

## **General Terms and Conditions of RIZ IT-Motion GmbH, Version 01. Dec. 2012**

### **A. General Provisions**

#### **1. Scope**

- 1.1 For contracts in all departments of RIZ IT-Motion GmbH (hereinafter: RIZ IT-Motion) with companies (§ 14 BGB [German Civil Code]), corporate bodies under public law and special funds under public law, these General Terms and Conditions (GT&C), i.e. the General Provisions as well as the Special Provisions, shall apply exclusively.
- 1.2 Any terms and conditions from the Customer shall not form part of the contract, even if RIZ IT-Motion has not explicitly objected to them in individual cases or being aware of conflicting or deviating terms from the customer makes delivery or provides services to the Customer without reservation.
- 1.3 By placing an order, the Customer acknowledges the GT&C as well as product-specific service descriptions valid at conclusion of contract and the product-specific price lists valid at conclusion of contract.
- 1.4 These GT&C, accessible to the Customer at [www.riz-itmotion.de](http://www.riz-itmotion.de) in the version valid when the Customer executes its declaration, shall apply equally to future business relationships with the Customer, unless the contracting parties agree otherwise in writing.

#### **2. Conclusion of Contract**

- 2.1 Quotations from RIZ IT-Motion are always subject to change and non-binding, unless RIZ IT-Motion has explicitly declared them binding.
- 2.2 A legal relationship shall only be established when both parties sign the Contract, or RIZ IT-Motion issues a written order confirmation, as well as when RIZ IT-Motion has commenced the contractual service provision.
- 2.3 RIZ IT-Motion may request written confirmation of verbal contractual declarations by the Customer.
- 2.4 Order processing shall occur within RIZ IT-Motion with the help of electronic data processing taking statutory provisions of data protection into account. On conclusion of a contract, the Customer shall give its consent to the processing of data that have become known the RIZ IT-Motion within the contract relationship and are necessary for order processing.

#### **3. Content and Extent of Performance, Time of Performance, Place of Performance**

- 3.1 In the absence of other agreements between the parties, content and extent of the goods and services owed by RIZ IT-Motion shall result from RIZ IT-Motion's order confirmation.
- 3.2 Partial deliveries and services are permitted and separately invoiced as long as the partial deliveries and services are acceptable to and useful for the Customer.
- 3.3 The delivery of hardware and software as well as their installation should be regarded as separate performances. RIZ IT-Motion is entitled to invoice the performances separately.
- 3.4 RIZ IT-Motion reserves the right to change products, especially in the course of ongoing developments, as long as the agreed dates of performance are met.
- 3.5 Delivery and service deadlines are non-binding, unless they were explicitly specified as binding.
- 3.6 Delivery and service times shall commence at the earliest on the date specified in the order confirmation. All delivery obligations are subject to correct and punctual supply to us.
- 3.7 Should the parties agree upon different or additional performances that affect the agreed deadlines, the deadlines shall be extended by a reasonable period.
- 3.8 Delivery and service deadlines are extended by the time period that the Customer is in default of payment.
- 3.9 In the event of circumstances for which RIZ IT-Motion is not responsible, especially force majeure and industrial action, the delivery time shall be extended accordingly. Should the said circumstances make the implementation of deliveries impossible, significantly more difficult or expensive, RIZ IT-Motion shall be released from its obligation to deliver or perform. Should the time of delivery be prolonged or RIZ IT-Motion is released from its obligations for reasons mentioned above, the Customer may not derive any claims for damages herefrom. The above ruling shall apply regardless whether the said circumstances occur at RIZ IT-Motion or at its sub-suppliers or subcontractors.

#### **4. Subcontractors of RIZ IT-Motion**

RIZ IT-Motion is entitled to utilize third parties in the provision of its performance either in total or in part.

#### **5. Prices**

- 5.1 Prices stated on offers, order confirmations and invoices do not include value added tax, which shall be added.
- 5.2 The price valid on the day of delivery or service shall be decisive for the calculation of prices plus value added tax, unless a different price agreement was concluded.
- 5.3 Unless otherwise agreed, prices shall be "ex work" (supply warehouse) from RIZ IT-Motion in Radolfzell, excluding freight and packaging. The Customer shall carry any extra costs arising from mode of shipment requested by it (e.g. express parcel, fast mail).
- 5.4 The Customer shall be invoiced separately for any incidental expenses such as freight charges, allowances, accessories, mailing costs or telecommunication costs, additional costs for dispatch, in particular freight, environmental and processing fees.

5.5 RIZ IT-Motion reserves the right to adjust its prices accordingly, should increases or reductions in costs occur after conclusion of Contract, in particular due to tariff agreements or changes in material costs. At the Customer's request, RIZ IT-Motion shall provide evidence of this.

5.6 In the case of goods obtained abroad, RIZ IT-Motion may adjust the prices agreed upon, if the exchange rate between the currency of the supplier country and the Euro fluctuates by more than 3% from the time of order confirmation to delivery/invoicing.

## 6. Terms of Payment

6.1 Receivables from goods and services are due immediately without any deductions, unless other terms of payment were agreed at conclusion of contract.

6.2 The Customer shall be in arrears, if it does not make payment within 30 days of due date and receipt of invoice, or following a reminder from RIZ IT-Motion on due date.

6.3 In the case of arrears the Customer shall owe the statutory default interest of 8% above prime rate. The right to assert claims beyond this remains unaffected.

6.4 The Customer's right to offset counterclaims of any kind shall be excluded, unless the counterclaim has been established by a legally binding judgement or is undisputed.

6.5 Should the Customer be in arrears, RIZ IT-Motion is entitled to make delivery at any time against cash payment, pre-payment or provision of security. All outstanding receivables, also those from other contracts, including those for which instalments have been agreed, shall become due for payment immediately.

6.6 Should the Customer be in default of payment, RIZ IT-Motion may additionally refuse further delivery from this or another contract or make it dependent on pre-payment or provision of security without prejudice to its other statutory rights.

