

## **General Terms and Conditions for Service Agreements of CANCOM Austria AG (General Service Terms)**

### **1. General**

**1.1** The present General Terms and Conditions for Service Agreements (hereinafter referred to as “General Service Terms”), as amended from time to time, shall, together with the respective service ticket (if available, this takes precedence over all other parts of the contract) and/or the other annexes and conditions of the underlying offer of CANCOM Austria AG, constitute the sole contractual basis (hereinafter referred to as “service agreement” or “agreement”) of CANCOM Austria AG, 1120 Vienna, Wienerbergstrasse 53 (company register n° 178368g) (hereinafter referred to as “CANCOM”), and shall govern the performance of services (hereinafter referred to as “service”) for the customer. In case of rental services and services rendered by CANCOM Rental Services GmbH the respective service performance shall additionally be based on the provisions of the framework lease agreement as well as the supplementary lease and service tickets which shall prevail in case of doubt. Service may be performed in the form of service or work performance. Unless agreed otherwise in the service agreement, services shall be performed as services.

**1.2** The present General Service Terms shall apply with regard to all services which CANCOM performs for the customer even if with a later conclusion of individual agreements, no explicit reference is made thereto.

**1.3** Subsidiary agreements, amendments, and supplements to the present General Service Terms, to the service agreement as well as any and all declarations made in this context shall require written form, including the original signature or qualified electronic signature, and shall only be effective if they have been accepted in writing by a representative authorized by CANCOM. The same shall apply to the abandonment of the written form clause. Oral subsidiary agreements do not exist.

**1.4** General Terms and Conditions of the customer shall not become part of the service agreement content even if they are attached for example to offer requests, orders, or acceptance declarations and even if they are not objected, unless CANCOM has explicitly acknowledged them in writing. Acts of performance by CANCOM shall under no circumstances be deemed to constitute consent to contractual terms and conditions that deviate from CANCOM's terms and conditions.

## **2. Scope of Performance**

**2.1** CANCOM shall perform services for the customer in compliance with the respective Service Level Agreements (SLA) which amongst others determine manner, quality, scope, system requirement of the services. CANCOM shall be entitled to adapt services to the current state of the art at any time. If such adaptations result in increased expenses for CANCOM, CANCOM shall be entitled to invoice these separately.

**2.2** CANCOM shall perform the services on the basis of the information which has been provided to them by the customer. The customer shall be responsible for the choice of the service as well as for the results strived for and achieved by the application of the service. CANCOM shall in particular not be responsible for the provision of security-related services or appropriate consulting beyond the scope of the chosen specifications.

**2.3** Unless agreed otherwise CANCOM shall perform the services during business times customary with CANCOM (NAZ), exclusive of bank holidays and on days generally off at CANCOM.

**2.4** The customer shall and will not perform services on the contractual systems himself nor will he commission third parties with such.

**2.5** Insofar as the service of CANCOM includes the exchange or the repairs of spare parts, these parts do not necessarily have to be brand-new, but used or refurbished system components may also be used. In each case of exchange the ownership of the exchanged component shall be transferred to CANCOM unless explicitly agreed otherwise. This shall not apply only in the case that the customer provides the spare parts himself.

**2.6** If SaaS services (Software-as-a-Service) are also included in the scope of services, these services are regulated in detail in the other parts of the agreement or general provisions for this type of services are set forth in section 5. of the General Software Terms of CANCOM.

**2.7** Any and all services which exceed the services defined in the respective service level agreement (SLA), shall be performed upon separate assignment and shall be invoiced according to the currently valid charge rates of CANCOM.

The following services are not included in the scope (of performance) and will be invoiced to the customer according to actual expenditure:

- services performed upon request of the customer outside the times agreed for the respective services as well as those services which exceed the agreed quantity structures
- any and all works on the cable- and line network
- reductions, extensions of hardware or function, hard- and/or software upgrades as well as license extensions on the system or on system components
- SW updates or upgrades as well as Hardware or licenses

- wear parts and expendables (headsets, accumulators, batteries, paper, toner, lamps, panels, plasma screens, projection screens, projection films, floppy disks, etc.) as well as services in connection with their exchange
- any and all services for the purpose of troubleshooting and recovery of damages from elementary events (e.g., damages caused by lightning stroke or flooding, etc.)
- the inspection of system components by CANCOM for security-relevant gaps and all support services in connection with the elimination of these security gaps
- services in connection with malfunctions which are caused by systems or system components not included in the present agreement
- troubleshooting in case of non-compliance with ambient conditions (humidity, dust, harmful substances, etc.) as well as the operation of the system contrary to producer guidelines (system requirements). Equally service performances incurring due to improper handling of the components underlying the service (e.g., damages caused by the customer, devastation etc.).
- troubleshooting of disturbances outside normal working hours (NAZ) of CANCOM
- services for proving that the cause of malfunction in case of faults or malfunctions is not a system supervised by CANCOM (e.g., with integrated systems, systems with additionally installed software, etc.)
- services in connection with malfunctions due to improper handling, operating errors, technical or other interventions by the customer or third parties in the system itself or due to other circumstances which CANCOM is not responsible for
- All services that arise in connection with the termination of the contract (e.g., dismantling of the service, technical formats of data transmission, etc.) will be invoiced to the customer according to actual expenditure (see section 5.8 and 5.9).

