

## General Terms and Conditions of DE-CIX Management GmbH

### -subscription to Work-IX- Status: 01.07.2007

#### § 1 Application of the terms and conditions

- (1) A contractual relationship relating to all services provided by DE-CIX Management GmbH ("the services") is based exclusively on the present terms and conditions if the other party to the contract is an entrepreneur, legal person under public law or an entity of the Federal Special Funds. The present terms and conditions of business apply to all future business transactions even if not explicitly agreed again. The present terms and conditions are deemed to be accepted at the latest on first provision of service.

Any acceptance by the other party ("the subscriber") with reference to its terms and conditions of business or purchasing conditions is hereby rejected.

- (2) Departures from the present terms and conditions must be in writing. This also applies to any waiver of the requirement for written form. If statute sets more stringent requirements, these must be observed.
- (3) The representatives of DE-CIX Management GmbH are not authorised to enter into oral agreements or give oral guarantees.
- (4) DE-CIX Management GmbH is entitled at any time to revise or supplement these general terms and conditions of business including all appendices such as conditions of use and any service specifications and service agreements. DE-CIX Management GmbH will notify the subscriber of any change in writing. If the subscriber fails to object to the changed conditions within *four* weeks of receipt of the notification of change, the changes become effective as announced. DE-CIX GmbH will notify the subscriber of this consequence separately in writing. If the subscriber objects to the changes, the present agreement continues in force unchanged. In this case DE-CIX Management GmbH is entitled to terminate the agreement within a period of *six* months of receipt of the notice of objection; the provision of 3.1 does not apply.

#### § 2 Entry into force of the agreement

- (1) The agreement on the service to be provided by DE-CIX GmbH enters into force on declaration of agreement by DE-CIX Management GmbH and the subscriber. The declarations may be made in writing, by telefax or electronically by e-mail or in an online form with corresponding authorisation by DE-CIX Management GmbH. In the absence of declaration of acceptance by DE-CIX Management GmbH the agreement enters into force at the latest on provision of the contractual services by DE-CIX Management GmbH. Actual use of the services provided by the subscriber is not required.
- (2) Drawings, illustrations, documentation, advertising claims or other service data are merely information on state, condition and quality. A warranty of specific properties or assumption of warranty by DE-CIX Management GmbH requires explicit written agreement in each individual case.
- (3) DE-CIX Management GmbH can make entry into the agreement conditional on presentation of written power of attorney, an advance payment or a bond from a German major bank.
- (4) If DE-CIX Management GmbH uses third parties to provide the services offered, these are not parties to the contract with the subscriber. There is further no contractual relationship between subscribers simply by virtue of the fact that they jointly use technical installations.

#### § 3 Term, termination

- (1) The agreements under the present general terms and conditions of business are entered into for a term of one year unless otherwise agreed in supplementary conditions of use, and are extended for a further year unless notice of termination is given in written form three months before the end of the annual agreement. DE-CIX Management GmbH will confirm receipt of notice of termination.
- (2) This is without prejudice to the right to extraordinary termination for important cause. DE-CIX Management GmbH has such right specifically if the subscriber repeats or persists in a violation of its contractual obligations beyond a stated period of notice or after

unsuccessful complaint or for other important cause, and specifically 5.2 or 8.3. DE-CIX Management GmbH further has the right to extraordinary termination, with or without notice at its own discretion, if the subscriber declares that it is finally ceasing payments or DE-CIX Management GmbH can no longer reasonably be expected to provide the due services as a result of a fundamental change in the legal or technical standards for the Internet.

#### § 4 Consequences of expiration of agreement

On expiration of the agreement the subscriber will remove all items in its possession from the relevant computer centre and restore areas used by it to the state on entry into force of the agreement within two weeks of the end of the agreement.

#### § 5 Scope of service, rights and obligations of the parties

- (1) The services of DE-CIX GmbH are determined by the agreements entered into between the parties. These include all contractual agreements between the parties in the relevant appendices.
- (2) DE-CIX Management GmbH reserves the right to modify or expand the scope of the services and to make improvements if changing technical conditions require. Restrictions are permissible if they do not adversely affect the contracted functionality.