## 7. Packaging, Shipment, Passing of Risk

7.1 Unless otherwise agreed, deliveries shall be made "ex works" (supply warehouse) of RIZ IT-Motion, Radolfzell. This shall also apply, if RIZ IT-Motion has assumed transport costs or advanced these for the Customer.

7.2 Unless otherwise agreed, RIZ IT-Motion shall choose packaging and mode of shipment.

7.3 Shipment shall be effected at the Customer's risk.

7.4 The risk of damage to or loss of the contractual products passes to the Customer when the contractual products have been handed to the forwarding agent, shipper or the person appointed to effect shipment. This shall also apply, if RIZ IT-Motion has assumed transport costs or advanced these for the Customer.

7.5 At the Customer's written request and at its account, the contractual products shall be insured against damages arising from storage, transport and fire.

## 8. Inspection of Contractual Products

8.1 The Customer is obligated to have an expert employee inspect all contractual products in accordance with the provisions of commercial law (§ 377 HGB [Commercial Code]), as soon as they have been delivered or made accessible, no later than within 4 weeks. If a defect is found, including wrong and short delivery, the Customer must make written notification giving a detailed description of the defect.

8.2 The Customer must make written notification of hidden defects, which were undetectable within the deadline of 4 weeks despite careful inspection, no later than within 4 weeks after discovery, giving a detailed description of the defect.

8.3 Should the Customer fail to make notification, the contractual products shall be deemed accepted despite the defect.

## 9. Retention of Title

9.1 The contractual products supplied shall remain the property of RIZ IT-Motion until all receivables from this Contract including future receivables arising from the Contract, and beyond that from the entire business relationship with the Customer, have been fulfilled. In the case of a current account, the retention of title shall be considered a security for the outstanding claims of RIZ IT-Motion.

9.2 The Customer shall store the goods subject to retention of title for RIZ IT-Motion free of charge. It must insure them against the usual risks, such as fire, theft and water to the customary extent. The Customer herewith assigns its compensation claims from damages of the aforementioned kind that become due to it from insurance companies or other parties obligated to make restitution, in the amount of the invoiced value of the goods to RIZ IT-Motion. RIZ IT-Motion accepts the assignment.

9.3 If the Customer combines, mixes or processes the goods subject to retention of title into a new movable object, this is done on behalf of RIZ IT-Motion without RIZ IT-Motion thus incurring any obligations. The Customer does not acquire ownership in the new object through combining, mixing or processing pursuant to §§ 947 et seq. BGB. If the goods are mixed or processed with items that are not owned by RIZ IT-Motion, RIZ IT-Motion shall acquire co-ownership in proportion of the invoice value (incl.VAT) of the goods subject to retention of title and the total value. In the event that RIZ IT-Motion does not acquire such ownership, the Customer already now assigns its expectant ownership or – in the aforementioned proportion – its co-ownership in the newly created item to RIZ IT-Motion by way of security.

9.4 The Customer is entitled to process or resell the goods subject to retention of title during the normal course of business, as long as its equity situation does not deteriorate significantly or it is not repeatedly in default of payment.

9.5 The Customer assigns to RIZ IT-Motion by way of security, already at this time, its claims (in the final amount of the invoice including VAT) against the buyer arising from such resale of the goods subject to retention of title, along with all ancillary rights – if RIZ IT-Motion co-owns the goods subject to retention of title in proportion to the corresponding share of co-ownership. The same applies to other claims that supersede the goods subject to retention of title or otherwise arise with respect to the goods subject to retention of title, such as insurance claims or claims from inadmissible actions in the case of loss or destruction. The

Customer is authorised to collect the assigned claims as long as it meets its payment obligations to RIZ IT-Motion. Should the Customer default on payments or its equity situation deteriorate significantly, this authorisation to collect is revoked. In this case, the Customer authorises RIZ IT-Motion to inform the buyer of the assignment and collect the receivables itself. At RIZ IT-Motion's request, the Customer is obligated to supply an exact list of claims due to RIZ IT-Motion with the buyers' names and addresses, amount of individual claims, invoice dates etc. and give RIZ IT-Motion all the information necessary to assert the assigned claims and allow it to verify this information.

- 9.6 If the goods subject to retention of title were processed, mixed or combined and RIZ IT-Motion thus acquired co-ownership of them, RIZ IT-Motion shall be entitled to claim the purchase price from the buyer proportionate to the value of its rights to the goods. The above provisions shall apply accordingly.
- 9.7 If the combined value of all of securities interests held by RIZ IT-Motion exceeds the total value of secured claims by more than 10%, RIZ IT-Motion is obligated, at the Customer's request, to release a corresponding part of those securities, at its option.
- 9.8 Goods subject to retention of title or assigned claims may not be pledged or assigned by way of security. RIZ IT-Motion must be informed immediately of any pledges and the name of the garnisher must be provided.
- 9.9 Should RIZ IT-Motion repossess the goods subject to retention of title by asserting its reserved title, a withdrawal from the contract only exists when RIZ IT-Motion expressly declares this. RIZ IT-Motion may cover its claims by selling the repossessed goods subject to retention of title.
- 9.10 If the title retention is not valid according to the laws of the country of destination, but the country of destination allows for the retention of other rights to the goods that are economically similar to a retention of title, this alternative right is deemed to be agreed. If and as far as it becomes necessary for the customer to provide assistance in order to ensure the effectiveness of this alternative right, the Customer undertakes to do so at RIZ IT-Motion's request.