### **3. Rights of Use to Software Products and Documents**

**3.1** Insofar as the customer is provided software products by CANCOM or the use of software products is provided within the scope of the service performance, the customer shall be granted the non-exclusive, non-transferable, non-sub-licensable right limited to the term of the agreement, to use the software products in an unmodified form within the business of the customer in Austria (license programs). Unless these conditions do not provide to the contrary, the General Software Terms of CANCOM shall anyhow apply as amended from time to time.

**3.2** In case of use of software products in a network, a (separate) license shall be required for each concurrent user. In case of use of software products on “Stand-Alone-PCs”, each PC shall require a license.

**3.3** With regard to software products of third parties provided to the customer by CANCOM, the respective license provisions of the producer of these software products shall apply with priority, as well as the General Software Terms of CANCOM as amended from time to time. The customer acknowledges that these conditions may change at any time and that this is beyond the sphere of influence of CANCOM, and he shall accept

these producer-related changes.

**3.4** Unless separately agreed otherwise, no further going rights to software products shall be transferred to the customer. The customer's rights according to sections 40(d), 40 (e) Austrian Copyright Act shall not be affected hereby.

**3.5** Any and all documents provided to the customer by CANCOM, particularly documentations on software products, may neither be reproduced nor distributed in any other way, against payment or without.

**3.6** CANCOM shall be entitled to inspect usage data of the customer as well as other information concerning the calculation of fees or dues. This shall include the right to examine compliance by the customer with conditions included in an agreement based on the present General Service Terms in connection with the use of software products at all sites and for all environments which the customer installs or uses license programs in. With such an examination CANCOM may employ an independent examiner for support, provided that CANCOM has concluded a written confidentiality agreement with that examiner. The customer shall undertake to cooperate in the examination to an appropriate extent and without consideration.

**3.7** The customer shall be obliged to establish and keep written records, versions of system tools and other system data and to make these available to CANCOM as well as to their examiners, in order to provide verifiable evidence vis-à-vis CANCOM that the installation and the use of the license programs by the customer are in accordance with the conditions of an agreement based on the present General Service Terms. CANCOM shall and will inform the customer in writing if such an examination shows that the provisions of the respective agreement conditions are not being met. The rights and obligations of this paragraph shall remain in force for as long as the license programs are licensed to the customer and for two years thereafter unless manufacturer's specifications provide for a longer period.

**3.8** CANCOM shall support the customer in the defense of all claims stating that the contractually used software violates an intellectual property right or copyright valid under Austrian law. The customer shall inform CANCOM immediately in writing and perform a third-party notice according to section 21 Austrian Code of Civil Procedure in case of a lawsuit if such claims are raised against him.

**3.9** If claims are raised based on the violation of intellectual property rights, which CANCOM is responsible for, CANCOM may at its own expense modify the software, exchange it, or obtain a right of use. If that is not possible at appropriate cost, the customer shall upon request by CANCOM immediately return the original together with all copies of the software inclusive of provided documents. Herewith any and all claims of the customer regarding the violation of intellectual property rights and the copyright shall be finally settled excluding any further going obligation of CANCOM.

#### **4. System Inspection**

If the service is being performed for a system which at the time of contract conclusion has been operated for more than 12 months or which has not been delivered or put into operation by CANCOM, CANCOM shall be entitled to inspect it.

If this inspection in its result shows that on the side of the customer the requirements for the offered services are not given or only in part, the customer shall be offered alternative solutions. Additionally, CANCOM shall be entitled to withdraw from the contract without a statement of reasons within four weeks from performance of the inspection.

Costs and expenses resulting from the system inspection and a possible (also a failed) system restoration shall be borne by the customer according to the currently valid list prices and charge rates of the CANCOM customer service. The same shall apply in case of withdrawal by CANCOM according to this clause.

#### **5. Term / Termination / Early Termination / Process and Legal Consequences of Termination of Contract**

Any and all stipulations regarding term, termination resp. waiver of termination, early cancellation of the service agreement and fees primarily result from the offer and/ or the respective underlying service tickets resp. in case of a lease- or service agreement relationship with CANCOM Rental Services GmbH from the respective lease- and service tickets. If the offer and/or respective service tickets (lease- and service tickets) do not provide (specific) regulations, the following provisions shall anyhow apply.

Subject to a separate stipulation in the offer and/ or the service ticket (lease- and service ticket), which prevails all other contract documents, the service agreement shall come into force upon signature by both contracting parties, upon provision of the service by CANCOM at the latest and shall be concluded for an indefinite period of time. It may be terminated by either party giving 3 months written notice by registered letter, to the end of the minimum term agreed in the service ticket (lease- and service ticket) at the earliest, however. The customer may only terminate services which are not considered a prerequisite for a service which itself is not terminated.

