

## **checkpointmedia AG: General Terms and Conditions**

Date: Nov. 2004

### **1. Applicability and Contract Conclusion**

1.1 All supplies and services provided by checkpointmedia AG are performed subject solely to the General Terms and Conditions of checkpointmedia AG valid at the time, unless and in so far as no other written agreements have been made. The General Terms and Conditions of any party to a contract concluded with checkpointmedia AG shall not be accepted and are hereby expressly excluded, also if the General Terms and Conditions of the contractual partner remain uncontested. The General Terms and Conditions of checkpointmedia AG shall also apply to any future business conducted between the parties to the contract, even if no express reference is made to these Conditions (consumer business is excluded).

1.2 Quotations of checkpointmedia AG are given without commitment. No contract shall arise until a written order confirmation has been sent by checkpointmedia AG, the content of which has sole precedence. If any quotations are submitted to checkpointmedia AG the submitting firm or company is bound by the terms of the quotation for a period of twenty-eight (28) days from receipt of the quotation at the offices of checkpointmedia AG. checkpointmedia AG may accept the quotation by means of a written confirmation of order (acceptance of contract). Delivery and tendering of account are the equivalent of a confirmation of order.

### **2. Prices, conditions of payment, estimates**

2.1 Unless agreed otherwise, invoices are to be paid net and promptly. Prices quoted are exclusive of VAT, unless otherwise agreed in writing. The prices agreed on are from checkpointmedia AG ("ex works") and exclude delivery, assembly, installation, training, dispatch and other secondary services (such as program carries, documents and any contract fees). If required, services of this kind can be performed and will be invoiced separately.

Non-recurring payments are at fixed prices. Regular payments can be amended by checkpointmedia AG in accordance with changes in the consumer price index of 2001. If wage costs or any other costs necessary for the performance of the work, such as costs of materials, energy, transport, remuneration of work performed by third parties etc. change under the terms of collective agreements reached in the branch after the contract has been concluded checkpointmedia AG is entitled to amend its prices accordingly. This also applies in the case of currency fluctuations between a supplier country and Austria.

2.2 Queries regarding invoices from checkpointmedia AG can be made in writing within fourteen (14) days of the date of the invoice. This does not affect the date on which payment of the invoice is due. If an invoice is not queried within the agreed time, that invoice shall be deemed to have been accepted.

In the event that the query is justified, the Customer is entitled to withhold payment only of an appropriate part of the invoiced sum, and not of the entire sum. An appropriate sum in such an eventuality shall be deemed the sum necessary to cover the expected costs of the substitute performance by a third party of the measures needed to rectify the defect. In addition, the assertion of a right of retention against checkpointmedia AG is excluded.

The set-off of any claims of checkpointmedia AG with counterclaims of any kind whatsoever is excluded. Assignment of any claims of the contractual partner on checkpointmedia AG is effective for checkpointmedia AG only if checkpointmedia AG has been notified of this assignment in writing in advance and has agreed to such assignment in writing.

2.3 checkpointmedia AG is entitled, though not obliged, to insure the goods at the expense of the contractual partner. Equally, checkpointmedia AG is entitled to charge an appropriate sum for additional costs incurred by the postponement due to the weather of activities in the open air. Weather-related risks shall be therefore be borne by the contractual partner.

2.4 In the case of objects of contracts that have the character of a project, payment shall be effected in every case against partial invoices and a final invoice. checkpointmedia AG is entitled to demand payments in advance, i.e. to submit partial invoices. If the contractual partner is in default with the payment of a partial invoice even after an appropriate period of grace has been granted (which shall be no longer than fourteen (14) days), checkpointmedia AG is entitled to demand payment for all services performed up to that time and to withdraw from the contract forthwith.

2.5 Regardless of any stipulations or agreements to the contrary, checkpointmedia AG is furthermore entitled to perform any outstanding deliveries or services only if payment for these is effected in advance or surety is given. If payments in advance as described in the preceding sentence or as described in Item 2.4. (partial invoices) have not been effected even after an appropriate period of grace has been granted, or if surety has not been given within a similar period of grace, checkpointmedia AG is entitled to withdraw from the contract forthwith. In this case, the terms of the law and of the contract shall apply as if the contractual partner were in default of contractual obligations.

