at latest within seven days of receipt of the goods. If the Customer neglects its obligation to inspect or notify in due form and time, it is not entitled to make any claims. The timeliness of the notification shall be assessed according to the time of its arrival to Genius Bytes.

9.5 In the case of justified notification of defects, Genius Bytes shall be obliged at its choice to supplementary performance either by delivery of error-free replacement goods or by repair. Replaced parts shall become the property of Genius Bytes. Genius Bytes is entitled to refuse supplementary performance in accordance with the statutory provisions.

9.6 If Genius Bytes fails to meet its obligation to supplementary performance, the Customer is entitled at its discretion to withdraw from the contract or to request a reduction in payment, if the Customer has allowed Genius Bytes a reasonable period of grace without result, unless the setting of a period of grace is not required according to the statutory provisions. In the event that the Customer withdraws from the contract, the Customer shall be liable for

deterioration, destruction or benefits not derived from the goods not only for its own due diligence, but also for every instance of liability.

9.7 Further claims for damages and reimbursement of expenses of the Customer due to or in connection with defects or consequential damages, regardless of the legal basis, only exist in accordance with the provisions of § 10. Here too Genius Bytes is only liable for typical and foreseeable damages.

9.8 The warranty obligation of Genius Bytes does not apply if defects are not present, i.e. in particular when defects are attributable to improper use, improper or negligent handling, natural wear and tear or interference by the Customer or an third party.

§ 10 Exclusion and Limitation of Liability

10.1 For all claims for compensation and reimbursement of expenses directed against Genius Bytes due to violation of obligation for which Genius Bytes is responsible, irrespective of the legal grounds on which such arise, in the event of minor negligence Genius Bytes is only liable for a breach of substantial contractual obligations which may endanger the purpose of the contract. Any other liability for minor negligence is excluded.

10.2 In the event of liability in accordance with § 10.1 and a liability without fault, the liability of Genius Bytes is restricted to typical and foreseeable damages. The assertion of claims for needless expenses by the Customer is not permissible.

10.3 For loss or damage caused by delay due to minor negligence, Genius Bytes shall only be liable for up to a value of 5% of the net order value.

10.4 In the event of liability according to § 10.1 and liability without fault, Genius Bytes is liable per event of damage up to an amount of EUR 30,000.00 or, if the value of the performance that caused the damage is greater, up to the price of the performance that caused the damage. This also applies to claims for compensation for futile expenses.

10.5 In the event of liability according to § 10.1 and liability without fault, Genius Bytes is not liable for direct damages or consequential damages, even if Genius Bytes was informed of the possibility of such damages occurring. This also applies to claims for compensation for futile expenses, if this relates to direct and consequential damages.

10.6 The exclusion of liability according to the above paragraphs shall be valid to the same extend for the agencies, legal agents, employees or other assignees of Genius Bytes.

10.7 All claims for compensation and reimbursement of expenses against Genius Bytes shall expire twelve months after delivery of the goods or acceptance or provision of services, in the event of tortuous liability from the time of becoming aware or grossly negligent unawareness of the circumstances justifying the claim or of the person liable to pay compensation. This does not apply to intent and in the cases mentioned in § 10.8.

10.8 The regulations in §§ 10.1 to 10.7 and also § 9.3 do not apply in the event of strict liability, if liability exists for injury to life, limb or health, in the event of guarantees as to quality or in the case of fraudulent concealment of a defect.

§ 11 Data Processing for Own Purposes

11.1 The Customer agrees that Genius Bytes processes and utilises contact details for the purpose of implementing and promoting the business relationship (including marketing purposes) between the Customer and the Genius Bytes companies (referred to hereinafter in this paragraph as "intended purpose"). Contact details are business-related contact details, which are made available to Genius Bytes by the Customer; these include for example names, job titles, company addresses, telephone numbers and email addresses of employees and contract partners of the Customer. Genius Bytes companies are Genius Bytes Software Solutions GmbH based in Bochum (Germany), its affiliated companies and Genius Bytes Business Partners, in addition to their subcontractors.

11.2 Furthermore, the Customer agrees that in the context of the intended purpose, contact details may be made available to the Genius Bytes companies and processed and used by such. In this context, Genius Bytes will process and use all contact details in accordance with the applicable provisions for data protection and for electronic communication in the context of the intended purpose.