If in the service agreements the service start is not separately agreed, the customer shall – after a possible system inspection and restoration, if necessary, as well as upon payment of expenses in this context, be entitled to performance of the services according to the agreed scope of performance.

Each contracting party shall be entitled to early terminate the service agreement for important reason by registered letter without previous notice. For CANCOM an important reason shall anyhow be given if the customer is in default with payment for more than 30 days, as well as if the other contracting party despite written reminder and threat of

termination violates other material obligations of the agreement, or if the services of the other contracting party are being impaired or impeded for a period of more than six months due to force majeure.

Furthermore, CANCOM shall be entitled to early terminate the agreement for important reason if material parameters of service performance have changed and CANCOM therefore cannot be expected to continue the services from an economic point of view.

In any case of total or partial early termination/cancellation and after any other ending of the agreement CANCOM shall be entitled to stop the performance of the services, irrespective of a possibly pendent lawsuit.

In case of a termination for reasons which CANCOM is responsible for, the customer shall be obliged to pay for the services fully rendered by CANCOM until effectiveness of the termination, resp. in case of incomplete rendering to pay for the services insofar as these are useful for the customer.

Unless otherwise specified in the other contractual elements, CANCOM is entitled, within the scope of the termination of the agreement, for whatever reason and depending on the type of service, to take the following (dismantling) measures, among others - this is a demonstrative list:

- Dismantling of the service: Depending on the type of service delivery, the location and ownership of the underlying systems
- Deactivation and deletion of existing interface: In particular, interfaces of the customer's ticket system that are in the ticket system of CANCOM must be deleted by CANCOM
- Data return or data deletion/technical formats of data transmission: The customer is responsible for data return or data deletion. However, CANCOM shall decide at its own discretion which technical format is permitted for data transmission.
- Termination of access: Determination of the time of termination of CANCOM's access authorization to the customer's systems via remote or local on the customer's system;
- Access authorization: Determination of the time of termination of CANCOM's access authorization to the customer's premises;
- Return of the electronic keys: e.g., access cards to the premises or RSA tokens
- General: Return of documents, certificates and customer-specific software, all services related to the deactivation of the customer in the system
- Deadlines: Insofar as there are no statutory provisions to the contrary, CANCOM may, at its own discretion, set deadlines for individual measures

**5.1** All (recovery) costs incurred in connection with the termination of the agreement shall be invoiced separately to the customer in the course of the final settlement of accounts according to actual expenditure and in accordance with the applicable rates of CANCOM. In the event that the customer is in default of such payments, CANCOM shall be entitled to withhold any items, in particular hard disks, storage media, password keys, until full payment is made.

## **6. Service Fee / Maturity / Increase**

**6.1** The conditions and fees payable by the customer shall result from the offer and/or the present service agreement (offer, service ticket, resp. lease- and service ticket) inclusive of its annexes.

**6.2** The service fee shall be due as of the agreed service start, otherwise as of the effective date of the agreement.

**6.3** Unless agreed otherwise, one-time fees shall be invoiced after performance of the service and recurring, constant fees (including charged base amounts) shall be invoiced quarterly in advance with the first quarter being invoiced pro-rata if appropriate. Services provided in variable quantities (e.g. storage) shall be settled and invoiced to the 15th of the following month.

**6.4** In case of an institution of insolvency proceedings on the assets of the customer, CANCOM shall be entitled to invoice the service fee for the duration of the insolvency proceedings as of the key date of the institution on a monthly basis in advance. The fee payable from the day of opening of the insolvency proceedings until the end of the current month shall be calculated on a pro-rata basis. The same shall apply in case of a deterioration of creditworthiness of the customer.

**6.5** The invoices issued by CANCOM shall be due plus Value Added Tax on the stated due date without any deduction and exempt from charges.

**6.6** Any and all claims from the service agreement shall be due for payment immediately. In case of default 1% interest per month shall be charged. The claiming of further damages shall not be affected thereby.

**6.7** With regard to partial statements the same payment conditions as those determined for the entire order shall apply.

**6.8** In case of only even partial default of payment CANCOM shall be entitled to completely or partially stop the services until payment receipt. The payment obligations of the customer shall remain upright unaltered.

**6.9** Without explicit written declaration of CANCOM the stopping of services shall not be deemed as a termination of the contractual relationship. CANCOM shall and will perform the services as soon as payment obligations or other contractual obligations are met by

the customer as agreed.

**6.10** The value of the amount of all current fees shall be secured according to the Consumer Price Index 2015 (VPI 2015), announced by Statistik Austria, or according to the index substituting it. Current fees shall therefore increase or decrease to the same extent as the index changes. The adaptation of service fees shall take place once a year as per April 1 of each calendar year in the proportion in which the annual average of the VPI 2015 for the last calendar year has changed in relation to the penultimate calendar year before the adaptation. In addition, CANCOM reserves the right, in the event of increases in variable cost components (such as, but not limited to, energy, raw materials, logistics, labor costs, etc.) to adjust the prices according to market conditions on a monthly basis. If CANCOM fails to perform an adaptation in case of an increase of the VPI 2015, this shall not constitute a waiver of the right to consider the respective increase with the adaptation of fees in the following years.