## 10. Warranty on Contractual Products

- 10.1 RIZ IT-Motion guarantees that the contractual products are free from defects at the time of passing of risk, i.e. suitable for the intended use according the Contract or for their customary use. RIZ IT-Motion shall not assume any further warranty.
- 10.2 Warranty claims do not arise for the Customer, if the Customer or third party has changed the contractual product, installed, maintained, repaired or used it incorrectly, or exposed it to environmental conditions that do not comply with the manufacturer's installation requirements, unless the Customer can prove that these circumstances are not the cause for the defect claimed. The same applies, when consumables are used that do not correspond to the original specifications. Warranty also does not arise if serial numbers, model labels and similar markings have been removed or rendered illegible.
- 10.3 Insignificant deviations in colour, size and/or other quality and performance characteristics do not give rise to warranty claims.
- 10.4 In the case of a defect, RIZ IT-Motion may, at its option, first repair or replace the item, free of charge. Parts that are removed or replaced become the property of RIZ IT-Motion. In the case of replacement, the defective item must be returned.
- 10.5 Should the defect not be repaired within a reasonable time or the repair or replacement fails for other reasons, the Customer is entitled, at its option, to reduce the purchase price or withdraw from the sales contract. The repair can only be regarded to have failed, if RIZ IT-Motion has been given sufficient time to repair or replace the item without achieving the desired result, if RIZ IT-Motion has refused this or delayed this for an unacceptably long time, if there are justified doubts of the chances of success or if it is otherwise unacceptable.
- 10.6 The periods of limitation on warranty claims shall not start anew when software or hardware (whole machines, parts, components) is replaced.
- 10.7 RIZ IT-Motion shall carry the costs associated with the repair, such as labour costs or transport costs for replacement delivery. RIZ IT-Motion shall, however, only bear those transport costs that are necessary for a repair at the agreed location.
- 10.8 If an inspection of a warranty claim reveals no defect, the costs for the inspection and repair shall be charged at RIZ IT-Motion's charge rate valid at the time.
- 10.9 RIZ IT-Motion removes defects of title by providing the Customer with legally unobjectionable use of the contract item or by supplying a contract item of equal value that is unencumbered by third party rights.
- 10.10 The Customer shall notify RIZ IT-Motion in writing immediately if third parties assert rights to the contract item (e.g. copyrights or patent rights) against it. The Customer authorises RIZ IT-Motion to conduct the dispute with the third party alone. As long as RIZ IT-Motion makes use of this authorisation, the Customer may not acknowledge the claims by the third party without RIZ IT-Motion's consent. RIZ IT-Motion shall then bear all costs for fending off claims by third parties and indemnifies the Customer from all costs associated with fending off these claims, unless they are based on conduct contrary to duty on behalf of the Customer (e.g. use of software contrary to contract).

## 11. Liability

- 11.1 RIZ IT-Motion shall pay compensation or replace futile expenses, irrespective of legal basis, only to the following extent:
- In the case of intent and warranty claims, RIZ IT-Motion assumes unlimited liability
  - In the case of gross negligence, RIZ IT-Motion is liable in the amount of a typical defect that could be foreseen at conclusion of contract
  - In the case of violating an essential Contract duty that must be fulfilled in order to enable the correct implementation of the Contract and that the Customer normally expects to be fulfilled (cardinal duty, in particular default), RIZ IT-Motion shall be liable for damages that are typical and foreseeable at conclusion of contract. If there is neither intent nor gross negligence, RIZ IT-Motion shall not be liable for direct damages, consequential damages or lost earnings.
  - The statutory provisions apply in the case of death, bodily harm or illness and to claims from the Product Liability Act.
- 11.2 In the case of slightly negligent breach of duty, RIZ IT-Motion's liability shall be entirely excluded, as long as it does not concern damages according to section 11.1.
- 11.3 Should RIZ IT-Motion's liability be excluded or limited, this shall also apply to the personal liability of its employees, co-workers, representatives and vicarious agents.

- 11.4 In all events, the duty to pay compensation for damages that RIZ IT-Motion is liable for, is limited to the cover of the business and liability insurance policy taken out by RIZ IT-Motion. The Customer may view this, if it so requests.
- 11.5 RIZ IT-Motion has the right to bring a defense of contributory negligence. The Customer is obliged to backup all data and programmes, to install virus protection with state of the art technology and to protect its system from external access (firewall) on a daily basis.
- 11.6 RIZ IT-Motion is only liable for loss of data and programmes or data damage if this loss was not due to the Customer's neglect of its aforementioned obligations (daily backup of data and programmes and virus protection).

**12. Period of Limitation on Damage Claims**

The period of limitation shall be

- 12.1 For claims from material defects resulting in purchase price refund in the case of withdrawal or in abatement, 12 months from delivery of the contractual item / operational readiness, however, for claims for defects in proper form, no less than three months from effective notification of withdrawal or abatement.
- 12.2 For other defect claims, 12 months from delivery / operational readiness.
- 12.3 For claims from defects of title, 24 months from delivery / operational readiness, if the defect of title is not due to a third party property right, who may demand the surrender of the contractual item.
- 12.4 For other claims for compensation or replacement of futile expenses, 24 months starting from the point in time that the Customer became aware of the circumstances justifying the claim or had to become aware without gross negligence
- 12.5 The limitation becomes effective by the time the maximum periods specified in §199 BGB has expired. The statutory provisions shall apply to compensation of damage and expense due to intent, gross negligence, warranty, malice, death, bodily harm and illness as well as claims arising from product liability law.

**13. Non-Assignment Clause**

The Customer is not entitled to assign its existing claims against RIZ IT-Motion arising from this Contract.

**14. Confidentiality**

- 14.1 The contracting parties undertake not to disclose any information or items that are legally protected or contain business or industrial secrets or are marked confidential, which have become known or were made accessible by the other contracting party before or during the implementation of the Contract, unless they are already public knowledge without violating the obligation of confidentiality. This obligation of confidentiality shall extend beyond the end of the Contract. The contracting parties shall store and secure these items and information in such a way that access by third parties is impossible.
- 14.2 The contracting parties shall make the items and information subject to confidentiality available only to employees and other third parties that require access in order to exercise their authorised duties. The contracting parties shall impose this confidentiality on employees and third parties with access to the protected information.
- 14.3 RIZ IT-Motion shall process the Customer's data necessary for the business transaction by taking statutory provisions on data protection into account.