If payment in instalments has been agreed with the contractual partner, the contractual partner shall be deemed to be in default if payment of an instalment is more than five (5) days overdue.

The contractual partner is obliged to notify checkpointmedia AG forthwith if bankruptcy or insolvency proceedings are opened against its assets and property.

2.6 checkpointmedia AG is under no liability for the accuracy of estimates which it draws up to the best of its specialist knowledge. If it becomes apparent after the contract has been awarded to checkpointmedia AG that the costs will be more than 15% higher than the costs quoted in the estimate, checkpointmedia AG will notify the contractual partner thereof. The invoicing of costs that exceed those given in the estimate by up to 15% requires no additional notification. Unless otherwise agreed in writing, alterations to the order placed or additional orders shall be invoiced separately and at appropriate prices.

A charge will be made for estimates in the fields of Design and Media Planning or for individual organizational concepts; a sum paid for an estimate or a presentation will be deducted from the final invoice or the final partial invoice if a contract is awarded on the basis of this estimate or presentation.

Estimates are deemed to be estimates of the total costs. Consequently, checkpointmedia AG reserves the right to amend the price as appropriate if the order placed differs in any way and to any extent, however slight, from the estimate.

### **3. Retention of title**

3.1 The goods remain property of checkpointmedia AG until payment including any interest and costs has been effected in full. The assertion of the retention of title constitutes a withdrawal from the contract only if this is explicitly stated. Until payment has been effected in full the contractual partner may not resell, pledge or transfer the product as surety to third parties, unless checkpointmedia AG has given written permission and been notified of the buyer's name or company and the complete address thereof; nor may the contractual partner work or modify the product or incorporate it with another product unless checkpointmedia AG has given written permission. If permission is given to resell the retention of title goods to a third party, the claim on the outstanding purchase price is deemed to have been assigned with immediate effect to checkpointmedia AG and checkpointmedia AG is entitled to notify the third party of this assignment. The retention of title also applies to any monies received by the contractual partner as a

result of the resale of the goods delivered; the contractual partner is obliged to keep these monies separate.

The contractual partner undertakes to notify checkpointmedia AG unbidden and in writing of any and every movement of the retention of title goods to another location until they have been paid for in full. If payment is delayed, also for other and future supplies and services provided by checkpointmedia AG to the contractual partner, or in the case of a reduction of the contractual partner's assets, checkpointmedia AG is entitled to assert its right to retention of title of the retention of title goods by entering the (business) premises of the contractual partner and reclaiming the retention of title goods.

In case of seizure or claims against the contractual partner, the contractual partner undertakes to declare the right of ownership of checkpointmedia AG and to inform the latter forthwith. Any costs that checkpointmedia AG should incur in order to protect its rights shall be reimbursed in full by the contractual partner.

3.2 The contractual partner undertakes to insure the retention of title goods against fire, water damage, theft and burglary at its own expense. The claims from this insurance shall be assigned to checkpointmedia AG; checkpointmedia AG accepts this assignment.

#### **4. Rights of exploitation**

4.1 Unless otherwise expressly agreed in writing, rights of exploitation do not pass to the contractual partner to the extent necessary for its appropriate use of the product until all payments, including any interest and costs, have been effected in full.

4.2 Plans, sketches and other documents remain intellectual property of checkpointmedia AG. Any exploitation thereof, especially transfer, copying and publication, requires the express permission of checkpointmedia AG. The contractual partner acknowledges that for any violation of this provision a penalty for breach of contract is hereby agreed which amounts to five times the total value of the order. Any loss incurred over and above this penalty shall also be reimbursed.

4.3 Any costs that checkpointmedia AG should incur in order to protect its rights shall be reimbursed in full by the contractual partner.

#### **5. Passing of the risk**

5.1 The risk passes to the contractual partner as soon as the goods have left the stores of checkpointmedia AG, or, in the case of transfer orders, the stores of its suppliers. The same applies in the case of part deliveries and also if the costs of delivery and installation are exceptionally borne by checkpointmedia AG, whatever the reason for this exception. In the case of foreign trade contracts, the Incoterms 2000 shall be deemed to be agreed upon; unless expressly agreed otherwise in writing, all deliveries are "ex works". If the dispatch or delivery of the goods is delayed as a result of force majeure, risk shall pass to the contractual partner in every case as soon as notification of readiness to dispatch has been issued.