11.3 Where necessary due to the provisions for data protection and for electronic communication, the Customer affirms that it has obtained or will obtain the prior consent of the contact person and has informed or will inform the contact person accordingly. In doing so, the Customer ensures that the Genius Bytes companies can process and use the contact details in the context of the intended purpose and can establish contact with the contact persons, for example by email.

11.4 The Customer agrees to the transfer of contact details to countries outside the European Economic Community on the condition that Genius Bytes guarantees an appropriate level of data protection using appropriate measures. This can be accomplished through the inclusion of the standard contractual clauses published by the EU commission or other contractual agreements from competent supervisory data protection authorities.

§ 12 Cooperation Obligations and Customer Resources

12.1 The cooperation of the Customer is a prerequisite for the on-schedule and successful provision of services by Genius Bytes.

12.2 The Customer shall cooperate in the fulfilment of the assignment to the extent necessary and free of charge, for example by making employees, IT systems, and data and telecommunications equipment available and also procuring the required licences or permits to use the above resources. The Customer grants Genius Bytes direct access to the software and to IT systems via remote data transmission. The Customer answers questions and checks results.

12.3 The Customer shall specify in writing a contact person for Genius Bytes and a postal address and email address at which the contact person can be contacted. The contact person must be a position to make the necessary decisions for the Customer or bring them about. The contact person shall ensure good cooperation with the contact person at Genius Bytes. The employees of the Customer, who are required for this activity, shall be released from other duties to an appropriate extent.

12.4 The Customer tests deliverables thoroughly with regard to faultlessness and usability in the specific situation, prior to commencing any operative use. This also applies to services which he receives in the context of supplementary performance.

12.5 Unless agreed otherwise, the Customer is responsible for all data and content of databanks, which the Customer makes available in connection with the services under contract, the selection of measures and controls with respect to access, security, encryption, use and transfer of data and all stored data.

12.6 The Customer shall take adequate precautions for the event that the deliverables are do not function properly (for example data backup, error diagnosis, regular checking of results). In the absence of an explicit written notification in individual cases, the employees of Genius Bytes assume that all the data with which they may come into contact is secure.

12.7 The Customer shall fulfil its duties to cooperate in a timely manner. If applicable, supplementary regulations are contained in the individual contract. If the Customer does not fulfil its obligations to cooperate or not in a timely manner and if this leads to damages, delays and/or additional expenditure, Genius Bytes cannot be held liable for such damages and can – without prejudice to further rights under the law – demand changes in the time schedule and the agreed prices/charges. Furthermore, Genius Bytes can set a reasonable period of grace for fulfilment of cooperation obligations, after the expiry of which Genius Bytes is entitled to terminate the contract. Termination of contract does not however happen automatically following expiry of such a time limit.

§ 13 Other Rights and Obligations

13.1 The Customer and Genius Bytes agree that:
1. The Customer does not have the right to use brands, company trademarks or other distinguishing features of Genius Bytes in advertising or in publications without prior written consent of Genius Bytes.
2. The exchange of confidential information requires a separate written agreement.
3. Each party shall only grant the other party the licences and rights that are expressly specified and agreed on. No further licences or rights shall be granted over and above this (including those for the use of patents).
4. Possible disagreements or complaints shall in the first instance be solved in the spirit of partnership. In particular, each party will allow the other party to implement fulfilment in an appropriate way before taking legal action due to non-fulfilment of a contractual obligation.
5. Claims arising from the contract – unless otherwise agreed in § 9 or § 10 – are subject to a period of limitation of three years. This shall not apply to claims for which longer periods are stipulated by law.
6. With the exception of payment obligations, neither of the parties is responsible for the non-fulfilment of obligations arising from reasons that are outside its own sphere of influence.
7. The assignment of rights from the contract, with the exception of payment entitlements to Genius Bytes, requires prior written consent of the other party. Consent can only be withheld for good reason. The sale of a part of the company by Genius Bytes, which affects Genius Bytes customers equally, is not viewed as assignment in the aforementioned context. Furthermore, a third party cannot derive any rights from the contract.
8. The Customer is not on its part entitled, to bring services from the contract or parts thereof onto the market or make such available in any other way contrary to the provisions of these Terms and Conditions of Business.
9. The Customer bears the responsibility for the results striven for and achieved through the use of the services. The organisational integration of Genius Bytes materials in the Customer's operating procedure is to be undertaken independently by the Customer.
10. The Customer shall grant Genius Bytes sufficient, free and secure access to its premises and systems (including remote access) and make information, employees and other resources available insofar as this is required for provision of services by Genius Bytes.
11. Both parties are responsible for the observance of the applicable laws of import and export and regulations (including US regulations, which make provisions for an export ban or a restriction with respect to certain uses or users).

