



General terms and conditions of deltatre AG

§ 1 Area of validity

- (1) These General Terms and Conditions are applicable to all contractual relationships between entrepreneurs in terms of § 14 of the German Civil Code (BGB), legal persons under public law or special funds under public law (hereinafter referred to as "Customer") and deltatre AG (hereinafter referred to as "deltatre").
- (2) The Terms and Conditions of deltatre shall apply exclusively. deltatre hereby explicitly objects to Terms and Conditions of Customers which conflict with or dissent from deltatre's Terms and Conditions, unless deltatre has expressly agreed.
- (3) The following Terms and Conditions also apply if deltatre is aware of Customer's Terms and Conditions which conflict with or dissent from these Terms and Conditions and performs services to Customer without any reservation.
- (4) **deltatre's Terms and Conditions also apply to any future dealings between deltatre and Customer without the need for their express incorporation.**

§ 2 Conclusion of contract

- (1) deltatre's first offer shall be without engagement and shall not obligate deltatre. A contract shall only and exclusively be concluded by Customer's order and deltatre's acceptance of the order carried out in writing or per Telefax or if and insofar deltatre confirms an order in writing or per Telefax and Customer has not objected in writing or per Telefax or if deltatre carries out the order. In cases of doubt deltatre's acceptance of the order shall be authoritative.
- (2) With respect to all order documents (pictures, drawings, texts, data, software, calculations etc.) deltatre reserves its rights, in particular property rights, copyrights, ancillary copyrights as well as industrial property rights. Customer may disclose order documents which are marked as confidential to third parties only with deltatre's prior consent in writing or per Telefax.

§ 3 Object of services

- (1) deltatre carries out its performance, i.e. goods and services in accordance to the subject matter of contract recorded in writing, in particular in accordance with the scope of services terminally determined in the contract. A further or different appearance and workmanship shall only be deemed agreed if it is confirmed by deltatre in writing. In the absence of such confirmation, any advertisement or public announcement shall not cause any contractual obligations either.
- (2) Demonstrations of the object of services within or outside of the subject matter of contract recorded in writing shall not be considered as warranted characteristics or guaranties, unless explicitly designated as such and confirmed by deltatre in writing.
- (3) Goods and services which are not covered by the express specifications of services are to be agreed separately in writing.

§ 4 Performance of services, Customer's duty to co-operate

- (1) **Customer will denominate a contact person who in connection with the contract and its execution is enabled to accept and release legally binding declarations and decisions effective for and against Customer and to effect such declarations and decisions within a reasonable period of time.**
- (2) deltatre may dispose of independent sub-contractors to provide its services and execute the rest of the contract. However, deltatre shall remain directly obligated towards Customer. deltatre decides in its sole discretion which employees to apply or replace.
- (3) As far as deltatre's services are effected by a data transfer between Customer and one of deltatre's databases via the Internet – either by Customer accessing the database (pull method) or by deltatre distributing data to Customer (push method), Customer is obligated to co-operate as follows:
Customer is obligated to create and keep operative without restrictions the technical requirements for accessing deltatre's databases and/or receiving deltatre's database content, in particular with regard to the hardware and system software adopted, internet access and the actual browser software. deltatre will inform Customer upon request about the technical requirements for the access to deltatre's database and/or the reception of database content, in particular about the browser to be used in each case.
In case deltatre further develops software platforms and other technical components of the database, Customer will take necessary adjustment measures with regard to the software and hardware Customer uses upon information by deltatre without undue delay. In order to use deltatre's databases properly, time and time zone of the computer system used by Customer have to be set correctly and up to date and the computer system used by Customer has to accept cookies which are transmitted by deltatre's servers. Customer will carry out and keep the respective settings.
Customer is obligated to arrange for all demanded backups of his computer system, including his database, in particular to carry out regular data savings and to apply updated protecting software (or other appropriate measures) for blocking computer virus and malware which is adequate to Customer's computer system and to the protection of his business.
- (4) Deadlines and terms for services have to be agreed in the contract in writing. Such deadlines and terms shall not apply in case of subsequent alterations of the contract