5.2 If a delivery date is changed at the contractual partner's request, or should checkpointmedia AG be unable to fulfil its obligations for whatever reason (with the exception of own default), or if the contractual partner cannot take delivery at the agreed time, or if the goods cannot be installed due to circumstances beyond the control of checkpointmedia AG, checkpointmedia AG remains entitled to present the invoice on the due delivery date as agreed in the contract and to demand payment of the invoice as agreed in the contract.

## **6. Creation of program carriers / other services**

6.1 Individual organizational concepts and programs are prepared on the basis of the type and extent of the binding information, documentation and resources placed at the complete disposal of checkpointmedia AG by the contractual partner. The contractual partner undertakes to provide sufficient test results and test opportunities at its own expense and in good time during normal office hours. In the event that one of the installations provided to the contractual partner for trial purposes is already in real-time operation, it is the responsibility of the contractual partner to ensure that the real-time data is saved. Individual programs shall be prepared on the basis of a written specification which shall be drawn up either by checkpointmedia AG using the documents and information placed at its disposal or by the contractual partner. In the former case, a charge will be made for the preparation of the specification.

The contractual partner undertakes to check any specification drawn up by checkpointmedia AG to ensure that it is correct and complete and to issue it with the contractual partner's stamp of approval. Any alterations that may be requested at a later date shall be regarded as additional orders and may result in a postponement of the delivery date and a corresponding amendment of the overall cost.

6.2 The software shall be regarded as accepted if acceptance of the program is not expressly declared within ten (10) working days following delivery and any installation or if checkpointmedia AG does not receive any comments from the contractual partner. The software shall be regarded as irrevocably accepted as soon as the contractual partner has put it into full operation.

6.3 A charge will be made for repair work which will be in accordance with the services actually rendered. Travelling expenses will be charged at a flat rate of EUR 50.00 net plus value added tax. A flat rate of EUR 75.00 net plus value added tax will be charged for every man hour started. If work on Sundays and/or public holidays is required, checkpointmedia AG is entitled to add a surcharge of 50% of the total invoice in the case of repair work. Should it emerge in the course of repair work that further repairs are necessary and practicable the original repair instructions shall be deemed to apply to the repairs subsequently found necessary, providing that the employee of checkpointmedia AG regards these repairs as practicable. No special notification of this decision to the contractual partner is required. A charge will be made for estimates for repair work and inspections at the contractual partner's premises even if no order is subsequently placed to carry out the repairs.

## **7. Delays in delivery, payment and acceptance**

7.1 An objectively justifiable delay in connection with checkpointmedia AG's fulfilment of its obligations or a short delay in settlement of a payment already due on the part of checkpointmedia AG is deemed to have been sanctioned in advance providing that such delay is reasonable in the context of the size of the order and the particular circumstances of the order and does not result from gross negligence or wilful intent on the part of checkpointmedia AG. Should checkpointmedia AG fall behind with deliveries through gross culpability the contractual partner is entitled to declare its withdrawal from the contract. In such an event it shall be agreed that the delay is accepted and the right to compensation is waived if checkpointmedia AG names a new delivery period before receiving the declaration of withdrawal and this delivery period does not exceed twelve (12) hours from checkpointmedia AG's notification thereof and if checkpointmedia AG makes delivery before expiry of this new delivery period. Minor or slight failings do not constitute a reason to withdraw from the contract, unless expressly agreed otherwise in writing.

Costs arising from delays caused by third parties, especially advisers of the contractual partner, or delays caused by the weather shall in no case be borne by checkpointmedia AG. Delays of this kind shall fall under the responsibility of the contractual partner and do not constitute a reason to delay the passing of risk (see Item 9.).