**6.11** The limited or impossible use of the system defined in the service agreement or parts of the system due to damage, theft, loss, legal, technical or economic impracticality, even in case of coincidence or force majeure, shall not entitle the customer to cancellation, termination or partial termination of the service agreement and the obligation to pay the agreed service fee shall remain upright unless the restricted or impossible usability has been caused by CANCOM. In this case the customer shall be entitled to extraordinary termination.

**6.12** Insofar as the contractual services are being performed in form of accounting- and/or consumption units, CANCOM (unless explicitly agreed otherwise) shall take measurements of the units used and to be charged according to its own procedure and provide the customer with records made by CANCOM on the units used or to be charged. Units used however shall be fully paid in advance (to the extent of units ordered). Consumption units shall, unless agreed to the contrary, be invoiced and fall due upon expiry of each calendar month. Payment periods shall be in accordance with the present clause (unless agreed otherwise).

**6.13** If CANCOM issues an estimation of expenses on a time and material basis or on the basis of use, such estimation shall be deemed for planning purposes only. CANCOM shall invoice according to the currently valid list prices and charge rates of the customer service on the basis of actual time and material expenses or according to the current or entitled use by the customer, taking into consideration an agreed minimum ordered quantity. The quantity approaches underlying the estimation are based on a valuation carried out to the best of knowledge of the scope of performance by virtue of the information provided by the customer.

## **7. Electronic Invoicing**

**7.1** Invoices can be delivered at the discretion of CANCOM in electronic form by e-mail or in paper form. In the case of electronic invoices, the customer must ensure that they can be retrieved. The customer undertakes to provide CANCOM with its own e-mail address, which is set up exclusively for the receipt of electronic invoices. The CANCOM e-mail address is merely a dispatch address for sending electronic invoices, the receipt of e-mails is not possible.

**7.2** Electronic invoices are created in "portable document format" (pdf) and are not signed. It is not possible to receive electronic invoices and paper invoices at the same time. One pdf file is created per invoice. Each invoice is sent individually by e-mail.

**7.3** The electronic invoice shall be deemed to have been received as soon as it can be retrieved or taken note of under normal circumstances.

**7.4** Reminders will be sent in paper form to the billing address provided.

**7.5** In the event that an electronic invoice cannot be delivered, CANCOM reserves the right to send the invoice in paper form to the postal address of the customer last notified to CANCOM.

**7.6** The customer can revoke the electronic sending of invoices at any time in writing and with a legally valid signature (by post or scanned by e-mail or fax). Thereafter, the customer shall receive invoices in the future by post to the postal address last notified to CANCOM. CANCOM reserves the right, for good cause, to independently change the delivery of invoices to the postal address last notified to CANCOM.

## **8. Efforts of the customer (cooperation obligations)**

**8.1** The performance of the contractual services depends on the timely fulfilment by the customer of the agreed cooperation obligations. The customer shall thus undertake to support all measures and to perform (preparatory) efforts which are necessary for the performance of the services by CANCOM, even if these are not explicitly included in the scope of performance. The cooperation obligations of the customer primarily result from the respective SLAs and shall prevail the present document in case of discrepancies. Insofar as these do not provide any stipulations, the following cooperation obligations shall anyhow apply.

**8.2** On his premises the customer shall be responsible for compliance with the conditions required by the respective producer for the operation of the hardware. The customer shall equally ensure room and building security, amongst others provide protection from water, fire, and access by unauthorized people. On his premises the customer shall himself be responsible for specific safety precautions (e.g., safety cells).

**8.3** On the dates announced by CANCOM the customer shall at his own expense provide the information, permits, documentation (plans as well as other documents) and data required for the performance of the order and in the form required by CANCOM as well as the necessary or adequate infrastructure free of charge and he shall support CANCOM at request with problem analysis and troubleshooting, with the coordination of handling orders and with the matching of services. In case of maintenance services which are realized by the customer, but which affect the services of CANCOM (e.g., with maintenance works on systems subject to a monitoring, etc.), the customer shall announce the start of such works on time (at least 5 working days in advance) as well as the actual start of such works and he shall immediately communicate the completion of such works.

**8.4** For the performance of the services the customer shall grant CANCOM the necessary access to the system as well as an access to remote control inclusive of any and all possibly necessary software user licenses and access authorizations. Moreover, the provision of entrance/access possibilities (system location, access cards, removal of furniture, material and the like, etc.) and access possibilities (remote control, data transfer facilities, call numbers, user names, passwords, rights, lines etc.) as well as the immediate notice of any changes of such. Insofar as such an access by CANCOM is required for the performance of the service, any modification may be done only after clearance with CANCOM.

**8.5** The customer shall provide CANCOM free of charge with any and all existing communication tools, if this should be necessary for the performance of the contractually agreed services by CANCOM.

**8.6** It shall be within the scope of responsibilities of the customer to take appropriate measures for data security. The customer shall particularly perform regular data backup, especially before the performance of services by CANCOM. CANCOM shall not be liable for data loss.