- regarding the object of services. In this case deltatre and Customer agree on new adequate deadlines and terms. The compliance with deadlines and terms with regard to deltatre's services requires Customer to comply with his duties of co-operation as to § 4 sub. 3. If deltatre has to wait for the performance of co-operation duties or Customer's information or if deltatre is hindered otherwise to carry out the order through no fault of its own, the deadlines and terms shall be deemed prolonged by the duration of the hindrance plus an adequate acceleration time. deltatre has to inform the contact person (§ 4 sub. 1) of the hindrance beforehand. If the failure to comply with deadlines and terms for services is caused by force majeure or other interferences for which deltatre is not accountable, § 12 shall apply. In this case, the agreed deadlines and terms shall be adequately prolonged.
- (5) Partial performances are admitted as far as they are acceptable for Customer.
- (6) deltatre will be in default only as a result of a dunning letter. If Customer wants to withdraw from the contract or wants to demand damages in lieu of performance because of deltatre's failure to comply with deadlines and terms, Customer shall be obligated to set a period for performance respectively – as far as due to the nature of the breach of duty setting a period of time is out of the question – give a warning notice, and has threatened the consequences of an effectless expiration concurrently with the fixing of a period of time respectively the warning notice. Dunning letter, fixing of a period of time and warning notice require written form to be valid.
- (7) Customer is obligated to accept the object of services without undue delay if deltatre offers the object of services as agreed in the contract. Customer may not refuse acceptance by reason of trivial defects.

§ 5 Prices, conditions of payment, electronic invoicing(e-invoicing)

- (1) Prices are calculated according to the price list valid at the time of the conclusion of the contract in each case which forms part of the contract, unless otherwise individually agreed. Prices are calculated net plus the applicable Value Added Tax in each case. Cash discounts are not conceded.
- (2) All amounts charged by deltatre have to be paid by Customer without discounts and plus the applicable Value Added Tax in each case within 14 (fourteen) days after reception of the bill, whereas Customer is deemed to have received the bill on the 3rd (third) day after dispatch by deltatre. Customer will be in default of payment by expiration of this time of performance, without the need for a dunning letter. Other terms of an installment contract according to Cl. 15 remain unaffected.
- (3) If Customer is in default of payment, deltatre is entitled to demand default interests in the amount of 8 percentage points above the basic rate of interest in terms of § 247 BGB. deltatre's right to demand further damages caused by default shall remain unaffected.
- (4) Customer is not entitled to a right of retention, unless the counterclaim, on which the retention depends, is indisputable or legally established. Customer shall only be entitled to offset with counter claims including reductions due to asserted specifications of defects, if Customer's counter claim is undisputed or legally determined.
- (5) Since 1st of July 2011, it is lawful under German law to create electronic invoices without signature. deltatre reserves the right to provide invoices without signature by regular mail or electronically by e-mail.

§ 6 Retention of title

- (1) deltatre retains title with regard to goods which are delivered by deltatre before payment by Customer until the purchase price in full plus deltatre's possible secondary claims in connection with the goods (e.g. shipping costs) has been paid.
- (2) During the duration of the retention of title Customer is prohibited to dispose of the goods (e.g. by conveying, pledging).

§ 7 Duty to examine, control and notify

- (1) Customer shall carefully examine the object of services or have it examined immediately after it is performed by deltatre. If a defect arises Customer shall notify deltatre in writing and by precisely describing the aberration from the agreed object of services (notification) immediately, at the latest within 5 (five) days. The performance of the object of services in this spirit shall be given in each single case of performance of services if the object of services has arrived Customer's sphere of control in such a way that Customer is enabled to examine the object of services' appearance and workmanship, in particular if Customer has in such a way received the object of services by deltatre or has gained access to the object of services.
- (2) **Defects of the object of services, which were noticeable upon careful examination, shall be deemed approved by Customer, unless they are notified to deltatre by Customer in writing and with a precise description of the aberration from the agreed object of services within 5**



General terms and conditions of deltatre AG

(five) days after performance of the object of services by deltatre as to § 7 sub. 1 sentence 2 and examination by Customer as to § 7 sub. 1 sentence 1 (delayed notification).