7.2 If checkpointmedia AG is prevented from fulfilling its obligations, the delivery period shall be extended automatically by the duration of the hindrance. However, checkpointmedia AG is also entitled to withdraw from the contract following a period of grace of fourteen (14) days and to exploit the goods elsewhere. In this case, a penalty for breach of contract amounting to 30% of the total amount of the invoice shall also be agreed. In all other cases the terms set out under Item 8. apply.

Should acceptance be delayed because a third party (consultant, construction company etc.) consulted by the contractual partner fails to perform a service or provide information within the time stipulated – for whatever reason – or should checkpointmedia AG be prevented from beginning or completing its work by such failure, checkpointmedia AG is entitled, at its discretion and following a period of grace of no more than fourteen (14) days, to demand payment of the entire price as agreed, irrespective of whether the goods or other services have been accepted, or to declare its withdrawal from the contract. In addition checkpointmedia AG is entitled in every case to charge the contractual partner separately for any additional expenses which may have arisen – for whatever reason – as a result of the contractual partner's consultation of a third party.

7.3 If the contractual partner is in delay with acceptance of the work performed by checkpointmedia AG or unjustly refuses to accept this work, the latter is entitled to store the goods at the contractual partner's expense at a haulage contractor's on the premises of checkpointmedia AG or at the point of dispatch or in its own business premises and to levy a storage fee of 0.5% plus value added tax of the net total of the payment due for the goods for every month started, and to continue to insist on the immediate fulfilment of the provisions of the contract.

If partial payments have been agreed, checkpointmedia AG is entitled to demand payment of the all outstanding amounts (default). In case of doubt the contractual partner shall present a bank guarantee covering the price agreed for the entire job. Furthermore, checkpointmedia AG is entitled to defer fulfilment of its own obligations towards the contractual partner until payment or other settlement has been effected in accordance with the agreement.

7.4 Should the contractual partner be in delay with payment, it undertakes to reimburse the dunning fees and collection charges incurred by checkpointmedia AG for the necessary legal measures, and shall take as the basis for this reimbursement at least the amounts set down in the decree of the BMWA (Federal Ministry of Economics and Labour) relating to the highest rates payable to collection agencies. In addition, checkpointmedia AG is entitled to charge a sum of EUR 25.00 plus value added tax for every reminder issued and a further sum of EUR 12.00 plus value added tax for every quarter that the contractual partner is listed on the record of defaulting customers. Even if the delay in payment is no fault of the contractual partner's checkpointmedia AG is entitled to charge interest on arrears at an annual rate of 8.5%, or in the case of business customers the statutory interest on arrears. Furthermore, any additional loss, especially the loss incurred as a result of higher rates being charged due to non-payment on any credit accounts owned by checkpointmedia AG, shall be reimbursed irrespective of whether the contractual partner is at fault for the delay in payment or not.

## **8. Cancellation charge, compensation**

8.1 The contractual partner has the right to withdraw from the contract without giving any reasons for this withdrawal if it effects payment for all services rendered and goods delivered and at the same time pays compensation which shall amount to 30% of the costs not yet invoiced.

8.2 Unless otherwise agreed in writing, it is incumbent solely on checkpointmedia AG to decide whether goods already delivered shall be taken back by checkpointmedia AG. If delivered goods are returned the contractual partner shall receive credit amounting to 70% of the purchase price already paid. If the goods returned are retention of title goods, a cancellation charge of 30% on the retention of title goods shall be additionally levied. All other services shall be paid for in full. Costs

of uninstallation, removal, return to the supplier if appropriate etc. shall be reimbursed by the contractual partner in full and according to the costs actually incurred.

## **9. Warranty**

9.1 Only deviations from the specification as agreed in writing shall constitute defects. Discrepancies arising from the impossibility to implement the specified services or the impossibility of implementing them without unreasonable costs being incurred where the overall impression and/or overall result is the same for an objective observer shall not constitute a defect. checkpointmedia AG provides warranty for material defects or defects in the technical function, this liability being limited to rectification or replacement by the manufacturer. Unless expressly agreed otherwise in writing this warranty applies only to those defects that were present at the moment of the passing of risk; no liability will be accepted for defects occurring afterwards. It is incumbent upon the contractual partner to present proof that the defect was already present at the moment of delivery (consumer business is excluded.)