**8.7** The customer shall undertake to treat the passwords and Log-Ins necessary for the use of the services of CANCOM confidentially.

**8.8** Immediate notice to CANCOM (service center details are in the product listing) of any and all disturbances by the customer including a most accurate disturbance description as well as provision of any and all information necessary for the provision of the service.

**8.9** If faults occur which require increased urgency to be rectified (e.g., hacker attack), the customer must report these faults to CANCOM immediately by telephone. In this case, notification in exclusively written form is not sufficient.

**8.10** Introduction of the CANCOM employees into the guidelines and rules of the customer (his company sector) relevant for the performance of the service (security, access, data protection, etc.) as well as immediate notice of modifications of such.

**8.11** Provision of evidence of the cause of disturbance in case of failures resp. dysfunctions of a system supervised by CANCOM, if systems have been integrated into the system environment of the customer or extended by third-party use, auxiliary equipment or by additionally installed software.

**8.12** Authorization of CANCOM to perform to the necessary extent measurements on the systems or in the networks of the customer.

**8.13** Provision free of charge of necessary software licenses with regard to applications of the customer, communication- or inspection instruments and hardware to the extent required by CANCOM for the provision of the services in material, territorial and temporal terms.

**8.14** Announcing of contact persons or key persons (per location resp. range of duty) of the customer for the purpose of compliance with the authorization procedures, clearings, and the execution of service performances as well as immediate notice of modifications of such. The customer shall further ensure that the necessary contact persons are available for CANCOM, otherwise CANCOM may bring services to a stop until these persons are available. To this end, the customer undertakes to announce adequate contact persons and to provide them with the appropriate decision-making authority. Internally, the customer shall further ensure that short or rapid decision-making channels are defined and that the named contact persons are present on site at appointments if required. If the customer does not meet its obligations to cooperate or does not meet them in a timely manner or in full, CANCOM may, at its own discretion, make decisions as set out in more detail in section 8.23 and 8.24 by way of example.

**8.15** The customer undertakes to provide operational services, such as the inclusion of the customer's personnel IT resources.

**8.16** The customer shall meet all his cooperation duties on time in the way that CANCOM is not obstructed in the performance of its services. The customer shall ensure that CANCOM or third parties commissioned by CANCOM will be granted necessary access to the premises of the customer for the performance of the services. The customer shall be responsible for the fact that the employees of his connected undertakings participating in the fulfilment of the agreement, or third parties commissioned by him do appropriately cooperate in the fulfilment of the agreement.

**8.17** The customer shall support CANCOM accordingly in the processes arising in connection with the termination of the agreement. (cf. section 5.8). This includes in particular the granting of access to the customer's premises for the dismantling of the services (e.g., installations) or the binding communication with the named contact persons or key persons.

**8.18** If the customer fails to meet his cooperation duties on the agreed dates or to the agreed extent, time schedules for the services to be performed by CANCOM shall extend

appropriately. Additional expenses and costs caused hereby for CANCOM shall be reimbursed by the customer separately at the currently valid charge rates.

**8.19** If preparations to be made by the customer or requirements to be provided or authorizations to be obtained should not be mentioned, the customer shall irrespective thereof be responsible for their provision; unless CANCOM has engaged in writing in the provision of (single) preparatory efforts. A respective warning obligation is herewith amicably excluded. If such (efforts) are inappropriate or insufficient for installation, for putting into operation or the operation itself or if these - due to an action or omission by the customer - should become inoperative for the purpose of installation, putting into operation or the operation itself, the customer shall reimburse CANCOM in full any and all costs incurred thereby.

**8.20** The customer shall ensure that his employees and third parties attributable to him treat with appropriate care the facilities and technologies applied by CANCOM as well as any possibly allocated assets; the customer shall be liable vis-à-vis CANCOM for any damage.

**8.21** The allocations and contributions of the customer shall be free of charge.

**8.22** The customer shall without delay inform CANCOM comprehensively about all circumstances and at his own expense have any /or changes affecting the subject matter of the services and all works performed which are/or for its implementation or its accompanying measures - this shall also include information from adjacent or related projects. Such information shall be provided in a timely manner and demonstrably in writing. If CANCOM incurs expenses or other disadvantages as a result of the breach of the obligation to provide information, these shall be borne by the customer.

**8.23** The customer shall without delay and at his own expense have any and all works performed which are not defined in the agreement or its annexes as services by CANCOM and which are necessary for the fulfilment of the contractually agreed services.

**8.24** If the customer does not fulfil his obligation to cooperate or does not do so completely (or in time), the agreed dates shall be postponed in a reasonable manner. Furthermore, depending on the nature of the service, its obligation to cooperate may also be performed by CANCOM at its own discretion and against additional remuneration (e.g., reimbursement of expenses). The customer shall grant CANCOM the corresponding rights for this purpose. If in such a case no agreement is reached between the contractual parties and the customer fails to fulfil its obligation to cooperate, CANCOM shall be entitled to suspend its own obligation to perform.