13.2 The Customer agrees that Genius Bytes can names the service-provider relationship with the Customer as a reference and in particular can refer to the provision of services for the Customer in websites, print media and other advertising materials.

§ 14 Retention of Title

14.1 Genius Bytes retains ownership of the delivered goods, until all claims on the part of Genius Bytes arising from the business relationship with the Customer are settled including claims arising in the future from contracts concluded at a later date and including any recourse and indemnity claims from cheques and bills of exchange. This also applies for any balance in favour of Genius Bytes, if individual or all claims from Genius Bytes have been brought together in one invoice (open account) and the balance has been drawn.

14.2 The Customer shall insure the goods under retention of title adequately and in particular against fire and theft. In the event of a claim, any claims against the insurance company concerning the goods that are subject to retention of title are already hereby assigned to Genius Bytes at the full value of the goods subject to retention of title, the assignment of which is herewith accepted by Genius Bytes.

14.3 The Customer is not entitled to pledge or concede pledged property or undertake any other form of disposal of the goods that are subject to retention of title. The Customer is to inform Genius Bytes without delay of any seizure of the goods under retention of title by third parties or other access of third parties to the said goods, if insolvency proceedings are initiated pertaining to its assets and other legally-relevant occurrences which could impact on the rights of Genius Bytes.

§ 15 Notice of Termination

15.1 The contract can be terminated without previous notice for good cause in writing by the Customer or Genius Bytes, if the respective other party does not fulfil its contractual obligations even after a reasonable period of grace has been granted. In the event of negligible breaches of contract, however, termination of contract is excluded.

15.2 In the event of termination by the Customer, the Customer is obliged to pay for the service provided prior to termination of contract in addition to the materials supplied heretofore (in the event of extraordinary termination due to reasons for which Genius Bytes is responsible only those materials, which can be used by the Customer), and to reimburse Genius Bytes for other costs and claims, that arise from the provisions of the contract or statutory provisions.

15.3 Insofar as terms of contract are by their nature not subject to time limits, they remain valid after the termination of the contract; this also applies to possible legal successors and authorised persons.

§ 16 Written Form Requirement

All modifications or supplements to a contract require the consent of both parties. This also applies to a change or cancellation of this written form requirement.

§ 17 Place of Performance, Place of Jurisdiction, Applicable Law

17.1 The place of performance for all contractual obligations shall be the location of the place of business of Genius Bytes. The place of jurisdiction for all disputes is the court of jurisdiction located at the place of business of Genius Bytes. Genius Bytes shall however also be entitled to bring proceedings against the Customer before the court at the Customer's place of business.

17.2 All legal relations between the Customer and Genius Bytes shall be subject to the laws of the Federal Republic of Germany.

17.3 If the place of business of the Customer is located outside the Federal Republic of Germany, the United Nations Convention on Contracts for the International Sale of Goods (CISG) applies with the following special provisions:
  (a) Amendment to the contract or cancellation of contract must be in the written form. This also applies to any agreements with respect to this written form requirement.
  (b) In the case of delivery of goods that are in breach of contract, the Customer is only entitled to termination of the contract or replacement delivery if claims for damages against Genius Bytes are excluded or if it cannot be reasonably expected that the Customer utilises the goods that are in breach of contract and claim compensation for the remainder of the damages. In such instances, Genius Bytes is entitled to rectification of defects in the first instance. If the rectification of defects is unsuccessful and/or if it results in an unreasonable delay, the Customer is entitled at its choice to declare termination of the contract or to demand replacement delivery. The Customer is also entitled to this if the rectification of defects would cause unreasonable inconvenience or if there is uncertainty concerning the reimbursement of any expenses incurred by the Customer.

§ 18 Severability Clause

Should individual provisions or sections of the contract be ineffective or unenforceable, or become so, the remaining provisions and sections of the contract remain effective. In the event of one of the provisions of these conditions being ineffective, both parties undertake to replace the invalid provision by one which, as far as is legally possible, comes closest to the economic purposes of the invalid provision.

§ 19 Prevailing German Version

The English version of these Terms and Conditions of Business is only made available for support purposes, and the German version shall always prevail and be exclusively binding for the interpretation.