All product descriptions provided by checkpointmedia AG, such as diagrams, drawings, descriptions, information on dimensions, weight, performance and consumption, including information relating to the usability of appliances for new technologies are without obligation unless described explicitly as binding in writing. This applies especially in the case of alterations and improvements which aid technical progress. Minor deviations from such product descriptions shall be deemed to have been approved and do not affect the performance of a contract as long as such deviations are acceptable to the contractual partner.

Warranty provided by checkpointmedia AG applies only to any application and usability of programs supplied by checkpointmedia AG that have the express approval of checkpointmedia AG. Warranty claims brought by the contractual partner are limited to repair or replacement.

Checkpointmedia AG accepts no liability for advertising claims or assertions made in public by the manufacturer, importer etc. pertaining to product characteristics, unless such characteristics have been expressly agreed in writing.

9.2 Should the complaint be accepted, and should it be possible both to repair the defect and to offer a replacement, checkpointmedia AG shall satisfy the warranty claim by means of replacement or repair at its option. This shall not result in renewal or extension of the warranty period. In addition, in the case of business with companies or firms checkpointmedia AG reserves the right to satisfy a warranty claim by means of repair, replacement or price reduction; the contractual partner has the right of rescission only in the event of an inherent irreparable material defect (consumer business is excluded). Any additional claims for compensation are excluded in every case.

9.3 Warranty claims brought by the contractual partner do not entitle it to withhold performance of its contractual obligations (consumer business is excluded).

9.4 Warranty claims of firms or companies are conditional on the immediate examination of the goods by the contractual partner and on written notification to checkpointmedia AG of the nature and extent of the defect discovered. Such written notification must be given immediately after receipt of the goods, or within five (5) days thereof at the latest. The contractual partner undertakes to test the software within fourteen (14) days of delivery or installation by checkpointmedia AG and to notify checkpointmedia AG in writing within fourteen (14) days of delivery or installation of the software of any comments. In the event that a defect prevents real-time operation, acceptance shall be repeated within fourteen (14) days of the repair. If hidden defects are discovered, notification of such defects shall be given forthwith. If defects are not specified in written form or not specified in writing within the period stipulated, the goods shall be deemed to have been accepted, in which case no warranty claims or claims for compensation or avoidance on account of mistake shall be recognized. The applicability of the terms of § 377 ff of the Austrian Code of Commercial Law are not affected.

9.5 The contractual partner undertakes to allow checkpointmedia AG to examine the defect specified in the complaint at the premises of the contractual partner or at the premises of checkpointmedia AG at its option during normal office hours. The contractual partner shall place the computer system it uses (including the appropriate connections if it has systems with online connections to other computers), software programs, protocols, diagnosis of the documentation and data at the disposal of checkpointmedia AG free of charge during normal office hours to the extent necessary for testing; the contractual partner shall support checkpointmedia AG as far as it is able to do so, if need be by providing an EDP technician of the contractual partner. Faults for which the contractual partner is responsible (operating errors; system modifications contrary to the terms of the contract) shall be repaired by the contractual partner in good time. If the contractual partner's failure to repair faults for which it is responsible prevents checkpointmedia AG from repairing the defect, checkpointmedia AG shall regard the product as sound with respect to the defect specified in the complaint. The repair of the defect by means of software updates or suitable emergency solutions is acceptable.

Seller's warranties lapse if the contractual partner refuses to allow inspection of the defect. Failure to agree on two occasions to a time and a date during normal office hours for such inspection shall constitute such refusal which shall release checkpointmedia AG from its seller's warranties. Seller's warranties also lapse if the contractual partner disregards the operating conditions, service instructions or similar, repairs defects that have arisen itself or has them repaired by a third party or if it fails to abide by an obligation incumbent upon it under the terms of the contract, especially if it fails to effect specified payments or withholds these for whatever reason.

9.6 checkpointmedia AG reserves the right to send defective goods to the suppliers of these goods for the purposes of repair. In the case of delivery by a third party checkpointmedia AG is entitled to assign warranty claims that it has on the manufacturer to the contractual partner with full discharge of debtor.