**8.25** In the event of imminent danger, CANCOM shall be entitled to assume the customer's cooperation obligations for the respective event if the customer does not fulfill these obligations in a timely manner or as agreed. CANCOM shall provide these services at the expense of the customer and shall exclude any liability.

## 9. Process- and System Changes

**9.1** Changes in the work procedures of the customer which may cause changes in the services to be performed by CANCOM for the customer, shall require previous clearance with CANCOM with respect to their technical and commercial consequences.

**9.2** Planned extensions, upgrades and other modifications of the contractual system shall be cleared with CANCOM beforehand and as early as possible with regard to their practicability. If CANCOM agrees to these modifications, the service fee shall at the same time be adapted to the modified extent.

## 10. Due Dates, Default

**10.1** Binding due dates shall be explicitly agreed as such in writing.

**10.2** If CANCOM is responsible for a delay, the customer shall, after expiry of an appropriate grace period of at least four weeks, to be granted by the customer, be entitled to withdraw from the contract. From the reason of withdrawal the customer shall not be entitled to any damage claims.

**10.3** If the customer is responsible for a delay, CANCOM shall, after expiry of an appropriate grace period of at least four weeks, be entitled to withdraw from the contract. The customer shall reimburse CANCOM the expenses for work already performed as well as for services already ordered (from CANCOM suppliers) for the customer and he shall reimburse lost profits. Date of performance shall be the day of notice of readiness for delivery.

**10.4** In all other cases or if a party does not exercise its right to withdrawal, the agreed due dates shall be deferred appropriately.

## 11. Warranty

**11.1** The customer is aware of the fact that according to the state of the art it is impossible to exclude faults in services and products of the information technology in all conditions of use. CANCOM shall thus not warrant freedom from defects, and this shall not be owed.

**11.2** CANCOM shall warrant for a period of six months from acceptance or use of the systems and system components delivered by CANCOM in accordance with section 11.7. Warranty shall however be excluded if the deficiency is caused by provisions or contributions of the customer, his vicarious agents or other third parties attributable to him. If in the course of troubleshooting it should show that either no defect of a service of CANCOM is given or that the customer is responsible for it, the customer shall reimburse

CANCOM the expenses incurred.

**11.3** Power failures, service works, disturbances, and other events which CANCOM is not responsible for may lead to interruptions of services and shall not entitle the customer to a reduction of fees.

**11.4** The prerequisite for warranty claims is that the customer fulfils his obligations according to § 377 UGB. The customer shall immediately notify CANCOM in writing of any defects that have occurred and comply with the storage, assembly and operating conditions prescribed by CANCOM. Only in this case shall the obligation to give notice of defects pursuant to § 377 UGB be deemed to have been complied with. Any conflicting provisions of the customer in this regard shall not apply under any circumstances (see section 1.4.). The customer shall bear the additional expenditure incurred by a delayed notification in the correction of the error. The customer shall support CANCOM in all respects with their correction, particularly by providing all necessary information. CANCOM shall start with the correction of defects without delay and shall properly and faultlessly perform the services within the agreed time, if nothing is agreed within an appropriate period of time, by at its choice either repeating the services concerned or by performing necessary rectification works. The customer shall not carry out troubleshooting or repair works himself nor shall he commission third parties with it.

**11.5** If CANCOM despite sustainable efforts and at least triple qualified written reminders fails to remove a defect within an appropriate period of time, each contracting party shall have the right to terminate the service agreement with immediate effect ex nunc.

**11.6** In case of deliveries of hard- and software the warranty conditions of the respective producer shall prevail, and the present stipulations shall apply subsidiarily and correspondingly. Provided that the storage-, installation- and operation conditions imposed by CANCOM, or the producer are being complied with, CANCOM shall (subsidiarily) warrant for a period of six months with the customer having to prove the presence of a defect at the time of delivery of the service. If in the scope of warranty system components are replaced, the original warranty of the entire system shall not be extended.

**11.7** The services of CANCOM shall be deemed accepted upon establishment of an acceptance protocol, upon use of the services by the customer at the latest, however. Defects which do not substantially affect the use of the service of CANCOM, shall not impair acceptance and neither shall the customer be entitled to a retention of payment, not even in part.

**11.8** In the case of software maintenance, the warranty shall be deemed to have been satisfied if CANCOM provides a workaround. The removal of faults, i.e., dysfunctional deviations from the current specifications, shall at the choice of CANCOM be executed

either by implementing a workaround, delivery of new software or by a respective modification of the program. Modifications of the program by an inputting of patches (e.g., bug fixes and the like) shall only be made when these patches are released by the producer. In such case CANCOM shall however be able to wait with troubleshooting until then. The inspection of such patches is made exclusively by the producer and not by CANCOM.

## **12. Guarantee**

**12.1** The assumption by CANCOM of a guarantee for certain properties (condition) shall for its validity require a written confirmation by CANCOM. Otherwise CANCOM will transfer a possible existing guarantee by the producer to the customer with the explicit indication that it is the guarantee declaration of a third party and that claims from such a guarantee may only be raised against the declaring party.