**15. Written Form, Applicable Law, Place of Fulfilment, Place of Jurisdiction**

- 15.1 Changes and amendments to this Contract must be done in writing in order to be valid. The written form requirement can only be waived in writing. Transmissions in text form, especially by fax or email, shall be considered observing the written form requirement.
- 15.2 The law of the Federal Republic of Germany shall apply to the exclusion of all conflict of laws and the United Nations Convention on Contracts for the International Sale of Goods dated 11.04.1980.
- 15.3 Place of fulfilment and jurisdiction for all disputes arising from and connection with this Contract is the registered office of RIZ IT-Motion. RIZ IT-Motion shall be entitled to bring legal action in any other legal venue.

## **Special Provisions of RIZ IT-Motion GmbH**

The following Special Provisions shall apply in addition to the General Provisions of RIZ IT-Motion under section A. If the terms and conditions conflict, the Special Provisions shall supersede the General Provisions.

### **B. IT Support, Service, Administration, Maintenance Contracts**

#### **1. Support Services**

- 1.1 RIZ IT-Motion offers IT support, service and administration on the basis of written IT maintenance contracts or at the Customer's request.
- 1.2 In both cases, RIZ IT-Motion shall service the Customers IT system, including standard software and hardware. The support for peripheral devices (printers, scanners, monitors etc.) is limited to contacting the respective manufacturer or authorised agent and to effecting repairs in cooperation with third parties (technical support of manufacturers or external service companies). The service does not include problem solving and support for branch-specific software or software that has been specifically written for the Customer by third parties. Here the support is limited exclusively to functional capability of necessary hardware.
- 1.3 Unless otherwise agreed upon, RIZ IT-Motion is not obliged to adhere to specified reaction times for reported failures.
- 1.4 RIZ IT-Motion's telephone customer service is available from Monday to Friday between 08h30 and 17h30 on telephone number +49 (7732) – 939 1 939 and is only set up for incoming calls. RIZ IT-Motion is not obliged to provide constant availability and waiting times must be taken into account when lines are busy. The Customer can also report technical faults to the technical hotline by fax (+49 (7732) – 939 2 939) or email (support@riz-itmotion.de).

#### **2. Ticket-System**

- 2.1 RIZ IT-Motion uses web based help desk solutions for the support services that have been rendered.
- 2.2 The Customer can view current support cases under <http://www.riz-itmotion.de/helpdesk> at any time by using access data and check their status as well as see an overview of the tasks already completed and the labour costs thus incurred. RIZ IT-Motion employees collect incoming problem notifications (by telephone or email) and record activities (on-site or via remote maintenance) completely and in detail.

#### **3. Customer Obligation to Cooperate**

- 3.1 When making service requests, the problem must be described as detailed and reproducible as possible. It may be necessary to use tools supplied by RIZ IT-Motion. In the case of on-site calls, the Customer shall ensure that the Customer's employees are available to support the RIZ IT-Motion service employee, if necessary, and possibly perform service and repair work according to his instructions. All hardware and software products included in the service must be accessible to our employee so that he can start with his task without delay. Cabling and additions must be removed and hidden connections exposed. During the term of the cooperation, the Customer must inform RIZ IT-Motion of all changes, extensions, exchanges of hardware and software parts or network configurations that it or third parties carried out after the initial installation by RIZ IT-Motion.
- 3.2 The Customer is obligated to perform regular data backups (data and programmes). RIZ IT-Motion is not obliged to back-up the Customer's data and this is not part of the Contract, unless otherwise agreed upon in writing by the contracting parties.
- 3.3 RIZ IT-Motion's service obligations shall be suspended, if the Customer does not correctly fulfil its obligation to cooperate. RIZ IT-Motion is entitled to charge the Customer costs thus incurred based on the valid price list, if the Customer is responsible for the breach of obligation. RIZ IT-Motion reserves the right to assert further claims.

#### **4. Payment for Support Services**

- 4.1 The rate of payment for support services results from agreements specified in the IT maintenance contract, alternatively from RIZ IT-Motion's maintenance rates valid at the time of maintenance.
- 4.2 RIZ IT-Motion is entitled to adjust the maintenance fees agreed upon in the IT maintenance contracts, if the costs that the fees are based on, such as wages, wage ancillary costs, costs of materials procured from third parties, change after the conclusion of contract and the increase in fees does not exceed the rates of the previous contract year by more than 20%. Changes in fees become effective four weeks after written notification from RIZ IT-Motion. If the fees increase by more than 10% above the previous rate, the Customer is entitled to terminate the IT maintenance contract in writing with two weeks' notice to the start of the increase period that was announced.
- 4.3 The following services are not included in the IT support / IT maintenance contract and must be paid separately:
  - a. The delivery and customisation of new software modules
  - b. Updating services that become necessary due to the software being used on another hardware system or with another operating system, than the one that existed at initial installation or that is specified in our information on the requirements for hardware, operating environment and operating conditions.
  - c. Maintenance service after the Customer intervened in the programme code (source or object code) for the software or databases, or when the original functioning configuration of the systems has been changed;
  - d. Maintenance services with regard to the cooperation between the software that is part of the Contract and other computer programmes that are not part of the service agreement.

- e. Removal of faults and defects that are caused by incorrect handling of hardware or software or not adhering to instructions or documents by the Customer, by third party interference, by faulty hardware or foreign software, by lack of power supply or by force majeure.
- f. Costs for replacement parts that are subject to extensive wear and tear as well as consumables.