(3) Customer shall be obligated to carefully control the object of services or have it controlled after performance by deltatre (§ 7 sub. 1 sentence 2). If a defect of the object of services, which was not noticeable upon careful examination as to § 7 sub. 1 sentence 1, appears later Customer shall be obligated to notify the defect to deltatre in writing and by precisely describing the aberration from the agreed object of services (notification) immediately, at the latest within 5 (five) days. **If defects of the object of services become noticeable later, such defects shall be deemed approved by Customer unless they are notified to deltatre by Customer in writing and with a precise description of the aberration from the agreed object of services immediately, at the latest within 5 (five) days after detection (delayed notification).**

§ 8 Warranty, statute of limitation

(1) In case of a defect, deltatre will cure defects of the object of services at its choice by remedy/supplementary performance in the form of removal of defects or by producing or delivering a new object of services free of defects. If remedy/supplementary performance have failed at least two times, Customer shall at its choice be entitled to reduce price (reduction of price) or to withdraw from the contract (withdrawal). Customer is entitled to these options also in case deltatre refuses to carry out remedy/supplementary performance because it is possible only at disproportionate expense.

(2) As far as Customer is entitled to reduce price or withdraw from the contract according to the preceding § 8 sub. 1, he shall be entitled to demand damages or reimbursement of futile expenditure only in the framework set forth in § 9.

(3) Warranty claims do not cover wear and tear or such damages which arise after delivery in consequence of defective or negligent handling, exceeding exposure or exposure not intended in the product specification, use of inappropriate means of production, modifications to the object of services undertaken or initiated by Customer or damages which are caused by special outside influences which are not intended according to the contract as well as unreproducible software defects. Further, Customer shall not be entitled to warranty claims if the object of services (§ 3) deviates from the contractual appearance and workmanship only insignificantly or if the object of services' usability is only impaired immaterially. A software defect shall only be given in case of a material deviation from the program specification which arises in the latest update status ceded to Customer in each case.

(4) The limitation period for Customer's potential warranty claims such as remedy, withdrawal and/or reduction of price shall be one year following commencement of the limitation period according to the statutory provisions. For the rest, the statutory limitation periods shall apply.

§ 9 Liability, limitation of liability

(1) deltatre shall be liable for damages, irrespective of legal basis and in particular in case of Customer's claims for damages in lieu of performance or reimbursement of futile expenditure, only if these damages were caused by deltatre's culpable breach of essential contractual obligations (so called cardinal obligations) in such a way that endangers the contractual purpose or if such damages result from deltatre's gross negligence or intention.

(2) Cardinal obligation in terms of § 9 sub. 1 shall mean an obligation whose fulfilment facilitate the execution of the contract and those obligations upon which the contracting party regularly relied and was allowed to rely.

(3) **In case deltatre is liable for damages caused by the breach of cardinal obligations which is not caused by gross negligence or intention, deltatre's liability shall be limited to the contractually foreseeable damages, which generally will not exceed the price of the order or in case of a perennial duration of the contract, the price to be paid by Customer to deltatre within one year.**

(4) The exclusions or limitations of liability according to § 9 sub. 1 to 3 shall not apply to damages caused by injury of life, body or health, by the failure to comply with guaranties, to deltatre's liability under the Product Liability Act or to any other mandatory liability provision.

(5) deltatre shall not be liable for damages which are caused in connection with Customer's failure to provide for an appropriate daily updated data backup or Customer's failure to otherwise secure a prompt and cost-effective data recovery. In case of damages of data carrier material deltatre's liability does not include the costs for replacing lost data or information.