## **13. Liability**

**13.1** The liability of CANCOM for slight negligence as well as for service interruption, lost profits, failed savings, interest losses, consequential damages and pecuniary losses shall be excluded with the exception of personal damages resp. claims resulting from product liability. The reversal of the burden of proof for gross negligence shall be excluded.

**13.2** If data security has not explicitly been agreed as service, the liability of CANCOM shall be limited to the actual expenses for restoration of the data, to a maximum however of EUR 15.000,-- per damage case.

**13.3** On the whole the liability of CANCOM for any and all damages and expenses resulting from the agreement shall be limited to the basic contractual fee or to EUR 250.000,--, depending on which amount is lower. The contractual fee shall be calculated by the net amount of all allowances incurred until the first possibility of ordinary termination of the agreement.

**13.4** The limitations of liability as well as the exclusions of liability shall equally apply to the benefit of the governing bodies and auxiliary persons of CANCOM, in particular sub-contractors, suppliers, representatives, consultants and employees.

**13.5** In case of non-compliance with possible user conditions according to the user manual, documentation or official admission requirements, any liability, particularly damages, shall be excluded. The customer shall be responsible for proving compliance with possible user conditions.

**13.6** Damage claims shall become time-barred twelve months after the date when the customer became aware of the damage as well as the author of damage.

**13.7** The customer shall undertake to reimburse CANCOM any and all expenses connected to the pursuance of claims (anyhow dunning costs, collection expenses, lawyers' fees, dues) with regard to all contract violations such as in particular payment default.

## **14. Force majeure**

**14.1** For the purposes of these service contract conditions, force majeure shall be deemed to be all unforeseeable events or such events which, even if they were foreseeable, are beyond the control of the parties to the contract and whose effects on the performance of the contract cannot be prevented by reasonable efforts of the parties to the contract, even if they occur at suppliers. These include, but are not limited to, war, insurrection, strike, revolution, military or civil coup, epidemics or widespread viral diseases (e.g., in the form of epidemics or pandemics) and the associated (protective) measures decreed by state authorities, fire, flood, storm, earthquake, lightning, power failure, industrial action.

**14.2** If a case of force majeure occurs, the affected party shall immediately notify the other party in writing. The affected party to the contract is not responsible for the delay or impossibility of performance caused by such force majeure. The agreed delivery and performance period shall in any case be extended by the duration of the effect of the force majeure.

## **15. Audit Rights**

**15.1** CANCOM and the manufacturer have the right to check compliance with the contractual regulations and the contractual performance once a year and/or if there is an important reason to do so. The auditing shall be performed in each case in accordance with the applicable technical standards of CANCOM or the manufacturer. The customer undertakes to provide CANCOM with the information necessary to control compliance with the obligations set out in this agreement. This right of control shall also include the possibility for CANCOM and the manufacturer to inspect the performance at any time at the business premises of the customer during normal working hours and without disturbing the operational processes. This inspection must be announced in writing at least one month in advance and may not exceed three working days.

**15.2** If defects are discovered in the course of an inspection or audit, the customer shall remedy such defects immediately at its own expense, at the latest within the period of time agreed between the customer and CANCOM or the manufacturer. The costs of the performance of an audit shall generally be borne by CANCOM or the manufacturer. This cost coverage shall not include personnel costs. Personnel costs shall be borne by each contracting party itself. If, however, defects are discovered in the course of the audit, the

customer shall bear the costs of remedying the defect as well as the costs of the follow-up audits caused by the discovery and remedy of the defect.

## **16. Secrecy and Data Protection**

**16.1** The customer shall undertake to treat strictly confidential vis-à-vis third parties any and all technical and business documents (e.g., data carriers, drawings, documents, test results, samples) as well as any kind of technical information, knowledge, experiences in connection with this service agreement as well as the service tickets.

**16.2** CANCOM undertakes to comply with the applicable data protection regulations of the GDPR and the Austrian DSGVO. Insofar as the customer transfers data to CANCOM, he shall be solely responsible for the fact that any and all necessary approvals of third parties for the data transfer to CANCOM are given and/or that all data processing applications comply with data protection law. The customer shall indemnify and hold CANCOM harmless with regard to any and all claims in this respect.

**16.3** If personal data is processed by CANCOM (as the “processor”) on behalf of the customer (as the responsible party/ “controller”) within the scope of the provision of services, this shall be deemed to be order processing in the sense of Art. 28 GDPR. This order processing shall be carried out exclusively on the basis of a unilateral declaration of commitment to the processing of personal data by CANCOM in accordance with the legal requirements. This declaration of commitment is available at <https://www.cancom.at/en/agb>.

**16.4** In the event that CANCOM is the responsible party (“controller”) in the context of the order processing and the customer is the order processor, an appropriate agreement on the processing of personal data shall be concluded separately between CANCOM and the customer in accordance with Art. 28 GDPR.

**16.5** CANCOM shall be entitled to exploit content and conclusion of the present agreement in reference lists.

**16.6** By placing an order, the customer agrees to be informed about product news by newsletter via e-mail or telephone until revocation, which is possible at any time.