**5. Conditions of Repair (outside of Warranty)**

- 5.1 If a quotation is not expressly requested the repair is charged at RIZ IT-Motion's repair rates valid on the day the order is placed.
- 5.2 If customer service is performed at the Customer's premises or those of a third party, the Customer shall pay for the expenses incurred for the time of traveling there and back and the traveling costs as well as the associated transport risk.
- 5.3 Claims for obviously defective repairs must be asserted in writing within eight days of the goods reaching their destination. If this deadline is exceeded, the Customer loses its statutory warranty claims. Defective repairs that are not obvious must be claimed immediately after they are discovered.
- 5.4 The period of limitation on claims for defects is 12 months after accepting the repaired item.

**c. Special Provisions for Deliveries, Installations and Implementing Hardware and/or Standard Software**

**1. Scope of Performance, Purchased Item and Purpose**

- 1.1 The exact scope of performance and the purchased item are specified in the order confirmation and service description from RIZ IT-Motion, alternatively in the offer from RIZ IT-Motion. These form integral parts of the Contract. Other specifications or requirements shall only become part of the Contract if the contracting parties agree upon these in writing or RIZ IT-Motion has confirmed these in writing.
- 1.2 The contractual products from RIZ IT-Motion are designated exclusively for the (end) use by the company. If the contracting party intends to deliver the products acquired from RIZ IT-Motion to a user or a company that in turn supplies users with products of this kind, it must inform RIZ IT-Motion of this before the conclusion of Contract.

**2. Properties of Contractual Products or Services**

- 2.1 The goods and services from RIZ IT-Motion conform to the latest technology available at the time of order confirmation. RIZ IT-Motion reserves the right to make technical changes typical in the trade, in particular improvements, up until delivery, if these only insignificantly change the properties and the Customer is not unreasonably affected.
- 2.2 Product descriptions, demonstrations or test programmes are only performance descriptions, not guarantees.
- 2.3 Specifications on the properties or durability of a contractual item or service in our contract declarations, public or private statements, or public statements by a manufacturer or its agents shall neither constitute a guarantee (assurance) in terms of § 276 (1) BGB nor a guarantee of properties and durability in terms of § 443 BGB, if RIZ IT-Motion has not expressly assumed such a guarantee in writing.
- 2.4 If the contract item is built or modified according to the Customer's specifications or individual requirements, RIZ IT-Motion is not obligated to check the accuracy or usefulness of these specifications or requirements without a specific agreement.

**3. Properties of Software**

- 3.1 Unless otherwise expressly agreed, the software that is part of the Contract is standard software that has been produced to meet the Customer's general needs and cannot fulfill every individual need. The parties agree that it is not possible with today's state of technology to develop error-free standard software for all applications. If the testing of and consultation on individual applications is not contained in the scope of services, the Customer shall ensure that the product contents it has requested for the software satisfies its needs.
- 3.2 The software shall have the properties agreed upon and be suitable for use as provided in the Contract, in the absence of agreement for customary use. It satisfies the criteria of practical efficiency, and its quality is common for standard software, however, not error-free. A functional impairment of the programme due to defects in hardware, environmental conditions, operational errors among others, is not a defect. An insignificant reduction in quality shall not be taken into account.
- 3.3 If the delivered software is software from third producers, RIZ IT-Motion is only obligated to hand over the data and/or programmes licensed in the Customer's name to the Customer on a contractually agreed data carrier (disk, CD-ROM etc.) or by electronic data transmission. RIZ IT-Motion shall be entitled to acquire licences registered in the Customer's name for and on behalf of the Customer. Usage conforms to the usage conditions of the third producers. The Customer is authorised to use the software according to these conditions. These shall be made available to the Customer – on request even before the conclusion of contract.
- 3.4 With the delivery of the software the Customer shall receive the associated user documents of the producer (if requested) in written form. An introduction or training is only owed, if this has been contractually agreed upon. Existing copyright markings, registration markings such as registration numbers in the software, in particular, may not be removed or modified.
- 3.5 RIZ IT-Motion shall only install original software on the Customer's hardware, for which there are relevant original data carriers and / or original licence certificates (licence key). If the Customer cannot prove that it is the owner of this software, RIZ IT-Motion shall not perform the installation or start-up. If the Customer performs the installation and start-up itself, RIZ IT-Motion shall not assume any support services for these programmes.
- 3.6 The Customer shall thoroughly test each module for its usability in concrete situations before starting to use it productively. This also applies to programmes that the Customer receives within the warranty or within an IT maintenance contract.



3.7 The Customer shall make appropriate provisions for the event that the programme does not work properly in total or in part (e.g. data backup, fault diagnostics, regular testing of results, emergency plans). It is the Customer's responsibility to secure the working environment of the programme.

#### **4. Customer's Rights to the Software**

4.1 The software (programme and user manual) is legally protected. The legal owner (usually the software producer) is entitled to the copyright, patent rights, trademarks and all other intellectual property rights to the software.

4.2 When acquiring the software the legal owner grants the Customer the right to use the software according to the user conditions provided by the legal owner. Any use or application beyond this is excluded.

4.3 If the customer acquires hardware in which the software is preinstalled, the conditions of usage shall apply accordingly to the preinstalled software.

4.4 A right for multiple usage requires a special written agreement, as long as the legal owner's licensed right allows for this.

4.5 The Customer is only permitted to process its own data for its own purpose with the programme. Contractual regulations on usage (e.g. limitation of workstations or persons) must be technically established and practically maintained.

4.6 The Customer shall be entitled to transfer the software to a subsequent user in its original condition and as a whole together with a copy of the purchase agreement. This entitlement extends neither to the transfer of copies or partial copies of the software nor to the release of modified or processed versions or copies or partial copies of these. On transfer of the software, the Customer's right of use passes to the subsequent user, who thus supersedes the Customer. The Customer's right of use ceases at the same time. On transfer, the Customer must immediately and completely delete all copies or partial copies of the software as well as modified or processed version and copies and partial copies thereof or destroy these in another manner. This also applies to backup copies.