(6) deltatre shall only be liable as provided in the subclauses above. Any further liability, irrespective of its legal basis is excluded. In particular, deltatre shall not be responsible for the usability of the database content/the database and/or the trademark "deltatre" if content of one of deltatre's databases forms part of the object of services which is provided by Customer's access to the database or by distributing of database content to Customer. Customer is aware of the fact that deltatre's databases are developed and maintained as well as permanently updated lege artis and the databases' content is secured considering scientific accuracy and generally recognised codes of practice, in particular recognised rules of programming. In case of performance of

database content, deltatre shall not be liable for the loss of database content and/or programs as far as Customer has failed to perform data backups and to make sure thereby that lost data can be restored with reasonable effort. This applies mutatis mutandis if damages are caused by Customer's failure to sufficiently protect his computer system from computer virus and other malware.

(7) The exclusions or limitations of liability according to the subclauses above also apply to claims against employees or subcontractors of deltatre.

(8) The preceding provisions do not modify the burden of proof.

§ 10 Copyright, ancillary copyright, industrial property rights, liquidated damages

(1) Objects of services, documents, proposals, documentations etc. as well as all things, documents and information which were provided during the commencement of negotiations and execution of the contract are deltatre's intellectual property and may only be used or exploited by Customer as far as agreed in the contract. If a contract between Customer and deltatre is not concluded or a contract has ended, they have to be returned to deltatre or deleted and may not be used or exploited.

(2) As far as the object of services to be performed by deltatre is protected under copyright law and/or industrial property laws (trademark law, protection of titles), in particular if the object of services covers content of one of deltatre's databases, the object of services is protected in favour of deltatre, who holds exclusive rights of use and exploitation, and is free from any third party rights. deltatre is free to dispose of such rights in the form covered by the contract.

(3) deltatre grants to Customer at the conditions agreed in the order/contract a non-exclusive, non transferable right of use, limited to the contract period, limited as to territory and content to the contractually agreed scope of use, in the object of services to be performed, e.g. in the content of one of deltatre's databases to be delivered, as far as it forms part of the scope of services. deltatre expressly reserves all other rights, in particular the right to use the object of service in excess of the scope of the contract and in particular the right to transfer the rights granted to Customer to third parties. In particular the granting of rights of use or exploitation rights in one of deltatre's databases as such, the archiving and database right, the right of house advertising and promotion, the right of secondary use etc is excluded. The grant of rights according to this § 10 sub. 3 does not cover any rights, which come into being only as a result of a revision of a statute or for other reasons. The future use of the object of services in future ways of exploitation, which were unknown at the time of the conclusion of the contract, in connection with its contractually agreed use is excluded. Any further use of the object of services which exceeds the rights granted in the preceding § 10 sub. 3, shall only be permitted if separately agreed between Customer and deltatre in writing.

(4) Customer is not entitled, whether in connection with the execution of the contract or not, to use industrial property rights, such as patents, utility patents, trademarks, labels, titles etc. of deltatre or of the objects of services to be provided by deltatre. The use of such industrial property rights has to be separately agreed between Customer and deltatre in writing.

(5) As far as software is delivered/sold or provided to Customer, e.g. in case deltatre performs services through data transfer between Customer and one of deltatre's databases by the push method via the Internet (see § 4 sub. 3 sentence 1) for the purpose of reception or processing of the performed services, Customer is granted a non-exclusive right to use the software limited to the term and the scope of the contract, which is revocable anytime. Use means the permanent or temporary starting, running, loading, displaying, executing, transferring or saving in whole or in part of the software. Customer guaranties that the software is used limited to the scope of the contract, in particular the software is not altered or modified, it is copied, reconverted, decompiled or recovered in any other way, it is not integrated in whole or in part into other software programs and/or it is not provided to third parties contrary to mandatory statutory laws (such as § 69d sub 2 and 3, § 69e of the German Copyright Act [UrhG]). If the contract is limited to a certain term, Customer will return the software including all provided documents and will delete all existing copies.

The above conditions shall accordingly apply to the use of correction/revision status or updates.