**16.7** The customer gives his explicit consent that his (company) name, address and e-mail address are passed on to the respective manufacturer, as far as this is necessary for the fulfilment of the order.

## **17. Copyright**

**17.1** Execution documents, such as plans, sketches and other technical documents, as well as the offer itself, samples, catalogs, brochures, illustrations and the like shall always

remain the intellectual property of CANCOM and are subject to the relevant legal provisions regarding reproduction, imitation, etc. In addition, any use, in particular forwarding, copying, publication and making available, including copying even in extracts, requires the express written consent of CANCOM, unless this is necessary for the performance of the Agreement.

**17.2** Except for the exception in section 17.1., the customer is in any case prohibited from distributing or reproducing all the above-mentioned documents in any form whatsoever. The customer shall keep them carefully, protect them from unauthorized access and return them to CANCOM upon request or in the event of termination of the contractual negotiations or upon termination of the contract without being requested to do so. The right of retention of the customer is excluded. In the event of infringement of CANCOM's copyrights or the provisions set forth in this section 17, the customer shall pay CANCOM a contractual penalty in the amount of 100% of the agreed remuneration. This shall not affect any further claims for damages or injunctive relief.

## **18. Export Limitation**

**18.1** Performance of the contract (particularly compliance with the agreed service levels) by CANCOM shall be subject to the fact that no obstacles whatsoever due to national and/or international laws, particularly export control provisions, are opposed to it. With the use of the services the customer shall equally be responsible for compliance with the Austrian and other applicable export laws, in particular with the Austrian and the US export rules. Any transfer of contractual objects, documents or other material, in particular any re-export may be subject to the obligation to gain a permit according to the export rules of the USA, the European Union or possible other states. In such case the customer shall undertake to obtain the appropriate permits from the respective authorities before a transfer takes place. In each case of a repeated transfer the same obligation must be contractually imposed on the respective transferee, resp. the person entitled to dispose of.

**18.2** For dual-use items, the following applies specifically: An export license is required for the export of certain goods. The license requirement results from certain technical product characteristics and applies to deliveries to all countries outside the EU, but in rare cases also to shipments within the EU. A distinction is made between military equipment and dual-use goods, which can be used for both military and civil purposes. The goods concerned are included in lists of goods. In addition to goods, software and technology are also included in the definition of goods. The customer undertakes, in accordance with Article 22 (10) of the EC Dual-Use Regulation, to clearly mark goods subject to approval on his business documents (e.g., purchase contracts, invoices, etc.), even in the case of intra-Community deliveries, e.g., by stating the list item.

## **19. Changes of General Service Terms, Specifications and Prices**

**19.1** CANCOM shall be entitled to change the General Terms and Conditions, the individual specifications or the prices with an appropriate period of notice, provided that the change is reasonable, taking into consideration the interests of the customer.

**19.2** If changes are made to the disadvantage of the customer, the customer shall be entitled to an extraordinary termination right at the time of effectiveness of the change.

## **20. Sub-contractors, Transfer of Rights and Obligations**

**20.1** CANCOM shall be entitled to entrust sub-contractors with the performance of duties.

**20.2** CANCOM shall be entitled to fully transfer the rights and obligations from this contract to connected undertakings of the CANCOM Group. In such case CANCOM shall inform the customer in writing. The customer shall not be entitled to extraordinary termination if the assuming company enters into all contractual rights and obligations. The transfer of rights and obligations by the customer without the consent of CANCOM shall be excluded.

**20.3** In case of a business transition according to section 38 UGB (Austrian Commercial Code) the Seller and the Acquirer shall undertake to immediately inform CANCOM in writing, otherwise they shall be jointly liable for any and all fee- and damage claims.

## **21. Final Provisions**

**21.1** A set-off of claims of the customer against claims of CANCOM shall be excluded.

**21.2** The customer shall waive the defenses of avoidance of the service agreement due to error or reduction of more than half the value (laesio enormis).

**21.3** The contractual relationships are exclusively subject to Austrian Law excluding its conflict of laws rules. The application of the UNCITRAL treaty of the United Nations on contracts for the international sale of goods is hereby excluded.

**21.4** The court in Vienna having subject-matter jurisdiction shall have exclusive jurisdiction for the decision on all disputes arising out of the contractual relationships – inclusive of disputes on their existence or non-existence.

**21.5** The customer shall in each case announce to CANCOM in writing and without delay any changes of his name or company name, his address, legal form, company register number, payment office etc. If such a change in the person of the customer leads to a probable deterioration of enforcement of claims or a worsened creditworthiness of the customer (e.g., transfer of the place of business abroad, change in the legal form),

CANCOM shall be entitled to change to prepayment or to demand an appropriate security.

**21.6** If single provisions of the service agreement inclusive of its annexes should wholly or in part be ineffective, the other provisions shall remain in force. An effective provision shall be deemed agreed in place of the ineffective provision which meets the economic purpose of the ineffective provision most closely. The same shall apply in case of a gap.