4.7 Leasing the software or parts thereof shall be excluded.

#### **5. Start and End of Customer's Rights to Software**

5.1 The rights to the software shall only pass to the Customer when all contractual remuneration has been fully paid. Until such time, the Customer only has a temporary right of use under the law of obligations that can be withdrawn according to section 5.2.

5.2 RIZ IT-Motion is entitled to withdraw the temporary right of use given good cause. Good cause exists, in particular, if the Customer does not make the payment.

5.3 If RIZ IT-Motion withdraws the temporary right of use, RIZ IT-Motion shall be entitled to demand the return of the contractual items from the Customer or written assurance that they have been destroyed as well as the deletion or destruction of all copies and written assurance that this has occurred.

#### **6. Set-up and Installation of Hardware and Software, Customer's Obligation to Cooperate**

6.1 If RIZ IT-Motion is assigned to assemble or install the hardware, RIZ IT-Motion is obligated to set up the hardware and put it into operational readiness in accordance with the performance description agreed upon in the order confirmation. Unless otherwise agreed, RIZ IT-Motion is not obliged to connect the hardware to other devices or programmes.

6.2 If the installation of software is owed, the contractual item is operational when a test run has been performed and the Customer has confirmed the operational readiness.

6.3 In this case, the Customer's inspection and notice obligations as well as the period of limitation on damage claims shall begin on the date of operational readiness.

6.4 The Customer is obligated to establish the spatial and technical conditions necessary for the installation as well as other assembly and connection requirements.

#### **7. Delivery Times, Performance Difficulties and Obstacles**

7.1 If RIZ IT-Motion assembles and installs the hardware or software, the delivery terms for service and delivery times are deemed to have been met when the contractual item is operational, unless otherwise agreed.

7.2 If operational readiness cannot be established for reasons for which the Customer is responsible, especially by violating its obligation to cooperate, the day of delivering the contractual item shall be considered the day of operational readiness.

### **D. Special Provisions for Services of the RIZ IT-Motion Data Centre**

#### **1. General**

RIZ IT-Motion provides various services of high quality and security in its data centre (e.g. server housing, hosted services, hardware hosting, web hosting). The security of Customer data and the availability of services are ensured with the following measures, among others:

*Security through constructional and technical measures:*

- access control system
- video surveillance
- smoke detector
- redundant air conditioning
- monitoring temperature fluctuations by an external monitoring service

- monitoring water penetration by an external monitoring service
- redundant power supply
- uninterrupted and filtered power supply

*Security and availability of the internal network:*

- segmentation of the network and strict separation of individual customer systems
- extensive backup of own system
- multiple redundant firewall systems for online communication
- 24 / 7 monitoring of data centre infrastructure
- use of redundant, high quality branded hardware systems for the operation of the data centre
- redundant IP connection to various providers (carrier companies). Average annual availability 99.6%

## **2. Server Housing**

- 2.1 RIZ IT-Motion offers its Customers the possibility to place a dedicated server in their data centre (server housing). The monthly costs depend on the space required (unit height) and power usage and are specified in the RIZ IT-Motion fees. RIZ IT-Motion does not assume responsibility for the availability of the Customer's server, unless this is specially regulated in a separate contract. In addition, RIZ IT-Motion is not obliged to provide backup for Customer systems, unless this is specially regulated in a separate contract. It is the Customer's responsibility to include the server in its on electronics insurance against possible damage and failure.
- 2.2 The housed customer server (dedicated server, managed user server, managed root server) is connected to the Internet backbone of RIZ IT-Motion via a port with a total capacity of 100Mbits/s, unless otherwise agreed in a separate contract. RIZ IT-Motion guarantees that there are no bandwidth reducing pieces of wiring or components (e.g. switches) with lesser capacity in the physical network connection from port to Internet backbone.
- 2.3 Any IP addresses that may be necessary to operate the housed customer server are the property of or are owned by RIZ IT-Motion and may be changed at any time. The IP addresses neither become the Customer's property nor pass into its possession and remain the property of RIZ IT-Motion after the end of the contractual relationship.
- 2.4 Should the Customer require maintenance work to be done on its server, it can effect this itself or assign the maintenance to RIZ IT-Motion. This maintenance work is not included in the monthly housing fee and is invoiced separately. The Customer shall have no right to access the RIZ IT-Motion data centre. This shall only occur in the company of a RIZ IT-Motion employee at normal business hours. Access outside of business hours is possible after consulting with RIZ IT-Motion.

## **3. Hosted Services**

RIZ IT-Motion offers its Customers, who do not wish to build their own IT infrastructure, various services on a rental basis (e.g. groupware services, storage capacity etc.). The exact definition of the content is specified in an individual contract (order form).

## **4. Hardware Hosting**

RIZ IT-Motion offers its Customers the possibility to rent hardware capacity (dedicated server or virtual platform). Details shall be specified in a separate contract (order form).

## **5. Web Hosting**

RIZ IT-Motion offers its Customers the possibility to rent server storage space in the RIZ IT-Motion server installation in order to operate an Internet website. Details shall be determined in an individual contract (order form).

## **6. Backup Services**

- 6.1 RIZ IT-Motion offers its Customers the possibility to automatically or manually backup the data of the respective company database or of individually booked IT services (e.g. groupware postboxes), that are stored on the Customer's hosted server at the RIZ IT-Motion data centre or on RIZ IT-Motion's own server. Backup occurs using backup agents installed on the respective system, with which the files for backup can be selected, the connection to the backup server in the data centre established and the backup done according to specified timetables in the background or manually immediately. Only data that is stored on the respective server shall be backed up, a local client backup is not effected. Data backup is done using a backup library; media with backup data is not copied additionally and is stored at geographically separate locations for reasons of redundancy.
- 6.2 The backup service is provided by RIZ IT-Motion at its data centre. The rooms are secured against unauthorised access. Video, temperature and fire monitoring are active, surveillance notifications are transmitted to the technical team of RIZ IT-Motion. The backup plan is compiled jointly with the Customer and separately recorded in writing. The Customer shall receive a backup document for this. Modifications and changes must be done in writing. Backup services are specifically defined by RIZ IT-Motion and not customised. At the Customer's request, the backup data shall be stored. A reaction time of 120 minutes is assured during normal business hours (Mon.-Fri. 08h30 – 17h30).
- 6.3 RIZ IT-Motion is not liable for the condition and functionality of files for backup at the time of backup. In the event of disruptions in the operation of the data centre due to force majeure (storms, lightning strike, fire, malicious damage by third parties etc.) or material faults of the data carriers or backup cartridges, the Customer can only access the last possible functioning backup version.