(6) If a third party raises legitimate claims towards Customer based on the infringement of a copyright, ancillary copyright or industrial property right (in the following: property right) by the object of services provided by deltatre and used according to the contract, including provided software as to § 10 sub. 5, e.g. in case content of one of deltatre's databases forms part of the object of services and the use of the granted rights in the database content infringes third party rights and/or causes damages to third parties, deltatre shall be liable to Customer as follows:

a) deltatre will at its own choice and at its own costs either obtain a right of use in the object of services, modify the object of services in such way that it



General terms and conditions of deltatre AG

does not infringe third parties' property rights or replace the object of services. If this is not possible at reasonable conditions, deltatre shall be obligated to take back the object of services on reimbursement of price.

b) deltatre's aforementioned duties shall only exist if Customer advises deltatre in writing on the claims raised by third parties immediately, if Customer does not acknowledge an infringement and leaves measures of defence and negotiations of a settlement to deltatre. If Customer ceases to use the object of services for reasons of mitigation of damages or for other material reasons, Customer has to advert to the third party that by ceasing to use the object of services Customer does not acknowledge to have infringed property rights. Customer's claims towards deltatre shall be excluded as far as Customer is responsible for the infringement of property rights. Customer's claims towards deltatre shall be further excluded, as far as the infringement of property rights is caused by special parameters of Customer, by an application not foreseeable for deltatre or if Customer has modified, completed, processed the object of services or has used the object of services in part or in clippings or in connection with services/objects of services not provided by deltatre without deltatre's express written approval. Further claims towards deltatre are excluded. § 9 (limitation of liability) shall remain unaffected as well as Customer's right to withdraw from the contract.

At the time of the conclusion of the contract between deltatre and Customer the Parties are not aware of third party claims based on the infringement of property rights by the object of services performed by deltatre and used in accordance with the contract. deltatre and Customer will notify each other on risks of infringement and alleged cases of infringement of which they become aware and will give each other the opportunity to conjointly counter according claims.

(7) **If Customer uses copyrights, ancillary rights and property rights without having been granted rights of use, in particular if Customer grants rights of use to third parties without authorization Customer shall be obligated to pay liquidated damages to deltatre in the amount of the triple account of the price (§ 5 sub. 1), at least, however, in the amount of EUR 10.000,00 (in words: Euro ten thousand) for each single case of non-compliance. deltatre's claim for liquidated damages shall be due at the time of the single noncompliance in each case. Customer may proof minor damages.**

§ 11 Confidentiality

(1) deltatre and Customer shall strictly keep as confident and will not use for their own benefit all commercial, operative, organizational and technical information, knowledge and experience of the other Party which has been made accessible, confided, or otherwise become known to the other Party and which is only accessible to a limited group of people, designated as „confidential“ by deltatre or Customer or which has to be treated as confidential due to the consequences of a possible disclosure according to the principle of good faith (“business secrets”). Documents and business secrets which were provided to the other Party may only be used for the purpose of the contract and must not be disclosed to third parties, unless such documents and information according to their purpose shall be disclosed to third parties or are already known to third parties.

(2) The duty to keep confidential also applies to the content of this contract, the determinations made by its performance and the findings obtained at its execution. Neither deltatre nor Customer shall be permitted to disclose the conditions of this contract to third parties. This does not apply to deltatre's or Customer's lawyers, auditors and financial advisors respectively to a disclosure prescribed by law.

(3) Both parties are obligated to agree on according duties to keep confidential with their employees and/or auxiliary persons and other third parties, which are involved in the execution of the contract.

(4) The mutual duty to keep confidential applies unlimited as to time; it shall continue after the termination of the contract.

(5) § 14 sub. 3 of these Terms and Conditions shall remain unaffected.

(6) Personal data collected and evaluated in computer systems and computer programs have to be secured according to the data privacy laws in force.

(7) deltatre and/or Customer shall return the documents and business secrets obtained from the other Party in each case to deltatre/Customer after termination of the contract.

§ 12 Force majeure

(1) deltatre shall not be responsible for the deferral of dates and periods for performance or the impossibility to perform caused by force majeure.