Components that have been replaced remain with checkpointmedia AG or shall be returned to checkpointmedia AG on request and at the expense of the contractual partner. Goods that have been returned or replaced become property of checkpointmedia AG. Freight, packing and any travelling expenses that may be incurred by an engineer shall be at the contractual partner's expense. Seller's warranties also lapse if the contractual partner disregards the operating conditions, service instructions or similar, repairs defects that have arisen itself or has them repaired by a third party or if it fails to abide by an obligation incumbent upon it under the terms of the contract, especially if it fails to effect specified payments or withholds these for whatever reason.

9.7 The assignment of claims to third parties by the contractual partner is excluded.

9.8 The warranty period for movables is six (6) months. The warranty period for software is three (3) months. In the case of consumer business the statutory periods apply. Claims for compensation under § 933b ABGB, the Austrian Civil Code, are excluded, except where this clause is not contra bonos mores in the specific instance.

9.9 The terms of the warranty for hardware shall also apply to software with the exception of the different warranty periods. A software defect shall be deemed to have occurred when a software program performs in a manner that does not conform with the specification (documentation) and when this non-conformity of performance can be reproduced by the contractual partner.

The contractual partner is hereby informed of the difference between work performed under the terms of the warranty, i.e. repair work, and maintenance work, i.e. supplementary maintenance. Maintenance shall be deemed to be the performance of such work necessary for the readiness for service of the object of the contract and the replacement of parts subject to wear and tear. Supplementary maintenance shall be deemed to include work which becomes necessary as a result of an alteration of the contractual partner's requirements, including the availability on the market of

new updates or the need to adjust the product to a new environment (expansion or installation of a new operating system), or the appearance of computer viruses or similar destructive program codes.

9.10 The warranty does not apply to the artistic realization and design of a production.

9.11 checkpointmedia AG provides no warranty in the event that second-hand goods are purchased or when it agrees to undertake repair work, modifications or reassembly. (This provision does not apply to consumer business, for which in these cases a warranty period of one year applies.)

## **10. Liability**

10.1 checkpointmedia AG accepts liability for damage to property or pecuniary loss caused culpably to the contractual partner only if such damage occurs with intent and gross negligence (*krasse grobe Fahrlässigkeit*); in the case of consumer business liability shall be accepted also in the event of ordinary negligence (*schlichte grobe Fahrlässigkeit*). Gross negligence (*krasse grobe Fahrlässigkeit*) or wilful damage has to be proved by the damaged party. In the event of slight negligence (*leichte Fahrlässigkeit*) and, in the case of business conducted with companies, ordinary negligence (*schlichte grobe Fahrlässigkeit*), claims for compensation of all kinds are excluded with the exception of damage to a person, atypical damage and – in the case of consumer business – damage to property that has been accepted for the purpose of processing.

Any liability that subsists on the basis of mandatory legal requirements shall in any case be limited to the sum foreseeable on the basis of all circumstances known to checkpointmedia AG or unknown to checkpointmedia AG by its own fault or omission at conclusion of the contract, and shall not exceed the payment received from the contractual partner under the terms of the contract in question.

10.2 Claims for compensation brought against checkpointmedia AG for consequential loss and pecuniary loss, savings not achieved, loss of profits, loss of interest payments and loss or injury caused to a third party are excluded in any case providing this is legally admissible. In any case that the liability of checkpointmedia AG is excluded or limited, this exclusion or limitation applies equally to checkpointmedia AG's employees, collaborators, shareholders, representatives and auxiliary persons.

10.3 In the absence of a separate agreement no liability of any form whatsoever will be accepted for the violation of the industrial property rights of a third party (patent rights, moral rights, trademark rights, copyright, protection of patterns and designs etc.). Should a third party claim that checkpointmedia AG has violated its industrial property rights, checkpointmedia AG shall be notified of this claim without delay and in full detail. The contractual partner is liable for ensuring that the manufacturer's restrictions and/or instructions with regard to the use of the hardware or software supplied are strictly adhered to and undertakes to keep checkpointmedia AG free and harmless in this regard. The goods supplied offer only that level of safety that can be expected on the basis of approval specifications, operating instructions, supplier's stipulations regarding the handling of the product (operating manual) – especially with regard to the inspections required – and any other information provided. Liability to pay compensation for damage to property and/or injury to persons under the terms of the product liability law and claims on product liability that may be inferred from other regulations are excluded.