## **7. Availability of Data Centre Hardware and / or Services**



- 7.1 The availability of the data centre hardware and / or services relates to the perfect functioning of the hardware and the IT work and services booked according to individual service / rental agreements. Unless specifically agreed upon in writing, availability at a 99% monthly average is assured.
- 7.2 In the case of disruptions or problems, RIZ IT-Motion support can be reached by email or telephone during normal business hours (Mon.-Fri., 08h30 – 17h30). The disruption shall be remedied immediately within existing technical and operational possibilities. Short-term disruptions due to maintenance do not give rise to claims against RIZ IT-Motion. RIZ IT-Motion may interrupt the service for maintenance purpose for a short time, which shall be coordinate with the Customer except in the event of short-term changes.

## 8. Software and Licensing

- 8.1 The Customer is obligated only to use original, legally acquired and / or self programmed software on its systems. RIZ IT-Motion is not obliged to verify this. RIZ IT-Motion has no influence on the content that the Customer makes available on its systems. Should the Customer violate applicable laws with its content, RIZ IT-Motion is entitled to terminate the Contract with immediate effect.
- 8.2 In individual cases (specified in an individual contract / order form) the Customer shall be granted software user rights for certain services. Here the relevant software user agreement from the software producer and its licence rights shall apply. In the event of termination of the Contract with RIZ IT-Motion the user right to the particular software shall cease and the Customer undertakes to uninstall the software.

## 9. Maintenance Window

A maintenance window is agreed upon for periodic, planned or unplanned maintenance work on the systems of RIZ IT-Motion and its suppliers that are necessary for the protection and security of ongoing operations or for performing updates or upgrades. Possible interruptions of availability during such work must not be regarded as down times and are considered service time. As a rule, system maintenance is performed on weekends from Saturday 12h00 to Sunday 12h00 or during the night of each working day between 23h00 and 06h00 the following morning. In exceptional cases, system maintenance may also be performed at any other time by considering the least possible disruption of operations. RIZ IT-Motion shall inform the Customer of planned system maintenance as early as possible. At times RIZ IT-Motion's suppliers have different maintenance windows. The particular arrangement of the chosen suppliers can be communicated to Customer upon request.

## 10. Duration, Termination

Unless otherwise agreed upon in an individual contract, the services that the Customer receives via the data centre shall continue for an unlimited period and can be terminated with one month notice to end of the following month. The right to termination without notice for good cause shall remain unaffected.

## 11. Warranty and Liability

- 11.1 RIZ IT-Motion shall provide warranty for the functionality of the data centre within the agreed specifications and availability agreements.
- 11.2 In the case that the agreement is not completely fulfilled or not adhered to RIZ IT-Motion shall only be liable, if RIZ IT-Motion is responsible for the non-fulfilment or non-adherence. This shall not apply to, in particular:
- Failures that RIZ IT-Motion is not directly responsible for, in particular external DNS or routing problems, virtual attacks on the net or mail infrastructure of RIZ IT-Motion (DOS/virus) and failures of parts of the Internet outside of RIZ IT-Motion's control that could lead to measurement errors for the Customer.
  - Failures that occur if the Customer's own software is used incorrectly or has been repaired, or if systems (scripts, programmes etc.) were not installed, operated and maintained according to the producer's or RIZ IT-Motion's guidelines
  - Failures that are erroneously transmitted to the Customer due to errors at internal or external monitoring services.
  - Failures caused by maintenance windows of RIZ IT-Motion or its suppliers.
- 11.3 If RIZ IT-Motion proves that a defect reported by the Customer was not RIZ IT-Motion's responsibility, the costs incurred by RIZ IT-Motion while searching for the error and, if applicable, resolving the error shall be at the Customers expense.

## E. Special Provisions for Online Services

The following provisions shall govern the use of online services ordered from RIZ IT-Motion. When placing the order the Customer acknowledges the relevant conditions of use of the online service provider; these shall become an integral part of the Contract between RIZ IT-Motion and the Customer. At the Customer's request, RIZ IT-Motion shall make the conditions of use from the provider available.

### 1. Domain Name Service and Web Hosting

- 1.1 The Customer has the right to apply for its own domains (e.g. .de, .com, .net, .org, .biz, .info etc.). The rules of the relevant "Network Information Center" (NIC) shall apply to delegation. RIZ IT-Motion only submits the applications. RIZ IT-Motion in principle enters the Customer as the organisation making application. As "administrative contact" RIZ IT-Motion shall enter the

person named by the Customer. RIZ IT-Motion makes the Customer aware of the importance of the choice of this person, because ultimately it is the person named in the domain application, who can decide on the future use of the domain. RIZ IT-Motion recommends that, if possible, the administrative contact should be a member of management or of the board. The domains are always connected for a specific time period, which is explicitly specified in the order form. Should the Customer wish to change to a different provider, RIZ IT-Motion undertakes, on the Customer's written instructions, to take the necessary steps for a smooth changeover.