(2) **Force majeure in terms of this contract means** strikes, lockouts, governmental interferences, war, situations comparable to war and civil war, shortage of energy and resources, **obstructions of business** through no fault of deltatre's own but caused by thunderstorm, lightning, fire, water, snow and ice, **by shortfall of communication networks and communication processors, shortfall of computer systems, cable fire, machine defects, accidents during the travel, loss of personnel etc.**

§ 13 Duration of the contract, termination

(1) The contract enters into force at the point in time agreed and terminates after the agreed period (base period). Unless specifically and contractually agreed upon

otherwise, especially if the contract is not concluded explicitly for a determined period of time without automatic renewal, the contract **will be extended automatically by 1 (one) further year (extended period), unless the Contract is terminated beforehand with a notice period of 3 (three) month to the end of the base period or an extended period. For the rest the right to terminate for cause is excluded.**

(2) the right to terminate for cause shall remain unaffected by the preceding provisions as to § 13 sub. 1. A material reason to terminate for cause shall be given in particular:

- If one Party has failed to comply with an essential contractual obligation even after having obtained a written warning from the other party within 4 (four) weeks; an essential contractual obligation is in particular Customer's duty of payment pursuant to § 5 sub. 2 (deltatre's right to terminate for cause if Customer is in default of payment and a warning with fixing a period of time have been effectless),

- If the other Party is insolvent,

- If insolvency proceedings against the assets of the other Party were applied for,

- If one Party's circumstances under company law change considerably (change of control). However, changes to deltatre's circumstances under company law within deltatre's affiliated companies (§§ 15 ff. German Stock Company Act [AktG]) and/or within its shareholders and or within the shareholders/associates of deltatre's affiliated companies (§§ 15 ff. AktG) shall be deemed inconsiderable.

(3) Notice of termination and warning must be given in writing. A notice of termination by E-Mail does not meet this requirement.

(4) Customer is obligated to deliver to deltatre or to delete – without prejudice of § 10 sub. 1 sentence 2 and § 11 sub. 6 – all commercial documents which are associated with deltatre, including computer analysis and data pools created by Customer, all documents and means of work provided by deltatre as well as all copies of the aforementioned documents immediately at the termination of the contract. Customer is further obligated to assign to deltatre all possible property rights of all types (copyrights, ancillary copyrights, trademarks and protected titles etc.) in the documents in terms of Sentence 1 respectively to grant deltatre exclusive rights of use.

§ 14 Blocking right, references, public relations

(1) **In case deltatre's services are rendered by Customer's access to one of deltatre's databases via the Internet (pull method pursuant to § 4 sub. 3 sentence 1) deltatre shall be entitled to block access to the database, if Customer, his agent, auxiliary person, representative, vicarious agent, or a person otherwise attributable to Customer violates provisions of the contract, unless Customer fails to eliminate the violation after having been given a warning by deltatre.**

deltatre's claims for damages shall remain unaffected.

(2) **deltatre is further entitled to use the services provided to Customer, including correspondent services/productions of deltatre or Customer, for demonstration purposes as well as for advertising, house advertising, information purposes and for accompanying information, in all TV media, new media, in particular on its website/homepage as well as in print media, in particular to publish or refer to it, unless Customer may claim conflicting legitimate interests in writing.**

(3) deltatre and Customer will co-operate in a positive and diligent manner in order to publish advertising and general communication with regard to their relationship, the contract, the use of deltatre's services by Customer and other matters which were agreed by mutual agreement. Neither deltatre nor Customer is permitted to publish such advertising or general communication pursuant to the preceding § 14 sub. 3 sentence 1 without prior written approval of the other party (which may not be unreasonably withheld).

§ 15 Installment Payments

(1) Installment payments require a separate written agreement between the Parties. They may be proposed by the customer only for orders of at least EUR 50,000. There is, however, no entitlement to make installment payments. The respective outstanding invoice balance is subject to interest at the rate of 4.9% per annum. An installment plan may be arranged for up to an overall term of a maximum of 24 months. Until full discharge, deltatre reserves the right to carry out further deliveries only upon prepayment or against cash on delivery.

(2) By proposing an installment plan, the customer agrees that deltatre will conduct a credit check by obtaining information from credit agencies.