#### § 6 Availability, Underperformance, service work

- (1) DE-CIX Management GmbH guarantees availability of 99% of its Work-IX services in terms of yearly averages (calculated for the calendar year).
- (2) In the event of underperformance on availability the parties agree that the subscriber solely receives the credits as provided in the following sections. The subscriber has no further claims unless DE-CIX Management GmbH caused the underperformance deliberately or through gross negligence.
- (3) The subscriber receives a credit of a daily fee for an underperformance of 12 hours in total. The daily fee results from the proportionate quarterly fee paid by the subscriber for the Work-IX service. The maximum amount of a credit in any one instance is at most the monthly fee, or annually at most three monthly fees paid by the subscriber to DE-CIX GmbH for the Work-IX service.
- (4) The subscriber must file justified claims on credits within 4 weeks of obtaining knowledge of failure to meet the service level. Justified claims are offset against subsequent invoices.
- (5) Performance of service and/or repair work by the computer centre operator and/or DE-CIX Management GmbH is not taken into account in determining downtimes. The same applies in the case of relocation under Art. 7.
- (6) Corresponding notification of service and repair work by DE-CIX Management GmbH or the computer centre or network operator leading to an interruption of service is forwarded to the subscriber immediately on receipt by DE-CIX Management GmbH. The standard service period for service work by DE-CIX Management GmbH itself is from 03.00 to 07.00 every Wednesday. If it is foreseeable that service or repair measures will result in an interruption of service, DE-CIX Management GmbH will notify subscribers at least two weeks before carrying out the measure, if it is a DE-CIX Management GmbH measure; if it is a third party measure, the corresponding information will be forwarded without delay on receipt; in this event DE-CIX Management GmbH will intervene to ensure corresponding notice is given. In any case DE-CIX Management GmbH will endeavour to avoid interruptions of service by its own service and repair measures. If services are nevertheless interrupted, DE-CIX Management GmbH will draw up and provide to subscribers a detailed report to the extent this is actually and legally possible. In cases where the interruption of service is due to activities of the computer centre or network operator, DE-CIX Management GmbH will endeavour to obtain a report from them.

#### § 7 Right of relocation

DE-CIX Management GmbH is entitled to relocate the Work-IX location within the computer centre or to other computer centres. This measure is subject to notification with 10 weeks' notice. DE-CIX Management GmbH will further notify subscribers of the term of agreements entered into with computer centre operators through which subscribers are connected with Work-IX. The same

applies for any notification or termination of agreement or end of agreement.

## **§ 8 Obligations of the subscriber**

- (1) The subscriber is obliged to use the services provided by DE-CIX Management GmbH properly. It is obliged specifically
  - (a) to pay the agreed fee in accordance with the prevailing tariff plus the tax on this,
  - (b) to enable DE-CIX Management GmbH to install technical equipment if and to the extent that this is necessary to use the services and that installations are not made by the subscriber, (this also includes providing all information needed for the provision of service by DE-CIX Management GmbH),
  - (c) to notify DE-CIX Management GmbH on request which technical equipment is used to participate in the services,
  - (d) not to misuse access to the services and to avoid illegal acts,
  - (e) to comply with national and applicable international statutes and technical or legal guidelines, safety guidelines, manufacturer specifications and official orders and to obtain official permits if needed currently in future within the framework of the services provided by DE-CIX Management GmbH,
  - (f) to only bring items into the computer centre which are required for the contracted service,
  - (g) to give DE-CIX Management GmbH access and/or entry at all times to the items brought in if DE-CIX Management GmbH believes this is necessary,
  - (h) to ensure that the items brought into the computer centre for the specified purpose are suitable and do not pose any threat to the property of DE-CIX Management GmbH or third parties or adversely affect or prevent the functionality of the services provided to third parties by DE-CIX Management GmbH,
  - (i) not to affect items of third parties, not to gain access outside the contracted services to or investigate (computer) systems not owned by the subscriber,
  - (j) to notify DE-CIX Management GmbH without delay of identifiable complaints, defects or loss with regard to the services it offers (fault report),
  - (k) to do everything reasonable to make possible identification of the defect or damage and its causes or facilitate and speed the correction of the fault,
  - (l) after submission of a fault report to DE-CIX Management GmbH to reimburse work on inspecting the subscriber's installations if and to the extent that the examination shows that the subscriber was responsible for the fault,
- (2) If the subscriber fails to meet the obligations in para. 1 (d, e), DE-CIX Management GmbH is entitled to terminate the agreement without notice, and in the other cases under para. 1 with the exception of (a) to terminate the agreement after unsuccessful complaint.
- (3) DE-CIX Management GmbH can regulate details of collaboration between subscribers through access conditions and user regulations. Violations of material provisions of these supplementary conditions entitle DE-CIX Management GmbH to terminate the agreement without notice after unsuccessful complaint.