- 1.2 RIZ IT-Motion has no influence on the length of the registration process of the selected domain with the network information center. Should another provider register the Customer's selected domain during this procedure, RIZ IT-Motion cannot be held liable, since these processes are not within its sphere of influence.
- 1.3 The contractual relationship always begins with accepting the order (date of order confirmation), however no later than the time that the services are utilised. The contractual relationship may be terminated by either party without giving reasons within a month to the end of the following month (taking the minimum term into account), as long as no other agreements have been concluded in writing. If there is not termination, the contractual relationship is automatically extended by the originally booked period. The right to extraordinary termination for good cause remains unaffected.
- 1.4 With regard to its registered domain, the Customer can order corresponding storage space from RIZ IT-Motion for a web presence and / or associated email accounts. The costs for this are specified in the price list valid at the time. RIZ IT-Motion has no influence on content of the web presence and / or the email traffic; this responsibility lies solely with the Customer. The Customer is obligated
  - not to introduce any content or information into the Internet that violates legal provisions, personal rights and/or third party copyrights or which infringe ethical principles;
  - to refrain from overloading the network with aimless and incorrect distribution of data, and especially not send emails containing advertising without the recipients' explicit consent (prohibition of email spamming);
  - to allow for accepted principles of data protection and comply with them (e.g. keeping usernames and passwords secret and protecting them from unauthorised use by third parties) as well as to take sufficient measures of protection against computer viruses, in particular preventing their spread;
  - to inform all persons who are allowed to use the services of RIZ IT-Motion and its external partners about complying with these obligations;
  - to ensure that legal provisions and official requirements are fulfilled insofar as these are necessary for participating on the net at present and in the future;
  - to ensure that the selected names for addresses (domain, email addresses) are available and do not contravene legal prohibitions, third party rights and ethical principles;
  - to accept the ICANN guidelines, in particular in the event of disputes over a domain due to the infringement of trademarks, name and other property rights (Uniform-Domain-Name-Dispute-Resolution-Policy);
  - to comply with the relevant practices of correct data protection in the net, i.e. – in the case of trade and commercial use – to always backup the data at the end of each working day during which the database was changed by the Customer or one of its vicarious agents or representatives. Data that is stored on RIZ IT-Motion's web servers may not be backed up on these. In particular, the Customer must perform a complete data backup before installing software (or updates).
- 1.5 In the event of a significant violation of these obligations (e.g. against the prohibition of email spamming) RIZ IT-Motion is entitled, at its option, to temporarily block access to its services in total or in part with immediate effect.
- 1.6 Otherwise, RIZ IT-Motion reserves the right against the background of liability that it might incur to temporarily or permanently block Internet pages containing insulting, discriminating or in any other way legally doubtful content at the expense of the Customer and return the domain to the relevant provider. RIZ IT-Motion shall immediately inform the Customer of such measures and request it to remove allegedly illegal content or demonstrate their legality and, if necessary, prove this. The same applies if an Internet page is blocked due to official order towards RIZ IT-Motion. RIZ IT-Motion shall lift the suspension as soon as their illegality has been refuted. RIZ IT-Motion is not obliged to check the content of all Internet pages. Regular random checks shall be done or a notification from a third party acted on.
- 1.7 The Customer shall be made aware especially of the legal provisions with regard to data protection. RIZ IT-Motion points out that within the execution of the contract, in particular when registering a domain, personal data is also stored (e.g. name, address). This data may be transmitted to third parties for the purpose of implementing the contract and publicised to the usual extent to identify the owner of a domain (including possible public retrieval in so-called Who-is-databases).

## 2. Dial-up into the Internet, VPN Connections, IT Services from External Providers

- 2.1 RIZ IT-Motion shall make services available to the Customer at a fee, which are necessary for dial-up into the Internet or for the connection of several locations of the Customer. The Customer shall conclude an individual contract (order form) with RIZ IT-Motion for every service ordered. In particular for VPN-connect products, the contracting parties shall conclude individual contracts (order form) for individual VPN-connections. The individual contracts are independent from each other with regard to duration and continuance.
- 2.2 RIZ IT-Motion may make the provision of services dependent on the presentation a property owner's declaration pursuant to § 10 of the Telecommunication Customer Protection Ordinance. RIZ IT-Motion can only determine whether the data rate specified in the order form can be maintained, in the course of the provision of services. The following applies to SDSL connections: If the data transfer rate cannot be provided, RIZ IT-Motion shall inform the Customer immediately. In such an event, the contracting parties can agree on a data rate that is achievable, or each of the contracting party shall have the right to withdraw from the Contract for that particular connection. In the case of withdrawal, RIZ IT-Motion shall refund any payments that the Customer has already made immediately. Additional claims based solely on the reasons for withdrawal are excluded. The following applies to ADSL connections: The speed or bandwidth of the ADSL connection can be up to 16.000 kbits/s down- and 1.024 kbits/s upstream. These are the theoretically possible maximum values. The actual usable bandwidth depends, among other things, on

- the quality of the available copper cable and can deviate noticeably from the theoretically possible maximum bandwidth. The above mentioned values can differ in the future depending on technical developments.
- 2.3 If twisted pair copper cables are not available at the installation site for the respective product, each contracting party may withdraw from the individual contract for that particular product. In the case of withdrawal, RIZ IT-Motion shall refund any payments that the Customer has already made immediately. Additional claims based solely on the reasons for withdrawal are excluded.
- 2.4 Should the network provider cancel the line with RIZ IT-Motion and RIZ IT-Motion is not responsible for this, RIZ IT-Motion is entitled to extraordinary termination of the corresponding connection.
- 2.5 Unless otherwise provided in the order form, the minimum term for individual services shall be 12 months. The minimum term always starts with the provision of the respective service. The term of individual services shall be extended by 12 months each time, if the service has not been cancelled in writing with three months' notice before the end of the term. Should a different tariff be agreed on during the Contract term, a new minimum term shall begin at the time of change, which corresponds to the original term agreed upon. Depending on the service, additional one-off fees could arise.
- 2.6 Otherwise, the contractual terms and conditions of the respective external partner shall apply; on request, these can be made available to RIZ IT-Motion Customers at any time.