(3) Termination for Convenience

Both the customer and deltatre may terminate the installment agreement at any time with a notice period of 3 months to the end of a calendar month, unless this is excluded by deviating provisions or other agreements.



General terms and conditions of deltatre AG

(4) Termination for important Cause

Other agreements notwithstanding, both the customer and deltatre may terminate the entire installment agreement without notice period at any time if there is an important cause because of which a continuation of the business relationship cannot reasonably be expected of the terminating party. Justified interests of the other Party are to be taken into account in this determination.

August 2013

a) Such a cause for termination arises for deltatre in particular if compliance with the customer's payment obligations or the enforceability of deltatre's claims is endangered (even if collateral, if any, is foreclosed) because of the circumstances listed as examples below:

- if payment of one installment by the customer is more than 7 business days late;
- if a material adverse change or substantial endangerment of the customer's financial circumstances or the intrinsic value of collateral provided for the installment plan, if any, occurs, in particular if the customer suspends payments or declares that payments will be suspended, or if a bill of exchange accepted from the customer is protested;
- if the customer does not meet its agreed obligation to provide or increase collateral upon deltatre's request in a reasonable period of time;
- if the customer provided incorrect information about its financial circumstances;
- if foreclosure proceedings are initiated against the customer;
- if the financial situation of a co-debtor or of the general partner have undergone a material adverse change or are substantially endangered, as well as in case of death or change of the general partner.

b) Should the important cause consist in the breach of an obligation under the Agreement, termination may be made only upon fruitless expiry of an extension set to remedy such breach, or upon fruitless warning. This does not apply solely in cases in which the customer seriously and finally refuses performance, if it does not render performance at the time determined in the Agreement or within a certain period, even though deltatre contractually linked its continued interest in the performance to its timeliness, or if there are special circumstances which justify an immediate termination taking into account the mutual interests.

(5) Upon expiry of the installment agreement, any amounts still outstanding are due immediately.

§ 16 Final provisions

(1) deltatre and Customer agree to search for a conjoint solution at the assertion of rights; in doing so, the Parties will consider the special situation of the other Party in each case.

(2) The contract and the rights resulting from this contract may not be transferred or assigned without the other Party's prior written approval. Approval may not be unreasonably withheld. Customer's consent is not necessary if deltatre assigns the rights and duties resulting from this contract to a person or a company, which assumes all assets, shares or the whole business of deltatre by way of purchase, merger or in any other way. The same applies if deltatre transfers this contract to an affiliated company in terms of §§ 15 ff. AktG. § 354a of the German Commercial Code (HGB) remains unaffected.

(3) deltatre's or Customer's failure to execute or delayed execution of any of the rights resulting from this contract shall not be deemed a waiver of such rights or a single or partly execution of such rights and does not exclude the different or further execution of such right or the execution of any other right.

(4) The contract, including these Terms and Conditions constitutes the whole agreement between deltatre and Customer and replaces any prior agreements between the Parties with regard to the subject matter of the contract. In case of conflicting clauses between this Terms and Conditions and the contractual regulations in the underlying Agreement, the contractual provision as more specific clause shall apply. In particular, Customer's terms and conditions do not become part of this agreement. No oral side agreements exist. Amendments, addenda and changes of any of the provisions of the contract including these Terms and Conditions and all waivers of any of the provisions of this contract require written form to be valid. This (written form requirement) shall in particular apply to the abrogation or waiver of the written form requirement.

(5) Should any or single provisions of the contract, including these Terms and Conditions, be or become contestable or invalid, this shall not affect the validity of the remaining provisions of the contract including these Terms and Conditions. Instead of the contestable or invalid provision/s a provision shall apply which Customer and deltatre would have agreed on according to the original purpose of the contestable or invalid provision(s) considering an economic approach. The same applies analogously in the case of a gap in the contract.

(6) This contract shall be governed by the laws of the Federal Republic of Germany in exclusion of the United Nations Convention for the International Sale of Goods (CISG).

(7) Place of performance shall be at deltatre's registered office. Exclusive place of jurisdiction for all legal disputes arising from and in connection with this contract, irrespective of the legal basis, shall be MUNICH.