## **§ 9 Payment terms, escalator clause**

- (1) The fees for the agreements concluded under the present general terms and conditions of business are invoiced quarterly in advance. Invoicing is done at the start of the billing quarter, at the latest on the fifth working day. The invoice is payable at once.
- (2) If there are older receivables outstanding under the agreement, DE-CIX Management GmbH is entitled to credit payments first to costs, then to interest and finally to the oldest outstanding receivable.

- (3) If the computer centre operators which DE-CIX Management GmbH obtains its contractual services or parts thereof increase their prices to DE-CIX Management GmbH, the price increase may be passed on to the subscribers.

## **§ 10 Right of offset and retention**

The subscriber may only offset uncontested or legally enforceable claims against claims of DE-CIX Management GmbH. The subscriber is only entitled to assert a right of retention for counterclaims under an agreement with regard to receivables under the same agreement.

## **§ 11 Default**

- (1) The subscriber is automatically in default on the first day of the month following the start of a billing quarter without the need for reminder. In the event of default by the subscriber DE-CIX Management GmbH is entitled to block the connection subject to two weeks' prior notice, starting from the date of mailing to the subscriber. DE-CIX Management GmbH may send notification of blockage to the e-mail address designated by the subscriber for the administrative contact or other e-mail address designated in writing by the subscriber. DE-CIX Management GmbH can send written notice instead. Receipt of notification of blockage is not required. The subscriber is obliged to pay the agreed fee even in the event that the connection is blocked.
- (2) In the event of default DE-CIX Management GmbH is further entitled to charge interest of 8 percentage points above the ECB base interest rate from the relevant date. This is without prejudice to any claim for further damages.
- (3) If the subscriber is in default on the fee or a substantial part of the fee for two successive quarters or is in default to an amount equal to the basic quarterly fee for one quarter for a period of more than two months after the start of a quarter, DE-CIX Management GmbH can terminate the agreement without notice.

## **§ 12 Confidentiality, data protection**

- (1) Unless otherwise explicitly agreed in written, information provided to DE-CIX Management GmbH is not confidential.
- (2) Person-related data collected, processed or used by DE-CIX Management GmbH for the purposes of the contract is treated in accordance with the relevant provisions of the Data Protection Act.
- (3) DE-CIX Management GmbH warrants that all persons employed by it on the present agreement are familiar with and comply with the relevant data protection regulations in their prevailing version. The subscriber is not entitled to obtain for itself or third parties through the services data or information not intended for itself or third parties.
- (4) If internationally recognised technical standards so provide and the subscriber does not object, information on the subscriber will be made available to third parties (if so directory services, looking glass etc.).
- (5) The subscriber is notified that the computer centres which house the DE-CIX locations are monitored by video. The video recordings of the persons entering the monitored areas of the computer centre are stored for evidence purposes by the relevant computer centre operator. The subscriber is responsible for obtaining the necessary declaration of agreement required by the Data Protection Act from the persons entering the computer centre.