10.4 checkpointmedia AG accepts no liability for any damage that may be caused to the contractual partner as a result of the failure of an appliance or program in whatever form.

checkpointmedia AG shall accept liability only as far as has been agreed and according to the prevailing conditions. checkpointmedia AG is not liable for the recovery of data unless this has been destroyed as a result of checkpointmedia AG's wilful intent or gross negligence and checkpointmedia AG has guaranteed the contractual partner that the data can be reconstructed at reasonable cost from data material stored in machine readable form. If the order consists of the creation of individual organizational concepts and programs on the basis of data, drawings, models or other specifications of the contractual partner checkpointmedia AG's warranty and liability are limited solely to the performance of the order as agreed.

10.5 All limitations of liability shall apply equally to other services. Other services are those services performed outside the scope of the warranty, especially maintenance and repair work as services resulting from supplementary orders.

10.6 Any liability claims must be brought within six (6) months (this provision does not apply to consumer business).

## **11. Loyalty and secrecy**

11.1 The contractual partner is obligated to maintain loyalty towards checkpointmedia AG and shall therefore refrain from recruiting or employing, either directly or indirectly through a third party, employees, collaborators on contracts for work or labour and subcontractors of checkpointmedia AG who are or were involved in the execution of an order for the duration of the contract and for twelve (12) months after the expiry or termination of the contract. In the event of any violation of this obligation a penalty for breach of contract regardless of causality is hereby agreed which shall amount to EUR 20,000. Any loss incurred over and above this penalty, especially any loss of profits, shall also be reimbursed.

11.2 checkpointmedia AG has the authority to process any personal data entrusted to it in the course of the fulfilment of the order or to have such data processed by any third party it engages to perform services. checkpointmedia AG undertakes to keep data secret in keeping with the Austrian Data Protection Act 2000; any material entrusted to checkpointmedia AG (data carriers, data, analyses, programs, etc.) shall be returned to the contractual partner on request after completion of the order.

11.3 checkpointmedia AG undertakes to treat all information relating to trade and business secrets and business partners of the contractual partner's which it receives in the course of fulfilling the contract confidentially and to refrain from exploiting such information even after expiry or termination of the contract, and additionally to oblige any third party it engages to perform services to be bound by these and all other obligations agreed to towards the contractual partner. The contractual partner can release checkpointmedia AG from this obligation. Any legal obligation to provide information shall prevail over this obligation to secrecy. However, checkpointmedia AG shall be granted the right free of charge to make known the results of the services performed for the contractual partner for advertising purposes and to publish samples thereof in any media (e.g. websites, catalogues, information brochures, promotional films).

## **12. Miscellaneous**

12.1 In the event that the contractual partner cannot be regarded as a business enterprise as defined under the terms of the Austrian Consumer Protection Act, all contract clauses shall be void the agreement of which with consumers has no legal validity or would be illegal; in place of such clauses an admissible provision shall be applied that most closely corresponds for trade purposes to the clause applicable to business enterprises.

12.2 The place of performance for all obligations arising from the legal transactions including the right of rescission is Vienna. The legal venue for all disputes in connection with this contract shall be the materially competent court in Vienna. However, checkpointmedia AG shall have the right to bring legal action against the contractual partner also at its place of general jurisdiction. Austrian law shall apply irrespective of the country in which the contract is fulfilled. The UN Convention on International Contracts for the Sale of Goods shall not apply.

12.3 Subsidiary agreements, subsequent modifications and/or additions shall be valid only if made in writing. If no other formal requirement prevails, this writing may take the form of a fax and fax confirmation or email with email confirmation.

12.4 If one of the foregoing provisions of these General Terms and Conditions is inapplicable or becomes inapplicable this shall not affect the applicability of any of the other provisions of these General Terms and Conditions. In place of the invalid provision an admissible regulation shall be applied which corresponds as closely as possible to the purport of the invalid provision.

12.5 This English version is a translation. The original German version shall prevail.