## **§ 13 Limitation of liability for DE-CIX GmbH**

- (1) The contractual and extracontractual liability of DE-CIX Management GmbH for all the services provided in the course of or in connection with the agreement is limited in accordance with the following provisions, and liability of DE-CIX GmbH for loss of profit is excluded. This is without prejudice to any liability of DE-CIX Management GmbH under the Product Liability Act (Produkthaftungsgesetz).
- (2) DE-CIX Management GmbH is always liable in full and without restriction in the event of intent or fraudulent concealment of a defect. DE-CIX Management GmbH is further liable without restriction in the event of exceptional contractual assumption of a guarantee or purchasing risk. If damage occurs in transit with a carrier, the relevant provisions of the agreement between the carrier and DE-CIX Management GmbH apply to the liability of DE-CIX Management GmbH to the subscriber.

- (3) DE-CIX Management GmbH is always liable in full and without restriction for damage from culpable injury to human life, body or health.
- (4) DE-CIX Management GmbH is always liable in full and without limit in the event of its own gross fault and deliberate intent.
- (5) DE-CIX Management GmbH is also liable on the merits of the case for each instance of culpable violation of essential contractual obligations where compliance is particularly important for achieving the purpose of the agreement ("strict obligations"). This also applies if the violation is committed by senior management and auxiliary persons.
- (6) DE-CIX Management GmbH is liable on the merits of the case for violations of obligations other than strict obligations through gross fault (intent and gross negligence) by simple auxiliary persons, unless it can claim exemption for gross negligence by trade practice.
- (7) In the event of 13.5 and 13.6 the liability of DE-CIX Management GmbH is limited in amount as far as applicable under Art. 6 and beyond this to compensation for the typical damage occurring.
- (8) Claims for damages under sections 280 para. 2, 286 BGB (loss due to delay) are limited in amount to one month's subscription fee due to DE-CIX Management GmbH from the subscriber.
- (9) DE-CIX Management GmbH is not liable for nonperformance or delay due wholly or in part to force majeure, e.g. strikes, lockouts and governmental restrictions. This also applies if the force majeure affects suppliers or subcontractors of DE-CIX Management GmbH or their sub-suppliers or subcontractors. DE-CIX Management GmbH is released from the obligation to provide service for the duration of these disturbances and their effects.
- (10) Claims for liability lapse one year after occurrence of the event causing the liability, except for liability for deliberate intent.

#### **§ 14 Liability of the subscriber, indemnifications**

- (1) The subscriber is fully liable under the statutory provisions. This also applies to all consequences and disadvantages arising to DE-CIX Management GmbH and third parties for the subscriber's failure to meet its contractual obligations.
- (2) The subscriber indemnifies DE-CIX Management GmbH on first demand from corresponding third party claims including the costs of legal action.

#### **§ 15 Final provisions**

- (1) Place of performance is the place where the services are provided. This is currently Frankfurt/Main, Federal Republic of Germany. Sole venue for all claims under and arising out of the present agreement including actions arising out of a cheque or bill and all disputes between the parties on the entry into force, performance or expiration of the agreement is the registered office of DE-CIX GmbH, provided that the subscriber is a legal person under public law or entity of the Federal Special Funds.
- (2) The present agreement is subject exclusively to the law of the Federal Republic of Germany. To the extent that the UN Convention on Contracts for the International Sale of Goods applies, its provisions are waived as far as is legally possible.
- (3) No ancillary agreements are made.
- (4) The obligations under agreements entered into on the basis of the present terms and conditions of business are also binding on the legal successors of the subscriber.
- (5) If any provision of this agreement is or becomes invalid this does not affect the validity of the remaining provisions. Instead the invalid provision is deemed to be replaced by a provision which corresponds to or at least approximates the purpose of the agreement and which the parties would have agreed to achieve the same commercial result if they had been aware of the invalidity of the original provision. The same applies to incompleteness of the provisions.